

08-22-2008

I hereby certify that this correspondence  
is being deposited today with the United  
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envelope addressed to: Commissioner for  
United States Patent and Trademark Office  
P.O. Box 1450, Alexandria, VA

13-1450

August 19, 2008



103521139

To the Director of the U. S. Patent and Trademark Office

**1. Name of conveying party(ies):**

NATWEST USA CREDIT CORP.

- ☐ Individual(s) ☐ Association  
☐ General Partnership ☐ Limited Partnership  
☒ Corporation- State: New York  
☐ Other \_\_\_\_\_

Citizenship (see guidelines) \_\_\_\_\_

Additional names of conveying parties attached? ☐ Yes ☒ No

**3. Nature of conveyance )/Execution Date(s) :**

Execution Date(s) 06/30/2008

- ☐ Assignment ☐ Merger  
☐ Security Agreement ☐ Change of Name  
☒ Other See Below\*

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

Additional names, addresses, or citizenship attached? ☐ Yes ☒ No

Name: CFM Corporation(Canada) (Successor in Interest to

Internal Majco Building Specialties, L.P.)

Address: \_\_\_\_\_

Street Address: 2695 Meadowvale Blvd.

City: Mississauga, Ontario

State: \_\_\_\_\_

Country: Canada Zip: L5N 8A3

- ☐ Association Citizenship \_\_\_\_\_  
☐ General Partnership Citizenship \_\_\_\_\_  
☐ Limited Partnership Citizenship \_\_\_\_\_  
☒ Corporation Citizenship Canada  
☐ Other \_\_\_\_\_ Citizenship \_\_\_\_\_

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)

**4. Application number(s) or registration number(s) and identification or description of the Trademark.**

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1615588, 1506999, 700363, 799520

Additional sheet(s) attached? ☐ Yes ☒ No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

\*Order Authorizing Sale of Certain of Debtor's Assets Free and Clear of All Liens, Claims, Interests and Other Encumbrances and  
Approving Assumption and Assignment of Certain Agreements, Monitor's Certificate(Canada)&Approval of Vesting Order(Canada)

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

Name: Nathan T. Lewis, Esq./Jones Day

Internal Address: \_\_\_\_\_

Street Address: North Point, 901 Lakeside Avenue

City: Cleveland

State: OH Zip: 44114

Phone Number: 216/586-7078

Fax Number: 216/579-0212

Email Address: ntlouis@jonesday.com

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

4

**7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 115.00**

- ☐ Authorized to be charged by credit card  
☒ Authorized to be charged to deposit account  
☐ Enclosed

**8. Payment Information:**

a. Credit Card 6011 2288 4111 1111 Expiration Date 08/01/08 - 07/31/09 1615588

b. Deposit Account Number 501432

Authorized User Name Koston(\*Ref 560255-685001)

**9. Signature:**

Signature

August 18, 2008

Date

Nathan T. Lewis, Esq.

Name of Person Signing

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

74

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
CFM U.S. CORPORATION, <u>et al.</u> ,	)	Case No. 08-10668 (KJC)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	Related to Docket Nos. 13, 125, 311, 326, 327 & 359

**ORDER PURSUANT TO 11 U.S.C. §§ 105(A), 363, 365, 503  
AND 507 AND FED. R. BANKR. P. 2002, 6004, 6006 AND 9014:  
(A) AUTHORIZING SALE OF CERTAIN OF DEBTORS' ASSETS  
FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS  
AND OTHER ENCUMBRANCES AND (B) APPROVING  
ASSUMPTION AND ASSIGNMENT OF CERTAIN AGREEMENTS**

Upon the motion [Docket No. 13] (the "Sale Motion") of the above-captioned debtors and debtors in possession (collectively, the "Debtors") seeking, inter alia, entry of an order pursuant to sections 105(a), 363, 365, 503 and 507 of chapter 11 of title 11 of the United States Code (as amended, the "Bankruptcy Code") and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules"), (a) approving the sale of substantially all of the assets of the Debtors and (b) approving the assumption and assignment of certain executory contracts and unexpired leases of the Debtors in connection with the sale; and the Sale Motion having been served upon all creditors and other parties in interest in these cases; and it appearing that proper and adequate notice of the Sale Motion has been given and that no other or further notice is required; and after due deliberation thereon; and good and sufficient cause appearing therefor,

NOW, THEREFORE, THE COURT HEREBY FINDS THAT:

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

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B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this District and this Court pursuant to 28 U.S.C. §§ 1408 and 1409. Notice of the Sale Motion having been given as described above, is proper, timely, adequate, sufficient and proper under the circumstances.

C. Capitalized terms used herein that are not otherwise defined in this Order shall have the meanings ascribed to such terms in the Asset Purchase Agreement, dated as of June 23, 2008 between the Debtors and certain foreign affiliates (collectively, the "Sellers"), on the one hand, and Monessen Hearth Systems Company and Vermont Castings Holding Company (collectively, the "Purchasers"), on the other hand (the "Asset Purchase Agreement")<sup>1</sup>, or, if not otherwise defined in the Asset Purchase Agreement or this Order, the meanings ascribed to such terms in the Sale Motion.

D. On April 25, 2008, the Court entered its *Order Approving Debtors' Motion for Entry of Order, Pursuant To 11 U.S.C. §§ 105(a), 363, 365, 503, and 507 and Federal Bankruptcy Rules 2002, 6004, 6006, and 9014, (A) Approving Bidding Procedures in Connection With the Sale of Substantially all of the Debtors' Assets; (B) Authorizing and Scheduling an Auction in Connection With the Sale; (C) Approving the Procedure Pursuant to Which the Debtors May Seek Approval of a Break-Up Fee And Expense Reimbursement to a Stalking Horse Bidder; (D) Approving the Cure Procedures Relating to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection With the Sale; (E) Approving the Form and Manner of Notices; and (F) Scheduling a Hearing to Consider Approval of the Sale* [Docket No. 125] (the "April 25, 2008 Bidding Procedures Order").

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<sup>1</sup> A copy of the Asset Purchase Agreement without its voluminous exhibits and schedules is attached hereto as Exhibit A.

E. On June 19, 2008, the Court, amending the April 25, 2008 Bidding Procedures Order, entered its *Amended Order Approving Debtors' Motion for Entry of Order, Pursuant To 11 U.S.C. §§ 105(a), 363, 365, 503, and 507 and Federal Bankruptcy Rules 2002, 6004, 6006, and 9014, (A) Approving Bidding Procedures in Connection With the Sale of Substantially all of the Debtors' Assets; (B) Authorizing and Scheduling an Auction in Connection With the Sale; (C) Approving the Procedure Pursuant to Which the Debtors May Seek Approval of a Break-Up Fee And Expense Reimbursement to a Stalking Horse Bidder; (D) Approving the Cure Procedures Relating to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection With the Sale; (E) Approving the Form and Manner of Notices; and (F) Scheduling a Hearing to Consider Approval of the Sale* [Docket No. 311] (the "Amended Bidding Procedures Order").

F. On June 26, 2008, the Court entered its *Final Order (A) Approving Stalking Horse Protections And (B) Further Modifying The Bidding Procedures* [Docket No. 359] (the "Stalking Horse Order" and, together with the April 25, 2008 Bidding Procedures Order and the Amended Bidding Procedures Order, the "Bidding Procedures Orders"), which further amended the April 25, 2008 Bidding Procedures Order and the Amended Bidding Procedures Order and approved certain protections for the Stalking Horse Bidder (as such term is defined in the Stalking Horse Order). The Bidding Procedures Orders approved certain bidding procedures (the "Bidding Procedures") for the Debtors' assets.

G. The Debtors and their investment bankers, PricewaterhouseCoopers Corporate Finance Inc. ("PWCCF"), diligently and in good faith marketed the Purchased Assets that are subject to the Asset Purchase Agreement to secure the highest and best offer therefor by, inter alia, delivering offering materials to potential purchasers, inviting the potential purchasers

to meet with the Debtors' management, PWCCF and other of the Debtors' professionals; and providing each of the potential purchasers with the opportunity to conduct extensive due diligence and bid for all or any portion of the Purchased Assets in accordance with the Bidding Procedures approved by the Court. In addition, the Debtors delivered the Auction and Sale Notice and the April 25, 2008 Bidding Procedures Order to each of the entities set forth in paragraph 21 of the Bidding Procedures Order, including those entities that had, within the past twelve (12) months, expressed to the Debtors an interest in purchasing the Debtors' Assets. The terms and conditions set forth in the Asset Purchase Agreement, and the transactions contemplated thereby, represent fair and reasonable terms and conditions, including the amount of the purchase price, and constitute the highest and best offer obtainable for the Purchased Assets and are fair and adequate.

H. An auction was held in Toronto, Ontario, Canada on June 27, 2008 (the "Auction") in accordance with the Bidding Procedures Order. Immediately prior to the conclusion of the Auction, the Debtors, in consultation with PWCCF, the Official Committee of Unsecured Creditors (the "Committee"), the Ontario Teachers' Pension Plan Board ("OTPPB") and the Bank of Montreal ("BMO") selected the Purchasers as the Successful Bidders (as such term is defined in the Bidding Procedures Orders).

I. Proper, timely, adequate and sufficient notice of the Bidding Procedures, the Auction, the Sale Motion and the hearing on the foregoing has been provided in accordance with sections 105(a), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 6006, and no other or further notice is required.

J. A reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein, and the rights of third parties to submit higher or

otherwise better offers for all or any portion of the Purchased Assets in accordance with the Bidding Procedures approved by this Court, have been afforded to all interested persons and entities.

K. The Bidding Procedures afforded a full, fair and reasonable opportunity for any entity to make a higher or otherwise better offer to purchase the Purchased Assets.

L. The Debtors and the Purchasers have complied with the Bidding Procedures in all respects. The bidding and auction process was non-collusive, fair and reasonable, conducted in good faith and resulted in the Debtors' obtaining the highest available value for the Purchased Assets.

M. The Debtors have reasonably exercised their sound business judgment in determining (1) to enter into the Asset Purchase Agreement and (2) to sell and transfer the Purchased Assets, and to assume and assign the Contracts and Personal Property Leases (collectively, the "Assumed Agreements"), to the Purchasers. The relief requested in the Sale Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest.

N. The Asset Purchase Agreement was negotiated, proposed and entered into by the Sellers (including the Debtors) and the Purchasers without collusion, in good faith and from arm's-length bargaining positions. Neither any of the Sellers nor any of the Purchasers has engaged in any conduct that would cause or permit the Asset Purchase Agreement to be avoided under section 363(n) of the Bankruptcy Code. None of the Purchasers is an "insider" or "affiliate" of the Debtors (as such terms are defined in the Bankruptcy Code). Each Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby in consummating the transactions contemplated by the Asset Purchase Agreement. The Purchasers will be acting in good faith within the meaning of

section 363(m) of the Bankruptcy Code in Closing the transactions contemplated by the Asset Purchase Agreement at all times after the entry of this Order.

O. The consideration to be provided by the Purchasers for the Purchased Assets pursuant to the Asset Purchase Agreement (i) is fair and reasonable, (ii) represents the highest and best offer for the Purchased Assets and (iii) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession and the District of Columbia.

P. The Purchased Assets constitute property of the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code or are property of the Debtors' foreign affiliates that will be subject to sale approval under related Canadian insolvency proceedings. Except as otherwise set forth in the Asset Purchase Agreement, the Debtors have full corporate power and authority to execute and deliver the Asset Purchase Agreement and all other documents contemplated thereby; and no further consents or approvals are required for the Debtors to consummate the transactions contemplated by the Asset Purchase Agreement.

Q. With respect to any and all entities asserting any options, pledges, security interests, claims, equities, reservations, third party rights, rights of first refusal, voting trusts or similar arrangements, liens, trusts or deemed trusts (whether contractual, statutory or otherwise), charges, including court-ordered charges, or other encumbrances or restrictions on or conditions to transfer or assignment of any kind (including, without limitation to the generality of the foregoing, restrictions or conditions on or to the transfer, assignment or renewal of licenses, permits registrations and authorizations or approvals of or with respect to governmental units and instrumentalities), whether direct or indirect, absolute or contingent, matured or unmatured, liquidated or unliquidated, perfected, registered or filed, secured or unsecured, on or against the

Purchased Assets owned by the Debtors (collectively, the "Encumbrances"), either (i) such entity has consented to the sale and transfer, license and assignment, as applicable, free and clear of its Encumbrance, with such Encumbrance to attach to the proceeds of such sale and transfer, license and assignment, as applicable, respectively, (ii) applicable nonbankruptcy law permits the sale of the Purchased Assets free and clear of such Encumbrance, (iii) such Encumbrance is in bona fide dispute, or (iv) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such Encumbrance, so that the conditions of section 363(f) of the Bankruptcy Code have been met.

R. Upon the Closing of the Asset Purchase Agreement, the sale and transfer of the Purchased Assets to the Purchasers shall be a legal, valid and effective transfer of the Purchased Assets to the Purchasers, and shall vest in the Purchasers all right, title and interest in the Purchased Assets in accordance with the terms and conditions of the Asset Purchase Agreement free and clear of any Encumbrances including, without limitation, any claims pursuant to any successor or successor-in-interest liability theory, under sections 105(a), 363(f) and 365 of the Bankruptcy Code.

S. Except as expressly set forth in the Asset Purchase Agreement with respect to Assumed Liabilities and Permitted Encumbrances, the Purchasers shall not have any liability for any (i) obligation of the Debtors, or (ii) any claim against the Debtors related to the Purchased Assets by reason of the transfer of such Purchased Assets to the Purchasers. None of the Purchasers shall be deemed, as a result of any action taken in connection with the purchase of the Purchased Assets or otherwise, to: (1) be a successor to the Debtors (other than with respect to the Assumed Liabilities and any obligations arising under the Assumed Agreements from and after the Closing); or (2) have, de facto or otherwise, merged with or into the Debtors. None of



the Purchasers is acquiring or assuming any liability, warranty or other obligation of the Debtors, except as expressly set forth in the Asset Purchase Agreement or any of the Assumed Agreements.

T. The Purchasers would not have entered into the Asset Purchase Agreement and would not consummate the transactions contemplated thereby if the sale of the Purchased Assets to the Purchasers or their respective assignees, the assumption, assignment and sale of the Assumed Agreements to the Purchasers or their respective assignees, and the assumption of the Assumed Liabilities by the Purchasers or their respective assignees were not, except as otherwise provided in the Asset Purchase Agreement with respect to the Assumed Liabilities and Permitted Encumbrances, free and clear of all Encumbrances of any kind or nature whatsoever, or if any of the Purchasers would, or in the future could (except and only to the extent expressly provided in the Asset Purchase Agreement with respect to the Assumed Liabilities or the Permitted Encumbrances), be liable for any of such Encumbrances or other liabilities (such other liabilities or obligations being referred to collectively as the "Successor Liabilities"), including, but not limited to, Encumbrances or Successor Liabilities in respect of the following (the following being referred to collectively as the "Successor Liability Documents, Statutes and Claims"): (1) any employment or labor agreements; (2) all deeds of trust and security interests; (3) any pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of any Debtor; (4) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the

Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Worker Adjustment and Retraining Act of 1988, (g) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (h) the Americans with Disabilities Act of 1990, (i) the Consolidated Omnibus Budget Reconciliation Act of 1985, (j) state discrimination laws, (k) state unemployment compensation laws or any other similar state laws, (l) state workers' compensation laws or (m) any other state or federal benefits or claims relating to any employment with the Debtors or any predecessors; (5) any products liability or similar claims, whether pursuant to any state or federal laws or otherwise, including, without limitation, asbestos-related claims; (6) except as provided in paragraph <sup>31</sup>~~29~~ below, reclamation, environmental or other claims or liens arising from conditions first existing on or prior to the applicable Closing (including, without limitation, the presence of hazardous, toxic, polluting or contaminating substances or waste) that may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, et seq., or similar state statute; (7) any bulk sales or similar law; (8) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; (9) any theory of antitrust; and (10) any common law doctrine of de facto merger or successor or transferee liability, successor-in-interest liability theory or any other theory of successor liability.

U. None of the Purchasers constitutes a successor to the Debtors because: (1) except as otherwise set forth in the Asset Purchase Agreement, none of the Purchasers is expressly or impliedly agreeing to assume any of the Debtors' liabilities; (2) the transactions contemplated by the Asset Purchase Agreement do not amount to a consolidation, merger or a de facto merger of the Debtors and any Purchaser; (3) none of the Purchasers is merely a

continuation of the Debtors; and (4) the transactions contemplated by the Asset Purchase Agreement are not being entered into fraudulently or in order to escape liability from the Debtors' debts.

V. The Debtors may assume the Assumed Agreements and assign each of them to the Purchasers pursuant to section 365 of the Bankruptcy Code free and clear of all Encumbrances. The assumption and assignment of the Assumed Agreements pursuant to the terms of this Order is integral to the Asset Purchase Agreement and is in the best interests of the Debtors and the Debtors' estates, creditors and other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtors.

W. The respective amounts set forth on Exhibit B hereto are the sole amounts necessary under sections 365(b)(1)(A) and (B) and 365(f)(2)(A) of the Bankruptcy Code to cure all undisputed monetary defaults and pay all undisputed actual pecuniary losses under the Assumed Agreements (the "Cure Amounts").

X. Upon the payment of the applicable Cure Amount, if any, (a) each Assumed Agreement shall constitute a valid and existing interest in the property subject to such Assumed Agreement, (b) none of the Debtors' rights will have been released or waived under any such Assumed Agreement, (c) the Assumed Agreements shall remain in full force and effect, and (d) no default shall exist under the Assumed Agreements, nor shall there exist any event or condition which, with the passage of time or the giving of notice, or both, would constitute such a default.

Y. Each Purchaser has provided adequate assurance of its future performance under the Assumed Agreements within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code.

Z. All findings of fact and conclusions of law announced by the Court at the hearing in relation to the Sale Motion are hereby incorporated herein.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Sale Motion is granted on the terms set forth herein.
2. The *Limited Objection of Citicorp Leasing, Inc. to Amended Notice of (I) Debtors' Intent to Assume and Assign Certain Executory Contracts and Unexpired Leases, (II) Proposed Cure Amounts and (III) Sale Hearing* [Docket No. 360] (the "Citicorp Limited Objection") and the *Limited Objection by the Official Committee of Unsecured Creditors to Debtors' Proposed Sale of Substantially All of Their Assets Pursuant to Debtors' Motion for Entry of Order Pursuant to 11 U.S.C. §§ 105(a), 363, 365, 503, and 507 and Federal Bankruptcy Rules 2002, 6004, 6006, and 9014, (A) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets; (B) Authorizing and Scheduling an Auction in Connection With the Sale; (C) Approving the Procedures Pursuant to Which the Debtors May Seek Approval of a Break-Up Fee and Expense Reimbursement to a Stalking Horse Bidder; (D) Approving the Cure Procedures Relating to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale; (E) Approving the Form and Manner of Notices; and (F) Scheduling a Hearing to Consider Approval of the Sale* [Docket No. 360] are resolved on terms contained herein. All other objections to the Sale Motion or the relief requested therein that have not been withdrawn, waived or settled are hereby overruled on the merits.

3. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell

and transfer the Purchased Assets to the Purchasers in accordance with the terms of the Asset Purchase Agreement and this Order.

4. The Asset Purchase Agreement is hereby approved in all respects, and shall be deemed in full force and effect, binding and benefiting the Debtors and the Purchasers.

5. The Debtors are authorized, empowered and directed to implement and consummate all of the transactions contemplated by the Asset Purchase Agreement (each, collectively, a "Sale"), including, without limitation, to sell the Purchased Assets to the Purchasers and to assume and assign to the Purchasers the Assumed Agreements, all on the terms and conditions of the Asset Purchase Agreement, for the purchase price set forth in, and determined in accordance with, the Asset Purchase Agreement. The Debtors are authorized, empowered and hereby directed to deliver special warranty deeds, bills of sale, assignments and other such documentation that may be necessary or requested by the Purchasers in accordance with the terms of the Asset Purchase Agreement to evidence the transfers required by the Asset Purchase Agreement. The Debtors are authorized, empowered and hereby directed to enter into a Transition Services Agreement containing the terms contemplated by Schedule 1.1(eeeee) to the Asset Purchase Agreement.

6. Except as otherwise set forth in paragraph <sup>30</sup>~~28~~, upon the Closing of the Sale, the Purchasers shall take title to and possession of the Purchased Assets subject only to the applicable Permitted Encumbrances. With the exception of such Permitted Encumbrances, pursuant to section 363(f) of the Bankruptcy Code, the transfer of title to the Purchased Assets and the Assumed Agreements shall be free and clear of any and all Encumbrances, including, without limitation, any claims pursuant to any Successor Liability theory or any of the Successor Liability Documents, Statutes and Claims; provided, however, that the Purchasers shall not be

relieved of liability with respect to the Assumed Liabilities, including any obligations accruing under the Assumed Agreements from and after the Closing of the Sale. All Encumbrances shall attach solely to the proceeds of the Sale with the same validity, priority, force and effect as presently exists with respect to such Purchased Assets immediately prior to the Closing of the Sale. Upon entry of this Order, the security interests granted in the proceeds of the Sale hereby shall be properly perfected without the need for further filings or further documentation.

