

FORM PTO-1594
(Rev. 6-93)
OMB No. 0651-0011 (exp. 4/94)

RECORDATION FORM COVER SHEET TRADEMARKS ONLY

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

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BWS-074 ▾

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

1. Name of conveying party(ies):
International Wallcoverings Company

Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State Nova Scotia
 Other _____

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

2. Name and address of receiving party(ies)

Name: Brewster Wallpaper Corp.

Internal Address: _____

Street Address: 67 Pacella Park Drive

City: Randolph State: MA ZIP: 02368

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

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: December 16, 2004

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)
2,226,983; 2,786,523; 2,797,682;
2,814,917; 2,831,952; 2,898,006

Additional numbers attached? Yes No

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

Name: Thomas V. Smurzynski

Internal Address: Lahive & Cockfield, LLP

Street Address: 28 State Street

City: Boston State: MA ZIP: 02109

6. Total number of applications and registrations involved: 6

7. Total fee (37 CFR 3.41)..... \$ 165.00

Enclosed
 Authorized to be charged to deposit account

8. Deposit account number:
12-0080

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.

Thomas V. Smurzynski *Thomas V. Smurzynski* February 25, 2005
 Name of Person Signing Signature Date

Total number of pages including cover sheet, attachments, and document: 15

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office, facsimile no. (703) 306-5995, on the date shown below.

Dated February 25, 2005 Signature: *Thomas V. Smurzynski* (Thomas V. Smurzynski)

CH \$165.00 120080 2226983

AGREEMENT OF PURCHASE AND SALE

BETWEEN:

GRANT THORNTON LIMITED, in its capacity as receiver of International Wallcoverings Company, and not in its personal capacity (hereinafter called the "**Vendor**")

OF THE FIRST PART

- and -

BREWSTER WALLPAPER CORP.
(hereinafter called the "**Purchaser**")

OF THE SECOND PART

RECITALS:

- A.** On December 16, 2004, the Vendor was appointed the receiver of International Wallcoverings Company (the "**Company**") by GE Canada Equipment Financing G.P. ("**GE**"), The GML Trust Partnership (the "**Trust**") and Grandberg Family Associates Limited Partnership (the "**Partnership**") (collectively, the "**Secured Parties**"); and
- B.** The Purchaser wishes to purchase all of the Vendor's right, title and interest, if any, in and to the Purchased Assets (as hereinafter defined) on the terms and conditions set out in this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto agree as follows:

- 1. Definitions.** In this Agreement:
 - (i) "**Accounts Receivable**" means all accounts receivable of the Company for the sale of goods or services, all other amounts owing or accruing to the Company howsoever arising including, but not limited to, (a) any and all cash or other amounts on deposit with any financial institution or any other person or entity to the credit of the Vendor or the Company as of the Closing Date; (b) any and all refunds available to the Company from any governmental body or other authority on account of income taxes or other taxes; and (c) all amounts which have been prepaid by the Company, whether created before or after the date of this Agreement but which for

greater certainty shall not include any accounts receivable or other amounts arising from the sale of the Purchased Assets;

- (b) **"Agreement"** means this agreement and all schedules attached to this Agreement and all amendments to this Agreement made in writing between the Vendor and the Purchaser;
- (c) **"Bill of Sale"** means the bill of sale between the Purchaser and the Vendor substantially in the form set out in Schedule "A" attached hereto.
- (d) **"Business"** means the undertaking of the Company including the manufacture, sale and distribution of wallcoverings and related products by the Company;
- (e) **"Business Day"** means a day other than a Saturday, Sunday or statutory holiday in Ontario;
- (f) **"Closing"** means the completion of the transaction of purchase and sale contemplated herein;
- (g) **"Closing Date"** means December 16, 2004;

- (i) **"Equipment"** means any equipment, machinery, tools, apparatus, plants, furniture, fixtures and vehicles owned by the Company of whatsoever nature or kind including all parts, accessories, attachments, additions and accessions thereto;

- (k) **"Excluded Assets"** means the property referred to in Section 2(b) hereof;

(m) "Intellectual Property" means:

