

**TRADEMARK RECORDATION FORM
APPLICATION NUMBER(S) OR REGISTRATION NUMBER(S) AND
IDENTIFICATION OR DESCRIPTION OF THE TRADEMARK
ADDITIONAL SHEET**

Please RELEASE the following 4 (four) specific Security Interests outlined below in the Newport Harbor Trademarks:

1. Serial #: 75272295
Registration #: 2189971
Assignment #: 1
Reel/Frame: 2993/0423
Recorded: 12/16/2004
Assignors: Whaling MFG. Co., Inc.
Assignee: Rosenthal & Rosenthal, Inc.

2. Serial #: 76503796
Registration #: None
Assignment #: 1
Reel/Frame: 2993/0423
Recorded: 12/16/2004
Assignors: Whaling MFG. Co., Inc.
Assignee: Rosenthal & Rosenthal, Inc.

3. Serial #: 75560992
Registration #: 2285443
Assignment #: 1
Reel/Frame: 2993/0423
Recorded: 12/16/2004
Assignors: Whaling Mfg. Co., Inc.
Assignee: Rosenthal & Rosenthal, Inc.

4. Serial #: 73450620
Registration #: 1319471
Assignment #: 2
Reel/Frame: 2993/0423
Recorded: 12/16/2004
Assignors: Whaling MFG. Co., Inc.
Assignee: Rosenthal & Rosenthal, Inc.

ASSIGNMENT AND CONSENT AGREEMENT

This **ASSIGNMENT AND CONSENT AGREEMENT** (this "Agreement") is entered into as of September 23, 2005 among Rosenthal & Rosenthal, Inc. ("Assignor"), Whaling Mfg. Co. Inc., a Massachusetts corporation ("Debtor"), James S. Pavao, and Norberta M. Pavao (jointly and severally, the "Guarantor") and Capstone Capital Group I, LLC and Capstone Business Credit, LLC (jointly and severally, the "Assignee").

RECITALS

WHEREAS, Assignor and Debtor are parties to the Factoring Agreement, dated as of May 19, 2003, among Debtor and Assignor ("Existing Factoring Agreement"), and other documents described on and attached to Exhibit A hereto (as amended, the "Documents") pursuant to which the Assignor has made loans to Debtor (the "Loans") secured by certain assets of Debtor.

WHEREAS, Assignor has agreed to sell and assign all of its right, title and interest in and to the Loans, the Documents, and the rights and obligations evidenced therein (collectively, the "Obligations") to Assignee in consideration of the payment by Assignee to Assignor of [REDACTED] until Assignor's receipt of such funds (the "Purchase Price") in immediately available funds and subject to the other terms and conditions set forth in this Agreement.

WHEREAS, as of the date of this Agreement, the unpaid balance of the Obligations is [REDACTED].

WHEREAS, Debtor and Guarantor consent to the sale of the Assigned Property (as defined below) pursuant to this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. **Assignment; Assignee's Acknowledgments.** Effective upon Assignor's receipt of the Purchase Price from Assignee in immediately available funds by no later than September 23, 2005, Assignor hereby assigns to Assignee all Assignor's right, title and interest in and to the Documents, the Obligations and all collateral therefor and guarantees thereof (collectively, the "Assigned Property").

2. **Without Recourse Assignment; Covenants, Representations and Warranties.**

2.1 This Assignment is without recourse to and without warranties or representations, expressed or implied, by Assignor, except that Assignor warrants and represents that:

2.1.1 The Documents are in the possession of Assignor and all signatures appearing on the Documents are genuine to the best of Assignor's knowledge.

2.1.2 Assignor has title to the Assigned Property, the right, ability and authority to sell the Assigned Property, and such sale will be free and clear of any and all liens and encumbrances on the Assigned Property.

2.1.3 Assignor has not previously settled with, compromised with or released the Debtor or any Guarantor with respect to the Obligations, and has not entered into any covenants not to sue or other agreements binding upon Assignor, except as disclosed in the Documents or in this Agreement.

2.1.4 Assignor has not agreed to any subordination of the Assigned Property or the security interests securing the Loans, except as set forth in that certain Intercreditor Agreement, dated March 23, 2004, between Assignor and [REDACTED], as amended.

2.1.5 The Obligations are secured by those certain Documents set forth on Exhibit A hereto and Assignor has filed the UCC financing statements against Debtor as listed on Exhibit B (the "UCC Filings").

