

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

| | | | |
|--|--|-----------------------|----------------------------|
| SUBMISSION TYPE: | NEW ASSIGNMENT | | |
| NATURE OF CONVEYANCE: | "Bill of Sale and Assignment" and Related Documents | | |
| CONVEYING PARTY DATA | | | |
| Name | Formerly | Execution Date | Entity Type |
| Whaling Mfg. Co., Inc. (also known as Whaling Manufacturing Company, Inc.) | | 07/21/2008 | CORPORATION: MASSACHUSETTS |
| RECEIVING PARTY DATA | | | |
| Name: | Whaling Distributors, Inc. | | |
| Street Address: | 1350 Avenue of the Americas | | |
| Internal Address: | 24th Floor | | |
| City: | New York | | |
| State/Country: | NEW YORK | | |
| Postal Code: | 10019 | | |
| Entity Type: | CORPORATION: DELAWARE | | |
| PROPERTY NUMBERS Total: 1 | | | |
| Property Type | Number | Word Mark | |
| Registration Number: | 2618075 | AQUA CONTROL | |
| CORRESPONDENCE DATA | | | |
| Fax Number: | (401)861-1953 | | |
| | <i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i> | | |
| Phone: | 401-421-3141 | | |
| Email: | rsalter@saltermichaelson.com | | |
| Correspondent Name: | Robert S. Salter | | |
| Address Line 1: | 321 South Main Street - 5th Floor | | |
| Address Line 2: | SALTER & MICHAELSON | | |
| Address Line 4: | Providence, RHODE ISLAND 02903-7128 | | |
| ATTORNEY DOCKET NUMBER: | WHALING T003190 | | |
| NAME OF SUBMITTER: | Robert Salter | | |

CH \$40.00 2618075

Signature:

/Robert Salter/

Date:

03/09/2009

Total Attachments: 25

source=Redacted Doc for Recording#page1.tif
source=Redacted Doc for Recording#page2.tif
source=Redacted Doc for Recording#page3.tif
source=Redacted Doc for Recording#page4.tif
source=Redacted Doc for Recording#page5.tif
source=Redacted Doc for Recording#page6.tif
source=Redacted Doc for Recording#page7.tif
source=Redacted Doc for Recording#page8.tif
source=Redacted Doc for Recording#page9.tif
source=Redacted Doc for Recording#page10.tif
source=Redacted Doc for Recording#page11.tif
source=Redacted Doc for Recording#page12.tif
source=Redacted Doc for Recording#page13.tif
source=Redacted Doc for Recording#page14.tif
source=Redacted Doc for Recording#page15.tif
source=Redacted Doc for Recording#page16.tif
source=Redacted Doc for Recording#page17.tif
source=Redacted Doc for Recording#page18.tif
source=Redacted Doc for Recording#page19.tif
source=Redacted Doc for Recording#page20.tif
source=Redacted Doc for Recording#page21.tif
source=Redacted Doc for Recording#page22.tif
source=Redacted Doc for Recording#page23.tif
source=Redacted Doc for Recording#page24.tif
source=Redacted Doc for Recording#page25.tif

BILL OF SALE AND ASSIGNMENT

This BILL OF SALE AND ASSIGNMENT (this "Bill of Sale") is made and effective as of this 21st day of July 2008, from Whaling Manufacturing Company, Inc. ("Transferor"), and Whaling Distributors, Inc. ("Transferee").

WITNESSETH

WHEREAS, Transferor is indebted and liable to Transferee pursuant to the terms of a certain agreements dated September 1, 2007 by and between (a) [REDACTED] and (b) Transferor and [REDACTED] such agreements, and any and all agreements or instruments executed in connection with any such agreement, and any amendments or supplements to any of the foregoing, are collectively referred to in this Bill of Sale as the "Financing Documents"), and pursuant to the Financing Documents, Transferee has valid first priority perfected security interests in and liens upon substantially all of the assets of Transferor; and

WHEREAS, Transferor has defaulted in performance of its obligations under the Financing Documents and has agreed to surrender the Transferred Assets (as defined herein) to Transferee, subject to and upon the terms and conditions set forth in the Surrender Agreement (defined below); and

WHEREAS, Transferee and Transferor have entered into a certain Surrender Agreement, dated as of even date herewith (the "Surrender Agreement"), pursuant to which, inter alia, Transferor has agreed to surrender peacefully, and transfer to Transferee, and Transferee has agreed to acquire from Transferor, the Transferred Assets (as defined herein) for the consideration, and upon the terms and conditions, contained in the Surrender Agreement; and

WHEREAS, all capitalized terms used and not otherwise defined herein shall have the respective meanings set forth in the Surrender Agreement or the Financing Documents, as the case may be.

NOW, THEREFORE, in reliance upon the representations and warranties made in the Surrender Agreement and in consideration of the mutual covenants and agreements contained in the Surrender Agreement and hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, do hereby agree as follows:

1. Transferor hereby sells, conveys, assigns and transfers to Transferee, free and clear of all covenants, conditions, easements, liens, charges, security interests, adverse claims encumbrances, demands or other title defects or restrictions of any kind, all of Transferor's rights, title and interest in and to all of the following assets, fixtures, properties and business of every kind or nature, whether tangible or intangible, wherever located (collectively, the "Transferred Assets"):

{10462264:1}

(i) All inventory and goods, including without limitation, all inventory and goods held for sale or lease or to be furnished under contracts of service, raw materials, work in process, finished goods, goods in transit, advertising, packaging and shipping materials, and all designs, creations, patterns, styles, samples and all other material and supplies (collectively, the "Inventory");

(ii) All documents, including without limitation, documents of transport, payment and title relating to any of the foregoing and all such other documents as are made available to Transferor for the purpose of ultimate sale or exchange of goods or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with goods in a manner preliminary to their sale or exchange;