- (i) all patents and applications for patents, all reissues, divisions, continuations and extensions thereof, and all licences and other rights relating to patents, inventions and discoveries owned or held by the Company;
- (ii) all of the Company's trade marks and related trade mark registrations; all design and design rights for all of the Company's intellectual property, both past and present; all copyrights, copyright registrations and applications therefore; and all renewals, modifications and extensions of any of the aforesaid rights, and all licences and other rights relating thereto;
- (iii) all of the Company's patterns, plans, drawdowns, colour standards, colour separations, designs, design and design rights of all intellectual property and brands and brand names, art, research data, trade secrets and other proprietary know-how, processes, drawings, technology, unpatented blue prints, flow sheets, equipment and parts lists and descriptions and related instructions, manuals, data, records and procedures and any and all data used in the Business, all computer software owned by the Company and all computer software licences and agreements to which the Company is a party, including without limitation all licences, agreements and other contracts and commitments relating to any of the foregoing to which the Company is a party; and
- (iv) all storage drawers and cabinets for the items set out in (i), (ii) and (iii) above.

(n) "Inventory" means all inventories held, used or intended for use in the Business, including without limitation raw materials, operating supplies, packaging, work in progress, finished goods inventory and sample books including but not limited to the inventory described in Schedule "B";

(o) "Leases" means the lease and financing agreements entered into by the Company with the parties set out in Schedule "C";

(p) **"Letter of Credit"** means the letter of credit issued by the Purchaser's operating lender to GE to secure the Purchaser's obligations under the Promissory Note;

(r) **"Promissory Note"** means the promissory note issued by the Purchaser in favour of GE in the form attached hereto as Schedule "D";

(s) **"Purchased Assets"** means the property referred to in Section 2(a) hereof; and

(t) **"Purchase Price"** means the amount referred to in Section 3 hereof.

Purchase and Sale

(a) Subject to the terms and conditions hereof, the Vendor, in its capacity as receiver of the Company, shall sell to the Purchaser and the Purchaser shall purchase from the Vendor upon Closing all of the Vendor's right, title and interest, if any, in and to the following assets used in the operation of the Business (collectively, the **"Purchased Assets"**):

- (i) the Inventory;
- (ii) the Designated Cylinders and Designs;
- (iii) the ERP Agreements;
- (iv) the Intellectual Property; and
- (v) the Accounts Receivable.

(b) The Vendor and the Purchaser hereby acknowledge and agree that except for the property and assets set out in 2(a) above all other property, assets and undertakings of the Company (collectively, the **"Excluded Assets"**) do not form part of the Purchased Assets and that the Purchaser will not be purchasing any right, title or interest in or to any of them including, but not limited to the following:

- (i) any non-operating assets of the Company, if any;

- (ii) those assets and equipment which are subject to the Leases save and except for the assets and equipment which are part of the Designated Cylinders and Designs;
- (iii) the Business; and
- (iv) the printing and embossing cylinders which do not form part of the Purchased Assets as set out in 2(a)(ii).

3.

4. Payment of the Purchase Price. The Purchaser shall pay the Purchase Price as follows:

5. Taxes and other costs. The Purchaser shall pay upon Closing, in addition to the Purchase Price, all applicable federal, provincial and state taxes, duties and registration and other fees and charges which may be exigible in connection with the purchase and sale of the Purchased Assets, including without limitation federal goods and services tax and applicable provincial or state retail sales taxes. Alternatively, where applicable, the Purchaser shall have the option to furnish the Vendor with appropriate exemption certificates which, if appropriate as determined by the Vendor in its sole discretion, the Vendor shall also execute. The Purchaser agrees to indemnify and save the Vendor harmless from and against all claims and demands for payment of any such applicable taxes, including any interest, penalties or other liabilities or costs incurred as a result of any failure by the Purchaser to pay such taxes when due.

6. **No Assumption of Liabilities**

Except for the assumption of the GE Assumed Debt and the Partnership Assumed Debt, the Purchaser shall not assume any other liabilities of the Company.

7. **Representations and Warranties – Vendor.** The Vendor hereby represents and warrants to the Purchaser as follows:

- (a) the Vendor has been duly appointed as receiver of the Company and has the authority to enter into this Agreement and to sell its right, title and interest, if any, in and to the Purchased Assets;
- (b) the Vendor has not disposed of or encumbered the Purchased Assets; and
- (c) the Vendor is not a non-resident of Canada within the meaning of the *Income Tax Act (Canada)*.