2.1.6 The unpaid balance of the Obligations set forth in the third "Whereas" clause above is accurate.

2.1.7 Upon Assignor's receipt of the Purchase Price from Assignee in immediately available funds, the Debtor will no longer be indebted to Assignor with respect to the Assigned Property or otherwise, except that nothing contained herein is intended to discharge Debtor from its present or future obligations as account debtor on accounts receivable that are sold or assigned to Assignor. If any such indebtedness shall arise in the future, Assignor will not assert, vis-à-vis Assignee, that such indebtedness is secured by the collateral described in the Documents.

2.1.8 Assignor has not promised to or advised any entity that the Obligations will be less than the amount owed to Assignor as of the date hereof.

2.1.9 To the best of Assignor's knowledge, Assignor has not received any notices that any third party asserts a purchase money priority security interest in any Debtor's inventory.

2.2 Following Assignor's receipt of the Purchase Price, Assignor agrees to promptly:

2.2.1 Deliver the Documents to Assignee together with cash collateral for the Obligations in the amount of [REDACTED].

2.2.2 Notify all Debtor's account debtors who have been previously notified that payments in connection with the Debtor's accounts receivable are to be made to Assignor that, subsequent to the date hereof, all such payments are to be made to the Assignee rather than to the Assignor.

2.2.3 Pay to Assignee the proceeds of any of such Debtor's accounts receivable and all other funds of the Debtor received by Assignor on account of the Assigned Property subsequent to the date hereof.

2.3 Assignor authorizes Assignee to file Uniform Commercial Code Amendments assigning UCC financing statements filed by Assignor against any of the Debtor or any Guarantor in respect of the Obligations to Assignee, including, without limitation, the UCC Filings listed on Exhibit B hereto, upon Assignor's receipt of the Purchase Price.

3. Representations and Warranties of Assignee. Assignee represents and warrants to Assignor as of the date of this Agreement that:

3.1 The execution, delivery and performance by Assignee of this Agreement have been duly authorized by all necessary action on the part of Assignee and do not and will not (i) violate any material provision of any law, rule, regulation, order, judgment, injunction, decree, determination or award presently in effect having applicability to Assignee or (ii) result in a material breach or constitute a material default under any indenture or loan or credit agreement or other agreement or instrument to which Assignee is a party or by which it is bound.

3.2 No authorizations, consents or approvals from, or notifications to or filings with, any court, governmental agency or other person or entity are or will be necessary to the valid execution, delivery or performance by Assignee of this Agreement.

3.3 Assignee is duly organized, validly existing and in good standing under the laws of the State of its formation with the requisite power and authority to execute, deliver and perform its obligations under this Agreement and to consummate the transactions contemplated herein.

3.4 This Agreement constitutes the legal, valid and binding obligation of Assignee, enforceable against Assignee in accordance with its terms, except as may be limited by bankruptcy, reorganization, receivership, insolvency or similar laws affecting the enforcement of creditors' rights generally and by equitable principles of general applicability regardless of whether considered in a proceeding in equity or at law.

3.5 Assignee (i) has such knowledge and experience in financial matters that it is capable of evaluating and has sufficient information to evaluate the merits and risks of the purchase of the Assigned Property, (ii) is knowledgeable concerning the rights and remedies of a lender under a credit facility, (iii) has agreed to purchase the Assigned Property on the basis of its own independent investigation, evaluation and credit determination, (iv) except as set forth in Section 2 hereof, has not sought, received, or relied upon any representation or warranty or information or statements from Assignor regarding or relating to the Debtor or the Guarantor, their respective businesses, operations, or future prospects, or the consideration that might be paid or distributed on account of the Assigned Property, and (v) is aware that the Purchase Price may differ from the amount ultimately received by Assignee on account of the Assigned Property.

3.6 Assignee hereby indemnifies Assignor and agrees to hold Assignor harmless from and against any liability, cost or expense sustained or incurred by Assignor by

reason of any claims asserted against Assignor for the return of any monies that Assignor pays to Assignee pursuant to Sections 2.2.1 and 2.2.3 hereof, including claims that the payments received by Assignor which Assignor remitted to Assignee pursuant to such sections were preferential transfers under the Bankruptcy Code.

