

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
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<b>SUBMISSION TYPE:</b>		NEW ASSIGNMENT	
<b>NATURE OF CONVEYANCE:</b>		RELEASE BY SECURED PARTY	
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Heller Financial, Inc.		08/20/2008	CORPORATION: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Western Nonwovens, Inc.		
<b>Street Address:</b>	966 East Sandhill Ave.		
<b>City:</b>	Carson		
<b>State/Country:</b>	CALIFORNIA		
<b>Postal Code:</b>	90746		
<b>Entity Type:</b>	CORPORATION: DELAWARE		
<b>PROPERTY NUMBERS Total: 4</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	3101913	CLIMASHIELD	
<b>Serial Number:</b>	78499875	THE ALL WEATHER ADVANTAGE	
<b>Serial Number:</b>	78530080	THE ALL-WEATHER INSULATION	
<b>Serial Number:</b>	78499874	THE CONTINUOUS FILAMENT ADVANTAGE	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	(414)298-8097		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
<b>Email:</b>	asmyczek@reinhartlaw.com		
<b>Correspondent Name:</b>	Alec D. Smyczek		
<b>Address Line 1:</b>	1000 N. Water St. Suite 1700		
<b>Address Line 4:</b>	Milwaukee, WISCONSIN 53202		
<b>ATTORNEY DOCKET NUMBER:</b>	096821		
<b>NAME OF SUBMITTER:</b>	Alec D. Smyczek		
<b>Signature:</b>	/Alec D. Smyczek/		

**CH \$115.00 3101913**

Date:

06/12/2009

**Total Attachments: 54**

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: )  
 )  
WESTERN NONWOVENS, INC., et al.,<sup>1</sup> )  
 )  
 )  
Debtors. )

Chapter 11  
Case No. 08-11435 (PJW)  
(Jointly Administered)

Related Docket Nos. 28 & 87

**ORDER (I) APPROVING ASSET PURCHASE AGREEMENT  
AND AUTHORIZING THE SALE OF ASSETS OF THE DEBTORS  
OUTSIDE THE ORDINARY COURSE OF BUSINESS, (II) AUTHORIZING  
THE SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS,  
ENCUMBRANCES AND INTERESTS, (III) AUTHORIZING  
AND APPROVING ASSUMPTION AND ASSIGNMENT OF EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF**

Upon the Motion of the Debtors for an Order (A) Approving Sale Procedures Relating to Sale of Assets Not Included in the Simmons Sale, (B) Approving Sale of Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests Pursuant to 11 U.S.C. § 363(b), (f), and (m), and (C) Granting Related Relief, dated July 14, 2008 (the "Non-Simmons Sale and Procedures Motion"), and upon the Supplemental Motion with Respect to Motion of the Debtors for an Order (A) Approving Sale Procedures Relating to Sale of Assets Not Included in the Simmons Sale, (B) Approving Sale of Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests Pursuant to 11 U.S.C. § 363(b), (f), and (m), and (C) Granting Related Relief (the "Supplemental Motion," and collectively, the "Motions"), of the above-captioned debtors and debtors in possession (the "Debtors") for the entry of an order pursuant to sections 105, 363, and 365 of Title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the

<sup>1</sup> The Debtors in these cases, along with the last four digits of each of the Debtor's federal tax identification number, are: Western Nonwovens, Inc. (9696); Western Synthetic Fiber, Inc. (1778); Bonded Fiberloft, Inc. (4998); Reliance Products, Inc. (0233); Paltex Incorporated (9988); Mid-America Fiber Company, Inc. (2849); Florida Nonwovens, Inc. (1133); and Utah Nonwovens, Inc. (3204). The mailing address for all of the Debtors is 966 E. Sandhill Avenue, Carson, CA 90746.