(iii) All rights, claims, rights of offset, rights of return, actions and causes of action against any Person, including without limitation, those arising out of the purchase by Transferor of any of its Inventory including, without limitation, the supplier orders, and all rights of stoppage in transit, replevin, reclamation and rights of any unpaid vendor or as a lienor;

(iv) All equipment, machinery, fixtures, trade fixtures, vehicles, furnishings, furniture supplies, materials, tools, machine tools, office equipment, appliances, apparatus, dies, jigs, and chattels; trucks, trailers, loaders and other vehicles and all replacements and substitutions therefore and all accessories thereto;

(v) All of Transferor's now owned or hereafter acquired General Intangibles, including, without limitation, trademarks, tradenames, tradestyles, trade secrets, equipment formulation, manufacturing procedures, quality control procedures, product specifications, patents, patent applications, copyrights, registrations, contract rights, choses in action, causes of action, corporate or other business records, inventions, designs, goodwill, claims under guarantees, licenses, franchises, tax refunds, tax refund claims, computer programs, computer data bases, computer program flow diagrams, source codes, object codes and all other intangible property of every kind and nature;

(vi) All of Transferor's now owned or hereafter acquired Accounts and contract rights, Instruments, insurance proceeds, Documents, Chattel Paper, letters of credit and Transferor's rights to receive payment thereunder, any and all rights to the payment or receipt of money or other forms of consideration of any kind at any time now or hereafter owing or to be owing to Transferor ("Receivables"), all proceeds thereof and all files in which Transferor has any interest whatsoever containing information identifying or pertaining to any of Transferor's Receivables, together with all of Transferor's rights to any merchandise which is represented thereby, and all Transferor's right, title, security and guarantees with respect to each Receivable, including, without limitation, all rights of stoppage in transit, replevin and reclamation and all rights as an unpaid vendor;

(vii) All of Transferor's now owned and hereafter acquired investment property, including, without limitation, securities (whether certificated or uncertificated,

securities entitlements, securities accounts, commodities accounts, and commodities contracts;

(viii) All representations, liens on real or personal property, leases and other agreements and property which in any way secures or relates to the foregoing, or are acquired for the purpose of securing and enforcing any item thereof;

(ix) (1) all cash held as collateral to the extent not otherwise constituting collateral, all other cash or property at any time on deposit with or held by lender for the account of Transferor (whether for safekeeping, custody, pledge, transmission or otherwise), (2) all present or future deposit accounts (whether time or demand or interest or non-interest bearing) of Transferor with Lender any other Person including those to which any such cash may at any time and from time to time be credited, (3) all investments and reinvestments (however evidenced) of amounts from time to time credited to such accounts, and (4) all interest, dividends, distributions and other proceeds payable on or with respect to (x) such investments and reinvestments and (y) such accounts;

(x) All Instruments, Chattel Paper, Documents, and contract rights and other rights, irrespective of when acquired; and

(xi) All proceeds, insurance proceeds, products and accessions of or to any and all of the foregoing, and all collateral and security for, and guarantees of, any and all of the foregoing, and all books and records relating to any and all of the foregoing (including without limitation, any and all microfilm, microfiche, computer programs and records, source materials, tapes and discs) and all equipment containing said books and records.

TO HAVE AND TO HOLD the Transferred Assets, together with all rights and appurtenances thereunto, unto Transferee and its successors and assigns forever and Transferor does covenant and agree to and with Transferee to warrant and defend the within transfer of the Transferred Assets hereby conveyed.

2. Transferor and its successors and assigns covenant to Transferee, its successors or assigns, to do, execute and deliver, or cause to be done, executed and delivered, all such further acts, documents or instruments of transfer or assignment as shall be reasonably necessary or appropriate to vest in or confirm to Transferee, its successors or assigns, all of the Transferred Assets hereby assigned and transferred, requested by Transferee.

3. Notwithstanding anything contained in the Bill of Sale to the Contrary, Transferee does not, and shall not, be obligated to assume any liabilities or obligations of Transferor arising under or in connection with the Assets or Transferor's Business.

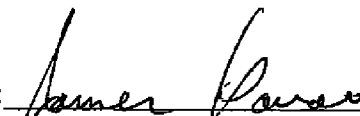
4. This Bill of Sale may be executed in two or more counterparts, which may be facsimile counterparts, all of which shall be considered one and the same Bill of Sale.

5. This Bill of Sale shall be governed and construed in accordance with the laws of the State of New York without regard to any applicable principles of conflicts of law.

IN WITNESS WHEREOF, the parties have caused this Bill of Sale to be executed as of the date first written above.


TRANSFEROR:

WHALING MANUFACTURING COMPANY, INC.

By: 
Name: James Pavao
Title: President

TRANSFeree:

WHALING DISTRIBUTORS, INC.

By: 
Name: Peter Cannold
Title: Vice President

SURRENDER AGREEMENT

THIS SURRENDER AGREEMENT (this "Agreement") is made and entered into as of July 21, 2008 (the "Effective Date"), by and between Whaling Distributors, Inc. having principal offices at 1350 Avenue of the Americas, 24th Floor, New York, New York 10019 (the "Secured Party"), and **Whaling Manufacturing Company, Inc.** ("Whaling" or "Debtor"), a Massachusetts corporation having its principal offices at 451 Quarry Street, Fall River, Massachusetts 02723.

BACKGROUND

A. Debtor is indebted and liable to [REDACTED] (" [REDACTED] ") and [REDACTED] (" [REDACTED] ") pursuant to the terms of certain Agreements dated September 1, 2007 between (a) Debtor and [REDACTED] and (b) Debtor and [REDACTED], respectively (such agreements, and any and all agreements or instruments executed in connection with any such agreement, and any amendments or supplements to any of the foregoing, are collectively referred to in this Agreement as the "Financing Documents"), and pursuant to the Financing Documents, CBC and CCG have valid first priority perfected security interests in and/or a mortgage and liens upon substantially all of the assets of Debtor (the "Collateral").

B. Secured Party has acquired and succeeded to all rights of [REDACTED] and [REDACTED] under the Financing Documents and in and to the Collateral.