8. **Representations and Warranties – Purchaser.** The Purchaser hereby represents and warrants to the Vendor as follows:

- (a) it is a corporation duly incorporated, organized and subsisting under the laws of the State of Massachusetts;
- (b) it has the corporate power and authority to enter into and perform its obligations under this Agreement and all necessary actions and approvals have been taken or obtained by the Purchaser to authorize the creation, execution, delivery and performance of this Agreement and this Agreement has been duly executed and delivered by the Purchaser, and this Agreement is enforceable against the Purchaser in accordance with its terms;
- (c) the Purchaser is not registered under Part IX of the *Excise Tax Act (Canada)* and is a non-resident of Canada under that legislation;
- (d) the Purchaser shall export all tangible personal property forming part of the Purchased Assets (the "Purchased TPP") as soon after receipt as is reasonable having regard to the circumstances surrounding the exportation and, as applicable, the normal business practice of the Purchaser;
- (e) the Purchaser is not acquiring the Purchased TPP for consumption, use or supply in Canada before the exportation of such property by the Purchaser;

- (f) the Purchased TPP shall not be processed, transformed or altered in Canada after the supply thereof is made to the Purchaser and before the Purchaser exports the property, except as is reasonably necessary or incidental to its transportation; and
- (g) the Purchaser shall provide the Vendor with a copy of bills of lading relating to the export of the Purchased TPP.

9. **Title to and Conditions of the Purchased Assets.** The Purchased Assets are being sold on an "as is, where is" basis. The Purchaser has conducted such inspections of the condition of the Purchased Assets and such investigations of the Vendor's right, title and interest in and to the Purchased Assets as it has deemed appropriate and has relied entirely on its own inspection and investigation and has satisfied itself concerning those matters. No representation, warranty or condition, either expressed or implied, has been or will be given by the Vendor as to: (a) the title, description, condition, cost, size, quantity, quality, fitness for purpose, merchantability, valuation, revenues, expenses, assignability, or otherwise of or concerning the Purchased Assets; (b) any set-off claims, lien claims or any other claims by any third parties against the Purchased Assets; or (c) the right of the Vendor to sell or assign same, save and except for the express representations and warranties given in Section 7 hereof. Without limiting the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario), or any similar legislation in the Province of Ontario, do not apply hereto and have been waived by the Purchaser. The descriptions of the Purchased Assets contained herein are for the purposes of identification only and no representation, warranty or condition has been or will be given by the Vendor concerning the accuracy of those descriptions and the Purchaser acknowledges that it does not rely on same. The Purchaser acknowledges and agrees that the Vendor makes no representation or warranty regarding any oral or written communication provided to the Purchaser by the Vendor or any of its affiliates. The Purchaser acknowledges and agrees that the Vendor makes no representation or warranty regarding any oral or written communication provided to the Purchaser by the Company or any former employees of the Company, whether such former employees were under contract to the Vendor or otherwise at the time such information was provided.

10. **Conditions Precedent – Purchaser.** The obligations of the Purchaser under this Agreement are subject to the conditions stated below, which are for the exclusive benefit of the Purchaser and all or any of which may be waived by the Purchaser, any such waiver to be binding on it only if made in writing:

- (a) all representations and warranties of the Vendor contained in this Agreement in Section 7 shall be true as of the Closing Date with the same effect as though made on and as of that date;

- (b) the Vendor shall have performed each of its obligations under this Agreement to the extent required to be performed on or before the Closing Date;
- (c) the Vendor shall have executed and delivered the Bill of Sale; and
- (d) none of the following shall have occurred:
 - (i) any action or proceeding at law or in equity shall be pending or threatened by any person, firm, government, governmental authority, regulatory body or agency to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets;
 - (ii) the Purchased Assets shall not have been removed from the control of the Vendor by any means or process; and
 - (iii) no party shall have taken any action to redeem any of the Purchased Assets.

If any condition noted in subparagraphs 10(a), 10(b), 10(c) or 10(d) is not satisfied or has not been waived by the Purchaser as of the Closing Date, the Purchaser may terminate this Agreement by written notice to the Vendor.

11. Conditions Precedent – Vendor. The obligations of the Vendor under this Agreement are subject to the conditions stated below, which are for the exclusive benefit of the Vendor and all or any of which may be waived by the Vendor, any such waiver to be binding on it only if made in writing:

- (a) all representations and warranties of the Purchaser contained in Section 8 of this Agreement shall be true as of the Closing Date, with the same effect as though made on and as of that date;
- (b) the Purchaser shall have performed each of its obligations under this Agreement to the extent required to be performed on or before the Closing Date;
- (c) none of the following shall have occurred:
 - (i) any action or proceeding at law or in equity shall be pending or threatened by any person, firm, government, governmental authority, regulatory body or agency to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets;
 - (ii) the Purchased Assets shall not have been removed from the control of the Vendor by any means or process; and

- (iii) no party shall have taken any action to redeem any of the Purchased Assets; and
- (d) the Purchaser shall have executed and delivered the Promissory Note to GE and delivered the Letter of Credit to GE.