3.7 Debtor hereby indemnifies Assignor and agrees to hold Assignor harmless from and against any liability, cost or expense sustained or incurred by Assignor by reason of any claims against Assignor seeking the return of (a) any money paid to Assignor by or for the account of Debtor (including customers of Debtor) which was applied by Assignor to the reduction of Debtor's indebtedness to Assignor; or (b) property of Debtor transferred to Assignor or in which Assignor was granted a security interest to secure the indebtedness of Debtor or the proceeds of such property.

4. Covenants by Debtor and Guarantor.

4.1 Upon Assignor's receipt of the Purchase Price from Assignee in immediately available funds, the Debtor and the Guarantor (collectively, the "Obligors") agree that the Obligations will be owed to Assignee without setoff, defense, counterclaim or recoupment.

4.2 Obligors confirm that (i) the unpaid balance of the Obligations as set forth in the third Whereas clause in this Agreement is due and owing from Debtor to Assignor without offset, defense or counterclaim, and (ii) Exhibit A is a complete list of all of the Documents.

4.3 Obligors agree that upon Assignee's receipt of the Purchase Price, Assignor shall be released from any and all liability to Obligors under, in connection with, or related to, the Documents (including any claims for any monies due or to become due under the Existing Factoring Agreement, whether by reason of credit approvals heretofore issued by Assignor or otherwise) and from any and all claims of Obligors in any way related to the Loans, the Obligations or the Documents.

4.4 **OBLIGORS UNDERSTAND THAT THIS AGREEMENT CONSTITUTES A WAIVER OF SIGNIFICANT RIGHTS THAT THEY MAY HAVE AND SUCH WAIVER IS BEING MADE AS AN INDUCEMENT TO ASSIGNEE TO ACCEPT THIS ASSIGNMENT.**

4.5 Upon Assignor's receipt of the Purchase Price, [REDACTED] is hereby released and discharged from all obligations under that certain Guarantee, dated May 19, 2003, by [REDACTED] to Assignor. Notwithstanding the foregoing, [REDACTED] reaffirms his obligations under that certain Guarantee, dated May 19, 2003, by [REDACTED] to Assignor, and agrees that such Guarantee remains in full force and effect.

5. Miscellaneous.

5.1 **Amendment.** Neither this Agreement nor any provisions hereof may be changed, waived, discharged or terminated, nor may any consent to the departure from the terms hereof be given, orally (even if supported by new consideration), but only by an instrument in writing signed by the parties to be charged thereby. Debtor and Guarantor agree that their

signature shall only be required with respect to any amendment to Section 4. Any waiver or consent so given shall be effective only in the specific instance and for the specific purpose for which given.

5.2 Choice of Law. This Agreement and all transactions contemplated hereunder and/or evidenced hereby shall be governed by, construed under, and enforced in accordance with the internal laws of the State of New York.

5.3 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

5.4 Notices. Any notices, communications, requests and demands to or upon the respective parties hereto to be effective shall be in writing and, unless otherwise expressly provided herein, shall be conclusively deemed to have been received by a party hereto and to be effective on the day on which received by such party at the address set forth for such party on the signature page hereof or to such other address as such party may hereafter indicate by written notice to the other parties, or, in the case of telecopy notice, when acknowledged as received, or if sent by registered or certified mail, on the third business day (i.e., a day other than a Saturday, Sunday or a day on which Assignor's offices are closed) after the day on which mailed in the United States, addressed to such party at such address.

5.5 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. Delivery of an executed counterpart of the signature page to this Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Agreement, and any party delivering such an executed counterpart of the signature page to this Agreement by facsimile to any other party shall thereafter also promptly deliver a manually executed counterpart of this Agreement to such other party, provided that the failure to deliver such manually executed counterpart shall not affect the validity, enforceability, or binding effect of this Agreement.

5.6 Termination. This Agreement may not be terminated except upon execution of a written document signed by each of the parties hereto; provided, however, that if Assignor does not receive the Purchase Price from Assignee in immediately available funds on or before September 28, 2005, then this Agreement shall terminate without any further act of any party hereto, and upon such termination, no party hereto shall have any further rights or obligations hereunder.

5.7 Entire Agreement. This Agreement constitutes the entire agreement among the parties integrates all the terms and conditions mentioned herein or incidental hereto, and supersedes all oral negotiations and prior writings with respect to the subject matter hereof, including, without limitation, any summary of terms and conditions, letters of intent, information memorandum, presentation or any other communications.