C. Debtor acknowledges that it is in default of its obligations under the Financing Documents (the "Obligations") and wishes to surrender the Transferred Assets (as defined herein) to the Secured Party in partial satisfaction of the Obligations, subject to and upon the terms and conditions set forth in this Agreement and in the Surrender Letter (as defined below).

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the agreements made herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Secured Party and Debtor agree as follows:

1. SURRENDER OF TRANSFERRED ASSETS.

1.1. Transfer of Assets. Subject to the terms and conditions contained herein, Debtor hereby transfers and surrenders to the Secured Party all of Debtor's right, title and interest in and to all assets, properties and business of Debtor, including all real, personal or mixed property of every type and description, whether tangible or intangible, owned, or any right, title and interest in and to the forgoing used by Debtor, wherever located, in which [REDACTED] or [REDACTED] has been granted by Debtor a security interest or mortgage including the assets listed on Schedule 1.1 attached (the "Transferred Assets"), but excluding Debtor's corporate minute books, stock records and tax documents, Debtor shall take such action, as the Secured Party shall reasonably request, to effectuate the peaceful surrender of the Transferred Assets to the Secured Party. Without limiting the generality of the foregoing, upon the execution of this Agreement, Debtor shall execute and deliver to the Secured Party a surrender letter in the form annexed hereto as Exhibit 1.1 (the "Surrender Letter"), which is incorporated in this Agreement by reference.

Debtor shall also execute and deliver bills of sale, endorsements, assignments, deeds and other instruments of transfer, all in such form as the Secured Party may request, to vest in the Secured Party, good and marketable title to the Transferred Assets, free and clear of all covenants, conditions, easements, liens, charges, security interests, adverse claims, encumbrances, demands or other title defects or restrictions of any kind.

2. CLOSING; LIABILITIES.

2.1. No Liabilities Assumed by the Secured Party. Anything in this Agreement or the Surrender Letter to the contrary notwithstanding, the Secured Party shall not assume, nor in any way be liable or responsible for, any liabilities or obligations of Debtor. Without limiting the generality of the foregoing, the Secured Party shall not assume or be liable for any of the following:

(a) any liability or obligation of Debtor arising out of or in connection with the negotiation and preparation of this Agreement or the consummation and performance of the transactions contemplated hereby, including any tax liability so arising and all legal, accounting and other fees and expenses of Debtor;

(b) any liability or obligation under contracts and other agreements to which Debtor is a party or by or to which it or its assets, properties or rights are bound or subject including but not limited to any mortgage, collective bargaining agreement, or other agreement;

(c) any tax liability or obligation that result from or have accrued in connection with Debtor's ownership of the Transferred Assets or operation of the Debtor's business ("Business") and relate to periods on, prior to or after the Closing;

(d) any liabilities, claims and obligations of any kind or nature accruing with respect to or in connection with the ownership of the Transferred Assets or operation of the Business on, prior to or after the Closing;

(e) any liability or obligation of Debtor relating to or in connection with any third party vendor accrued for, applicable to or arising from any period on, prior to or after to the Closing; and

(f) any liability or obligation of Debtor arising out of or in connection with the acts or omissions of customers or clients of Debtor that occurred prior on, to or after the Closing; and

(g) any liability to any employees or independent contractors of Debtor, including but not limited to, any obligations under any collective bargaining agreement, or any pension plan, or any compensation, or any benefits of any kind, which arose prior on, to or after the Closing.

2.2. Allocation. Any consideration received by Debtor shall be allocated by the Secured Party and Debtor as required by Internal Revenue Service Form 8594. Debtor and the Secured Party agree (i) to file with its federal income tax return for its fiscal year in which the Closing occurs an Internal Revenue Service Form 8594 (and any supplement(s) thereto that may

be required to be filed) providing the information required by such Form and (ii) that all other tax returns and reports filed by Debtor or the Secured Party required to include the effects of the transactions contemplated in this Agreement shall likewise be consistent with such allocation.

2.3. **Closing.** The consummation of the transactions contemplated by this Agreement (the "Closing") shall take place in the offices of Secured Party simultaneously with the execution of this Agreement. The date the Closing occurs, is referred to herein as the "Closing Date".

3. **REPRESENTATIONS AND WARRANTIES OF DEBTOR.** Debtor represents and warrants to the Secured Party that the following representations and warranties are true, correct and complete:

3.1. **Ownership of Debtor.** All of Debtor's issued and outstanding capital stock is held of record and beneficially owned of record by James Pavao, all of which have been duly and validly issued, are fully paid and non-assessable and were not issued in violation of any preemptive rights. No shares of Debtor are held in treasury. Debtor has not agreed or promised to issue (or contemplate issuing), sell or otherwise dispose of any capital stock of any class or any other security of Debtor or granted, accepted, issued or made, or agreed to grant, accept, issue or make, any option, warrant or other right, subscription, call, conversion or other agreement, commitment or obligation of any kind to subscribe for or to purchase any capital stock or any other security of Debtor, or any securities exercisable or exchangeable for or convertible into any such capital stock or other security.

3.2. **Corporate Organization.** Debtor is a corporation duly organized, validly existing and in good standing under the laws of the State of Massachusetts. Debtor has full power and authority to own, lease and use its assets and properties and to carry on its business as heretofore conducted.

3.3. **Authority, Binding Agreement.** Debtor has the full corporate right, power and authority required to enter into, execute and deliver this Agreement and all other instruments and agreements to be executed and delivered by it pursuant to the terms of this Agreement or in connection with the transactions contemplated hereby (this Agreement and such other instruments and agreements being collectively referred to as the "Transaction Agreements"), and to consummate the transactions contemplated by the Transaction Agreements, and otherwise to perform fully its obligations under the Transaction Agreements. The execution and delivery by Debtor to the Secured Party of the Transaction Agreements and the consummation of the transactions contemplated thereby have been duly and validly authorized, approved and adopted by all necessary action of Debtor. No other corporate proceedings on the part of Debtor are necessary to authorize, approve or adopt the Transaction Agreements or the transactions contemplated thereby. Each of the Transaction Agreements has been duly and validly executed and delivered by Debtor, constitutes a valid and binding obligation of Debtor, and is enforceable against Debtor in accordance with its respective terms, except to the extent that (a) such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to or affecting creditors rights generally, and (b) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceedings therefor may be brought.