If any condition noted in subparagraphs 11(a), 11(b), 11(c) or 11(d) is not satisfied or has not been waived by the Vendor on or before the Closing Date, the Vendor may terminate this Agreement by written notice to the Purchaser.

12. **Closing.** The Closing shall take place at the offices of Gowling Lafleur Henderson LLP, Suite 4900, Commerce Court West, Toronto, Ontario, M5L 1J3 at 10:00 a.m. on the Closing Date.
13. **Risk.** The Purchased Assets shall be and remain at the risk of the Vendor until Closing. If, prior to the Closing Date, the Purchased Assets shall be substantially damaged or destroyed by fire or other casualty, then, at its option, the Purchaser may decline to complete the transaction contemplated hereby. Such option shall be exercised in writing and received by Vendor within three (3) Business Days after notification to the Purchaser by the Vendor of the occurrence of the loss or damage, in which event this Agreement shall be terminated. If the Purchaser does not exercise such option, it shall complete the transaction contemplated hereby and shall be entitled to an assignment of the proceeds of insurance referable to such loss or damage. Where any damage is not substantial, the Purchaser shall complete the transaction contemplated hereby and shall be entitled to an assignment of the proceeds of insurance referable to such damage. If any dispute arises under this paragraph as to whether damage or destruction is substantial, such dispute will be determined by an arbitrator mutually acceptable to the parties. If the parties fail to agree on an arbitrator, either may, after such party has notified the other of such failure to agree, give notice to the other party that it wishes to submit the dispute to arbitration by a single arbitrator in accordance with the *Arbitration Act*, 1991 of Ontario. The name of an arbitrator shall be proposed in such notice and if the other party is not agreeable to such proposed arbitrator, Section 8 of such Act shall be applicable. The decision of the arbitrator, which shall be final and binding on the parties, shall be made as soon as possible following his appointment and his fees and expenses shall be borne equally by the parties. The Purchaser acknowledges that after the Closing the Purchaser shall be responsible for insuring the Purchased Assets.
14. **Termination.** If either the Vendor or the Purchaser terminates this Agreement pursuant to the provisions of either Sections 10 or 11 hereof, prior to the Closing:
 - (a) all of the obligations of both the Vendor and the Purchaser pursuant to this Agreement shall be at an end; and

(b) neither party shall have any right to specific performance or any other remedy against, or any right to recover damages or expenses from, the other.

15. **Vendor's Capacity.** The Purchaser acknowledges and agrees that, in executing this Agreement and completing the transactions contemplated hereby, the Vendor acts solely in its capacity as receiver of the Company and, except as regards its representations and warranties in Section 7 hereof, shall have no personal or corporate liability under or as a result of this Agreement.

16. **Assignment** The Purchaser shall not assign its rights and obligations under the Agreement of Purchase and Sale without the prior written consent of the Vendor.

17. **Third Party Consents.** The Purchaser acknowledges that it shall be the Purchaser's responsibility to obtain, at its own expense, any consents, approvals or any further documentation or assurances which may be required to carry out the terms of this Agreement, including any rights or licenses relating to the use of any Purchased Assets which are not assignable without the consent or other action of a third party (or parties). The Purchaser agrees that it shall not use such rights or licenses without first obtaining the consent or other action of the required third party.

18. **Miscellaneous**

(a) **Further Assurances.** Each of the parties shall, from time to time after the Closing Date, at the request and expense of the other party, take or cause to be taken such action, and execute and deliver or cause to be executed and delivered to the other party such documents and further assurances as may be reasonably necessary to give effect to this Agreement.

(b) **Notices.** Any notice required or committed to be given hereunder shall be in writing and shall be deemed to be sufficiently given if delivered to an officer of the Vendor or the Purchaser by personal delivery, telecopier or prepaid registered mail, addressed to the party to whom the same is given as follows:

(i) to the Vendor: Grant Thornton Limited
Royal Bank Plaza
19th Floor, South Tower
200 Bay Street, Box 55
Toronto, Ontario
M5J 2P9

Attention: Hassan Jaffer
Facsimile: 416-360-4948

(ii) to the Purchaser: Brewster Wallpaper Corp.
 67 Pacella Park Drive
 Randolph, Massachusetts
 U.S.A.
 02368