Nothing contained in this Order shall be construed to grant a lien in any funds the Purchasers are advancing the Sellers to cover the cost of services under the Transition Services Agreement and all such funds shall be used solely for that purpose.

to the same  
extent, priority,  
force and  
effect  
as such  
security interests  
existed before the  
Sale.

7. Effective upon the Closing Date and except with respect to Assumed Liabilities and Permitted Encumbrances, all persons and entities are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against the any Purchaser, its successors and assigns, or the relevant Purchased Assets, with respect to any (a) Encumbrance arising under, out of, in connection with or in any way relating to the Debtors, the Purchased Assets or the operation of such Purchased Assets prior to the Closing of the sale of the Purchased Assets or (b) Successor Liability, including, without limitation, the following actions:

- a. Commencing or continuing in any manner any action or other proceeding against any Purchaser, its successors, assets or properties;
- b. Enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against any Purchaser, its successors, assets or properties;

Notwithstanding anything stated in this Order, all rights, claims, defenses and causes of action are reserved to investigate and challenge all security interests and liens asserted against the proceeds of the Sale and/or the Debtors' estates, except with respect to BMO.

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c. Creating, perfecting or enforcing any lien or other Encumbrance against any Purchaser, its successors, assets or properties;

d. Asserting any setoff, right of subrogation or recoupment of any kind against any obligation due any Purchaser or its successors;

e. Commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Order or other orders of the Court, or the agreements or actions contemplated or taken in respect thereof; or

f. Revoking, terminating or failing or refusing to renew any license, permit or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with the Purchased Assets.

8. Without limiting the generality of the foregoing, except as otherwise specifically set forth in the Asset Purchase Agreement, none of the Purchasers shall assume or be obligated to pay, perform or otherwise discharge any workers' compensation debts, obligations and liabilities of the Debtors arising pursuant to state law or otherwise. This Order is intended to be all inclusive and shall encompass, but not be limited to, workers' compensation claims or suits of any type, whether now known or unknown, whenever incurred or filed, which have occurred or which arise from work-related injuries, diseases, death, exposures, intentional torts, acts of discrimination or other incidents, acts or injuries prior to the Closing Date, including, but not limited to, any and all workers' compensation claims filed or to be filed, or reopenings of those claims, by or on behalf of any of the Debtors' current or former employees, persons on laid-off, inactive or retired status, or their respective dependents, heirs or assigns, as well as any and all premiums, assessments or other obligations of any nature whatsoever of the Debtors relating in any way to workers' compensation liability.

9. In addition, without limiting the generality of the foregoing, except as otherwise specifically set forth in the Asset Purchase Agreement, none of the Purchasers shall assume or be obligated to pay, perform or otherwise discharge any debts, obligations and liabilities of the Debtors arising pursuant to the Debtors' ownership or operation of their facilities prior to the date of the applicable Closing, including, but not limited to, any Successor Liabilities in respect of the Successor Liability Documents, Statutes and Claims or otherwise. Each Purchaser has given substantial consideration under the Asset Purchase Agreement for the benefit of the holders of Encumbrances. The consideration given by the Purchasers shall constitute valid and valuable consideration for the releases of any potential claims of successor liability of the Purchasers, which releases shall be deemed to have been given in favor of the Purchasers by all holders of Encumbrances against the Debtors or the Purchased Assets.

10. Any amounts that become payable by the Debtors to the Purchasers pursuant to the Asset Purchase Agreement (and related agreements executed in connection therewith) as of the Closing Date (a) shall constitute allowed administrative expenses of the Debtors' estates under sections 503(b)(1) and 507(a)(1) of the Bankruptcy Code and (b) shall be paid by the Debtors in the time and manner provided for in the Asset Purchase Agreement or the applicable related agreement.

11. All entities that are in possession of some or all of the Purchased Assets on the Closing Date are directed to surrender possession of such Purchased Assets to the Purchasers or their assignee at the Closing.

12. Upon the Closing of the Sale and the payment of the Cure Amounts, the Debtors are authorized to assume and assign each Assumed Agreement to any designated Purchaser free and clear of all Encumbrances. Such payments (if any) shall (a) effect a cure of



all defaults existing thereunder as of the applicable Closing Date, (b) compensate for any actual pecuniary loss to such non-Debtor party resulting from such default, and (c) together with the assumption of the Assumed Agreements by the designated Purchaser, constitute adequate assurance of future performance thereof. The applicable Purchasers shall then have assumed the Assumed Agreements and, pursuant to section 365(f) of the Bankruptcy Code, the assignment by the Debtors of such Assumed Agreements shall not be a default thereunder. After the payment of the relevant Cure Amounts, neither the Debtors nor the Purchasers shall have any further liabilities to the non-Debtor parties to the relevant Assumed Agreements other than the designated Purchaser's obligations under the Assumed Agreements that become due and payable on or after the Closing Date.

13. Any provisions in any Assumed Agreement that prohibit or condition the assignment of such Assumed Agreement or allow the party to such Assumed Agreement to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Assumed Agreement, constitute unenforceable anti-assignment provisions that are void and of no force and effect. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the designated Purchaser of the Assumed Agreements have been satisfied. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, the designated Purchaser shall be fully and irrevocably vested with all rights, title and interest of the relevant Debtor under the applicable Assumed Agreement. Any provisions of any lease of real property constituting an Assumed Agreement that purports to permit the landlords thereunder to cancel the remaining term of such lease if the Debtors discontinue their use or operation of the leased real property is void and of no force and effect, and shall not be

enforceable against the Purchasers or any sublessees thereof, and the landlord under such lease shall not have the right to cancel or otherwise modify such lease or increase the rent, assert any claim or impose any penalty by reason of such discontinuation, the Debtors' cessation of operations, the assignment of such lease to the Purchasers or their assignee or the interruption of business activities at any of the leased premises.

14. Upon the Closing of the Sale and the payment of the relevant Cure Amounts, the designated Purchaser shall be deemed to be substituted for each relevant Debtor as a party to the applicable Assumed Agreements and the Debtors shall be relieved from all liability on such Assumed Agreements arising after the relevant Closing.

15. If the Closing does not occur, the Assumed Agreements shall not be deemed to have been assumed by the Debtors or assigned to the Purchasers. Likewise, if a Contract or Personal Property Lease is removed from the list of Assumed Agreements in accordance with the terms of the Asset Purchase Agreement, such agreement shall not be deemed to have been assumed by the Debtors or assigned to the Purchasers, pursuant to section 365 of the Bankruptcy Code. To the extent an agreement is removed from the list of Assumed Agreements in accordance with the terms of the Asset Purchase Agreement, the Debtors shall, within 10 days of Closing, serve a notice to the non-Debtor parties to such agreement that the Debtors will not seek to assume or assign such agreement to the Purchasers as part of the Sale.

16. To the extent a Contract or Personal Property Lease is added to the list of the Assumed Agreements in accordance with the terms of the Asset Purchase Agreement, or the Cure Amount for an Assumed Agreement otherwise is not properly included in a Cure Amount Notice, the Debtors shall serve a notice to the non-Debtor parties to such agreement that the

Debtors seek to assume and assign the Contract to the Purchasers as part of the Sale (the "Supplemental Cure Notice"). The Supplemental Cure Notice shall include the proposed Cure Amount for the Assumed Agreement. The non-Debtor parties to the Assumed Agreement shall have 10 days from the date of service of the Supplemental Cure Notice (the "Supplemental Deadline") to assert an objection to the assumption and assignment of the Assumed Agreement or the proposed Cure Amount. Any such objection must be filed with the Court and served on the Debtors and the Purchasers by the Supplemental Deadline. If no timely objection is filed and served with respect to a Supplemental Cure Notice, the assumption and assignment of such Assumed Agreement and the related proposed Cure Amount shall be deemed approved, final and effective as of, and conditioned upon the occurrence of, the Closing Date, pursuant to section 365 of the Bankruptcy Code, without further order of the Court. If a timely objection is received and the parties are unable to resolve such objection, it will be scheduled to be heard by the Court at the next regularly scheduled hearing in these chapter 11 cases that is at least 10 days after the Supplemental Deadline, or at such other date as agreed by the parties.

17. The purchase price paid and other valuable consideration given by the Purchasers to the Sellers in accordance with the Asset Purchase Agreement exceeding the amount of (a) BMO's allowed pre-petition secured claim; and (b) any amounts owed BMO under the debtor-in-possession financing order entered by this Court [Docket No. 233], including any amounts owed under the carve out, shall be held by the Debtors and shall not be used or distributed absent further order of ~~a court of competent jurisdiction~~ <sup>this Court and the Court presiding over the CCAA Proceedings,</sup> except to the extent modified by a further Order, protocol, or agreement by the Debtors, Parties, and ~~OTPPB~~ <sup>the CCAA</sup>, the Committee

18. Notwithstanding the foregoing, the Debtors are authorized to expend any funds paid to them by the Purchasers pursuant to the Transition Services Agreement for the ~~the CCAA~~ <sup>the CCAA</sup> Parties, and ~~OTPPB~~ <sup>the Committee</sup>

performance of the services they are obligated to render under the Transition Services Agreement.

19. For avoidance of doubt, notwithstanding anything to the contrary in this Order or in the Asset Purchase Agreement, neither Schedule 3.1 to the Asset Purchase Agreement, nor any other allocation of value agreed to between the Purchasers and the Sellers shall be binding on the Committee or any other party in interest (except the Purchasers and the Sellers).

20. Each Purchaser is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

21. Pursuant to Rules 6004(g) and 6006(g) of the Federal Rules of Bankruptcy Procedure, this Order shall be effective immediately upon entry.

22. A Certified Copy of this Order may be filed with the appropriate Clerk and/or recorded with the appropriate recorder to act to cancel the liens and other Encumbrances of record with respect to the Purchased Assets, except the Permitted Encumbrances.

23. The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to implement the terms and conditions of the Asset Purchase Agreement and the provisions of this Order. Pursuant to the Final Order under 11 U.S.C. §§ 105(a), 361, 362, 363 and 364, Bankruptcy Rules 2002, 4001, 6004 and 9014 and Local Bankruptcy Rules 4001-2; (i) authorizing debtors to (a) obtain secured post-petition financing; and (b) use cash collateral; (ii) granting adequate protection; (iii) modifying the automatic stay and (iv) granting related relief, entered by the Court on May 22, 2008 (the "DIP Order"), paragraph 28 thereof, the Debtors are directed and ordered to pay on the Closing Date a

sufficient amount of the proceeds of the Sale to the Pre-Petition Agent and Pre- Petition Lender (as defined in the DIP Order) and the DIP Lender (as defined in the DIP Order) so that all Pre-Petition Obligations (as defined in the DIP Order) and Post-Petition Obligations (as defined in the DIP Order) owed to them will be paid in full.

24. This Order shall be binding in all respects upon the Debtors, their estates, all creditors of, and holders of equity interests in, any Debtor (whether known or unknown), any holders of Encumbrances on the Purchased Assets, all non-Debtor parties to the Assumed Agreements, all successors and assigns of each Purchaser, each Debtor and their affiliates and subsidiaries, the Purchased Assets and any trustees, if any, subsequently appointed in the Debtors' chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code of any of the Debtors' cases. This Order and the Asset Purchase Agreement shall inure to the benefit of the Debtors, their estates, their creditors, the Purchasers and their respective successors and assigns. The Asset Purchase Agreement and any related agreement shall not be subject to rejection.

25. This Order is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons and entities who may be required by operation of law, the duties of their office or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and

instruments necessary and appropriate to consummate the transactions contemplated by the Asset Purchase Agreement, and any related agreement.

26. Nothing contained in any chapter 11 plan confirmed in these cases or the order confirming any such plan or in any other order in these cases (including any order entered after any conversion of these cases to cases under chapter 7 of the Bankruptcy Code) shall alter, conflict with or derogate from the provisions of the Asset Purchase Agreement or the terms of this Order, including, but not limited to, (a) the obligation of the Debtors to pay any amounts due to the Purchasers pursuant to the Asset Purchase Agreement or any transactions contemplated thereby in the time and manner provided in the Asset Purchase Agreement and without further order of this Court and (b) the status of any such payments as administrative priority expenses of the Debtors' estates pursuant to sections 503(b) and 507(a)(1) of the Bankruptcy Code.

27. This Order constitutes authorization under all applicable jurisdictions' versions of the Uniform Commercial Code for the Purchasers to file UCC termination statements with respect to all security interests in or liens on the applicable Purchased Assets.

28. The failure specifically to include any particular provision of the Asset Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Asset Purchase Agreement be authorized and approved in its entirety.

29. The Asset Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates.

30. Notwithstanding anything to the contrary in this Order or the Asset Purchase Agreement, to the extent any of the Purchased Assets are determined to be an interest in a consumer credit transaction subject to the Truth in Lending Act or an interest in a consumer credit contract (as defined in section 433.1 of title 16 of the Code of Federal Regulations), the Purchasers shall remain subject to the same claims and defenses that are related to such consumer credit transaction or such consumer credit contract to the same extent as the Purchasers would be subject to such claims and defenses of the consumer if such interest had been purchased at a sale not under section 363 of the Bankruptcy Code, as provided for in section 363(o) of the Bankruptcy Code.

31. Nothing in this Order or the Asset Purchase Agreement releases, nullifies, precludes, or enjoins the enforcement of any liability to a governmental unit under police or regulatory statutes or regulations that any entity would be subject to as the owner or operator of property after the date of entry of this Order. Notwithstanding the foregoing sentence, nothing in this Order shall be interpreted to deem the Purchasers as the successor to the Sellers under any state law successor liability doctrine with respect to any liabilities under environmental statutes or regulations for penalties for days of violation prior to entry of this Order or for liabilities relating to off-site disposal of wastes by the Debtors prior to the Closing of the Sale.

32. Citicorp Leasing, Inc. ("Citicorp") hereby consents to the assumption and assignment of the leases set forth on Exhibit B attached hereto (the "Leases"); provided, however, that the Debtors' and Citicorp's rights with respect to the appropriate amount necessary to cure all defaults under the Leases are hereby preserved. To the extent the parties are unable to resolve the Citicorp Limited Objection, all outstanding issues will be addressed at the hearing

scheduled to take place before this Court on August 14, 2008 at 11:00 a.m. (prevailing Eastern Time).

33. This Court shall retain jurisdiction over the transactions contemplated in the Asset Purchase Agreement for purposes of enforcing the provisions of this Order and the Asset Purchase Agreement.

Dated: June 30, 2008



THE HONORABLE KEVIN J. CAREY  
UNITED STATES BANKRUPTCY JUDGE



**EXHIBIT A**

**[Asset Purchase Agreement]**

{00226141;v3}

# **ASSET PURCHASE AGREEMENT**

## **CANADIAN SELLERS**

**CFM CORPORATION**

**- and -**

**CFM CANADA**

**- and -**

**2089451 ONTARIO LIMITED**

**- and -**

## **U.S. SELLERS**

**CFM MAJESTIC U.S. HOLDINGS, INC.**

**- and -**

**CFM U.S. CORPORATION**

**Each a "Seller" and collectively, the "Sellers"**

**- and -**

## **BUYERS**

**MONESSEN HEARTH SYSTEMS COMPANY**

**- and -**

**VERMONT CASTINGS HOLDING COMPANY**

**Collectively, the "Buyers"**

**Made as of June 23, 2008**

**TRADEMARK**

**REEL: 003841 FRAME: 0542**

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## ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of June 23, 2008

### BETWEEN:

**CFM CORPORATION**, a corporation amalgamated under the laws of the Province of Ontario, **CFM MAJESTIC U.S. HOLDINGS, INC.**, a corporation incorporated under the laws of the State of Delaware, **CFM U.S. CORPORATION**, a corporation incorporated under the laws of the State of Delaware, **CFM CANADA**, a general partnership formed under the laws of the Province of Ontario and **2089451 ONTARIO LIMITED**, a corporation incorporated under the laws of the Province of Ontario

(each a "Seller" and collectively, the "Sellers")

- and -

**MONESSEN HEARTH SYSTEMS COMPANY**, a corporation incorporated under the laws of the Commonwealth of Kentucky ("**Monessen**"), and **VERMONT CASTINGS HOLDING COMPANY**, a corporation incorporated under the laws of the State of Delaware ("**VC Holding**")

(Monessen and VC Holding are each sometimes referred to individually as a "**Buyer**" and collectively, as the "**Buyers**")

### RECITALS:

- A. The Sellers design, develop, manufacture and distribute hearth and space heating products, barbecues and other outdoor products for the retail and new residential builder markets in North America (collectively, the "**CFM Business**").
- B. The CFM Business is divided into two operation lines: a Mass Division, which involves the sale of plate-steel stoves and home comfort products, electric fireplaces, grills and smokers to mass retailers (the "**Excluded Business**"); and a Specialty Division, which involves the design, manufacture and sale of fireplaces, cast-iron stoves, plate-steel stoves, specialty grills, parts and accessories to distributors, builders and dealers, including sales of products with the Vermont Castings, Majestic and Dutchwest brand names (the "**Specialty Business**").
- C. On April 9, 2008, CFM Corporation and 2089451 Ontario Limited filed an application for protection from their creditors and for a stay of proceedings pursuant to the *Companies' Creditors Arrangement Act* (Canada), as amended (the "**CCAA**") in the Ontario Superior Court of Justice (the "**Canadian Court**") and have obtained an initial order (the "**CCAA Initial Order**") which, among other things, temporarily stays their creditors from proceeding with claims against any of them and which extends the protections of the CCAA Initial Order to CFM Canada (CFM

Corporation, CFM Canada and 2089451 Ontario Limited each individually a "Canadian Seller", and collectively, the "Canadian Sellers").

- D. On April 9, 2008, CFM Majestic U.S. Holdings, Inc. and CFM U.S. Corporation (each individually, a "U.S. Seller" and collectively, the "U.S. Sellers") filed voluntary petitions for relief pursuant to Chapter 11 of Title 11 of the *United States Code*, as amended (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "U.S. Court"). The U.S. Sellers' bankruptcy cases (the "Bankruptcy Cases") are being jointly administered under Case No. 08-10668 (KJC).
- E. On May 9, 2008 and May 12, 2008, the Sellers sold all of their right, title and interest in and to certain of the assets of the Excluded Business to certain third parties.
- F. The Buyers wish to buy certain assets of the Sellers' Specialty Business related to their operations in Bethel, Vermont and Randolph, Vermont (together, the "Purchased Business"), and certain other assets of the Sellers' Specialty Business.
- G. Subject to the approval of the Canadian Court and the U.S. Court, the Sellers wish to sell to the Buyers all of their right, title and interest in and to all of the Purchased Assets, and the Buyers wish to purchase such Purchased Assets and assume the Assumed Liabilities in connection therewith on and subject to the terms and conditions of this Agreement.
- H. The terms and conditions of this Agreement are governed by, and subject in all respects to, the Bidding Procedures Orders.