3.4. Non-Violation. Debtor's execution and delivery of the Transactions Agreements and the related agreements, its performance of any of the obligations thereunder, the consummation by it of the transactions contemplated thereby, or the sale, transfer and assignment by the Secured Party of the Transferred Assets to a third party transferee does not and will not:

(a) violate, conflict with or result in the breach of any provision of its Certificate of Incorporation as may have been amended and restated through the effective date of this Agreement (the "Effective Date"), Bylaws as may have been amended and restated through the Effective Date, or other governing instruments of Debtor;

(b) violate any statute, law, code, ordinance, rule, regulation, judgment, order, writ, decree or injunction applicable to Debtor or any of the Transferred Assets;

(c) violate, conflict with, result in any breach of, termination of or default (with or without notice or lapse of time or both) under any term, condition or provision of any lease, license, distribution, sales, representation or other agreement, contract, commitment or other instrument of any kind, to which Debtor is a party or by which it is bound or to which any of the Transferred Assets are subject;

(d) increase the obligations of or diminish the rights of Debtor or its successor in interest under any lease, license, distribution, sales, representation or other agreement, contract, commitment or other instrument;

(e) require Debtor to obtain any consent, authorization or approval or make any registration or filing under any statute, law, ordinance, regulation, rule, judgment, decree or order of any court or with or from any governmental agency, board, bureau, body, department or authority or any other person; or

(f) violate, conflict with, or result in a breach of any of the provisions of, result in the loss of any benefit under, constitute a default (or which would, with notice or lapse of time or both, constitute a default) under or give rise to any right of termination, acceleration or cancellation with respect to, or result in the creation or imposition of any security interest, lien, charge, claim, restriction or other encumbrance upon, Debtor or any of the Transferred Assets under any of the terms, conditions or provisions of any note, bond, loan, mortgage, indenture, obligation, deed of trust, license, lease, agreement, permit, concession, grant, franchise, judgment, injunction, order, writ, award, decree or any security issued by Debtor or any other instrument to which Debtor is a party or by which Debtor or any of the Transferred Assets may be bound or affected, either directly or indirectly.

3.5. Certificate of Incorporation and Bylaws. Debtor has heretofore delivered, or made available to, the Secured Party, true, correct and complete copies of its Certificate of Incorporation, Bylaws and all other governing or charter instruments of Debtor as are in effect on the Effective Date.

3.6. Tax Matters. All Tax Returns (as defined below), including any amendments thereof, with respect to Debtor, the Business or the Transferred Assets that were required to have been filed with any federal, state, county, local or foreign governmental or quasi-governmental

agency, board, bureau, body, department, authority or instrumentality have been duly and timely (taking into account any applicable extension periods) filed or caused to have been duly and timely filed by Debtor and all such Tax Returns are complete and accurate in all respects. Debtor has timely paid all Taxes (as defined below) owed by it as shown on the Tax Returns which are or became due and payable on or prior to the date hereof. There is no agreement with any foreign, federal, state or local taxing authority which may affect the tax liability of, or extend any statute of limitations applicable to any claim for, or the period for collection or assessment of, Taxes due from Debtor. Debtor is not delinquent in the payment of any Tax and has not requested any extension of time within which to file any Tax Return which has not since been filed. Debtor has made all required withholding deposits and the Financial Statements (as defined below) of Debtor reflect adequate reserve for all payable Taxes. No Tax Return of Debtor has been audited, and no taxing authority has with respect to any such Tax period alleged any dispute, default or deficiency by Debtor in the payment of any Tax or threatened to make any assessment in respect thereof. Debtor is not a "foreign person" within the meaning of Section 1445 of the Code (as defined below). All Taxes that Debtor was required by a law to withhold or collect have been duly withheld or collected and, to the extent required, have been paid to the proper federal, state, local or foreign government entity or any court, administrative or regulatory agency or commission or other governmental authority or agency ("**Governmental Body**"). No liens for Taxes have been filed upon or against any property or assets of Debtor, including the Transferred Assets, except liens for Taxes not yet due, and no taxing authority has asserted any unresolved claims for Taxes. Consummation of the transaction contemplated by the Transaction Agreements will not result in the imposition or creation of any Taxes or liens on the Transferred Assets, except for Taxes that shall remain the liability of Debtor. For purposes of this Agreement (i) "**Code**" shall mean the Internal Revenue Code of 1986, as amended; (ii) "**Taxes**" shall mean all taxes, charges, fees, levies or other assessments, including all net income, gross income, gross receipts, sales, use, ad valorem, transfer, bulk sale or transfer, franchise, profits, license, withholding, payroll, employment, excise, estimated, severance, stamp, occupation, property or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest and any penalties (including penalties for failure to file in accordance with applicable information reporting requirements of the Code), additions to tax or additional amounts imposed by any taxing authority (domestic or foreign); and (iii) "**Tax Return**" shall mean any report, return or other document or information required to be supplied to a taxing authority in connection with Taxes.

3.7. **Consents.** No consent, approval or authorization of any person, group or governmental authority or notice to any of the foregoing, including other parties to, or beneficiaries of, loans, mortgages, notes, indentures, loan guarantees, leases or other agreements or instruments, is required in connection with the consummation by Debtor of the transactions contemplated by the Transaction Agreements, or in order that any such agreement or other instrument continue in full force and effect following such consummation, and the failure to obtain any consent of any person, group or governmental authority in connection therewith will not result in any default, breach, violation or acceleration of or under any such agreement or instrument, or any increase in obligation, decrease in benefit, or any other condition adverse, of or to the Secured Party, except such consents, approvals, authorizations or notices that have been obtained by Debtor.