"Bankruptcy Rules") authorizing the Debtors to, *inter alia*, (i) conduct an Auction<sup>2</sup> and enter into that certain APA, substantially in the form attached as Exhibit C to the Non-Simmons Sale and Procedures Motion with the Successful Bidder(s) at the conclusion of the Auction, (ii) sell the Purchased Assets described on Exhibit B to the Non-Simmons Sale and Procedures Motion free and clear of all liens, claims, encumbrances, and interests, with such sale to be in accordance with the terms and conditions of the APA; (iv) assume and assign to the Successful Bidder(s) the Assumed Agreements as described in the Supplemental Motion; and (iv) granting related relief; and this Court having entered an order dated July 29, 2008 (the "Procedures Order"), authorizing the Debtors to conduct, and approving the terms and conditions of, the Auction and Sale Procedures to consider higher or otherwise better offers for the Purchased Assets, establishing a date for the Auction, and approving, *inter alia*, (i) the Sale Procedures in connection with the Auction; (ii) the form and manner of notice of the Auction, the Sale Procedures, the Cure Notice, and the Sale Hearing; and the Court having established the date of the Sale Hearing; and the Auction having been conducted and the Debtors having determined that Harvest Consumer Insulation, Inc., was the Successful Bidder(s) (the "Buyer") in connection with the form of APA attached hereto as Exhibit A; and the Court having jurisdiction to consider the Motions and the relief requested therein in accordance with 28 U.S.C. §§ 157(b)(2) and 1334; and consideration of the Motions, the relief requested therein, and the responses thereto, if any, being a core proceeding in accordance with 28 U.S.C. § 157(b); and the appearance of all interested parties and all responses and objections, if any, to the Motions having been duly noted in the record of the Sale Hearing; and upon the record of the Sale Hearing, and all other pleadings and proceedings in this case, including the Motions; and it appearing that the relief requested in the Motions is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest; and after due deliberation and sufficient cause appearing therefore;

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion or the APA.

IT IS HEREBY FOUND, DETERMINED AND CONCLUDED THAT:<sup>3</sup>

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

B. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. The Court has jurisdiction over this matter and over the property of the Debtors, including the Purchased Assets to be sold, transferred or conveyed pursuant to the APA, and their respective estates pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

D. The statutory predicates for the relief sought in the Motions and the basis for the approvals and authorizations herein are (i) Bankruptcy Code sections 102, 105, 363, 365, 1123, 1141, and 1146, and (ii) Bankruptcy Rules 2002, 6004, 6006, and 9014.

E. On July 14, 2008 (the "Petition Date"), the Debtors each filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have continued in possession and management of their businesses and properties as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

F. As evidenced by the affidavits of service filed with the Court, proper, timely, adequate, and sufficient notice of the Motions, the Auction, and the Sale Hearing have been provided in accordance with Bankruptcy Code sections 102(1) and 363(b), Bankruptcy Rules 2002, 6004, 6006, 9006, 9007, 9008, and 9014, the local rules of this Court, the procedural due process requirements of the United States Constitution, and in compliance with the Sale

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<sup>3</sup> All findings of fact and conclusions of law announced by the Court at the Sale Hearing in relation to the Motion are hereby incorporated herein to the extent not inconsistent herewith.

Procedures Order. No other or further notice of the Sale Motion, the Auction, the Sale Hearing, or of the entry of this Order is necessary or shall be required.

G. A reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested persons and entities, including, without limitation, (i) the Office of the United States Trustee for the District of Delaware; (ii) Counsel to the Debtors' prepetition and postpetition lenders; (iii) each of the Debtors' thirty-five largest unsecured creditors (on a consolidated basis); (iv) parties known by the Debtors to assert liens or interests in the Purchased Assets; (v) entities known by the Debtors who may have expressed an interest in purchasing the Assets; (vi) taxing authorities who have a known interest in the relief requested by the Motion; (vii) the United States Attorney for the District of Delaware; (viii) the Securities and Exchange Commission; (ix) the Internal Revenue Service; (x) applicable government agencies known by the Debtors to assert jurisdiction over them and to have interest in the proposed sale; (xi) counsel to any committee of unsecured creditors; (xiii) those persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure; (xiv) counterparties to the Assumed Agreements; and (xv) all known creditors of the Debtors. Other parties interested in bidding on the Purchased Assets were provided, upon request, sufficient information to make an informed judgment on whether to bid on the Assets.