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are acknowledged), the Parties agree as follows:

#### ARTICLE 1 - INTERPRETATION

##### 1.1 Definitions

In this Agreement,

- (a) "Accounts Receivable" has the meaning given to such term in Section 2.1(c);
- (b) "affiliate" of any Person means any other Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For purposes of this definition, the term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise;
- (c) "Agreement" means this Asset Purchase Agreement and all attached Schedules, in each case as the same may be supplemented, amended, restated

or replaced from time to time, and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and all attached Schedules and unless otherwise indicated, references to Articles, Sections and Schedules are to Articles, Sections and Schedules in this Agreement;

- (d) **"Alternative Transaction"** has the meaning given to such term in Section 10.2;
- (e) **"Applicable Law"** means any domestic, foreign, federal, national, state, provincial or local statute, law (including the common law and the law of equity), ordinance, rule, regulation, restriction, by-law (zoning or otherwise), order, or any consent, exemption, approval or license of or concerning a Governmental Authority, that applies in whole or in part to the transactions contemplated by this Agreement, the Sellers, CFM Mexico, the Buyers, the Purchased Business or any of the Purchased Assets;
- (f) **"Assumed Employees"** has the meaning given to such term in Section 8.10(a);
- (g) **"Assumed Liabilities"** has the meaning given to such term in Section 2.3;
- (h) **"Bankruptcy Cases"** has the meaning given to such term in Recital D;
- (i) **"Bankruptcy Code"** has the meaning given to such term in Recital D;
- (j) **"Base Purchase Price"** has the meaning given to such term in Section 3.1;
- (k) **"Buyers' Response"** has the meaning given to such term in Section 3.4(c);
- (l) **"Bidding Procedures Order"** or **"Bidding Procedures Orders"** has the meaning given to such term in Section 9.1;
- (m) **"Break-Up Fee"** has the meaning given to such term in Section 10.2;
- (n) **"Business Confidential Information"** means all proprietary, non-public information that has commercial value or other utility to the Purchased Business, or the unauthorized disclosure of which would be detrimental to the interests of the Purchased Business;
- (o) **"Business Day"** means any day other than a Saturday or Sunday or a statutory holiday in Toronto, Ontario or New York, New York;
- (p) **"Buyer"** and **"Buyers"** have the meanings given to such terms in the preamble to this Agreement;
- (q) **"CA Firm"** has the meaning given to such term in Section 3.4(g);
- (r) **"Canadian Sellers"** has the meaning given to such term in Recital C;



- (s) "CCAA" has the meaning given to such term in Recital C;
- (t) "Canadian Court" has the meaning given to such term in Recital C;
- (u) "CCAA Initial Order" has the meaning given to such term in Recital C;
- (v) "CFM Business" has the meaning given to such term in Recital A;
- (w) "CFM Mexico" has the meaning given to such term in Section 2.1(p);
- (x) "Closing" means the completion of the sale and purchase of the Purchased Assets pursuant to this Agreement at the Closing Time and all other transactions contemplated by this Agreement that are to occur contemporaneously with the sale and purchase of the Purchased Assets;
- (y) "Closing Date" means the second Business Day following the satisfaction or waiver (where permissible) by the appropriate Party of all the conditions contained in Article 7 hereof or such other date as may be agreed to by the Parties in writing;
- (z) "Closing Date Working Capital" means the Working Capital as determined as of 12:01 a.m. (Toronto time) on the Closing Date;
- (aa) "Closing Date Working Capital Statement" has the meaning given to such term in Section 3.4(a);
- (bb) "Closing Time" means 10:00 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date as the Parties agree in writing that the Closing Time shall take place;
- (cc) "Code" means the *United States Internal Revenue Code of 1986*, as amended;
- (dd) "Commissioner" means the Commissioner of Competition appointed under the Competition Act;
- (ee) "Competition Act" means the *Competition Act* (Canada) and the Notifiable Transactions Regulations to the Competition Act;
- (ff) "Competition Act Approval" means (if a pre-merger notification is required pursuant to Part IX of the Competition Act) either:
  - (i) the Commissioner shall have issued an advance ruling certificate under Section 102 of the Competition Act with respect to the transactions contemplated in this Agreement;
  - (ii) each of the Parties shall have filed all notices and information required under Part IX of the Competition Act and the applicable waiting periods shall have expired; or

- (iii) the obligation to give the requisite notice has been waived pursuant to subsection 113(c) of the Competition Act; and,
- (iv) in the case of (ii) or (iii), the Commissioner or her delegate shall have advised the Buyers in writing that she is of the view that there are not sufficient grounds to initiate proceedings before the Competition Tribunal under the merger provisions of the Competition Act in respect of the transactions contemplated herein and such advice does not contain any conditions (other than the usual caveat that such proceedings may be initiated at any time up to three years after the transactions have been substantially completed) that are not satisfactory to the Buyers acting reasonably;

(gg) **"Confidential Information"** means the information (whether or not marked or identified as confidential), including but not limited to intellectual property, methodology, technology and programs, software, source code, product plans, designs, formulae, processes, techniques, drawings, diagrams, visual demonstrations, ideas, concepts, costs, prices and names, data, technical information, financial information, business plans, business processes and systems, information relating to clients and prospective clients, agreements and terms thereof, strategies, practices, marketing plans, advertising, commercial or sales materials, business opportunities, personnel, research, development or know-how which has been or may hereafter be disclosed, directly or indirectly, to the Buyers either orally, in writing or in any other form or medium whatsoever pursuant to or in contemplation of this Agreement, provided that Confidential Information shall not include information that: (i) is now or subsequently becomes generally available to the public through no fault or breach on the part of the Buyers; (ii) is independently developed by either Buyer without the use of any of the Confidential Information, provided that such independent development is capable of being proven in a court of law; (iii) is required to be disclosed by court order or other lawful action of a Governmental Authority, but only to the extent so ordered or required, and provided that the Buyers shall notify the Sellers, so that the Sellers may attempt to obtain a protective order either restricting or preventing such disclosure; or (iv) is rightfully received by either Buyer from a third party without a duty of confidentiality to the Sellers or their affiliates, provided that such rightful receipt by such Buyer is capable of being proven in a court of law;

(hh) **"Confidentiality Agreement"** means the confidentiality and non-disclosure agreement executed by Monessen in favour of the Sellers dated April 15, 2008;

(ii) **"Contracts"** has the meaning given to such term in Section 2.1(g);

(jj) **"Court Approval"** means the issuance of Court Orders by the Canadian Court and the U.S. Court approving the sale of the Purchased Assets;

- (kk) "Court Orders" means orders granted, or to be granted, by the Canadian Court and U.S. Court, each in form and substance mutually satisfactory to the Sellers and the Buyers, that: (A) in the case of the order of the Canadian Court, an order in the form attached hereto as Schedule 1.1(kk-1) (with such amendments as may be agreed to by the Buyers) (the "Canadian Sale Order") will, among other things, (i) authorize, approve or confirm this Agreement and the execution and delivery thereof by the Canadian Sellers, and the transactions contemplated by this Agreement; (ii) provide for the vesting of the Canadian Sellers' right, title and interest in and to the Purchased Assets in accordance with the terms and conditions of this Agreement, free and clear of all claims against the Purchased Assets of every nature or kind whatsoever and howsoever arising, including, without limiting the generality of the foregoing, all Encumbrances, save and except for Assumed Liabilities and Permitted Encumbrances, upon the filing with the Canadian Court of a certificate of the Monitor indicating that all matters to be completed prior to the consummation of the transactions contemplated hereby have been completed or waived; (iii) provide that the vesting of the Purchased Assets in a Buyer will be binding on any interim receiver, receiver or trustee in bankruptcy of any of the Canadian Sellers; (iv) an order to be granted by the Canadian Court in Ontario that exempts the transactions contemplated in this Agreement from compliance with the *Bulk Sales Act* (Ontario); and (v) approve the payment of the Break-Up Fee and the Expense Reimbursement; and (B) in the case of the U.S. Court, an order, among other things, approving the payment of the Break-Up Fee and the Expense Reimbursement under Article 10 of this Agreement; and an order in the form attached hereto as Schedule 1.1(kk-2) (the "U.S. Sale Order") will (i) authorize the performance of this Agreement and the execution and delivery by the U.S. Sellers pursuant to Section 363(b) of the Bankruptcy Code; (ii) approve the sale of the Purchased Assets by the U.S. Sellers to the Buyers pursuant to the terms of this Agreement, free and clear of all Encumbrances or Successor Liabilities pursuant to section 363(f) of the Bankruptcy Code, other than the Assumed Liabilities and Permitted Encumbrances; (iii) approve the assumption and assignment of Contracts and Personal Property Leases pursuant to section 365 of the Bankruptcy Code; (iv) contain findings of fact and rulings that the Buyers are good faith purchasers entitled to the protections of section 363(m) of the Bankruptcy Code; and (v) authorize and directs the Sellers to execute, deliver, perform under, consummate and implement, this Agreement, together with all additional instruments and documents, that may be reasonably necessary or desirable to implement the foregoing;
- (ll) "Cure Amounts" has the meaning given to such term in Section 2.3(c);
- (mm) "Deposit" has the meaning given to such term in Section 3.2(a);
- (nn) "DIP Lender" means Bank of Montreal;

- (oo) **"Employee Plan"** means any plan, arrangement, agreement, program, policy or practice (whether written or oral, formal or informal, funded or unfunded, insured or self-insured, registered or unregistered) sponsored, administered, maintained or contributed to by the Sellers or CFM Mexico that has any application to the Sellers' or CFM Mexico's employees (including directors, officers, retired employees, former employees, individuals working on contract with the Sellers or CFM Mexico or other individuals providing services to the Sellers or CFM Mexico of a kind normally provided by employees) or their dependants or beneficiaries and consisting of or relating to, as the case may be, any one or more of the following:
- (i) retirement savings or pensions, including without limitation any defined benefit pension plan, defined contribution pension plan, group registered retirement savings plan, or supplemental pension or retirement plan or retirement compensation arrangement;
  - (ii) any bonus, incentive pay or compensation, performance compensation, deferred compensation, profit sharing or deferred profit sharing, stock option, stock appreciation, stock purchase, phantom stock, vacation or vacation pay, sick pay, severance or termination pay, employee loans or separation from service benefits, or other type of plan or arrangement providing for compensation or benefits additional to base pay or salary; and
  - (iii) any disability or wage continuation benefits during periods of absence from work, or any other welfare benefit, including without limitation supplemental unemployment, hospitalization, health, medical/dental, disability, life insurance, death or survivor benefits, employment insurance, educational assistance, perquisite, and fringe benefits;
- (pp) **"Encumbrance"** means any security interest (whether contractual, statutory or otherwise), lien, trusts or deemed trusts (whether contractual, statutory or otherwise), prior claim, executions, levy, charge, including Court-Ordered charges, hypothec, hypothecation, reservation of ownership, pledge, encumbrance, mortgage or other financial or monetary claims, easement, option, right of first refusal or any adverse claim of any nature or kind, whether or not they have attached or been perfected, registered or filed, whether secured, unsecured or otherwise;
- (qq) **"Environment"** means soil, surface waters, groundwater, drinking water, land, stream sediments, surface or subsurface strata, ambient air, indoor air or indoor air quality, organic and inorganic matter and living organisms, including any material or substance used in the physical structure of any building or improvement, including all sewer systems, and any environmental medium or natural resource;
- (rr) **"Environmental Condition"** means any condition of the Environment with respect to or migrating from the Real Property, with respect to any other real

property previously owned, leased or operated in connection with the CFM Business to the extent such condition of the Environment existed at the time of such ownership, lease or operation, or with respect to or migrating from any other real property at which any Hazardous Material generated or managed in connection with the operation of the CFM Business prior to the Closing Date has been treated, stored or disposed of or has otherwise come to be located, which violates any Environmental Law, or even though not violative of any Environmental Law, nevertheless results in any Release, or Threat of Release, personal injury, property damage, loss, cost, expense, claim, demand, Order or liability;

- (ss) "Environmental Laws" means any Applicable Laws relating to public or workplace health or safety, protection of the Environment, Releases of Hazardous Materials or injury to persons relating to exposure to any Hazardous Materials;
- (tt) "ERISA" means the *Employee Retirement Income Security Act of 1974*, as amended;
- (uu) "Equity Commitment Letter" has the meaning given to such term in Section 5.6;
- (vv) "Escrow Agent" means KeyBank National Association;
- (ww) "Excluded Assets" has the meaning given to such term in Section 2.2;
- (xx) "Excluded Business" has the meaning given to such term in Recital B;
- (yy) "Excluded Liabilities" has the meaning given to such term in Section 2.4;
- (zz) "Expense Reimbursement" has the meaning given to such term in Section 10.2;
- (aaa) "Final Order" means an order for which all opportunities for rehearing, reargument, petition for certiorari and appeal are exhausted or expired and any requests for rehearing have been denied, and that has not been revised, stayed, enjoined, set aside, annulled, reversed, remanded, modified or suspended, with respect to which any required waiting period has expired, and to which all conditions to effectiveness prescribed therein or otherwise by law or order have been satisfied; provided, however, that no order shall fail to be a Final Order solely because of the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure or Rule 9024 of the Federal Rules of Bankruptcy Procedure may be filed with respect to such order.
- (bbb) "GAAP" or "generally accepted accounting principles" means generally accepted accounting principles in Canada as set out in the Handbook of the Canadian Institute of Chartered Accountants on the basis that the Purchased Business is regarded as a going concern, other than those principles requiring

the recognition of impairment or similar Encumbrances arising out of the Bankruptcy Cases, the CCAA proceedings and events relating thereto;

- (ccc) **"Governmental Authority"** means any government, regulatory authority, governmental department, agency, commission, bureau, court, judicial body, arbitral body or other law, rule or regulation-making entity:
- (i) having jurisdiction over a Seller, CFM Mexico, a Buyer, the Purchased Assets or the Assumed Liabilities on behalf of any country, province, state, locality or other geographical or political subdivision thereof; or
  - (ii) exercising or entitled to exercise any administrative, judicial, legislative, regulatory or Taxing authority or power;
- (ddd) **"Governmental Authorizations"** means authorizations, approvals, franchises, orders, certificates, consents, directives, notices, licenses, permits, variances, registrations or other rights issued to or required by the Sellers or CFM Mexico relating to the Purchased Business, any of the Purchased Assets or CFM Mexico by or from any Governmental Authority;
- (cee) **"GST"** means goods and services Tax payable under the GST Legislation;
- (ff) **"GST Legislation"** means Part IX of the *Excise Tax Act* (Canada);
- (ggg) **"Hazardous Material"** means any pollutant, toxic substance, including asbestos and asbestos-containing materials, hazardous waste, hazardous material, hazardous substance, contaminant, petroleum, petroleum-containing and petroleum-derived materials, radiation and radioactive materials, toxic mold and other harmful biological agents, and polychlorinated biphenyls as defined in, subject to regulation or that could give rise to liability under any Environmental Law;
- (hhh) **"HSR Act"** means the *Hart-Scott-Rodino Antitrust Improvements Act of 1976*, as amended, and any regulations and rules issued pursuant to that Act;
- (iii) **"HSR Approval"** means termination of the applicable waiting period under the HSR Act, if applicable;
- (jjj) **"Huntington Facility"** means the Sellers' manufacturing, distribution and office facilities located at 1000 East Market St., Huntington, Indiana 46750;
- (kkk) **"ICA"** means the *Investment Canada Act* (Canada), as amended;
- (lll) **"including"** and **"includes"** shall be interpreted on an inclusive basis and shall be deemed to be followed by the words **"without limitation"**;
- (mmmm) **"Intellectual Property"** means any and all patents and patent applications; trademarks, service marks, trade names, brand names, trade dress, slogans, logos and Internet domain names and uniform resource locators, and the

goodwill associated with any of the foregoing; inventions (whether patentable or not), industrial designs, discoveries, improvements, ideas, designs, models, formulae, patterns, compilations, data collections, drawings, blueprints, mask works, devices, methods, techniques, processes, know-how, proprietary information, customer lists, software, technical information and trade secrets; copyrights, copyrightable works, rights in databases and data collections and marketing materials; moral and economic rights of authors and inventors; other intellectual or industrial property rights and foreign equivalent or counterpart rights and forms of protection of a similar or analogous nature to any of the foregoing or having similar effect in any jurisdiction throughout the world; and registrations and applications for registration of any of the foregoing, including any renewals, extensions, continuations (in whole or in part), divisionals, re-examinations or reissues or equivalent or counterpart thereof; and all documentation and embodiments of the foregoing;

- (nnn) **"Inventories"** has the meaning given to such term in Section 2.1(d);
- (ooo) **"Keanall Escrow Fund"** means the amount of \$1,022,035, plus any interest or earnings accrued thereon, which was deposited into an escrow account pursuant to an escrow agreement dated December 19, 2003 among CFM Corporation, 1504795 Ontario Inc. and Computershare Trust Company of Canada, as escrow agent, for the purposes of paying future indemnity claims, if any, in connection with CFM Corporation's acquisition of Keanall Industries Inc. on December 20, 2001;
- (ppp) **"Material Adverse Change" or "Material Adverse Effect"** means a change in or an effect on the Purchased Business or the Purchased Assets, or circumstance, that materially and adversely impacts the value of the Purchased Business or the Purchased Assets (each taken as a whole) as at the date of this Agreement, but shall exclude: (i) the commencement of the Bankruptcy Cases or the CCAA proceedings or any changes or effects resulting from the announcement or pendency of the Bankruptcy Cases or the CCAA proceedings; (ii) changes, effects or circumstances that generally, or in the regions in which the Purchased Business operates, affect the industries in which the Business operates (including legal and regulatory changes) provided such changes, effects or circumstances do not have a materially disproportionate effect on the Purchased Business or the Purchased Assets, taken as a whole, relative to other companies and entities operating in the industry in which the Purchased Business operates; (iii) changes arising from the consummation of the transactions contemplated in this Agreement, or the announcement of the execution of this Agreement, including (a) any actions of competitors, (b) any actions taken by or losses of employees or (c) any delays or cancellations of orders for products or services; (iv) general economic or political conditions or changes, effects or circumstances affecting the financial or securities markets generally provided such conditions, changes, effects or circumstances do not have a materially disproportionate effect on the Purchased Business or the Purchased Assets, taken as a whole, relative to other companies and entities operating in the industry in which the Purchased

Business operates; (v) changes, effects or circumstances relating to foreign currency exchange rate fluctuations; (vi) any reduction in the price of services or products offered by the Purchased Business in response to the reduction in price of comparable services or products offered by a competitor; (vii) any existing event or occurrence with respect to which the Buyers have actual knowledge as of the date of this Agreement, including any item disclosed in the Schedules attached hereto; and (viii) any change, effect or circumstance that results from any action taken pursuant to or in accordance with this Agreement or at the request of the Buyers;

- (qqq) **"Mexican IP"** means all Intellectual Property used or held for use by CFM Mexico;
- (rrr) **"Monessen"** has the meaning given to such term in the preamble to this Agreement;
- (sss) **"Monitor"** means PricewaterhouseCoopers Inc., the monitor appointed by the Canadian Court in respect of the proceedings under the CCAA;
- (ttt) **"National Fireplaces"** means National Fireplaces and Facings Inc.;
- (uuu) **"Notice Period"** has the meaning given to such term in Section 8.7;
- (vvv) **"Order"** means any order, judgment, injunction, award, decree, ruling, charge, award, assessment, direction, instruction, penalty, sanction or writ of any Governmental Authority or arbitrator;
- (www) **"Orillia Facility"** means the Sellers' general purpose manufacturing facility located at 73 Paterson Rd., R.R. #1, Orillia, Ontario L3V 6H1;
- (xxx) **"Parties"** means the Sellers and the Buyers collectively, and **"Party"** means either the Sellers, collectively, on one hand, or the Buyers, collectively, on the other hand;
- (yyy) **"Permits"** has the meaning given to such term in Section 2.1(h);
- (zzz) **"Permitted Encumbrances"** means (i) liens for Taxes not yet due and payable, (ii) easements, rights of way and other similar encumbrances or discrepancies of record that, individually or in the aggregate, do not have a material adverse effect on the operation of the Real Property for its current use and (iii) the Encumbrances listed on Schedule 1.1(zzz) (as such Schedule may be updated by the Buyers from time to time);
- (aaaa) **"Person"** means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;



- (bbbb) **"Personal Property Leases"** has the meaning given to such term in Section 2.1(m);
- (cccc) **"Post-Petition Deposits"** means all cash deposits provided to suppliers and service providers of the Purchased Business during the period starting on the commencement of the CCAA proceedings and the Bankruptcy Cases and ending at the Closing Time and which are still outstanding as of such time;
- (dddd) **"Post-Petition Payables"** means all trade accounts payable and purchase order obligations related to the Purchased Business that were incurred during the period starting on the commencement of the CCAA proceedings and the Bankruptcy Cases and ending Closing Time and which are still outstanding as of such time;
- (eeee) **"Prepaid Expenses"** has the meaning given to such term in Section 2.1(e);
- (fff) **"Purchased Assets"** has the meaning given to such term in Section 2.1;
- (gggg) **"Purchased Business"** has the meaning given to such term in Recital F;
- (hhhh) **"Purchased IP"** has the meaning given to such term in Section 2.1(i);
- (iii) **"Purchase Price"** has the meaning given to such term in Section 3.1;
- (jjj) **"RCAP 2003"** has the meaning given to such term in Section 8.7;
- (kkkk) **"Real Property"** has the meaning given to such term in Section 2.1(n);
- (lll) **"Regulatory Approvals"** means Competition Act Approval (if a pre-merger notification is required pursuant to Part IX of the Competition Act), HSR Approval, any approvals required under the ICA, and all other such consents, approvals, permits and authorizations with any other Governmental Authorities whose consent is required for consummation of the transactions contemplated by this Agreement;
- (nnmm) **"Release"** means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, dumping, spraying, burial, abandonment, incineration, seepage, migration, placement or introduction, whether accidental or intentional and whether sudden, intermittent or gradual, of a Hazardous Material into the Environment (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Materials) and any condition that results in the exposure of a Person to a Hazardous Material;
- (nnnn) **"Released Parties"** has the meaning given to such term in Section 7.3(e);
- (oooo) **"Remaining W/C Escrow Amount"** has the meaning given to such term in Section 3.4(b);

- (pppp) "RST" means all Taxes payable under the RST Legislation;
- (qqqq) "RST Legislation" means the *Retail Sales Tax Act* (Ontario);
- (rrrr) "Seller" and "Sellers" have the meanings given to such terms in the preamble to this Agreement;
- (ssss) "Sellers' Objection" has the meaning given to such term in Section 3.4(d);
- (ttt) "Sellers' Representations" has the meaning given to such term in Section 12.4;
- (uuuu) "Settlement Date" has the meaning given to such term in Section 3.5(a);
- (vvvv) "Specialty Business" has the meaning given to such term in Recital B;
- (www) "Successor Liability" means all obligations and liabilities of any kind or nature whatsoever and howsoever arising, whether known or contingent, whether disclosed (whether on a Schedule or otherwise), undisclosed or otherwise, under any bulk transfer law of any jurisdiction, under any common law doctrine of *de facto* merger or successor or transferee liability, successor-in-interest liability theory, or otherwise by operation of Applicable Law;
- (xxxx) "Sunset Date" has the meaning given to such term in Section 10.1(c);
- (yyyy) "Target Working Capital" means \$47,157,000;
- (zzzz) "Tax" and "Taxes" includes:
- (i) taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, disability, severance, unemployment, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all license, franchise and registration fees and all employment insurance, health insurance and Canada, Québec and other government pension plan premiums or contributions, and any liability under any Applicable Law related to escheat, abandoned or unclaimed property; and
  - (ii) any liability in respect of any items described in clause (i) payable by reason of Contract, assumption, transferee liability, operation of law.