3.8. **Title and Sufficiency of Property.** Debtor has and will convey to the Secured Party good and marketable title to the Transferred Assets, subject to no mortgage, charge, pledge, conditional sales contract, lien, security interest, restriction, right of possession in favor of any third party claim or other encumbrance of any nature whatsoever that ranks in priority prior to Secured party (collectively, "**Existing Encumbrances**").

3.9. **Brokerage.** Debtor has not retained or otherwise used the services of any broker, finder or similar third party with respect to or in connection with, and has not otherwise incurred any liability or obligation for any brokerage fees, finders fees, commissions or similar payments which would become due as a result of the negotiation, entry into or consummation of the Transaction Agreements or any of the transactions contemplated hereby.

3.10. **Representations and Warranties on Closing Date.** The representations and warranties contained in this Section 3 shall be true, correct and complete in all material respects on and as of the Closing Date with the same force and effect as though such representations and warranties had then been made.

4. **REPRESENTATIONS AND WARRANTIES OF THE SECURED PARTY.** Secured Party represents and warrants to Debtor as follows:

4.1. **Corporate Organization.** The Secured Party is a corporation duly organized, validly existing and in good standing under the laws of the State of its formation. The Secured Party has full power and authority to own, lease and use its assets and properties and to carry on its business as heretofore conducted.

4.2. **Authority; Binding Agreement.** The Secured Party has the full corporate right, power and authority required to enter into, execute and deliver the Transaction Agreements, and to consummate the transactions contemplated by the Transaction Agreements, and otherwise to perform fully its obligations under the Transaction Agreements. The execution and delivery by the Secured Party to Debtor of the Transaction Agreements and the consummation of the transactions contemplated thereby have been duly authorized, approved and adopted by all necessary action of the Secured Party's Board of Directors. No other corporate proceedings on the part of the Secured Party or actions on the part of its shareholder are necessary to authorize, approve or adopt the Transaction Agreements or the transactions contemplated thereby. Each of the Transaction Agreements is enforceable against the Secured Party in accordance with its respective terms, except that (a) enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to or affecting creditors rights generally or (b) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceedings therefor may be brought.

4.3. **Brokerage.** The Secured Party has not retained or otherwise used the services of any broker, finder or similar third party with respect to or in connection with, and has not otherwise incurred any liability or obligation for any brokerage fees, finders fees, commissions or similar payments which would become due as a result of the negotiation, entry into or consummation of this Agreement or any of the transactions contemplated hereby.

4.4. Representations and Warranties on Closing Date. The representations and warranties contained in this Section 4 shall be true, correct and complete in all material respects on and as of the Closing Date with the same force and effect as though such representations and warranties had then been made.

5. COVENANTS OF DEBTOR. Debtor covenants and agrees with the Secured Party as follows:

5.1. Sales to Third Party Transferees. Debtor shall use its best efforts to do all things reasonably requested by the Secured Party for Secured Party to enjoy peaceful undisturbed use and possession of the Transferred Assets. Without limiting the generality of the foregoing, Debtor shall use its best efforts to:

(a) obtain all consents, authorizations and approvals required to be obtained by Debtor to consummate the transactions contemplated hereby or any sale of the Transferred Assets to a Third Party Transferee;

(b) if requested by the Secured Party, or a Third Party Transferee, change its corporate name to a name dissimilar with "Whaling" and provide the Secured Party with satisfactory evidence of such change of name;

(c) timely file all Tax Returns, reports and forms, and pay in full all Taxes (including any interest and/or penalties thereon), with respect to any Tax period ending on or prior to Closing Date as and when the same shall become due after the Closing. Debtor shall pay when due any sales or use Taxes, transfer Taxes, bulk sales Tax or like taxes arising out of the transfer of the Transferred Assets to the Secured Party and shall be liable for the filing of all Tax Returns and reports with respect to such taxes. All such Tax Returns of Debtor shall be prepared and, where applicable, filed on the basis of a taxable period ending at the Closing Date, unless clearly otherwise required by applicable Tax law. Any Taxes for any such period that are measured or measurable in whole or in part by reference to net or gross income or receipts, capital expenses, or compensation expenses shall be allocated based on the net or gross income or receipts, capital expenses, or compensation expenses actually earned or incurred for the portion of such period before and including, and after, the Closing Date, respectively, as determined from the books and records of Debtor, as if a taxable period ended on the Closing Date, so that (i) the portion of such Taxes so allocable to the portion of any such period from the beginning of such period up to and including the Closing Date shall be for the account of Debtor and (ii) the portion of such Taxes so allocable to the portion of such period after the Closing Date to the end of such period shall be for the account of the Secured Party. Debtor shall provide reasonable cooperation to the Secured Party in connection with (i) the preparation of and filing of any Tax Return, Tax election, Tax consent or certification, or any claim for refund, (ii) any determination of liability for Taxes, and (iii) any audit, examination or other proceeding in respect of Taxes of Debtor. The parties will preserve all information, records or documents relating to the liability for Taxes of Debtor until the expiration of any applicable statute of limitations or extensions thereof; or

(d) refrain from taking or omit to take any action, except in every case as may be required by applicable law, that would or is intended to result in: (i) any of Debtor's

representations and warranties set forth in this Agreement being or becoming untrue; or (ii) adversely affecting the ability of the Secured Party to effect the sale of the Transferred Assets to a third party.

6. CONDITIONS TO CLOSING.

6.1. Conditions to Debtor's Obligations. The obligation of Debtor to complete the Closing hereunder is subject to satisfaction of the following conditions, unless waived by Debtor:

(a) all representations and warranties of the Secured Party contained in this Agreement shall be true and correct in all material respects as of the Closing; and

(b) the Secured Party shall have performed and complied with all agreements, terms and conditions required by this Agreement to be performed and complied with by the Secured Party at or prior to the Closing.