Attention: Ken Grandberg and
 Peter Ciaccia
 Facsimile: 781-963-4982

with a copy to: Gowling Lafleur Henderson LLP
 Suite 4900, Commerce Court West
 Toronto, Ontario
 M5L 1J3

Attention: Paul Basso
 Facsimile: 416-863-3549

Any such notice personally delivered or telecopied shall be deemed to be given on the date on which it was so personally delivered or telecopied (provided, however, that any notice received by personal delivery or telecopier on a day which is not a Business Day or after 5:00 p.m. on a Business Day shall be deemed to have been given on the next business day) and any notice given by registered mail shall be deemed to have been given on the third Business Day following the date on which it was mailed. During the existence of any interruption or threatened interruption in the Canadian postal service, all notices shall be personally delivered or telecopied.

- (c) Time. Time shall be of the essence of this Agreement.
- (d) Successors and Assigns. This Agreement shall enure to the benefit of and be binding upon the parties, and their respective successors and permitted assigns, provided that the Purchaser shall not assign the benefit of this Agreement without the prior written consent of the Vendor.
- (e) Entire Agreement. This Agreement and the attached schedules constitute the entire agreement between the parties with respect to the purchase and sale of the Purchased Assets and supersede all prior negotiations and understandings between the parties with respect thereto. This Agreement may not be amended or modified in any respect except by written instrument executed by all of the parties hereto.
- (f) Headings. The headings in this Agreement do not affect its interpretation.


- (g) Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and each of the parties hereby irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.
- (h) Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed and delivered shall be an original, and all such counterparts shall together constitute one and the same instrument. Counterparts may be delivered by telecopier provided that the party so delivering forthwith deliver an original executed copy thereof by personal delivery or registered mail, in accordance with paragraph 18(b) hereof.
- (i) Tender. Any tender of documents or money hereunder may be made upon the Vendor and Purchaser at their respective addresses indicated in this Agreement, or their respective solicitors.
- (j) Expenses. Except as otherwise expressly provided in this Agreement, all costs and expenses (including the fees and disbursements of legal counsel, investment advisers and accountants) incurred in connection with this Agreement and the transactions contemplated herein shall be paid by the party incurring such expenses.
- (k) Severability. If any provision of this Agreement shall be determined by an arbitrator or any court of competent jurisdiction to be illegal, invalid or unenforceable, that provision will be severed from this Agreement and the remaining provisions shall remain in full force and effect.
- (l) Currency. All references herein to money amounts are to Canadian currency unless otherwise indicated.
- (m) Survival of Representations and Warranties. Unless otherwise specifically stated herein, all obligations, representations and warranties of the parties contained in this Agreement shall survive the Closing.
- (n) Benefit of this Agreement. Nothing in this Agreement shall be construed so as to entitle any party not a signatory to this Agreement to receive any benefit under this Agreement or confer any rights upon the Company or any person not a party to this Agreement.
- (o) Conveyance and Title. On Closing the Vendor shall grant, bargain, sell, assign, transfer and set over to the Purchaser all of the Vendor's right, title and interest, if any, in and to the Purchased Assets and the Purchaser agrees that it shall assume the right, title and interest of the Vendor in the Purchased Assets as they exist at the Closing. The Purchaser acknowledges that the Vendor has no obligation to deliver possession of

the Purchased Assets to the Purchaser, nor provide access to the premises where the Purchased Assets will be located at Closing, and that the Purchaser will make its own arrangements and rely on its own efforts in this regard.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

EXECUTED BY THE PURCHASER this _____ day of December, 2004.


BREWSTER WALLPAPER CORP.

Per: 
Name: Peter J. Ciaccia
Title: CFO and Treasurer

I have authority to bind the Corporation.

EXECUTED BY THE VENDOR this 16 day of December, 2004.

GRANT THORNTON LIMITED, in its capacity as receiver of International Wallcoverings Company, and not in its personal capacity

Per: 
Name: HASSAN JAFFER
Title: GR. Vice-Pres.

PTO/SB/97 (12-97)

Approved for use through 9/30/00. OMB 0651-0031

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

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Certificate of Transmission Under 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office

on February 25, 2005
Date

Thomas V. Smurzynski
Signature

Thomas V. Smurzynski
Typed or printed name of person signing Certificate

Note: Each paper must have its own certificate of transmission, or this certificate must identify each submitted paper.

Recordation Form Cover Sheet (1 page); and
Purchase and Sale Agreement (4 page)