United States Income Tax Regulation Section 1.1502-6(a) (or any predecessor or successor thereof or any analogous or similar provision under Applicable Law) or otherwise;

- (aaaaa) **"Tax Returns"** means all returns, declarations, statements, reports, claims for refund, information returns and forms, including any schedule or attachment thereto, and including any amendment thereof, relating to Taxes;
- (bbbbb) **"Threat of Release"** means a reasonable likelihood of a Release that requires action to prevent or mitigate damage or injury to health, safety or the Environment that might result from such Release;
- (ccccc) **"Title Company"** has the meaning given to such term in Section 8.6(c);
- (ddddd) **"Transfer Taxes"** has the meaning given to such term in Section 8.9(b);
- (eeeee) **"Transition Services Agreement"** means a transition services agreement or agreements dated as of the Closing Date among the Parties in a form to be agreed upon by the Parties, for the services and for the time periods and at the fees set forth on Schedule 1.1(eeee);
- (fffff) **"U.S. Court"** has the meaning given to such term in Recital D;
- (ggggg) **"U.S. Sellers"** has the meaning given to such term in Recital D;
- (hhhhh) **"VC Holding"** has the meaning given to such term in the preamble to this Agreement;
- (iiiiii) **"WARN Act"** means the *Worker Adjustment and Retraining Notification Act*, 29 U.S.C. § 2101 et. seq., as well as any regulations promulgated thereunder, and any other Applicable Law that requires advance notice of the closing or shutdown of a facility, operation or employment site;
- (jjjjj) **"W/C Escrow Agreement"** means an escrow agreement dated as of the Closing Date among the Parties and the Escrow Agent relating to the W/C Escrow Amount;
- (kkkkk) **"W/C Escrow Amount"** has the meaning given to such term in Section 3.3;
- (lllll) **"Working Capital"** means the net balance of certain current assets minus certain current liabilities of the Sellers related to the Purchased Business and the Purchased Assets set forth on Schedule 1.1(llll), as calculated in a manner that is consistent with the calculation of working capital set forth on Schedule 1.1(llll) and the principles and assumptions set forth therein; and
- (mmmmm) **"Working Capital Adjustment Amount"** means the absolute difference (whether positive or negative) between (a) Closing Date Working Capital and (b) Target Working Capital.

## **1.2 Schedules**

The following Schedules form part of this Agreement:

Schedule 1.1(kk-1)	-- Canadian Sale Order
Schedule 1.1(kk-2)	-- U.S. Sale Order
Schedule 1.1(zzz)	Permitted Encumbrances
Schedule 1.1(eeee)	-- Transition Services
Schedule 1.1(IIII)	-- Working Capital
Schedule 2.1(b)	Other Speciality Business Tangible Assets
Schedule 2.1(d)	-- Inventories
Schedule 2.1(g)	Contracts
Schedule 2.1(h)	-- Permits
Schedule 2.1(i)	-- Purchased IP
Schedule 2.1(j)	-- Domain Names
Schedule 2.1(m)	-- Personal Property Leases
Schedule 2.1(n)	-- Real Property
Schedule 3.6	-- Allocation
Schedule 4.4	-- Consents
Schedule 4.8	-- Environmental Matters
Schedule 4.9(a)	-- Employment Contracts and Collective Bargaining Agreements
Schedule 4.9(b)	-- Labor Disputes
Schedule 4.9(c)(ii)	-- Actions Involving Employee Plans
Schedule 4.9(c)(iv)	-- Defined Benefit Plans
Schedule 4.9(c)(v)	-- Multiemployer Plans
Schedule 4.9(c)(vi)	-- Post-Employment Welfare Benefit Obligations
Schedule 4.10	-- Litigation
Schedule 8.10(a)	Employees
Schedule 9.1	-- Bidding Procedures Orders

## **1.3 Statutes**

Unless specified otherwise, any reference in this Agreement to a statute refers to that statute as it may be amended, or to any restated or successor legislation of comparable effect, and to any interpretations of such statute by courts of competent jurisdiction.

## **1.4 Headings and Table of Contents**

The inclusion of headings and a table of contents in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.

## **1.5 Gender and Number**

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

#### **1.6 Currency**

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in United States dollars.

#### **1.7 Invalidity of Provisions**

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

#### **1.8 Entire Agreement**

This Agreement, the Confidentiality Agreement and the agreements and other documents required to be delivered pursuant to this Agreement constitute the entire agreement between the Parties, provided that the Confidentiality Agreement shall automatically terminate at the Closing, and set out all the covenants, promises, warranties, representations, conditions and agreements between the Parties in connection with the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

#### **1.9 Waiver, Amendment**

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by all Parties. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

#### **1.10 Governing Law; Jurisdiction and Venue**

This Agreement, the rights and obligations of the Parties under this Agreement, and any claim or controversy directly or indirectly based upon or arising out of this Agreement or the transactions contemplated by this Agreement (whether based on contract, tort, or any other theory), including all matters of construction, validity and performance, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the State of Delaware, without regard to the conflicts of law principles thereof. The Parties hereby attorn to the exclusive jurisdiction and venue of the U.S. Court and the Canadian Court, subject to the terms of any cross border protocols approved or made by the U.S. Court or the Canadian Court, for the resolution of any disputes arising under this Agreement. Each Party agrees that service of process on such Party as provided in Section 12.8 shall be deemed effective service of process on such Party.

### **1.11 Time**

If any period to take any action in this Agreement concludes on a day which is not a Business Day, the period to take such action shall automatically be extended to the next day that is a Business Day.

### **1.12 Knowledge**

In this Agreement, the phrase "to the knowledge of the Sellers" or other similar phrases means the actual knowledge of John Walker and Pat Gillian as of the date of this Agreement.

## **ARTICLE 2 - PURCHASE AND SALE**

### **2.1 Agreement to Purchase and Sell Purchased Assets**

Upon and subject to the terms and conditions of this Agreement (including the provisions of Section 2.5), and subject to the approval of the U.S. Court and the Canadian Court, at the Closing the Sellers shall sell or cause to be sold and the designated Buyers shall, pursuant to the Court Orders, purchase, free and clear of all Encumbrances (other than Permitted Encumbrances) or Successor Liabilities, all of the Sellers' right, title and interest in and to the following assets (collectively the "Purchased Assets"):

- (a) all machinery, equipment (including all trucks, cars and other motor vehicles), parts, molds, tools, office equipment, computers, servers, furniture, network equipment, electronic and optical equipment, racks, routers, generators, cables, furnishings and accessories of the Purchased Business whether located on the premises of the Sellers or elsewhere, together with any additions thereto arising in the ordinary course of the Purchased Business from the date of this Agreement to the Closing Date;
- (b) all machinery, equipment (including all trucks, cars and other motor vehicles), parts, molds, tools, office equipment, computers, servers, furniture, network equipment, electronic and optical equipment, racks, routers, generators, cables, furnishings and accessories of the Specialty Business (but not part of the Purchased Business) listed on the attached Schedule 2.1(b);
- (c) all trade accounts receivable and all trade debts due or accruing due in connection with the Specialty Business and the full benefit of all security therefor and any associated claims, demands or lawsuits against any of the customers of the Specialty Business arising out of or relating to their purchase of goods of the Specialty Business (the "Accounts Receivable");
- (d) all inventories of finished goods, work in process, raw materials and other materials and supplies of the Specialty Business described on the attached Schedule 2.1(d) (the "Inventories"), together with any additional inventories, work-in-progress, raw materials and other materials and supplies acquired after the date hereof, except to the extent any of the foregoing is sold or disposed of in the ordinary course of business prior to Closing;

- (e) the full benefit of all prepaid expenses of the Purchased Business including the Post-Petition Deposits, other than Tax prepayments and insurance prepayments (the "Prepaid Expenses"), and the petty cash on hand of the Purchased Business;
- (f) all unbilled revenues of the Specialty Business;
- (g) the contracts, agreements, leases, third party licenses and other legally binding instruments of the Specialty Business (the "Contracts") listed on Schedule 2.1(g), subject to modification through the Closing Date upon written notice from the Buyers to the Sellers at least 24 hours prior to the Closing Time;
- (h) the permits, licenses, approvals, authorizations, certifications and franchises set out in Schedule 2.1(h) (the "Permits");
- (i) all Intellectual Property used or held for use in the Specialty Business including the Intellectual Property listed in Schedule 2.1(i) (the "Purchased IP");
- (j) all domain names and internet addresses used in the Specialty Business, including those listed in Schedule 2.1(j);
- (k) the goodwill of the Purchased Business and the Purchased Assets;
- (l) all business and financial records and files of the Purchased Business or related to the Purchased Assets, including all customer lists and lists of suppliers, all operating manuals and specifications, and all personnel files of the Purchased Business; provided, however, that the Sellers may retain original Tax records and books and records pertaining thereto and copies of (i) all personnel files, and (ii) all books and records included in the Purchased Assets or relating to the Purchased Business or the Sellers to the extent necessary or useful for the administration of the Bankruptcy Cases, any proceedings under the CCAA or any other proceeding to which it is or becomes a party, the filing of any Tax Return or compliance with any Applicable Law;
- (m) all leases of personal or moveable property listed on Schedule 2.1(m), subject to modification through the Closing Date upon written notice from the Buyers to the Sellers at least 24 hours prior to the Closing Time, including all benefits, rights and options pursuant to such leases and all leasehold improvements forming part thereof (the "Personal Property Leases");
- (n) all real or immoveable property owned by the Sellers located in Bethel, Vermont and Randolph, Vermont listed on Schedule 2.1(n), and all plants, buildings, structures, improvements, appurtenances and fixtures (including fixed machinery and fixed equipment) thereon, forming part thereof or benefiting such real or immoveable property (the "Real Property");

- (o) all software and documentation therefor used or held for use in the Purchased Business, including, all electronic data processing systems, program specifications, source codes, object code, input data, report layouts, formats, algorithms, record file layouts, diagrams, functional specifications, narrative descriptions, flow charts, operating manuals, training manuals and other related material; and
- (p) all of the shares in the capital of Temcomex S.A. de C.V. ("CFM Mexico") owned by the Sellers.

## 2.2 Excluded Assets

Notwithstanding any provision of this Agreement to the contrary, the Purchased Assets shall not include any assets of the Sellers that are not specifically identified as Purchased Assets in Section 2.1 (collectively, the "Excluded Assets"), including:

- (a) cash on hand or on deposit with banks or other depositories, other cash equivalents, certificates of deposit, money markets instruments, bank balances and rights in and to bank accounts of the Sellers or any of their affiliates;
- (b) marketable securities and investments, stock, debt instruments (except to the extent specifically assumed pursuant to this Agreement), options and other securities, partnership interests or joint venture interests of the Sellers (including the capital stock of the Sellers, the shares of National Fireplaces and the shares in the capital stock of CFM Home Products (Asia) Limited, but excluding the shares in the capital of CFM Mexico described in Section 2.1(p));
- (c) debts due or accruing to any one or more of the Sellers from any other Seller or any shareholder, director, officer, employee or affiliate of any one or more of the Sellers;
- (d) the general ledger, accounting and Tax records, minute books, corporate seal, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of any of the Sellers as a Person;
- (e) the Sellers' rights under this Agreement or the transactions contemplated hereby;
- (f) all of the assets, rights or interests used in or held for use in connection with the design, manufacture and sale of plate-steel stoves by the Excluded Business;
- (g) all of the other assets, rights or interests used in or held for use in the Excluded Business;
- (h) the real or immoveable property (including all plants, buildings, structures, improvements, appurtenances and fixtures) owned by the Sellers at or in



connection with the Huntington Facility and the Orillia Facility, except to the extent specifically included in the Purchased Assets;

- (i) any claims, refunds, causes of action, rights of recovery, rights of set-off and rights of recoupment, the interest of any one or more of the Sellers in the Keanall Escrow Fund and in any litigation and in the proceeds of any judgment, order or decree issued or made in respect thereof in respect of occurrences, events, accidents or losses suffered prior to Closing that are not included in the Accounts Receivable (including all causes of action arising under sections 510, 544 through 551 and 553 of the Bankruptcy Code or under similar state laws including fraudulent conveyance claims and all other causes of action of a trustee and debtor-in-possession under the Bankruptcy Code);
- (j) any refundable Taxes previously paid by any one or more of the Sellers (including any Taxes paid under the GST Legislation) and any claim or right of any one or more of the Sellers to any refund of Taxes paid by the Sellers for periods ending on or prior to the Closing Date or, in the case of a period which includes but does not end on the Closing Date, the portion of such period through the Closing Date;
- (k) any deferred Tax assets of any Seller reflecting either the differences between the treatment of items for accounting and income Tax purposes or carryforwards;
- (l) all contracts of insurance, insurance policies (including D&O policies), insurance plans, insurance refunds, the interest of the Sellers in any insurance policies, including any cash surrender value thereof, all assets of the foregoing and all rights and claims under or in respect of the foregoing;
- (m) all abandoned or unclaimed property under any applicable state or local unclaimed property, escheat or similar Applicable Law;
- (n) all Employee Plans (other than Employee Plans maintained by CFM Mexico);
- (o) all contracts, agreements, leases, third party licenses, collective bargaining agreements and other legally binding instruments of the Sellers, other than the Contracts; and
- (p) the Purchase Price.

### **2.3 Assumption of Liabilities**

The Buyers shall assume as of the Closing Date and shall pay, discharge and perform, as the case may be, from and after the Closing Date, only the following specified liabilities and obligations of the Sellers with respect to the Purchased Business and/or the Purchased Assets (collectively, the "Assumed Liabilities"):

- (a) all liabilities and obligations arising under the Personal Property Leases, the Permits and the Contracts arising from events first occurring on or after the Closing Date;
- (b) all liabilities and obligations of the Buyers pursuant to Section 8.10;
- (c) all cure costs required to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assignment and assumption of the Personal Property Leases and the Contracts, and with respect to Personal Property Leases and Contracts to which a Canadian Seller is a party, all costs required to be paid to the co-contracting party in order to obtain such co-contracting party's consent to the assignment (the "Cure Amounts"); and
- (d) the Post-Petition Payables.

The Buyers shall not be liable for, or assume, any other obligations or liabilities of the Sellers.

#### **2.4 Excluded Liabilities**

Other than the Assumed Liabilities, the Buyers are not assuming and shall not be responsible for any obligations or liabilities of the Sellers or the CFM Business (the "Excluded Liabilities"). Without limiting the foregoing, the Excluded Liabilities shall include:

- (a) all accounts payable of the Sellers that are not Post-Petition Payables;
- (b) all obligations or liabilities related to an Excluded Asset;
- (c) all obligations or liabilities relating to Sellers' bank debt, bond debt or other indebtedness;
- (d) all obligations or liabilities to the DIP Lender;
- (e) all obligations or liabilities for (i) Transfer Taxes allocable to the Sellers under Section 8.9, (ii) Real Property Taxes and ad valorem Taxes allocable to the Sellers under Section 8.8, (iii) Taxes of any of the Sellers or any affiliate of a Seller, and (iv) Taxes that relate to the Purchased Assets or the Assumed Liabilities for any taxable period ending on or before the Closing Date or, in the case of a period which includes but does not end on the Closing Date, the portion of such period through the Closing Date;
- (f) all fees, expenses, indemnification obligations or other obligations owed by the Sellers to their professional advisors;
- (g) all intercompany payables, loans and investments between any Seller and another Seller;
- (h) all obligations or liabilities for any return, rebate, repair, warranty or similar obligation related to products manufactured or sold by the CFM Business prior to the Closing;

- (i) all obligations or liabilities (including liabilities for negligence, strict liability, product liability, design or manufacturing defect, conspiracy, failure to warn or breach of express or implied warranties of merchantability or fitness for a particular purpose) to third parties for death, personal injury, other injury to persons or damage to property caused by or arising out of accidents or incidents involving products manufactured or sold by the CFM Business prior to the Closing;
- (j) except as set forth in Section 8.10, all obligations or liabilities relating out of the employment of Assumed Employees prior to the Closing Date;
- (k) except as set forth in Section 8.10 or the Transition Services Agreement, all obligations or liabilities relating to employees of the Sellers who do not become Assumed Employees as provided in Section 8.10, and all liabilities relating to any director or other service provider of the Sellers and their affiliates;
- (l) all obligations or liabilities under any Employee Plan of the Sellers (other than Employee Plans maintained by CFM Mexico);
- (m) any and all obligations or liabilities under any collective bargaining agreement or arising under any statutory obligation to bargain with a union or other labor organization;
- (n) all obligations or liabilities from or arising in connection with exposure to one or more Hazardous Materials, to the extent exposure occurred on or before the Closing Date;
- (o) all obligations or liabilities arising out of or related to any duty under or violation of any Environmental Law occurring or existing prior to the Closing Date in connection with the CFM Business or the Real Property, or any Environmental Condition occurring or existing prior to the Closing Date; and
- (p) any Successor Liability.

## **2.5 Assignment of Purchased Assets**

Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Purchased Asset or any right thereunder if an attempted assignment, without the consent of a third party, would constitute a breach or in any way adversely affect the rights of the Buyers or the Sellers thereunder after taking into account any nullification, invalidation or unenforceability of such consent requirement by or under the Bankruptcy Code or the CCAA. If such consent is not obtained or such assignment is not attainable, the Sellers and the Buyers will, at the sole cost and expense of the Buyers, cooperate and use their respective commercially reasonable efforts to implement a mutually agreeable arrangement pursuant to which the Buyers would obtain the benefits and assume the obligations thereunder in accordance with this Agreement; provided, however, that, subject to the provision of Section 12.1, the Buyers acknowledge and agree that nothing in this Section 2.5 shall operate

to prohibit or diminish in any way the right of any of the Sellers to dissolve, wind up or otherwise cease operations or their corporate existence in any manner or at any time subsequent to the Closing Date as they may determine in their sole discretion, which may be exercised without regard to the impact any such action may have on the Sellers' ability to fulfill their obligations under this Section 2.5.

### **ARTICLE 3 - PURCHASE PRICE AND RELATED MATTERS**

#### **3.1 Purchase Price**

Subject to the adjustments provided in Section 3.5, the purchase price payable to the Sellers for the Purchased Assets (the "Purchase Price") shall be an amount equal to (a) \$42,500,000 plus or minus any adjustments made pursuant to Section 8.8 (the "Base Purchase Price"), (b) minus the Cure Amounts for any Contracts added to Schedule 2.1(g) after the date of this Agreement pursuant to Section 2.1(g) and any Personal Property Leases added to Schedule 2.1(m) after the date of this Agreement pursuant to Section 2.1(m), in any case, up to an aggregate amount of \$500,000, and (c) (i) plus the Working Capital Adjustment Amount if Closing Date Working Capital is greater than Target Working Capital, or (ii) minus the Working Capital Adjustment Amount if Target Working Capital is greater than Closing Date Working Capital.

#### **3.2 Deposit**

- (a) The Buyers have deposited or caused to be deposited with the Monitor cash in an amount equal to 10% of the Base Purchase Price (the "Deposit") to be applied as provided in Section 3.2(b).
- (b) The Deposit, together with interest accrued thereon, if any, may be retained by the Sellers in the following circumstances: (i) at the Closing as a credit against the Purchase Price; or (ii) as set forth in Section 10.2. Except as described in the previous sentence, the Deposit, together with interest accrued thereon, shall be returned immediately to the Buyers or their designee as set forth in Section 10.2.

#### **3.3 Purchase Price Payable on Closing**

The Parties acknowledge that it is not possible to conclusively determine the Purchase Price until the Closing Date Working Capital Statement has been finalized in accordance with Section 3.4. Accordingly, the Parties agree that, at the Closing, the Buyers shall (a) pay (i) to or to the order of the Sellers an amount equal to the Base Purchase Price minus the Deposit and net earnings thereon, minus \$1 million (the "W/C Escrow Amount"), and (ii) to the Escrow Agent an amount equal to the W/C Escrow Amount and (b) cause the Monitor to pay the Deposit and net earnings thereon to or to the order of the Sellers. The Escrow Agent shall hold the W/C Escrow Amount in escrow in accordance with the terms of the W/C Escrow Agreement.