6.2. Conditions to the Secured Party's Obligations. The obligation of the Secured Party to complete the Closing hereunder is subject to satisfaction of the following conditions, unless waived by the Secured Party:

(a) all representations and warranties of Debtor contained in this Agreement shall be true and correct in all material respects as of the Closing; and

(b) Debtor shall have performed and complied with all agreements, terms and conditions required by this Agreement to be performed and complied with by Debtor at or prior to the Closing;

7. CLOSING OBLIGATIONS. At the Closing, the parties will execute and deliver the following:

(a) a certificate, dated the Closing Date and signed by an officer of Debtor, certifying as true and complete the resolutions duly adopted by the Board of Directors and Shareholders of Debtor which provide all necessary corporate authorization for the execution and carrying out by Debtor of this Agreement and all related agreements, certificates and other documents delivered by Debtor in connection with the consummation of the transactions contemplated by the Transaction Agreements;

(b) a Bill of Sale and such other instruments and documents of conveyance, transfer and assignment, executed by Debtor, as may be necessary or appropriate fully to convey, transfer and assign to the Secured Party all of the Transferred Assets; and

(c) the Surrender Letter executed by Debtor.

8. RELEASE. Whaling and James Pavao hereby irrevocably and unconditionally releases, acquits, and forever discharges Secured Party, [REDACTED] and [REDACTED], and their respective assigns, agents, directors, officers, employees, representatives, attorneys, parent companies, divisions, subsidiaries, affiliates (and agents, directors, officers, employees, representatives, and attorneys of such parent companies, divisions,

subsidiaries, and affiliates), and all persons acting by, through, under, or in concert with any of them (hereinafter "the Releasees"), from any and all claims, demands, or liabilities whatsoever, whether known or unknown or suspected to exist by Whaling which Whaling ever had or may now have against the Releasees, of any of them, including, without limitation, any claims, demands, or liabilities (including attorneys' fees and costs actually incurred) arising under or in connection with the Financing Documents or the surrender of the Transferred Assets provided for herein.

9. **FURTHER ASSURANCES.** From time to time at the Secured Party's or Debtor's reasonable request, whether at or after the Closing and without further consideration, the parties shall execute and deliver to the other party such further instruments as may reasonably be required to carry out the intent and purpose of this Agreement.

10. **MISCELLANEOUS.**

10.1. **Integration.** This Agreement supersedes any and all agreements previously made between the parties relating to the subject matter hereof, and there are no understandings or agreements between the parties relating to such subject matter other than those included herein.

10.2. **Publicity.** Except as may be required by law, no publicity release or other announcement or disclosure concerning this Agreement or the transactions contemplated hereby shall be made without the advance approval thereof by the Secured Party and Debtor.

10.3. **Notices and Communications.** Except as otherwise specifically provided elsewhere in this Agreement, any notice, payment, request, instruction or other document to be delivered hereunder shall be deemed sufficiently given if in writing and shall be deemed duly given when delivered personally or when deposited in the U.S. mails, registered or certified mail and postage prepaid or, telecopied (with original to follow by mail), addressed as follows:

If to the SECURED PARTY, at:

1350 Avenue of the Americas, 24th Floor
New York, New York 10019
Attention: [REDACTED]
Fax No.: [REDACTED]
Telephone No.: [REDACTED]

With a copy to:

Windels Marx Lane & Mittendorf, LLP
156 West 56th Street
New York, NY 10019
Attention: Charles A. Damato, Esq.
Fax No.: (212)262-1215
Telephone No.: (212)237-1000

If to DEBTOR, at:

451 Quarry Street
Fall River, Massachusetts 02723
Attention: James Pavao
Fax No.: (508) 678-9726
Telephone No.: (508) 678-9061

With a copy to:

Robert L. Rattet, Esq.
Rattet & Pasternak
550 Mamaroneck Avenue
Harrison, NY 10528
Attention: Robert L. Rattet, Esq.
Fax No.: (914)381-7400
Telephone No.: (914)381-7400

or at such other address of which any party shall have notified the other party in writing.

10.4. Non-Waiver. No delay or failure on the part of either party in exercising any right hereunder, and no partial or single exercise thereof, shall constitute a waiver of such right or of any other right hereunder.

10.5. Headings; Interpretation. Captions and headings in this Agreement are for convenience of reference only and shall not be used for interpreting or construing any provision hereof. No provision of this Agreement or any related document shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured or drafted such provision. As used in this Agreement unless the context otherwise requires (i) the word "including" shall mean "including but not limited to", and (ii) the word "or" shall mean and include "and/or".

10.6. Governing Law, Jurisdiction. This Agreement shall be governed and construed in accordance with the laws of the State of New York without regard to any applicable principles of conflicts of law. The parties hereto consent to the jurisdiction of the State or Federal Courts in the State of New York, County of New York in connection with any claim dispute or controversy, arising under or in connection with this Agreement and waive any objections based upon improper venue or forum non conveniens.

10.7. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Faxed executed counterparts will be deemed originals and may be enforced as such.

10.8. Expenses. Whether or not the Closing is consummated, each of the parties will pay, or cause to be paid, all of its own fees, costs and expenses (including legal and accounting fees and expenses) incurred in connection with the preparation of this Agreement and the entering into and consummating of the transactions contemplated hereby.

10.9. Assignability and Parties in Interest. This Agreement shall not be assignable by the Debtor. This Agreement, or any rights or benefits of the Secured Party hereunder may be assigned by the Secured Party. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. This Agreement shall inure to the benefit of any third party transferee of the Transferred Assets.

10.10. Amendments. This Agreement shall not be altered or amended except pursuant to an instrument in writing signed by Debtor, and the Secured Party.

10.11. No Third Party Beneficiaries. Except for the successors and assigns of the Secured Party, and as provided for in this Section 10.11 below, the parties hereto intend that no third party shall have any rights or claims by reason of this Agreement. This Agreement shall be for the benefit of any Third Party Transferee.