H. The Debtors have demonstrated a sufficient basis and the existence of exigent circumstances for them to enter into the APA, and to sell the Purchased Assets under Bankruptcy Code sections 363, 1123, and 1141, and to assume and assign the Assumed Agreements under Bankruptcy Code section 365 effective upon the closing of a sale to the Buyer, and such actions are appropriate exercises of the Debtors' business judgment and in the best interests of the Debtors, their estates, and their creditors.

I. The Sale Procedures set forth in the Procedures Order were non-collusive, substantively and procedurally fair to all parties, and were the result of arms length negotiations between the Debtors and other parties in interest.

J. The Debtors and their professionals have complied, in good faith, in all respects with the Procedures Order. As demonstrated by the testimony and other evidence proffered or adduced at the Sale Hearing through marketing efforts and a competitive sale process conducted in accordance with the Procedures Order, the Debtors (i) afforded interested potential purchasers a full, fair, and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase all of the Debtors' assets, and (ii) provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Purchased Assets.

K. The Sale Procedures obtained the highest value for the Purchased Assets for the Debtors and their estates.

L. The offer of the Buyer, upon the terms and conditions set forth in the APA, including the form and total consideration to be realized by the Debtors pursuant to the APA, (i) is the highest and best offer received by the Debtors; (ii) is fair and reasonable; (iii) is in the best interests of the Debtors' creditors and estates; (iv) constitutes full and adequate consideration and reasonably equivalent value for the Purchased Assets; and (v) will provide a greater recovery for the Debtors' creditors and other interested parties than would be provided by any other practically available alternative.

M. The Buyer is not an "insider" or "affiliate" of the Debtors as those terms are defined in the Bankruptcy Code. The Buyer is a buyer in good faith, as that term is used in the Bankruptcy Code and the decisions thereunder, and is entitled to the protections of Bankruptcy Code sections 363(m) and (n) with respect to all of the Assets. The APA was negotiated and entered into in good faith, based upon arm's-length bargaining, and without collusion or fraud of any kind. Neither the Debtors nor the Buyer has engaged in any conduct that would prevent the application of Bankruptcy Code section 363(m) or cause the application of or implicate Bankruptcy Code section 363(n) to the APA or to the consummation of the sale transaction and transfer of the Assets and Designated Contracts to the Buyer. The Buyer is entitled to all the protections and immunities of Bankruptcy Code section 363(m).



N. The Debtors have full corporate power and authority to execute the APA and all other documents contemplated thereby, and the sale of the Assets has been duly and validly authorized by all necessary corporate authority by the Debtors to consummate the transactions contemplated by the APA. No consents or approvals, other than as may be expressly provided for in the APA, are required by the Debtors to consummate such transactions.

O. The Debtors have advanced sound business reasons for seeking to enter into the APA and to sell and/or assume and sell and assign the Assets, as more fully set forth in the Motion and as demonstrated at the Sale Hearing, and it is a reasonable exercise of the Debtors' business judgment to sell the Assets and to consummate the transactions contemplated by the APA. Notwithstanding any requirement for approval or consent by any person, the transfer of the Assets to the Buyer is a legal, valid and effective transfer of the Assets.

P. The terms and conditions of the APA, including the consideration to be realized by the Debtors pursuant to the APA, are fair and reasonable, and the transactions contemplated by the APA are in the best interests of the Debtors' estates.