#### **3.4 Closing Date Working Capital**

- (a) Not later than 45 days after the Closing Date, the Buyers shall prepare and cause to be delivered to the Sellers a statement of the Closing Date Working

Capital ("Closing Date Working Capital Statement") which shall be prepared in a manner consistent with Schedule I.I(III).

- (b) On the date on which the Closing Date Working Capital Statement is delivered to the Sellers pursuant to Section 3.4(a), the Buyers shall instruct the Escrow Agent to pay to or to the order of the Sellers by wire transfer of immediately available funds the amount (if any) by which the W/C Escrow Amount (taking into account the thresholds set forth in Section 3.5(b)) exceeds (A) the Base Purchase Price minus (B) the Purchase Price (or if (A) minus (B) is a negative amount, the full W/C Escrow Amount), calculated assuming that the Closing Date Working Capital for such purposes equals the Closing Date Working Capital as set forth on the Closing Date Working Capital Statement delivered by the Buyers. The W/C Escrow Amount remaining after such payment is referred to as the "Remaining W/C Escrow Amount".
- (c) During the period following the Closing Date through to the Settlement Date, the Buyers shall give the Sellers, the Monitor, their agents (including accountants) and employees, reasonable access to the Buyers' books and records relating to the Purchased Business including all working papers, computer records, systems and other information technology and access to the Buyers' employees, agents, external accountant and auditors, during normal business hours as reasonably requested to allow the full review of the Closing Date Working Capital Statement and to attempt to resolve any dispute relating thereto. The Buyers shall instruct their employees, agents, external accountant and auditors to provide all assistance reasonably requested by the Sellers and the Monitor to allow them to question, verify and review the Closing Date Working Capital Statement.
- (d) The Sellers shall have 30 days after the delivery by the Buyers of the Closing Date Working Capital Statement to review the Closing Date Working Capital Statement. If the Sellers do not agree with the Buyers' determination of Closing Date Working Capital, as set forth on the Closing Date Working Capital Statement, the Sellers, on or before the last day of such 30 day period, shall inform the Buyers in writing of their objections to the Closing Date Working Capital Statement (the "Sellers' Objection"), setting forth a specific description of the basis of the Sellers' Objection, the adjustments to the Closing Date Working Capital Statement that the Sellers believe should be made and their determination of the Closing Date Working Capital after giving effect to such adjustments.
- (e) The Buyers shall have 15 days after the delivery of the Sellers' Objection to review and respond to the Sellers' Objection. If the Buyers do not agree with the Sellers' Objection, the Buyers, on or before the last day of such 15 day period, shall so inform the Sellers in writing (the "Buyers' Response").
- (f) If the Sellers' Objection is not delivered on or before the 30th day after delivery of the Closing Date Working Capital Statement, the Closing Date

Working Capital, as set forth in the Closing Working Capital Statement, shall be conclusive and binding on the Buyers and the Sellers and the Parties shall be deemed to have agreed thereto. If the Buyers' Response is not delivered to the Sellers on or before the 15th day after delivery of the Sellers' Objection, the Closing Date Working Capital, as set forth in the Sellers' Objection, shall be conclusive and binding on the Buyers and the Sellers and the Parties shall be deemed to have agreed thereto.

- (g) If the Buyers deliver a Buyers' Response and the Sellers and the Buyers are unable to resolve all of their disagreements with respect to the determination of Closing Date Working Capital within ten days following the delivery of the Buyers' Response, then the Buyers and the Sellers shall jointly engage Grant Thornton LLP, or if Grant Thornton LLP is unwilling to accept such mandate, to an internationally recognized firm of independent public accountants having offices in both the United States and Canada as to which the Sellers and the Buyers mutually agree, or, if the Parties cannot agree within five days of expiry of such ten day period, such firm appointed by the Canadian and/or U.S. Court(s) (in either case, the "CA Firm"), to resolve such dispute. As promptly as practicable thereafter, the Buyers, on the one hand, and the Sellers, on the other hand, shall each prepare and submit a presentation (such presentation to include a worksheet setting forth all material calculations used in arriving at such presentation) to the CA Firm. As soon as practicable (but in no event more than 30 days) thereafter, the Buyer and the Sellers shall cause the CA Firm to choose one of the Parties' positions based solely upon the presentations by the Buyer and the Sellers. All determinations made by the CA Firm will be final, conclusive and binding on the Parties. The Closing Working Capital Statement as prepared by the Buyers and (i) as modified in respect of all disputed items by the final, binding and conclusive determination of the CA Firm or (ii) as agreed by the Sellers and the Buyers shall serve as the definitive Closing Date Working Capital Statement. The fees and disbursements of the CA Firm shall be paid 50% by each Party.

### **3.5 Determination of Purchase Price and Adjustment of Amount Paid on Closing Date**

- (a) On the second Business Day following the date on which the (i) Parties agree, or are deemed to agree, to the Closing Date Working Capital or (ii) CA Firm determines the Closing Date Working Capital in accordance with Section 3.4(g) (the "Settlement Date"), the Purchase Price shall be determined based on the Closing Date Working Capital, and shall be adjusted as provided in Section 3.5(b).
- (b) On the Settlement Date, (i) if the Closing Date Working Capital is greater than the Target Working Capital, (A) the Sellers and the Buyers shall cause the Escrow Agent to pay the Remaining W/C Escrow Amount to or to the order of the Sellers, and (B) the Buyers shall pay the lesser of (1) the Working Capital Adjustment Amount and (2) \$1 million to or to the order of the Sellers; or (ii) if the Closing Date Working Capital is less than the Target Working Capital and the resulting Working Capital Adjustment Amount is (A) equal to

or more than the Remaining W/C Escrow Amount, the Sellers and the Buyers shall cause the Escrow Agent to pay the Remaining W/C Escrow Amount to or to the order of the Buyers and the Buyers shall not be entitled to receive any further or additional payments from the Sellers in respect of the Purchase Price adjustment contemplated by this Article 3 or (B) less than the Remaining W/C Escrow Amount, the Sellers and the Buyers shall cause the Escrow Agent to pay, out of the Remaining W/C Escrow Amount, (1) an amount equal to the Working Capital Adjustment Amount to or to the order of the Buyers, and (2) the balance of the Remaining W/C Escrow Amount to or to the order of the Sellers. Notwithstanding the foregoing, no payment shall be made by either the Buyer or the Sellers pursuant to Section 3.4 or this Section 3.5 unless the Working Capital Adjustment Amount is more than \$500,000, in which case the Buyer or the Sellers (as applicable) shall make the payment required by Section 3.4 or this Section 3.5 after deduction of the \$500,000 threshold and/or cause the Escrow Agent to deliver the Remaining W/C Escrow Amount to the Sellers, if applicable. If no payment is required pursuant to this Section 3.5(b) as a result of the application of the immediately preceding sentence, the Working Capital Adjustment Amount shall be deemed to be zero for the purposes of this Agreement. All payments hereunder shall be made by wire transfer of immediately available funds on the Settlement Date to an account or accounts specified in writing by the recipient prior to the Settlement Date. All payments under this Section 3.5(b) will be treated by the Parties as a purchase price adjustment for all federal, state, provincial, local and other Tax purposes.

### **3.6 Purchase Price Allocation**

The consideration paid by the Buyers hereunder (including the assumption by the Buyers of the Assumed Liabilities) shall be allocated among each of the Sellers and the Purchased Assets in accordance with their fair market values using the methodologies to be determined by the Buyers and the Sellers prior to the Closing, which will be set forth on Schedule 3.6. The Buyers and the Sellers shall report the purchase and sale of the Purchased Assets for all accounting and Tax purposes as so determined by the Buyers and the Sellers, acting reasonably. The Buyers and the Sellers shall each be responsible for the preparation of their own statements or forms (including IRS Form 8594) required to be filed under the Code or the *Income Tax Act* (Canada) or other Applicable Laws.

### **3.7 Withholding Taxes**

Notwithstanding anything herein to the contrary, to the extent required under Applicable Law, the Buyers shall be entitled to withhold any and all amounts from the Purchase Price equal to any withholding Tax owed to any Governmental Authority as a result of the transactions contemplated by this Agreement. For avoidance of doubt, any amounts withheld hereunder will be treated as having been paid to the Sellers.

#### **ARTICLE 4- REPRESENTATIONS AND WARRANTIES BY THE SELLERS**

Each of the Sellers represents and warrants to the Buyers as follows, and acknowledges that the Buyers are relying upon the following representations and warranties in connection with their purchase of the Purchased Assets:

##### **4.1 Corporate Power**

Each Seller and CFM Mexico is duly organized or incorporated and validly existing under the laws of its jurisdiction of organization or incorporation, as applicable.

##### **4.2 Absence of Conflicts**

Subject to receipt of the Regulatory Approvals and the Court Approval, none of the Sellers nor CFM Mexico is a party to, bound or affected by or subject to any charter or by-law provision or Applicable Laws or Governmental Authorizations that would be violated, breached by, or under which any default would occur or, with notice or the passage of time would, be created as a result of the execution and delivery of, or the performance of obligations under, this Agreement or any other agreement or document to be entered into or delivered under the terms of this Agreement.

##### **4.3 Due Authorization and Enforceability of Obligations**

Subject to Court Approval being obtained, each Seller has all necessary power, authority and capacity to enter into this Agreement and the agreements contemplated hereunder, and to carry out its obligations hereunder and thereunder, and the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary action (corporate or otherwise) of each Seller. This Agreement constitutes a valid and binding obligation of each Seller enforceable against it in accordance with its terms, subject to Court Approval.

##### **4.4 Approvals and Consents**

Except for the Court Approvals, the Regulatory Approvals and any consents identified on Schedule 4.4 that may be required in connection with the sale and transfer of a Purchased Asset, no authorization, consent or approval of, or filing with or notice to, any Governmental Authority or other Person is required in connection with the execution, delivery or performance of this Agreement by the Sellers and each of the agreements to be executed and delivered by the Sellers or the purchase of any of the Purchased Assets hereunder.

##### **4.5 Residence of the Sellers**

- (a) Each of the following Sellers is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada):

- CFM Corporation
- CFM Canada



- 2089451 Ontario Limited

- (b) Any Seller that is a non-resident of Canada for the purposes of the *Income Tax Act* (Canada) is not selling or assigning to the Buyers any Purchased Asset that is "taxable Canadian property" as defined for the purposes of the *Income Tax Act* (Canada).
- (c) No Seller that is not a United States person for purposes of the Code is selling or transferring any "United States real property interest" as that term is defined in Section 897 of the Code.

#### 4.6 GST Legislation

The following Sellers are registered for GST purposes under the GST Legislation. The Sellers' GST registration numbers are as follows:

- CFM Corporation	89107 7380.
- CFM Canada	87027 7514
- 2089451 Ontario Limited	81295 7348

#### 4.7 Intellectual Property

To the knowledge of the Sellers, the operation of the Specialty Business and CFM Mexico as currently conducted by the Sellers does not infringe, misappropriate, violate or otherwise conflict with any Intellectual Property right of any other Person. To the knowledge of the Sellers, none of the Purchased IP or the Mexican IP is being infringed by any Person. Other than pursuant to the distribution agreement between CFM Corporation and CFM Europe Limited (which shall be disclaimed and repudiated by the Sellers at or prior to the Closing Time), there are no material Intellectual Property licenses, leases or similar arrangements related to any Purchased IP or Mexican IP, and neither the Sellers nor CFM Mexico has licensed, leased or otherwise been granted the authority to use from any other Person any material Intellectual Property.

#### 4.8 Environmental Matters

Except as set forth on Schedule 4.8, to the knowledge of the Sellers:

- (a) There is no asbestos nor any asbestos containing materials, PCBs or radioactive substances kept at, used in, applied to or in any way incorporated in any building, structure, improvement or equipment on the Real Property or any real property owned or leased by CFM Mexico. Neither the Sellers nor CFM Mexico currently sell any product containing asbestos or that utilizes or incorporates asbestos-containing materials.
- (b) There has been no Release of any Hazardous Material at the Real Property or any real property owned or leased by CFM Mexico that requires or may

require reporting, investigation, assessment, cleanup, remediation or any other type of response action pursuant to any Environmental Law.

- (c) The Sellers have made available to the Buyers copies of all material third party reports in their possession or control concerning Environmental Conditions and other Environmental matters relating to the Real Property, any real property owned or leased by CFM Mexico, or the Purchased Business.

#### 4.9 Employment Matters

- (a) Employees. Except as set forth on Schedule 4.9(a), none of the Sellers or CFM Mexico has entered into or is bound by any (i) written employment, consulting or severance Contract with any of their employees, or (ii) collective bargaining agreements with respect to any of their employees.
- (b) Labor Practices. With respect to the Purchased Business, except as set forth in Schedule 4.9(b), since January 1, 2005 and to the Sellers' knowledge (i) the Sellers and CFM Mexico have not experienced any labor disputes, strikes, lockouts, or other similar labor activity nor has any labor organization attempted to organize any employees, and (ii) no unfair labor practice charge or complaint has been filed with any Governmental Authority.
- (c) Plans.
  - (i) Each Employee Plan maintained by CFM Mexico has been maintained, operated, registered and administered in compliance in all material respects with its terms and Applicable Laws.
  - (ii) Except as set forth in Schedule 4.9(c)(ii), there are no pending or, to the Sellers' knowledge, threatened legal actions relating to the Employee Plans maintained by CFM Mexico (other than claims for benefits under such plans in the ordinary course for which no controversy exists).
  - (iii) With respect to each Employee Plan maintained by CFM Mexico, all contributions, premiums, expenses and other payments required to be made by the Sellers, CFM Mexico or their affiliates on or before the Closing Date have been or will be made prior to the Closing Date.
  - (iv) Except as set forth on Schedule 4.9(c)(iv), no Employee Plan is a defined benefit pension plan subject to Title IV of ERISA and neither the Sellers nor their affiliates have maintained or contributed to or terminated a defined benefit pension plan within the past five years.
  - (v) Except as set forth on Schedule 4.9(c)(v), no Employee Plan is a "multiemployer plan" as defined in Section 3(37) of ERISA, and neither the Sellers nor CFM Mexico is obligated to make contributions to a multiemployer plan on behalf of any employee, or has any liabilities under any multiemployer plan. The Sellers have made all

required contributions to each Employee Plan set forth on Schedule 4.9(c)(v). Neither the Sellers nor their affiliates have incurred a complete withdrawal as this term is defined in Section 4203 of ERISA or a partial withdrawal as defined in ERISA Section 4205 from any such multiemployer plan.

- (vi) Except as set forth on Schedule 4.9(c)(vi) or as required by Applicable Law, neither the Sellers nor any of their affiliates have any liability for providing post-employment welfare benefits to any employee or former employee.
- (d) WARN Act. The Sellers have not, within the 90 days immediately prior to the Closing Date, in whole or in part taken any action or actions which would, either independent of or in conjunction with the transactions contemplated by this Agreement, result in a plant closing or mass layoff within the meaning of the WARN Act, or any similar Applicable Law to the extent related to the Purchased Business or the Purchased Assets. To the extent that any employees of the Sellers or any other Persons are entitled under the WARN Act or any similar Applicable Law to notice in conjunction with any of the transactions contemplated by this Agreement, the Sellers have provided such timely notice(s) in compliance with the WARN Act or any similar Applicable Law.

#### **4.10 Litigation**

Except as set forth on Schedule 4.10, there is no suit, action, litigation, investigation, claim, complaint or proceeding pending, or to the knowledge of the Sellers, threatened against the Sellers or CFM Mexico that (a) questions the validity of this Agreement, (b) involves or relates to any of the transactions contemplated hereunder, or (c) that, if resolved adversely to Sellers and/or CFM Mexico, would reasonably be expected to have a Material Adverse Effect.

#### **4.11 Compliance With Laws**

To the knowledge of the Sellers, the Purchased Business, the Purchased Assets and CFM Mexico are materially in compliance with all Applicable Laws.

### **ARTICLE 5- REPRESENTATIONS AND WARRANTIES OF THE BUYERS**

Each Buyer represents and warrants to the Sellers as follows and acknowledges that the Sellers are relying upon the following representations and warranties in connection with their sale of the Purchased Assets:

#### **5.1 Corporate Power**

Monessen is a corporation existing under the laws of the Commonwealth of Kentucky and has all necessary corporate power, authority and capacity to enter into this Agreement and the agreements contemplated hereunder and to carry out its obligations hereunder and thereunder. VC Holding is a corporation existing under the laws of the State of Delaware and

has all necessary corporate power, authority and capacity to enter into this Agreement and the agreements contemplated hereunder and to carry out its obligations hereunder and thereunder.

## **5.2 Residence of the Buyers**

Monessen is a "WTO Investor" for the purposes of the ICA. VC Holding is a "WTO Investor" for the purposes of the ICA.

## **5.3 Absence of Conflicts**

Subject to receipt of the Regulatory Approvals and the Court Approval, neither Monessen nor VC Holding is a party to, bound or affected by or subject to any charter or by-law provision or Applicable Law or Governmental Authorization that would be violated, breached by, or under which any default would occur or with notice or the passage of time would, be created as a result of the execution and delivery of, or the performance of obligations under, this Agreement or any other agreement or document to be entered into or delivered under the terms of this Agreement.

## **5.4 Due Authorization and Enforceability of Obligations**

Each Buyer has all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action of each Buyer. This Agreement constitutes a valid and binding obligation of each Buyer enforceable against it in accordance with its terms, subject to Court Approval and the Regulatory Approvals, except:

- (a) as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization and similar laws affecting creditors generally; and
- (b) as such enforceability may be limited by general principles of equity, regardless of whether asserted in a proceeding in equity or law.

## **5.5 Approvals and Consents**

Except for the Court Approvals and the Regulatory Approvals and any consents that may be required in connection with the sale and transfer of a Purchased Asset, no authorization, consent or approval of, or filing with or notice to, any Governmental Authority, court or other Person is required in connection with the execution, delivery or performance of this Agreement by each Buyer and each of the agreements to be executed and delivered by each Buyer, or the purchase of any of the Purchased Assets hereunder, the absence of which would materially impair the ability of the Buyers to complete the transactions contemplated by this Agreement.

## **5.6 Financing**

The Buyers have delivered to the Sellers a true and complete copy of an equity commitment letter dated as of the date hereof made by RCAF 2003 in favour of the Buyers (the "Equity Commitment Letter"). The commitment described in the Equity Commitment Letter is not subject to any condition precedent other than the conditions expressly set forth therein and is sufficient, together with the existing cash resources of the Buyers, to pay the aggregate amount

of the Purchase Price. As of the date hereof, (i) the Equity Commitment Letter is in full force and effect and is a legal, valid and binding obligation of RCAF 2003, (ii) no amendment, modification or waiver of or to the Equity Commitment Letter is contemplated and (iii) no event has occurred which, with or without notice, lapse of time or both, would constitute a default or breach of the Equity Commitment Letter.

#### 5.7 GST Registration

On the Closing Date, each Buyer will be an unregistered non-resident person for purposes of the GST Legislation, including for purposes of Section 10 of Schedule VI to Part V of the GST Legislation.

### ARTICLE 6- ASSETS

#### 6.1 As is, Where Is

The Buyers are informed and sophisticated purchasers, and have engaged expert advisors, experienced in the evaluation and purchase of property and assets such as the Purchased Assets as contemplated hereunder. The Buyers have undertaken such investigations and have been provided with and have evaluated such documents and information as they have deemed necessary to enable them to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement. THE BUYERS ACKNOWLEDGE AND AGREE THAT THE PURCHASED BUSINESS AND THE PURCHASED ASSETS ARE SOLD "AS IS, WHERE IS" WITH ALL FAULTS WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW WITH RESPECT TO THE PURCHASED BUSINESS OR THE PURCHASED ASSETS AND WITHOUT ANY RECOURSE TO THE SELLERS OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS, REPRESENTATIVES OR ADVISORS, OTHER THAN FOR FRAUD OR AS OTHERWISE EXPRESSLY PROVIDED HEREIN. THE BUYERS AGREE TO ACCEPT THE PURCHASED BUSINESS AND THE PURCHASED ASSETS AND THE ASSUMED LIABILITIES IN THE CONDITION, STATE AND LOCATION THEY ARE IN ON THE CLOSING DATE BASED ON THEIR OWN INSPECTION, EXAMINATION AND DETERMINATION WITH RESPECT TO ALL MATTERS AND WITHOUT RELIANCE UPON ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY NATURE MADE BY OR ON BEHALF OF OR IMPUTED TO THE SELLERS, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. Unless specifically stated in this Agreement, no representation, warranty, term or condition, understanding or collateral agreement, whether statutory (including under the *Sale of Goods Act* (Ontario)), express or implied, oral or written, legal, equitable, conventional, collateral or otherwise, is being given by the Sellers in this Agreement or in any instrument furnished in connection with this Agreement, as to title, outstanding liens, description, fitness for purpose, merchantability, quantity, condition, quality, value, suitability, durability, assignability or marketability thereof, or in respect of any other matter or thing whatsoever including the respective rights, titles and interests of the Sellers, if any, therein and wherever all or part of the Purchased Assets are situated, and all of the same are expressly excluded. Without limiting the generality of the foregoing, the Buyers acknowledge that none of the Sellers makes any representation or warranty with respect to: (i) any projections, estimates or budgets delivered to or made available to the Buyers of future revenues, future results of operations (or any component thereof), future collection of Accounts

Receivable, future cash flows or future financial condition (or any component thereof) of the Purchased Business or the future Purchased Business operations of the Purchased Business; or (ii) any other information or documents made available to the Buyers or their counsel, accountants or advisors with respect to the Purchased Business, in each case, except as expressly set forth in this Agreement.