10.12. Gender, Number, etc. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns, including capitalized terms defined herein, shall include the plural and vice versa. "Including" and words of similar import shall be construed as words of inclusion and not of limitation such that matters described following such words of inclusion shall be regarded as nonexclusive, noncharacterizing illustrations of the matters described prior to such words of inclusion.

10.13. Severable Provisions. The provisions of this Agreement are severable, and if any one or more provisions is prohibited or otherwise unenforceable, in whole or in part, in any jurisdiction, the remaining provisions of this Agreement, including the remaining portion of any partially unenforceable provision, shall be binding and enforceable to the extent enforceable in such jurisdiction, and any such prohibition or unenforceability in any such jurisdiction shall not invalidate or render unenforceable such provision(s) in any other jurisdiction.

10.14. Currency. Except as otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in the currency of the United States of America.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the date first written above.

DEBTOR:

**WHALING MANUFACTURING COMPANY,
INC.**

By: James Pavao

Per: James Pavao

Its: President

SECURED PARTY:

WHALING DISTRIBUTORS, INC.

By: Peter Cannold

Per: Peter Cannold

Its: Vice President

Agreed as to Sections 8, 9 and 10

James Pavao
James Pavao

SCHEDULE 1.1

(a) All inventory and goods, including without limitation, all inventory and goods held for sale or lease or to be furnished under contracts of service, raw materials, work in process, finished goods, goods in transit, advertising, packaging and shipping materials, and all designs, creations, patterns, styles, samples and all other material and supplies (collectively, the "Inventory");

(b) All documents, including without limitation, documents of transport, payment and title relating to any of the foregoing and all such other documents as are made available to Debtor for the purpose of ultimate sale or exchange of goods or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with goods in a manner preliminary to their sale or exchange;

(c) All rights, claims, rights of offset, rights of return, actions and causes of action against any Person, including without limitation, those arising out of the purchase by Debtor of any of its Inventory including, without limitation, the supplier orders, and all rights of stoppage in transit, replevin, reclamation and rights of any unpaid vendor or as a lienor;

(d) All equipment, machinery, fixtures, trade fixtures, vehicles, furnishings, furniture supplies, materials, tools, machine tools, office equipment, appliances, apparatus, dies, jigs, and chattels; trucks, trailers, loaders and other vehicles and all replacements and substitutions therefore and all accessories thereto;

> (e) All of Debtor's now owned or hereafter acquired General Intangibles, including, without limitation, trademarks, tradenames, tradestyles, trade secrets, equipment formulation, manufacturing procedures, quality control procedures, product specifications, patents, patent applications, copyrights, registrations, contract rights, choses in action, causes of action, corporate or other business records, inventions, designs, goodwill, claims under guarantees, licenses, franchises, tax refunds, tax refund claims, computer programs, computer data bases, computer program flow diagrams, source codes, object codes and all other intangible property of every kind and nature;

(f) All of Debtor's now owned or hereafter acquired Accounts and contract rights, Instruments, insurance proceeds, Documents, Chattel Paper, letters of credit and Debtor's rights to receive payment thereunder, any and all rights to the payment or receipt of money or other forms of consideration of any kind at any time now or hereafter owing or to be owing to Debtor ("Receivables"), all proceeds thereof and all files in which Debtor has any interest whatsoever containing information identifying or pertaining to any of Debtor's Receivables, together with all of Debtor's rights to any merchandise which is represented thereby, and all Debtor's right, title, security and guarantees with respect to each Receivable, including, without limitation, all rights of stoppage in transit, replevin and reclamation and all rights as an unpaid vendor;

(g) All of Debtor's now owned and hereafter acquired investment property, including, without limitation, securities (whether certificated or uncertificated, securities entitlements, securities accounts, commodities accounts, and commodities contracts;

(h) All representations, liens on real or personal property, leases and other agreements and property which in any way secures or relates to the foregoing, or are acquired for the purpose of securing and enforcing any item thereof;

(i) (1) all cash held as collateral to the extent not otherwise constituting collateral, all other cash or property at any time on deposit with or held by lender for the account of Debtor (whether for safekeeping, custody, pledge, transmission or otherwise), (2) all present or future deposit accounts (whether time or demand or interest or non-interest bearing) of Debtor with Lender any other Person including those to which any such cash may at any time and from time to time be credited, (3) all investments and reinvestments (however evidenced) of amounts from time to time credited to such accounts, and (4) all interest, dividends, distributions and other proceeds payable on or with respect to (x) such investments and reinvestments and (y) such accounts;

(j) All Instruments, Chattel Paper, Documents, and contract rights and other rights, irrespective of when acquired; and

(k) All proceeds, insurance proceeds, products and accessions of or to any and all of the foregoing, and all collateral and security for, and guarantees of, any and all of the foregoing, and all books and records relating to any and all of the foregoing (including without limitation, any and all microfilm, microfiche, computer programs and records, source materials, tapes and discs) and all equipment containing said books and records.

DEBTOR'S CERTIFICATE

In accordance with the requirements of the Surrender Agreement dated as of July 21, 2008 (the "Agreement"), by and among Whaling Distributors, Inc. (the "Secured Party") and Whaling Manufacturing Company, Inc. a Massachusetts corporation (the "Company"), the Company hereby certifies that:

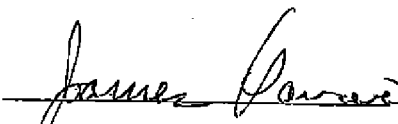
1. Attached as **Exhibit A** hereto are true and correct copies of resolutions duly adopted by the Company's Board of Directors and a majority of the Company's Shareholders by written consent dated July 21, 2008, none of which have been modified or rescinded and all of which are in full force and effect on the date of this Debtor's Certificate (the "Certificate").

2. The representations, warranties and covenants of the Company contained in the Agreement, and all Exhibits, Schedules and Certificates thereto, are true and correct, and have all been performed by the Company, on and as of July 21, 2008, the Closing Date.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the date first above written.