5.8 Venue. The parties agree that any suit, action or proceeding arising out of the subject matter hereof, or the interpretation, performance or breach of this Agreement, shall be instituted in the United States District Court for the Southern District of New York or any court

of said state located in New York County in the State of New York (the "Acceptable Forums"), each party agrees that the Acceptable Forums are convenient to it, and each party irrevocably submits to the jurisdiction of the Acceptable Forums, irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement, and waives any and all objections to jurisdiction or venue that it may have under the laws of the State of New York or otherwise in those courts in any such suit, action or proceeding.

5.9 JURY TRIAL WAIVER. EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS AGREEMENT, IN EACH CASE WHETHER SOUNDING IN CONTRACT, EQUITY OR TORT OR OTHERWISE.

IN WITNESS WHEREOF the parties hereto have executed or caused this Agreement to be executed by their respective officers or members thereunto authorized on the day and year first above written.

Assignor:

Address:
1370 Broadway
New York, NY 10018

ROSENTHAL & ROSENTHAL, INC.

By: _____
Name: _____
Title: _____

Debtor:

Address:

WHALING MFG. CO. INC.

By: James S. Pavo
Name: James S. Pavo
Title: President

James S. Pavo
James S. Pavo

Norberta M. Pavo
Norberta M. Pavo

Assignee:

Address:

CAPSTONE CAPITAL GROUP I, LLC

By: Joseph F. Ingrassia
Name: Joseph F. Ingrassia
Title: Managing Member

CAPSTONE BUSINESS CREDIT, LLC

By: Joseph E. Ingrassia
Name: Joseph E. Ingrassia
Title: Managing Member

IN WITNESS WHEREOF the parties hereto have executed or caused this Agreement to be executed by their respective officers or members thereto authorized on the day and year first above written.

Assignor:

Address:
1370 Broadway
New York, NY 10018

ROSENTHAL & ROSENTHAL, INC.

By: [Signature]
Name: FRANK ESTERLINE
Title: EVP

Debtor:

Address:
[Redacted]
[Redacted]

WHALING MFG. CO. INC.

By: _____
Name: _____
Title: _____

James S. Pavao

Norberta M. Pavao

Assignee:

Address:
[Redacted]
[Redacted]
[Redacted]

CAPSTONE CAPITAL GROUP I, LLC

By: _____
Name: _____
Title: _____

CAPSTONE BUSINESS CREDIT, LLC

By: _____
Name: _____
Title: _____

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EXHIBIT A

1. Factoring Agreement, dated as of May 19, 2003, between Debtor and Assignor.
2. Letter Agreement, dated as of July 1, 2003, between Debtor and Assignor.
3. Letter Agreement, dated as of October 3, 2003, between Debtor and Assignor.
4. Equipment Security Agreement, dated as of March 22, 2004, between Debtor and Assignor.
5. Tradestyle Letter, dated as of May 19, 2003.
6. Inventory Security Agreement, dated as of May 21, 2003, by Debtor in favor of Assignor.
7. Mortgage, dated as of December 16, 2004, by Debtor in favor of Assignor.
8. Intellectual Property Security Agreement, dated as of December 16, 2004, by Debtor in favor of Assignor.
9. Certificate of Directors, dated as of May 19, 2003.
10. Certificate of Officers, dated as of May 19, 2003.
11. Corporate Resolution of Directors, dated as of March 22, 2004.
12. Intercreditor Agreement, dated as of March 26, 2004, among Debtor, Burlington Coat Factory Warehouse Corporation and Assignor.
13. Corporate Guaranty, dated as of May 19, 2003, by Whaling Industries, Inc.
14. Certificate of Members' Resolutions for Guaranty, dated as of May 19, 2003.
15. Stockholders' Consent to Corporate Guaranty, dated as of May 19, 2003.
16. Guarantee, dated as of May 19, 2003, by James S. Pavao and Norberta M. Pavao.
17. Letter of Indemnity, dated as of May 21, 2003, between GMAC and Assignor.
18. Lien Subordination Agreement, dated as of May 21, 2003, between GMAC and Assignor.
19. Letter Agreement, dated as of March 8, 2005, among Burlington Coat Factory Warehouse Corp., Debtor and Assignor.
20. All UCC financing statements set forth on Exhibit B hereto.

EXHIBIT B

UCC Financing Statement No. 200320841220 filed on May 20, 2003 with the Massachusetts Secretary of State.

UCC Financing Statement No. 200428455770 filed on March 23, 2004 with the Massachusetts Secretary of State.