#### **6.2 Diligence**

The Buyers acknowledge and agree that: (a) they have had an opportunity to conduct any and all due diligence regarding the Purchased Assets and the Assumed Liabilities prior to the execution of this Agreement; (b) they have relied solely upon their own independent review, investigation and/or inspection of any documents and/or the Purchased Assets and/or the Assumed Liabilities; (c) they are not relying upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets or Assumed Liabilities, except as expressly stated in the Bidding Procedures Order and in this Agreement; and (d) the obligations of the Buyers under this Agreement are not conditional upon any additional due diligence.

### **ARTICLE 7- CONDITIONS**

#### **7.1 Conditions for the Benefit of the Buyers and the Sellers**

The obligation of the Buyers and of the Sellers to complete the purchase and sale of the Purchased Assets and the assignment and assumption of the Assumed Liabilities pursuant to this Agreement is subject to the satisfaction of, or compliance with, at or prior to the Closing Time, each of the following conditions:

- (a) no provision of any Applicable Law and no judgment, injunction, order or decree that prohibits the consummation of the purchase and sale of the Purchased Assets pursuant to this Agreement shall be in effect or threatened in writing by any Governmental Authority;
- (b) the U.S. Court and the Canadian Court shall have granted the Court Orders and the Court Orders shall be in full force and effect and have become Final Orders; and
- (c) all Regulatory Approvals shall have been obtained.

#### **7.2 Conditions for the Benefit of the Buyers**

The obligation of the Buyers to complete the purchase of the Purchased Assets and the assumption of the Assumed Liabilities pursuant to this Agreement is subject to the satisfaction of, or compliance with, or waiver by the Buyers of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Buyers):

- (a) the representations and warranties of the Sellers set forth in this Agreement shall be true and correct in all respects, without regard to any materiality or Material Adverse Effect qualifications contained therein, at the Closing Time

with the same force and effect as if made at and as of such time, except: (i) that to the extent such representations and warranties expressly speak as of an earlier date (e.g. speaking "as at the date hereof"), such representations and warranties shall be true and correct in all respects as of such specified date; and (ii) for any inaccuracies that would not, individually or in the aggregate, result in a Material Adverse Effect;

- (b) the covenants contained in this Agreement to be performed by the Sellers at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;
- (c) the Buyers shall have received a certificate confirming the satisfaction of the conditions contained in Sections 7.2(a) and 7.2(b), signed for and on behalf of the Sellers without personal liability by an executive officer of CFM Corporation or other persons reasonably acceptable to the Buyers, in each case in form and substance reasonably satisfactory to the Buyers;
- (d) the Bankruptcy Court shall have approved the assumption and assignment of all of the Personal Property Leases and the Contracts and determined the associated cure amounts and the order(s) making such approvals shall have become Final Order(s);
- (e) the Notice Period shall have expired;
- (f) the Sellers shall have taken all necessary steps to disclaim and repudiate the distribution agreement between CFM Specialty Home Products and RSR Home Comfort Products and the distribution agreement between CFM Corporation and CFM Europe Limited, and there shall be no pending objections or appeals of RSR Home Comfort Products or CFM Europe Limited resulting from or in connection with such disclaimer or repudiation;
- (g) the Sellers shall have satisfied their obligations set forth in Section 11.2(a) in all material respects; and
- (h) during the period commencing on the date of this Agreement and ending on the Closing Date, there shall not have been any Material Adverse Change or any event or circumstance that would reasonably be expected to cause a Material Adverse Change.

### **7.3 Conditions for the Benefit of the Sellers**

The obligation of the Sellers to complete the sale of the Purchased Assets and the assignment of the Assumed Liabilities pursuant to this Agreement is subject to the satisfaction of, or compliance with, or waiver where applicable, by the Sellers of, at or prior to the Closing Time, each of the following conditions (each of which is acknowledged to be for the exclusive benefit of the Sellers):

- (a) the representations and warranties of the Buyers set forth in this Agreement shall be true and correct in all material respects at the Closing Time with the

same force and effect as if made at and as of such time, except that to the extent such representations and warranties expressly speak as of an earlier date (e.g. speaking "as at the date hereof"), such representations and warranties shall be true and correct in all respects as of such specified date;

- (b) the covenants contained in this Agreement to be performed by the Buyers at or prior to the Closing Time shall have been performed in all material respects as at the Closing Time;
- (c) the Sellers shall have received a certificate confirming the satisfaction of the conditions contained in Sections 7.3(a) and 7.3(b), signed for and on behalf of the Buyers without personal liability by an executive officer of the Buyers or other persons reasonably acceptable to the Sellers in form and substance reasonably satisfactory to the Sellers.
- (d) the Buyers shall have satisfied their obligations set forth in Section 11.2(b) in all material respects; and
- (e) each of the current shareholders, officers, directors and employees of the Sellers (collectively, the "Released Parties") shall have received a release from the Buyers that forever releases and discharges each Released Party from any and all demands, claims, liabilities, actions, causes of action, counterclaims, suits debts, sums of money, accounts, indebtedness, liability or obligation of whatever nature based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Closing Time relating to, arising out of or in connection with, the Purchased Assets or the Purchased Business including, for greater certainty, any and all claims, demands, complaints, actions, losses, liabilities, judgments, settlements, damages, penalties, consequential damages, exemplary damages, fines, Encumbrances, liens, remediation, abatement, costs and expenses of investigation, remediation or cleanup in defence of or resulting from any claim, action or suit, demand or administrative proceeding or any requirement of any Governmental Authority, whether known or unknown, and whether in law or in equity, whether direct or consequential, compensatory, exemplary, liquidated or unliquidated, which either of the Buyers or their respective legal representatives, successors, assigns, heirs, executors or administrators has, shall have or may ever have against any Released Party with respect to any environmental condition, investigation or remediation with respect to the Real Property (owned or leased) of any Released Party; provided, however, that notwithstanding the foregoing, such release shall not release any Released Party from (i) any claims for fraud or intentional misrepresentation or (ii) any claims arising under or relating to this Agreement, any other agreement or document executed in connection with the transactions contemplated by this Agreement, or any other agreement or document executed after the Closing Time.



## **ARTICLE 8- ADDITIONAL AGREEMENTS OF THE PARTIES**

### **8.1 Access to Information**

Subject to the terms of the Confidentiality Agreement, until the Closing Time, the Sellers and CFM Mexico shall give to the Buyers' personnel engaged in the transactions contemplated by this Agreement and their accountants, legal advisers, consultants and representatives reasonable access to its premises and to all of the books and records relating to the Specialty Business, the Purchased Business, the Purchased Assets, the Assumed Liabilities and CFM Mexico, and to the Sellers' and CFM Mexico's personnel, and shall furnish them with all such information relating to the Purchased Business, the Purchased Assets, the Assumed Liabilities and CFM Mexico as the Buyers may reasonably request in connection with the transactions contemplated by this Agreement. Notwithstanding anything in this Section 8.1 to the contrary, any such investigation shall be conducted upon reasonable advance notice and in such manner as does not materially disrupt the conduct of the Specialty Business or the possible sale thereof to any other Person.

### **8.2 Conduct of Purchased Business Until Closing Time**

Except: (i) as expressly provided in this Agreement; (ii) with the prior written consent of the Buyers (not to be unreasonably withheld or delayed); (iii) as necessary or advisable in connection with the Bankruptcy Cases or the proceedings under the CCAA; or (iv) as otherwise provided in the existing Court Orders or any further order of the Canadian Court or the U.S. Court in connection with the CCAA proceeding or the proceedings under the Bankruptcy Code, prior to the Closing Time, to the extent reasonably practicable having regard to the Bankruptcy Cases and the proceedings under the CCAA, each of the Sellers shall:

- (a) operate the Purchased Business and the Purchased Assets only in the ordinary course in all material respects, consistent with past practice;
- (b) use commercially reasonable efforts to keep the Purchased Assets in good working order;
- (c) use commercially reasonable efforts to preserve its business organization, including the services of its officers and employees, and its business relationships and goodwill with customers, suppliers and others having business dealings with it;
- (d) except in the ordinary course of business or as would not have any adverse operational or economic consequences for the Buyers, adopt, enter into, or increase benefits or obligations under, any Employee Plan that covers Business Employees, or under any collective bargaining agreement or other agreement related to the Purchased Assets;
- (e) not make, or announce any proposal to make, any material change or addition (whether immediate, conditional or prospective) to the terms and conditions of employment of any of the employees of the Specialty Business that would result in a material increase in the value of the compensation package for such

employees, other than regularly scheduled increases in the ordinary course or as required by Applicable Law;

- (f) pay and discharge the debts authorized by the Canadian Court or the U.S. Court in connection with the Bankruptcy Cases or the proceedings under the CCAA;
- (g) not make or change any Tax election with respect to the Purchased Assets or the Purchased Business;
- (h) not alter, modify or accelerate its normal collective practices with respect to any accounts receivable or other amounts due and owing;
- (i) not delay the payment of, and shall maintain its normal practices and policies with respect to, all accounts payable included in the Post-Petition Payables;
- (j) maintain its general pricing policies and practices, and shall not change its credit or allowance practices or policies, with respect to any item of inventory;
- (k) use commercially reasonable efforts to maintain all current policies of insurance covering product liability or similar claims, the Purchased Assets and the assets of CFM Mexico; and
- (l) not transfer, lease, license, abandon or allow to expire, sell or otherwise dispose of any of the Purchased Assets, other than inventory or obsolete assets in the ordinary course of the Specialty Business, consistent with past practice.

### **8.3 CFM Mexico**

The Sellers shall insure that CFM Mexico operates in the ordinary course of business as it historically operated its business. The Sellers shall not cause CFM Mexico to (a) make any dividends or become subject to any indebtedness it is not subject to on the date hereof except for trade payables incurred in the ordinary course of business or (b) make or change any Tax election, change any annual Tax accounting period, file any amended Tax Return, enter into any closing agreement, settle any Tax claim or assessment, surrender any right to claim a Tax refund, or consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment.

### **8.4 Approvals and Consents**

The Sellers and the Buyers shall:

- (a) as soon as reasonably possible, seek all Regulatory Approvals and make all such filings and submissions in connection therewith, and shall request any expedited processing available. The Buyers shall be responsible for any administrative filing fees required by Applicable Law in connection with the Regulatory Approvals. The Sellers and the Buyers shall cooperate and communicate reasonably with each other in respect of all dealings with any Governmental Authorities in respect of the Regulatory Approvals, and will

provide copies of all such documents required in connection therewith to the other Party and its advisors and consult with the other Party and its advisors on the contents thereof prior to filing or responding and notifying the other Party of and allowing the other Party to participate in any calls or meetings relating thereto;

- (b) use commercially reasonable efforts to seek all consents, approvals or authorizations required in connection with the assignment of the Personal Property Leases and the Contracts to the Buyers; and
- (c) use commercially reasonable efforts to take or cause to be taken all other actions, and do or cause to be done all other things, necessary or appropriate to consummate the transactions contemplated by this Agreement, provided that in no event shall the Sellers be obligated to take any action that is likely to result in a Material Adverse Effect.

#### **8.5 Access of the Sellers to Records**

The Sellers (or their authorized representatives) shall, for a period of six years from the Closing Date, have reasonable access to, and the right to copy, at their expense, for bona fide business purposes and for purposes of the Bankruptcy Cases and CCAA proceedings and during usual business hours, upon reasonable prior notice to the Buyers, all books and records relating to the Purchased Business, the Purchased Assets and the Assumed Liabilities which are transferred and conveyed to the Buyers pursuant to this Agreement. The Buyers shall retain and preserve all such books and records for such six year period or until the Sellers are dissolved.

#### **8.6 Further Assurances**

- (a) Each of the Parties shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other Parties may reasonably require from time to time for the purpose of giving effect to this Agreement and shall use commercially reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement. Upon and subject to the terms and conditions of this Agreement and subject to the directions of any applicable Governmental Authority to the Sellers, the Parties shall use their commercially reasonable efforts to take or cause to be taken all actions and to do or cause to be done all things necessary proper or advisable under Applicable Laws and within their reasonable control to consummate and make effective the transactions contemplated by this Agreement, including using commercially reasonable efforts to satisfy the conditions precedent to the obligations of the Parties.
- (b) Without limiting the foregoing, at any time from and after the Closing and prior to the dissolution of the Sellers, the Buyers may request the assumption and assignment of any executory contracts or unexpired leases related to the Specialty Business which were not included on Schedule 2.1(g) or Schedule 2.1(m) and which were not previously rejected, disclaimed or

assigned to a third party. After receiving such a request, the Sellers shall, at the Buyers' expense, prepare and file any necessary papers with the U.S. Court to request the assumption and assignment of any such contract or lease and shall use commercially reasonable efforts to obtain any necessary approvals of the U.S. Court. The Sellers shall also use commercially reasonable efforts to assist the Buyers in obtaining any necessary consents to such assumption and assignment from the counterparty to any such contract or lease, all at the Buyers' expense. The Buyers shall be responsible for the payment of cure costs on, and filing fees with the U.S. Court relating to, any contracts or leases that they request assumption and assignment of pursuant to this Section 8.6.

- (c) The Sellers shall provide to the title company, chosen by the Buyers (the "Title Company") such affidavits as are reasonably necessary to permit the Title Company to (with regard to each ALTA Owner's Policy of Title Insurance to be obtained by the Buyers with regard to the Real Property): (i) delete its standard exceptions relating to parties in possession, mechanics' and materialmen's liens; (ii) insure that all consents required by any document of record have been obtained; (iii) insure that any applicable first refusal or similar purchase rights have been effectively extinguished; (iv) issue an "owner's comprehensive endorsement"; and (v) issue such other endorsements as the Buyers may reasonably request.

#### **8.7 Funding by Monessen's Parent Companies**

Within one Business Day of the U.S. Sale Order being entered, 2003 Riverside Capital Appreciation Fund, L.P. and 2003 Riverside Capital Appreciation Fund (QC), L.P. (the majority shareholders of Monessen's parent company) (together, "RCAF 2003") shall send notice to their investors that they must comply with their contractual obligation to advance funding to be used by Monessen to consummate the transactions contemplated by this Agreement. Under certain agreements between RCAF 2003 and its investors these funds need to be provided within 12 Business Days of such notice being provided by RCAF 2003 (the "Notice Period"). The Buyers shall use their commercially reasonable efforts to obtain the financing contemplated by the Equity Commitment Letter on the terms set forth therein as soon as possible after the U.S. Sale Order and in any event no later than the last day of the Notice Period.

#### **8.8 Prorations**

With the exception of those Taxes described in Section 2.4(e), for which the Buyers will have no liability, all real property, personal property, ad valorem and similar Taxes or fees, including general assessment and special assessments, related to the Purchased Assets and utility charges related to the Real Property will be prorated as of the Closing Date with (a) the Sellers being liable for such Taxes, fees and utility charges relating to any time period or periods ending on or prior to the Closing Date and (b) the Buyers being liable for such Taxes, fees and utility charges relating to any time period or periods beginning after the Closing Date. Proration of such Taxes will be made on the basis of the most recent officially certified Tax valuation and assessment. With respect to Taxes described in this Section 8.8, the Sellers shall timely file all Tax Returns due before the Closing Date with respect to such Taxes and the Buyers shall prepare

and timely file all Tax Returns due after the Closing Date with respect to such Taxes. To the extent that the automatic stay under section 362 of the Bankruptcy Code prohibits the U.S. Sellers, or the stay entered in the Canadian Cases prohibits the Canadian Sellers, from satisfying any Tax obligation they are responsible for under this Section 8.8, the payment of which is necessary to transfer the Purchased Assets to the Buyers (including any necessary recording of the transfer of a Purchased Asset), the Buyers shall pay the prohibited portion of the liability that is necessary to transfer the Purchased Asset in question and a corresponding amount shall be deducted from the Base Purchase Price.

#### **8.9 Tax Matters**

- (a) The Buyers and the Sellers agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Purchased Assets, the Assumed Liabilities, the Purchased Business and CFM Mexico as is reasonably necessary and requested for the preparation and filing of any Tax Return, claim for refund or other required or optional filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution of any suit or other proceedings relating to Tax matters and for the answer to any governmental or regulatory inquiry relating to Tax matters. The Sellers shall, within ten days of the Buyers' request therefor, deliver any information required to be reported by the Buyers pursuant to Section 6043A of the Code.
- (b) All amounts payable by the Buyers to the Sellers pursuant to this Agreement are exclusive of any GST, RST or any other federal, provincial, state or local or foreign value-added, sale, use, consumption, multi-staged, ad valorem, personal property, customs, excise, stamp, transfer, land or real property transfer, or similar Taxes, duties, or charges, or any recording or filing fees or similar charges (collectively, "Transfer Taxes"). All Transfer Taxes are the responsibility of and for the account of the party that is primarily liable for the payment of such Transfer Taxes under Applicable Laws. The Buyers and the Sellers agree to cooperate to determine the amount of Transfer Taxes payable in connection with the transactions contemplated under this Agreement. If either Party is required by Applicable Law or by administration thereof to collect any applicable Transfer Taxes from the other Party, such Party shall pay such amounts to the other Party concurrent with the payment of any consideration payable pursuant to this Agreement, and the Party collecting such amounts shall pay the same to the applicable Governmental Authority on a timely basis and otherwise in accordance with Applicable Laws.
- (c) After the Closing, no Seller will take any action or cause any action to be taken, and none of the Sellers will be part of any transaction, that would cause the transactions contemplated hereunder to be part of or substantially similar to the listed transaction identified in Notice 2001-16, 2001-1 C.B. 740, as modified and supplemented by Notice 2008-20, 2008-6 I.R.B. 406.
- (d) At the request of the Buyers, the Canadian Sellers shall, together with the Buyers, jointly make the elections provided for in paragraph 167(1)(b) of the

GST Legislation to have subsection 167(1.1) of the GST Legislation apply in respect of the sale of the Purchased Assets under this Agreement. If the Buyers request the Canadian Sellers to make either or both of these elections, the Buyers shall:

- (i) file the elections within the time prescribed by subsection 167(1.1) of the GST Legislation; and
  - (ii) at all times indemnify and hold harmless the Sellers and their directors, officers and employees, against and in respect of any and all amounts assessed by the Minister of National Revenue (Canada) (including all reasonable legal and professional fees incurred by the Sellers and their directors, officers and/or employees, as a consequence of or in relation to any such assessment) as a consequence of the Minister determining, for any reason, that the election is unavailable, inapplicable, invalid or not properly made.
- (e) The Canadian Sellers and the Buyers will jointly execute an election in the prescribed manner and within the prescribed time limits, to have the rules in subsection 20(24) of the *Income Tax Act* (Canada) apply to the obligations of the Canadian Sellers in respect of undertakings which arise from the operation of the Purchased Business and to which paragraphs 12(1)(a) and 12(1)(e) of the *Income Tax Act* (Canada) apply. The Buyers and the Sellers acknowledge that the Canadian Sellers are transferring assets to the Buyers which have a value equal to the amount elected under subsection 20(24) of the *Income Tax Act* (Canada) as consideration for the assumption by the Buyers of such obligations of the Sellers.
- (f) At the Closing, the Sellers and the Buyers shall collectively execute, acknowledge, deliver and file all such returns and other documents as may be necessary to comply with the Applicable Laws regarding the transfer of Real Property in the United States and the Transfer Taxes payable on such transfer. Such Transfer Taxes shall be paid to the appropriate Governmental Authority by the party responsible for such Transfer Taxes under Applicable Law.
- (g) The Sellers shall pay to the Mexican Tax authorities an amount equal to 25% of the Purchase Price allocated to CFM Mexico. The Sellers expressly state and agree that they will provide to the Buyers a copy of the filing of the Tax payment as provided in Article 190 of the Mexican Income Tax Law (*Ley del Impuesto sobre la Renta*), within the five calendar days following the last day in which such Tax payment may be required under the Applicable Law. Alternatively, the Sellers shall be entitled to pay the income tax on the net taxable gain realized. If the Sellers elect to pay the Tax by applying the corresponding rate on the net taxable gain realized, in addition to the copy of the filing of the Tax payment as provided in Article 190 of the Mexican Income Tax Law (*Ley del Impuesto sobre la Renta*), they shall provide to the Buyers a (i) copy of the residence certificate evidencing the Tax residency of the Sellers, (ii) copy of the notice duly filed before the Tax authorities

attesting the appointment of the legal representative and (iii) copy of the registered certified public accountant's opinion, all of the above duly filed before the Mexican tax authorities. Such documents shall have to be delivered within the five calendar days following the last day in which the certified public accountant's opinion may be required to be filed under the Applicable Law.