**WHALING MANUFACTURING COMPANY,
INC.**

By: 

Print Name: James Pavao

Its: President

**UNANIMOUS WRITTEN CONSENT
OF DIRECTORS AND SHAREHOLDERS
WHALING MANUFACTURING COMPANY, INC.**

JULY 21, 2008

SURRENDER AGREEMENT

RESOLVED, that after consideration that it is advisable and in the best interests of the Corporation and its stockholders for the Corporation to enter into the Surrender Agreement by and between the Corporation and Whaling Distributors, Inc. in the form presented to the Board (the "Surrender Agreement").

RESOLVED, that the Surrender Agreement is hereby adopted, approved and affirmed in all respects.

RESOLVED, that each and every agreement, instrument and other document in the forms presented to the Board that are required to be executed and delivered by the Corporation pursuant to the terms of the Surrender Agreement or in connection with the consummation of the transactions contemplated thereby (the "Surrender"), are hereby adopted, approved and affirmed in all respects (together with the Surrender Agreement, the "Transaction Documents").

RESOLVED, that the Chairman is hereby authorized, empowered and directed to, or to cause other officers of the Corporation to, execute and deliver the Transaction Documents and such other agreements and documents in addition thereto, as may, in the judgment of the officer so acting, be necessary, convenient or appropriate to carry out the Surrender.

RESOLVED, that the Chairman is hereby authorized, empowered and directed to, or to cause other officers of the Corporation to, consummate the Surrender and to take or cause to be taken such actions, as may, in the judgment of the officer so acting, be necessary, convenient or appropriate to carry out the Surrender, subject to: (i) the approval of the Surrender Agreement by the Corporation's stockholders by their written consent; and (ii) the satisfaction of all conditions precedent to the Corporation's obligations contained in the Surrender Agreement and other Transaction Documents, or the waiver thereof by such officers.

RESOLVED, that all actions heretofore taken by the officers and employees of the Corporation with respect to the negotiation of the Transaction Documents are hereby ratified, confirmed, adopted, approved and affirmed in all respects.

WRITTEN CONSENT OF STOCKHOLDERS

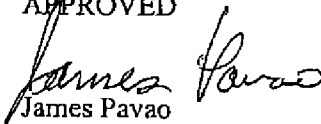
RESOLVED, that in accordance with the Corporation's Certificate of Incorporation and Bylaws, the Chairman shall obtain the written consent of the stockholders approving the Surrender Agreement and the Surrender, which shall be obtained by the execution of this consent by such shareholders.

OTHER FILINGS AND ACTIONS

RESOLVED, that the Chairman is hereby authorized, empowered and directed to, or to cause other officers of the Corporation to, do any and all acts and things and to sign, seal, execute, acknowledge, file, deliver and record all papers, instruments, documents and certificates and to pay all charges, fees, taxes and other expenses, from time to time as may, in the judgment of the officer so acting, be deemed necessary, desirable or appropriate to be done, signed, sealed, executed, acknowledged, filed, delivered, recorded or paid, under any applicable law or otherwise, in the name and on behalf of the Corporation, and to certify as having been adopted by the Board of Directors of the Corporation any form of resolution required under the Surrender Agreement, by any law, regulation or agency appropriate to effectuate the purpose and intent of these resolutions or any of them, and such other agreements and documents as may be executed by them pursuant to authorization granted in these resolutions or to any out the transactions contemplated thereby.

July 21, 2008

APPROVED



James Pavao
Sole Director
Shareholder

AFFIDAVIT

I, DONALD RAPOSA, currently the CONTROLLER of Whaling Distributors, Inc., a Delaware corporation, and formerly a CONTROLLER of Whaling Mfg. Co., Inc., being duly sworn, hereby states as follows:

1. I am presently the CONTROLLER of Whaling Distributors, Inc., a Delaware corporation having its principal offices at 451 Quarry Street, Fall River, Massachusetts 02723, and have held such office since July 22, 2008.

2. Until July 21, 2008, I was the CONTROLLER of Whaling Mfg. Co., Inc. (the "Company").

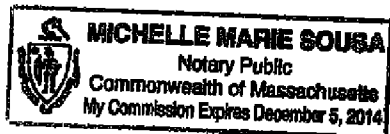
3. On July 21, 2008, the documents listed on Exhibit A hereto were executed by Whaling Manufacturing Company, Inc. in favor of Whaling Distributors, Inc. (the "Relevant Documents").

4. The purpose of this affidavit is to, and I do hereby, acknowledge, confirm and attest that (i) the name "Whaling Manufacturing Company, Inc.", under which the Relevant Documents were executed, is a name under which the Company regularly does business, and the Relevant Documents, among others, were executed in connection with a strict foreclosure and peaceful surrender of the Company's assets in favor of Whaling Distributors, Inc., and (ii) James Pavao, as signatory to such documents on behalf of Whaling Manufacturing Company, Inc., is, and was at the time of execution, the President, Sole Director and Sole Shareholder of the Company.

[Signature on following page]

[Signature Page to Affidavit]

IN WITNESS WHEREOF, I have signed this Affidavit on the 9th day of March, 2009.



Donald Raposa
DONALD RAPOSA
MA DPN Lic # 355759048 K: 12/2012

Sworn to on this 9th day of March, 2009.

Michelle Marie Sousa
NOTARY PUBLIC

Exhibit A**Relevant Documents**

1. Surrender Agreement by and between Whaling Distributors, Inc., as secured party, and Whaling Manufacturing Company, Inc., as debtor, dated July 21, 2008;
2. Bill of Sale and Assignment between Whaling Manufacturing Company, Inc., as transferor, and Whaling Distributors, Inc., as transferee, dated July 21, 2008; and
3. Debtor's Certificate, executed by Whaling Manufacturing Company, Inc., and annexed Unanimous Written Consent of Directors and Shareholders Whaling Manufacturing Company, Inc., executed by James Pavao, as sole director and shareholder, in each case dated July 21, 2008.

{10495533;2}