#### 8.10 Employee Matters

- (a) Prior to but conditional on the Closing and with effect as of the Closing Time, the Buyers shall offer employment to employees of the Sellers (including those employees on temporary layoff, leave of absence or disability) that are engaged in the Purchased Business. Prior to but conditional on the Closing and with effect as of the Closing Time, the Buyers shall also offer employment to those employees of the Specialty Business who are not covered by a collective bargaining agreement who are listed on Schedule 8.10(a) and who are not employees engaged in the Purchased Business. The Buyers shall have the ability to add and remove from Schedule 8.10(a) employees of the Specialty Business who are not employees of the Purchased Business and who are not covered by a collective bargaining agreement through the Closing by providing written notice of any such additions or deletions to the Sellers. Those U.S. employees of the Purchased Business or the Specialty Business who accept the Buyers' offer of employment shall hereinafter be referred to as "Assumed Employees." The Buyers will provide each Assumed Employee with compensation and employee benefits that are, in the case of each benefit, substantially similar to the benefits provided to Buyers' U.S. employees in comparable positions, unless a higher amount is required by Applicable Law. Except as provided in the Transition Services Agreement, such employee benefits will be provided under the Buyers' employee benefit plans. The Buyers will cause all plans and programs of the Buyers that provide benefits to Assumed Employees to recognize all service of the Assumed Employees with the Sellers and their affiliates to the same extent and for the same purposes thereunder as such service was counted under similar benefit plans of the Sellers or any of their affiliates for all purposes (except that with respect to benefit accrual, such service will not be counted to the extent that it would result in a duplication of benefits and will not be required to be counted for purposes of benefit accrual under any defined benefit pension plan). The Sellers shall not interfere with the Buyers' efforts to hire the employees identified in Schedule 8.10(a).
- (b) The Buyers shall assume and be responsible for all liabilities and obligations with respect to the Assumed Employees following the Closing Date, including any notification requirements under the WARN Act or any similar Applicable Law for any Assumed Employee that the Buyers terminate after the Closing Date, any notice of termination, termination or severance pay (in each case whether required under Applicable Law, under contract or otherwise), employment insurance, workplace safety and insurance/workers' compensation, salary or wages, statutory holiday pay, overtime pay, payroll or

employer health Taxes, commissions, bonuses, employee benefit plan payments or contributions, vacation entitlements and any other claims which may arise in respect of any Assumed Employee after the Closing Date.

- (c) The Sellers shall retain all liabilities and obligations with respect to any Assumed Employees up to and including the Closing Date and all liabilities and obligations with respect to any employees who are not offered employment or who do not accept offers of employment from the Buyers to become Assumed Employees made in accordance with the terms of this Agreement, including, in both cases, liabilities and obligations related to any notice of termination, termination or severance pay (in each case whether required under the WARN Act or other Applicable Law, under contract or otherwise), employment insurance, workplace safety and insurance/workers' compensation, salary or wages, statutory holiday pay, overtime pay, payroll or employer health Taxes, commissions, bonuses, employee benefit plan payments or contributions or vacation entitlements.

#### **8.11 No Third-Party Beneficiaries**

No provisions of this Agreement create any third-party beneficiary or other rights in any employee or former employee (including any beneficiary or dependent thereof), any Seller, any Buyer or any other person other than the Parties and their respective successors and assigns, or constitutes or creates an employment contract or an amendment to or adoption of any Employee Plan of or by any Seller or Buyer. The employment of all Assumed Employees from and after the Closing Date shall be "at-will" employment, except as otherwise required by Applicable Laws.

#### **8.12 Notices**

If at any time: (i) either Buyer becomes aware of any material breach by any Seller of any representation, warranty, covenant or agreement contained herein and such breach is reasonably capable of being cured by such Seller; or (ii) any Seller becomes aware of any material breach by either Buyer of any representation, warranty, covenant or agreement contained herein and such breach is reasonably capable of being cured by such Buyer, the Party becoming aware of such breach shall promptly notify the other Party in writing of such breach.

#### **8.13 Name Change**

Within ten Business Days following the completion of the purchase and sale of the Purchased Assets under this Agreement, each of the Sellers, if requested by the Buyers, shall use its best efforts to discontinue use of the name "CFM" and any variation thereof, except where legally required to advise that its name has been changed to another name, and each Seller, if applicable, shall as soon as reasonably practicable following the Closing file articles of amendment to change the corporate name of such Seller, if requested by the Buyers, to another name not confusingly similar to its present name. To the extent necessary, the Court Orders shall authorize and direct the appropriate Governmental Authorities to accept such articles of amendment notwithstanding the Sellers' CCAA proceedings and the Bankruptcy Cases.



#### **8.14 Bankruptcy Matters**

The Sellers will provide the Buyers and the Buyers' counsel with copies of all motions, applications and supporting papers prepared by or on behalf of the Sellers (including forms of orders and notices to interested parties) relating in any way to the Buyers or the transactions contemplated by this Agreement at least two Business Days in advance of the service and filing thereof, each of which shall be reasonably acceptable to the Buyers. The Sellers shall promptly give appropriate notice in accordance with Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure, similar rules under Canadian Applicable Law, the Local Bankruptcy Rules for the District of Delaware and any order of the Canadian Court or the U.S. Court, and provide appropriate opportunity for hearing, to all parties entitled thereto, of all motions, order, hearings, or other proceedings relating to this Agreement or the transactions contemplated hereby.

#### **8.15 Insurance**

Until the Closing Date, the Sellers will continue to maintain in effect their current insurance policies that provide coverage of the Purchased Assets. With respect to any damage or destruction to any of the Purchased Assets prior to the Closing Date for which the Sellers would be entitled to assert a claim for recovery under any insurance policy maintained with any third party insurance carrier by or for the benefit of the Sellers with respect to the Purchased Assets, at the request of the Buyers, the Sellers will use commercially reasonable efforts to assert one or more claims under such insurance policies covering such damage or destruction. In the case of any damage to or destruction of any Purchased Assets occurring prior to the Closing that is covered by an insurance policy maintained by the Sellers with any third party insurance carrier, the Sellers shall deliver all insurance proceeds realized therefrom to the Buyers at the Closing or as soon thereafter as collected by the Sellers, provided that if the amount of any such proceeds exceed the book value of the Purchased Asset (or, in the case of any Real Property, the portion of the consideration paid by the Buyers hereunder that is allocated to such Real Property pursuant to Section 3.6) that has been damaged or destroyed, the excess amount shall be retained by the Sellers and in no event shall the aggregate amount of any proceeds paid to the Sellers exceed the Purchase Price.

#### **8.16 Environmental Protection Agency Certifications**

Immediately following the execution of this Agreement, the Sellers shall use their best efforts to obtain, in favor of the Buyers, a perpetual royalty-free license to use, effective upon the Closing, each of the following Environmental Protection Agency certifications: Century/Dutchwest Certificate Number 348; Century/Dutchwest Certificate Number 364; FW247 Certificate Number 473; and Century/Dutchwest Certificate Number 655; provided, however, that notwithstanding the foregoing, in the event that any of such licenses are not obtained by the Closing, (a) the Sellers shall continue to use their best efforts to obtain such licenses and (b) at the Closing, the Sellers shall deliver to the Buyers copies of each of the aforementioned Environmental Protection Agency certifications and all related applications, testing results and data, designs, engineering information and other documentation. Notwithstanding anything to the contrary in this Agreement, the Sellers acknowledge and agree that any purchaser(s) of the Sellers' "Century" brand of products shall not be entitled to use the "Dutchwest" (or any name similar thereto) name, trade name or trademark.

## ARTICLE 9- BIDDING PROCEDURES

### 9.1 Bidding Procedures

The sale process and the bidding procedures pursuant to which the Purchased Assets will be sold shall be as set out in the orders of the Canadian Court and the U.S. Court attached hereto as Schedule 9.1 (each, a "Bidding Procedures Order" collectively, the "Bidding Procedures Orders"). Upon the earlier to occur of the date of entry of the U.S. Sale Order or the Canadian Sale Order, the Sellers shall not engage in any discussions with or accept any other offer for the Purchased Assets.

## ARTICLE 10- TERMINATION

### 10.1 Termination

This Agreement may be terminated at any time prior to the Closing, subject to any approvals required from the Canadian Court or the U.S. Court in connection with the Bankruptcy Cases or the proceedings under the CCAA, as follows:

- (a) by mutual written consent of the Sellers and the Buyers;
- (b) by the Sellers or the Buyers in the event the Bankruptcy Cases or the CCAA proceedings are terminated, converted (in the case of the Bankruptcy Cases, to a proceeding under Chapter 7 of the Bankruptcy Code) or dismissed;
- (c) by either the Sellers or the Buyers if the Closing has not occurred on or before 90 days after the date of the execution of this Agreement (the "Sunset Date");
- (d) by either the Sellers or the Buyers, if any condition set forth in Section 7.1 is not satisfied, or such condition is incapable of being satisfied, by the Sunset Date, unless the Party seeking termination is in material breach of its obligations under this Agreement and has failed to cure such breach within 14 days of written notice of such breach being provided;
- (e) by the Sellers if any condition set forth in Section 7.3 is not satisfied by the Sunset Date, unless the Sellers are in material breach of their obligations under this Agreement and have failed to cure such breach within 14 days of written notice of such breach being provided;
- (f) by the Buyers, if any condition set forth in Section 7.2 (other than the condition set forth in Section 7.2(e)) is not satisfied by the Sunset Date or if the Sellers are in material breach of Section 8.1 (and the Sellers have failed to cure such breach within three Business Days of written notice of such breach being provided), unless the Buyers are in material breach of their obligations under the Agreement and have failed to cure such breach within 14 days of written notice of such breach being provided; and

- (g) by the Buyers or the Sellers, if the Sellers execute a definitive agreement with a third party in connection with an Alternative Transaction, and such Alternative Transaction is approved by the Canadian Court and U.S. Court.

## **10.2 Effect of Termination**

If this Agreement is terminated pursuant to Section 10.1(g) or if at any time within six months of the date of this Agreement the Sellers sign an agreement contemplating a sale of a majority of the Purchased Assets to a third party or multiple third parties in one or more transactions, whether through a merger, amalgamation, asset sale, sale of equity interests or otherwise (an "Alternative Transaction"), and such Alternative Transaction closes, the Buyers shall be entitled to (i) payment of an expense reimbursement of Buyers' actual out of pocket costs of up to \$400,000 (the "Expense Reimbursement") and (ii) a fee of \$1,000,000 less the amount of the Expense Reimbursement (the "Break-Up Fee") payable out of the proceeds of such an Alternative Transaction, such payments to be made within ten Business Days of the completion of an Alternative Transaction. If this Agreement is terminated pursuant to Sections 10.1(a), 10.1(b), 10.1(c) (other than as a result of a material breach by the Buyers which the Buyers are unable to timely cure), 10.1(d), 10.1(f) (but only if such termination is based on a condition set forth in Sections 7.2(a), 7.2(b), 7.2(c), 7.2(d), 7.2(f), 7.2(g) or 7.2(h) not being satisfied or the material breach by the Sellers of Section 8.1 (and the Sellers having failed to cure such breach within three Business Days of written notice of such breach being provided)) or 10.1(g), the Buyers shall be entitled to the immediate return of the Deposit and any interest accrued thereon within ten Business Days of termination. If this Agreement is terminated by the Sellers under Section 10.1(c) or 10.1(e) based on a material breach being committed by the Buyers and the Buyers are unable to timely cure such breach, the Sellers shall be entitled (I) to the full amount of the Deposit and all interest accrued thereon as liquidated damages, in which case the Sellers' right to the Deposit shall constitute the sole and exclusive remedy for such termination or (II) after immediately returning the Deposit and any interest accrued thereon to the Buyers, to pursue any and all remedies (including specific performance) related to such termination. Except as otherwise provided in the preceding sentence, the Parties' respective rights to the Deposit under this Section 10.2 and the Buyers' right to payment of the Expense Reimbursement and the Break-Up Fee under the conditions provided for by this Section 10.2 shall constitute the sole and exclusive remedies for any termination of this Agreement prior to the Closing.

## **ARTICLE 11- CLOSING**

### **11.1 Location and Time of the Closing**

The Closing shall take place at the Closing Time on the Closing Date at the Toronto, Ontario offices of Goodmans LLP, 250 Yonge Street, Suite 2400, Toronto, Ontario M5B 2M6, or at such other location as may be agreed upon by the Parties.

### **11.2 Closing Deliveries**

- (a) Subject to Section 2.5, at the Closing, the Sellers shall deliver to the Buyers:

- (i) the documents required to be delivered by the Sellers pursuant to Section 7.2;
  - (ii) a copy of the Transition Services Agreement executed by the Sellers;
  - (iii) a copy of the W/C Escrow Agreement executed by the Sellers and the Escrow Agent;
  - (iv) bills of sale in with respect to the Purchased Assets in a form and substance satisfactory to the Buyers and the Sellers, acting reasonably, duly executed by the applicable Sellers;
  - (v) a certificate in form and substance satisfactory to the Buyers executed by each U.S. Seller certifying under penalties of perjury that such U.S. Seller is not a "foreign person" as defined in Section 1445 of the Code;
  - (vi) specific assignments and transfers with respect to the Purchased IP, each in form and substance satisfactory to the Buyers and the Sellers, acting reasonably, duly executed by the applicable Sellers;
  - (vii) all other certificates, deeds, bills of sale, endorsements, assignments, titles and other instruments of transfer and conveyance as may be required to transfer the Purchased Assets to the Buyers, each in a form reasonably satisfactory to the Buyers;
  - (viii) evidence of the disclaimer and repudiation of the distribution agreement between CFM Specialty Home Products and RSR Home Comfort Products and the distribution agreement between CFM Corporation and CFM Europe Limited;
  - (ix) a release executed by the DIP Lender (and any other lender to CFM or any of its affiliates, as applicable) in favour of CFM Mexico (in form and substance reasonably satisfactory to the Buyers), releasing and terminating (A) all indebtedness of CFM Mexico owed to the DIP Lender or such other lender (including indebtedness under any loan agreement, guarantee, or any other document or agreement executed by CFM Mexico in connection therewith), (B) any and all Encumbrances on the assets or shares of CFM Mexico and (C) any and all liabilities or obligations of CFM Mexico to the DIP Lender or such other lender in relation to CFM or any of its affiliates; and
  - (x) such other documents and instruments as may be reasonably requested by the Buyers to effectuate the transactions contemplated hereby.
- (b) At the Closing, the Buyers shall deliver to the Sellers:
- (i) instruments of assumption of liabilities with respect to the Assumed Liabilities in a form satisfactory to the Sellers and the Buyers, acting reasonably, and duly executed by the applicable Buyers;

- (ii) a duly executed election pursuant to GST Legislation and any certificates, elections or other documents required to be delivered pursuant to Section 8.9;
- (iii) the documents required to be delivered by the Buyers pursuant to Section 7.3;
- (iv) a copy of the Transition Services Agreement executed by the Buyers;
- (v) a copy of the W/C Escrow Agreement executed by the Buyers;
- (vi) the Purchase Price, less the Deposit and the W/C Escrow Amount, plus all applicable Transfer Taxes, by wire transfer of immediately available funds to an account designated in writing by the Sellers prior to Closing; and
- (vii) such other documents and instruments as may be reasonably requested by the Sellers to effectuate the transactions contemplated hereby.

## **ARTICLE 12 - GENERAL MATTERS**

### **12.1 Dissolution of Sellers**

The Buyers acknowledge and agree that nothing in this Agreement shall operate to prohibit or diminish in any way the right of any of the Sellers or any of their affiliates to dissolve, wind up or otherwise cease operations in any manner or at any time subsequent to the later of (a) the release of the W/C Escrow Amount to the Parties entitled thereto under Section 3.5 or (b) the termination or expiration of the Transition Services Agreement, in either case, as they may determine in their sole discretion.

### **12.2 Confidentiality**

Without limiting the provisions of the Confidentiality Agreement, until the transaction contemplated by this Agreement is completed, the Buyers shall not, except as contemplated below, directly or indirectly, use for their own purposes or communicate to any other Person any Confidential Information relating to the Sellers or to the Purchased Assets or the Purchased Business (including with respect to employees, customers and suppliers) which become known to the Buyers, their accountants, legal advisers or representatives as a result of the Sellers making the same available in connection with the transactions contemplated hereby. The foregoing shall not prevent the Buyers from disclosing or making available to their accountants, professional advisers and bankers and other lenders, whether current or prospective, any such Confidential Information for use solely in connection with completing the transactions contemplated hereby.

From the Closing Time and for two years thereafter, except in the performance of their obligations under this Agreement or any agreements entered into in connection with this Agreement, no Seller or any of its affiliates shall disclose any Business Confidential Information to any third party subject to the following exceptions: (1) information that is or becomes available to the public through no breach of this confidentiality obligation; (2) information that is disclosed by a third party free to disclose such information without restriction; (3) information

that is approved for release by specific written authorization of a Buyer, but only to the extent of such authorization; (4) information that is required by Applicable Law to be disclosed, but only to the extent and for the purposes of such required disclosure; and (5) information that is disclosed in response to a valid order of a Governmental Authority, but only to the extent of and for the purposes of such order.

### 12.3 Public Notices

No press release or other public announcement concerning the transactions contemplated hereby shall be made by the Sellers or by the Buyers without the prior consent of the other Party (such consent not to be unreasonably withheld) provided, however, that subject to the last sentence of this Section 12.3, any Party may, without such consent, make such disclosure if the same is required by Applicable Law (including disclosure required or customary in connection with the Bankruptcy Cases or the proceedings under the CCAA or for purposes of the Regulatory Approvals) or by any stock exchange on which any of the securities of such Party or any of its affiliates are listed or by any insolvency or other court or securities commission or other similar Governmental Authority having jurisdiction over such Party or any of its affiliates, and, if such disclosure is required, the Party making such disclosure shall use commercially reasonable efforts to give prior oral or written notice to the other, and if such prior notice is not possible, to give such notice immediately following the making of such disclosure. Notwithstanding the foregoing: (i) this Agreement may be filed by the Sellers with the Canadian Court and the U.S. Court, provided that the Sellers and their affiliates shall use reasonable commercial efforts to have it sealed by such courts; and (ii) the transactions contemplated in this Agreement may be disclosed by the Sellers to the Canadian Court, the U.S. Court, the DIP Lender, the Monitor, the U.S. Trustee and the Official Committee of Unsecured Creditors in the United States in the Bankruptcy Cases, subject to redacting confidential or sensitive information as permitted by Applicable Law and rules. The Parties further agree that:

- (a) the Monitor may prepare and file reports and other documents with the Canadian Court containing references to the transactions contemplated by this Agreement and the terms of such transactions; and
- (b) the Sellers and their professional advisors may prepare and file such reports and other documents with the Canadian Court containing references to the transactions contemplated by this Agreement and the terms of such transactions as may reasonably be necessary to complete the transactions contemplated by this Agreement or to comply with their obligations to the Canadian Court.

The Buyers shall be afforded an opportunity to review and comment on such materials prior to their filing in the manner provided for in Section 8.4. The Parties shall issue a joint press release announcing the execution and delivery of this Agreement, in form and substance mutually agreed to by them. Notwithstanding anything to the contrary contained herein, nothing in this Section 12.3 will preclude any of the Parties or RCAF 2003 from making (i) any "tombstone" or similar advertisement that does not state the Purchase Price, provided that, in the case of the Sellers, the Buyers are given sufficient notice and reasonable opportunity to review and approve the content of such advertisement, or (ii) any disclosures necessary and proper in conjunction with the filing of any Tax Return or other document required to be filed in

connection with making or obtaining (as the case may be) consents from any Governmental Authority.

#### **12.4 Survival**

The representations and warranties of any of the Sellers in this Agreement or in any agreement, document or certificate delivered pursuant to or in connection with this Agreement or the transactions contemplated hereby (the "Sellers' Representations") are set forth solely for the purpose of Section 7.2(a). Except as specifically set forth herein, none of the representations, warranties or covenants (except covenants that by their express terms are to be performed after the Closing) of any of the Sellers or the Buyers set forth in this Agreement or in any agreement, document or certificate delivered pursuant to or in connection with this Agreement or the transactions contemplated hereby shall survive the Closing. Except for fraud, none of the Sellers shall have any liability, whether before or after the Closing, for any breach of the Sellers' Representations, and the Buyers acknowledge that their exclusive remedy for any such breach shall be termination of this Agreement prior to the Closing (but only if permitted by Section 10.1).

#### **12.5 Expenses**

Except as otherwise specifically provided herein, each of the Sellers and the Buyers shall be responsible for the expenses (including fees and expenses of legal advisers, accountants and other professional advisers) incurred by them, respectively, in connection with the negotiation and settlement of this Agreement and the completion of the transactions contemplated hereby.

#### **12.6 Non-Recourse**

Except for fraud, no past, present or future director, officer, employee, incorporator, member, partner, stockholder, affiliate, agent, attorney or representative of the respective Parties, in such capacity, shall have any liability for any obligations or liabilities of the Buyers or the Sellers, as applicable, under this Agreement or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby.

#### **12.7 Assignment; Binding Effect**

No Party may assign its right, benefits or obligations under this Agreement without the consent of the other Parties, except that the Buyers may assign all or any portion of their rights and benefits under this Agreement to an affiliate of either Buyer without obtaining such consent, provided that no such assignment shall relieve a Buyer of any of its obligations under this Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third Person beneficiary rights in any Person or entity not a Party to this Agreement.

#### **12.8 Notices**

Any notice, request, demand or other communication required or permitted to be given to a Party pursuant to the provisions of this Agreement will be in writing and will be effective and deemed given under this Agreement on the earliest of: (i) the date of personal delivery; (ii) the

date of transmission by facsimile, with confirmed transmission and receipt (if sent during normal business hours of the recipient, if not, then on the next Business Day); (iii) two days after deposit with a nationally-recognized courier or overnight service such as Federal Express; or (iv) five days after mailing via certified mail, return receipt requested. All notices not delivered personally or by facsimile will be sent with postage and other charges prepaid and properly addressed to the Party to be notified at the address set forth for such Party:

(a) If to the Buyers at: Monessen Hearth Systems Company  
149 Cleveland Drive  
Paris, KY 40361  
Attention: David Barrett  
Telephone: 800-867-0454  
Facsimile: 877-867-1875

with copies (which shall not in itself  
constitute notice):

The Riverside Company  
50 Public Square, Suite 2900  
Terminal Tower  
Cleveland, OH 44113  
Attention: Timothy A. Goshline  
Telephone: 216-344-1040  
Facsimile: 216-344-1330

Jones Day  
325 John H. McConnell Boulevard  
Suite 600  
Columbus, OH 43215  
Attention: Rodd B. Lape  
Telephone: 614-469-3939  
Facsimile: 614-461-4198

Ogilvy Renault, LLP  
Suite 3800  
Royal Bank Plaza, South Tower  
200 Bay Street  
Toronto, ON M5J 2Z4  
Attention: Mark A. Convery  
Telephone: 416-216-4803  
Facsimile: 416-216-3930

(b) If to the Sellers at: CFM Corporation  
2695 Meadowvale Blvd.,  
Mississauga, ON, L5N 8A3  
Attention: John Walker  
Telephone: 905-858-8010  
Facsimile: 905-858-1165



with copies (which shall not in itself  
constitute notice) to:

Goodmans LLP  
Suite 2400, 250 Yonge Street  
Toronto, ON, M5B 2M6  
Attention: Robert Chadwick  
Telephone: 416-597-4285

Attention: Michael Partridge  
Telephone: 416-597-5498  
Facsimile: 416-979-1234

Foley & Lardner LLP  
321 North Clark, Suite 2800  
Chicago, IL 60610  
Attention: William McKenna  
Telephone: 312-832-4541  
Facsimile: 312-832-4700

Any Party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to such Party at its changed address.

#### **12.9 Counterparts; Facsimile Signatures**

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. The signature of any of the Parties may be evidenced by a facsimile, scanned email or internet transmission copy of this Agreement bearing such signature.


**[The remainder of this page left intentionally blank]**


IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

**SELLERS:**

**CFM CORPORATION**

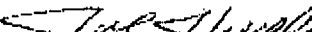
**CFM CANADA, by its managing partner,  
CFM CORPORATION**


Per:   
Name: JOHN J. WALKER  
Title: CFO

Per:   
Name: JOHN J. WALKER  
Title: CFO


**2089451 ONTARIO LIMITED**

**CFM MAJESTIC U.S. HOLDINGS, INC.**

Per:   
Name: JOHN J. WALKER  
Title: CFO


Per:   
Name: JOHN J. WALKER  
Title: CFO

**CFM U.S. CORPORATION**


Per:   
Name: JOHN J. WALKER  
Title: CFO

**BUYERS:**

**MONESSEN HEARTH SYSTEMS  
COMPANY**

Per:   
Name: Christopher K. Jones  
Title: Vice President

**VERMONT CASTINGS HOLDING  
COMPANY**

Per:   
Name: Christopher K. Jones  
Title: Vice President

GOODMANS\3600208.3

**EXHIBIT B**

**[Assumed Agreements and Cure Amounts]**

{00226141,v3}

Assigned Contract To Be Assumed and Assigned	Cure Cost	Contract Information
Leasing Schedule dated December 12, 2005 to that certain CitiCapital Material Handling Finance Master Equipment Lease Agreement, dated December 12, 2005, between CFM U.S. Corporation and Citicorp Leasing, Inc., with respect to one Caterpillar Model C3000LP and one Caterpillar Model C5000LP.	\$1,800.00	CitiCorp Leasing, Inc. 450 Mamaroneck Ave. Harrison, NY 10528 Fax: (781) 938-3879
Leasing Schedule dated December 28, 2006 to that certain CitiCapital Material Handling Finance Master Equipment Lease Agreement, dated December 12, 2005, between CFM U.S. Corporation and Citicorp Leasing, Inc., with respect to one Caterpillar Model C4000LP.	\$900.00	CitiCorp Leasing, Inc. 450 Mamaroneck Ave. Harrison, NY 10528 Fax: (781) 938-3879

{00226643;v2}

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF CENTRA-TELEVISION AND 2089451 ONTARIO LIMITED

Court File No. 08-CL-7470

July 3, 08

Applicants

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

Proceeding commenced at Toronto

MOTION RECORD  
(returnable July 3, 2008)

GOODMANS LLP  
Barristers & Solicitors  
250 Yonge Street, Suite 2400  
Toronto, Canada M5B 2M6

Robert J. Chadwick (LSUC# 35165K)  
David Bish (LSUC# 41629A)

Tel: 416-979-2211  
Fax: 416-979-1234

Solicitors for the Applicants

July 3/08  
The Applicants move for an  
order approving + vesting order with  
respect to the Monessen  
purchase agreement. The  
transaction took place on June  
25/08 + the Monessen purchase  
agreement was considered to  
be in the best interests of  
the Applicants + its Stake-  
holders + is also commercially  
reasonable. There were 5  
prospective bidding parties  
but no new en bloc bids.  
The breakfee + the overbid  
increment were reduced consensually.  
The Reliance Court granted an  
order approving the Monessen 30  
purchase agreement on June 25, 08.  
The assets were arranged in 5 lots  
3 of which are encompassed by  
the Monessen agreement. The  
Ontario transactions will be  
addressed on July 11, 08 as well  
a distribution in favour of BMO  
~~and~~ The transfer of asset remains to be  
no one opposed to the relief  
requested + in my view it should

granted in the circumstances.  
as asked  
St Repell, J.

TRADEMARK

REEL: 003841 FRAME: 0603

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT  
ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
CFM CORPORATION AND 2089451 ONTARIO LIMITED**

**MONITOR'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Initial Order of the Honourable Madam Justice Pepall of the Ontario Superior Court of Justice (the "Court") dated April 9, 2008, CFM Corporation and 2089451 Ontario Limited filed for protection pursuant to the *Companies' Creditors Arrangement Act*, which protection was extended to CFM Canada (together with CFM Corporation and 2089451 Ontario Limited, the "CCAA Parties").

B. Pursuant to an Order of the Court dated July 3, 2008, the Court approved the asset purchase agreement made as of June 23, 2008 (the "Purchase Agreement") amongst, *inter alia*, the CCAA Parties, and CFM Majestic U.S. Holdings, Inc. and CFM U.S. Corporation, as sellers, and Monessen Hearth Systems Company and Vermont Castings Holding Company (the "Purchasers") and provided for the vesting in the Purchasers, or as the Purchasers may direct in writing, of the CCAA Parties' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the filing with the Court by the Monitor of a certificate confirming that all matters to be completed prior to the consummation of the transactions contemplated by the Purchase Agreement have been completed or waived by the Purchasers and/or the Sellers, as applicable.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Purchase Agreement.



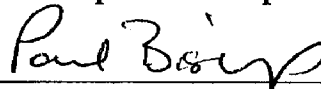
**THE MONITOR CERTIFIES** the following:

1. All matters to be completed prior to the consummation of the transactions contemplated by the Purchase Agreement have been completed or waived by the Purchasers and/or the Sellers, as applicable.

This Certificate was delivered by the Monitor at Toronto, this 25th day of July, 2008.

**PRICEWATERHOUSECOOPERS INC., in  
its capacity as monitor of CFM Corporation,  
CFM Canada and 2089451 Ontario Limited,  
and not in its personal capacity**

Per: \_\_\_\_\_



Name: Paul Bishop

Title: Senior Vice President

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT  
ACT, R.S.C. 1985, c. C-36, AS AMENDED

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
CFM CORPORATION AND 2089451 ONTARIO LIMITED

Court File No: 08-CL-7470

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

Proceeding commenced at Toronto

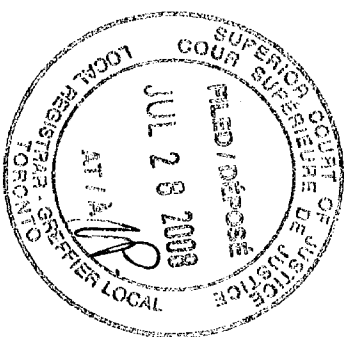
MONITOR'S CERTIFICATE

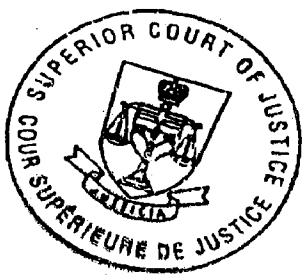
Goodmans LLP  
Barristers & Solicitors  
250 Yonge Street, Suite 2400  
Toronto, Ontario M5B 2M6

Robert J. Chadwick LSUC#: 35165K  
David B. Bish LSUC#: 41629A

Tel: (416) 979-2211  
Fax: (416) 979-1234

Solicitors for the Applicants





Court File No. 08-CL-7470

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MADAM

JUSTICE PEPALL

)  
)  
)

THURSDAY, THE 3<sup>RD</sup> DAY

OF JULY, 2008

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT  
ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
CFM CORPORATION AND 2089451 ONTARIO LIMITED**

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by CFM Corporation and 2089451 Ontario Limited (collectively, the "Applicants" and together with CFM Canada, the "CCAA Parties") for an order approving the sale transaction (the "Transaction") contemplated by an asset purchase agreement (the "Purchase Agreement") amongst, the CCAA Parties, and CFM Majestic U.S. Holdings, Inc. and CFM U.S. Corporation, as sellers, and Monessen Hearth Systems Company and Vermont Castings Holding Company (collectively, the "Purchasers"), as buyers, made as of June 23, 2008 and appended to the Report of PricewaterhouseCoopers Inc. (the "Monitor") dated July 2, 2008 (the "Report"), and vesting in the Purchasers, or as the Purchasers may direct in writing, the CCAA Parties' right, title and interest in and to the assets described in the Purchase Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Report and on hearing the submissions of counsel for the CCAA Parties, the Monitor, the Bank of Montreal, the Ontario Teachers' Pension Plan Board and the Purchasers, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Logan Willis sworn June 30, 2008 filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and that the Purchase Agreement is commercially reasonable and in the best interests of the CCAA Parties and their stakeholders. The execution of the Purchase Agreement by the CCAA Parties is hereby authorized and approved, and the CCAA Parties are hereby authorized and directed to take such additional steps and execute such additional documents (including amendments to the Purchase Agreement that do not have a material adverse effect on the estate or the stakeholders of the CCAA Parties), as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchasers, or as the Purchasers may direct in writing.

2. **THIS COURT ORDERS AND DECLARES** that upon the filing with this Honourable Court of a Monitor's certificate substantially in the form attached as Schedule A hereto (the "Monitor's Certificate"), all of the CCAA Parties' right, title and interest in and to the Purchased Assets described in the Purchase Agreement shall vest absolutely in the Purchasers, or as the Purchasers may direct in writing, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Pepall dated April 9, 2008; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule B hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the Permitted Encumbrances and Assumed Liabilities as such terms are defined in the Purchase Agreement) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the filing of the Monitor's Certificate with this Court, all Claims and Encumbrances shall attach to the net proceeds from the sale of the

Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the CCAA Parties are authorized and permitted to disclose and transfer to the Purchasers, or either of them, all human resources and payroll information in the CCAA Parties' records pertaining to the CCAA Parties' past and current employees. The Purchasers shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the CCAA Parties.

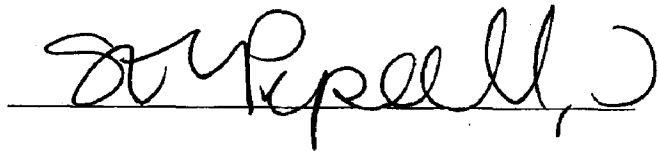
5. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the CCAA Parties and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any of the CCAA Parties;

the vesting of the Purchased Assets in the Purchasers, or as the Purchasers may direct in writing, pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the CCAA Parties and shall not be void or voidable by creditors of the CCAA Parties, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

6. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the CCAA Parties, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the CCAA Parties, and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the CCAA Parties and the Monitor, and their respective agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

**JUL 03 2008**

PER/PAR:  **Joanne Nicoara**  
Registrar, Superior Court of Justice

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT  
ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
CFM CORPORATION AND 2089451 ONTARIO LIMITED**

**MONITOR'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Initial Order of the Honourable Madam Justice Pepall of the Ontario Superior Court of Justice (the "Court") dated April 9, 2008, CFM Corporation and 2089451 Ontario Limited filed for protection pursuant to the *Companies' Creditors Arrangement Act*, which protection was extended to CFM Canada (together with CFM Corporation and 2089451 Ontario Limited, the "CCAA Parties").

B. Pursuant to an Order of the Court dated June 25, 2008, the Court approved the asset purchase agreement made as of June 23, 2008 (the "Purchase Agreement") amongst, *inter alia*, the CCAA Parties, and CFM Majestic U.S. Holdings, Inc. and CFM U.S. Corporation, as sellers, and Monessen Hearth Systems Company and Vermont Castings Holding Company (the "Purchasers") and provided for the vesting in the Purchasers, or as the Purchasers may direct in writing, of the CCAA Parties' right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the filing with the Court by the Monitor of a certificate confirming that all matters to be completed prior to the consummation of the transactions contemplated by the Purchase Agreement have been completed or waived by the Purchasers and/or the Sellers, as applicable.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Purchase Agreement.

THE MONITOR CERTIFIES the following:

1. All matters to be completed prior to the consummation of the transactions contemplated by the Purchase Agreement have been completed or waived by the Purchasers and/or the Sellers, as applicable.

This Certificate was delivered by the Monitor at Toronto, this ● of July, 2008.

**PRICEWATERHOUSECOOPERS INC., in  
its capacity as monitor of CFM Corporation,  
CFM Canada and 2089451 Ontario Limited,  
and not in its personal capacity**

Per: \_\_\_\_\_

Name:

Title:



## Schedule B

### *Personal Property Security Act (Ontario) Registrations against the CCAA Parties:*

Secured Party	Debtor(s)	Reference File No.
Bank of Montreal, as Agent	CFM Corporation	640512837
Bank of Montreal, as Agent	CFM Corporation CFM Canada 2089451 Ontario Limited	640512846
Bank of Montreal, as Agent	CFM Corporation	614073672
Bank of Montreal, as Agent	CFM Corporation	614073699
Bank of Montreal, as Agent	CFM Corporation CFM Canada 2089451 Ontario Limited	610970715
Bank of Montreal, as agent	CFM Corporation 2089451 Ontario Limited	610970724
Bank of Montreal, as Agent	CFM Kcanall CFM Corporation CFM Canada 2089451 Ontario Limited	610970733
Bank of Montreal, as Agent	2089451 Ontario Limited	640512864
Bank of Montreal, as Agent	2089451 Ontario Limited	629009478
1066424 Ontario Limited	CFM Corporation	644229378
Western Mechanical Electrical Millwright Services Ltd.	CFM Corporation	644229405
Ricoh Canada Inc	CFM Corporation	641207835

<b>Secured Party</b>	<b>Debtor(s)</b>	<b>Reference File No.</b>
Ricoh Canada Inc.	CFM Corporation	630544239
Ricoh Canada Inc.	CFM Corporation	623193282
G. N. Johnston Equipment Co. Ltd.	CFM Corporation	622396116
G. N. Johnston Equipment Co. Ltd.	CFM Corporation	620883297
G. N. Johnston Equipment Co. Ltd.	CFM Corporation	620834283
Ricoh Canada Inc.	CFM Corporation	618292944
G. N. Johnston Equipment Co. Ltd.	CFM Corporation	618187545
Liftcapital Corporation	CFM Corporation CFM Corporation	626059089
Liftcapital Corporation / Corporation Liftcapital	CFM Corporation CFM Canada 2089451 Ontario Limited	615280257
Liftcapital Corporation / Corporation Liftcapital	CFM Corporation CFM Canada 2089451 Ontario Limited	615280266
Hewlett-Packard Financial Services Canada Company	CFM Canada	621218349
De Lage Landen Financial Services Canada Inc.	C.F.M. Century D/O CFM Corporation C.F.M. Century CFM Corporation	601234767
Dunlop Lift Truck (1994) Inc.	CFM Canada	644843322

**Personal Property Security Act (Ontario) Registrations against related parties:**

Secured Party	Debtor(s)	Reference File No.
Bank of Montreal, as Agent	CFM Majestic U.S. Holdings, Inc.	640003698
Bank of Montreal, as Agent	CFM U.S. Corporation	640003689
Bank of Montreal, as Agent	Temcomex, S.A. De C.V. Cerrada Centinela No. 1773	640003707
Wajax Industries Limited	CFM Majestic Inc	615076902
Wajax Industries Limited	CFM Majestic Inc	614683602
Wajax Industries Limited	CFM Majestic Inc	614311146
Associates Capital Limited	CFM Majestic Inc	875535444
Pitney Bowes Leasing	CFM Majestic Products Inc	601677009

**Registrations against the CCAA Parties under Bank Act (Ontario):**

Registration Name	Address	Date	Expires	Number	Bank
CFM Corporation	2695 Meadowvale Blvd., Mississauga, ON, L5N 8A3	2007/11/06 12:31 PM PST	2012/12/31	01219481	0001 – Bank of Montreal 00022 – First Canadian Place P.O. Box 3, Toronto, ON M5X 1A3
CFM Canada	2695 Meadowvale Blvd., Mississauga, ON, L5N 8A3	2007/11/06 12:27 PM PST	2012/12/31	01219480	0001 – Bank of Montreal 00022 – First Canadian Place P.O. Box 3, Toronto, ON M5X 1A3

**Registrations against the CCAA Parties under the *Executions Act* (Toronto) and (Brampton):**

**A. Writ Details Report (Sheriff at City of Toronto (Toronto)):**

**Certificate No. 08505749-8679531B**

File Number: 07-0011589

Issue Date: 2007-12-05

Date Effective: 2007-12-06

Tribunal No.: 07-CV-342546 PD2

Court Type: SCJ – Civil

Jurisdiction: Toronto

Defendant: CFM Corporation

Creditor: Gibraltar Financial Corporation  
60 Revere Drive, Suite 840  
Northbrook, IL  
60062

Comments: 007-12-05 – (A) An amount in Canadian currency sufficient to purchase US\$212,923.88 at a bank in Ontario listed in schedule 1 to the *Bank Act* (Canada) at the close of business on the first day on which the bank quotes a Canadian dollar for purchase of such amount in US dollars before the day payment thereof is to be received by the plaintiff, and interest at the rate of 18 percent per annum from November 22, 2007; (B) \$1,158.00 for fixed costs and (*sic*) interest at the rate of 6 percent per year from November 22, 2007

**B. Writ Details Report (Sheriff at Regional Municipality of Peel (Brampton)):**

File Number: 07-0006190

Issue Date: 2007-12-05

Date Effective: 2007-12-28

Tribunal No.: 07-CV-342546 PD2

Court Type: SCJ – Civil

Jurisdiction: Toronto

Defendant: CFM Corporation

Creditor: Gibraltar Financial Corporation  
60 Revere Drive, Suite 840  
Northbrook, IL  
60062

Comments: 2007-12-27 – (A) An amount in Canadian currency sufficient to purchase US\$212,923.88 at a bank in Ontario listed in schedule 1 to the *Bank Act* (Canada) at the close of business on the first day on which the bank quotes a Canadian dollar for purchase of such amount in US dollars before the day payment thereof is to be received by the plaintiff, and interest at the rate of 18 percent per annum from November 22, 2007; (B) \$1,158.00 for fixed costs and (*sic*) interest at the rate of 6 percent per year from November 22, 2007

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER

Goodmans LLP  
Barristers & Solicitors  
250 Yonge Street, Suite 2400  
Toronto, Ontario M5B 2M6

Robert J. Chadwick LSUC#: 35165K  
David B. Bish LSUC#: 41629A

Tel: (416) 979-2211  
Fax: (416) 979-1234

Solicitors for the Applicants