Q. Except as otherwise provided in the APA, the Purchased Assets shall be sold free and clear of all Liens, Claims, Encumbrances, and Interests, with such Liens, Claims, Encumbrances, and Interests to attach to the consideration to be received by the Debtors in the same priority and subject to the same defenses and avoidability, if any, as before the Closing, and the Buyer would not enter into the APA to purchase the Purchased Assets otherwise.

R. The transfer of the Purchased Assets to the Buyer will be a legal, valid, and effective transfer of the Purchased Assets, and, except as may otherwise be provided in the APA, shall vest the Buyer with all right, title, and interest of the Debtors to the Purchased Assets free and clear of any and all Liens, Claims, Encumbrances, and Interests. Except as specifically provided in the APA or this Order, the Buyer shall not assume or become liable for any Liens, Claims, Encumbrances, and Interests relating to the Purchased Assets being sold by the Debtors.

S. The transfer of the Purchased Assets to the Buyer free and clear of all Liens, Claims, Encumbrances, and Interests will not result in any undue burden or prejudice to any

holders of any Liens, Claims, Encumbrances, and Interests as all such Liens, Claims, Encumbrances, and Interests of any kind or nature whatsoever shall attach to the net proceeds of the sale of the Purchased Assets received by the Debtors in the order of their priority, with the same validity, force, and effect that they now have as against the Purchased Assets and subject to any claims and defenses the Debtors or other parties may possess with respect thereto. All persons having Liens, Claims, Encumbrances, or Interests of any kind or nature whatsoever against or in any of the Debtors or the Purchased Assets shall be forever barred estopped and permanently enjoined from pursuing or asserting such Liens, Claims, Encumbrances, or Interests against the Buyer, any of its assets, property, successors or assigns, or the Purchased Assets.

T. The Debtors may sell the Purchased Assets free and clear of all Liens, Claims, Encumbrances, and Interests of any kind or nature whatsoever because, in each case, one or more of the standards set forth in Bankruptcy Code section 363(f) has been satisfied. Those (i) holders of Liens, Claims, Encumbrances, and Interests and (ii) non-debtor parties, who did not object, or who withdrew their objections, to the sale of the Purchased Assets and the Motion are deemed to have consented pursuant to Bankruptcy Code section 363(f)(2). All objections to the Motion have been resolved. Those holders of Liens, Claims, Encumbrances, and Interests who did object fall within one or more of the other subsections of Bankruptcy Code section 363(f) and are adequately protected by having their Liens, Claims, Encumbrances, and Interests, if any, attach to the proceeds of the sale of the Purchased Assets ultimately attributable to the property against or in which they claim or may claim any Claims, Encumbrances, and Interests, with such Claims, Encumbrances, and Interests being subject to treatment as prescribed in the any plan of liquidation proposed by the Debtors or by other, separate order of this Court.

U. Not selling the Purchased Assets free and clear of all Liens, Claims, Interests, and Encumbrances would adversely impact the Debtors' estates, and the sale of Purchased Assets other than one free and clear of all Liens, Claims, Interests, and Encumbrances would be of substantially less value to the Debtors' estates.

V. The Buyer will be acting in good faith, pursuant to Bankruptcy Code section 363(m), in closing the transactions contemplated by the APA at any time on or after the entry of this Order, and cause has been shown as to why this Order should not be subject to the stay provided by Bankruptcy Rules 6004(h).

W. The transactions contemplated under the APA do not amount to a consolidation, merger, or *de facto* merger of the Buyer and the Debtors and/or the Debtors' estates, there is not substantial continuity between the Buyer and the Debtors, there is no continuity of enterprise between the Debtors and the Buyer, the Buyer is not a mere continuation of the Debtors or their estates, and the Buyer does not constitute a successor to the Debtors or their estates.

X. The sale of the Assets outside of a plan of reorganization pursuant to the APA neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtors. The sale does not constitute a *sub rosa* chapter 11 plan.

Y. The total consideration provided by the Buyer for the Purchased Assets is the highest and best offer received by the Debtors, and the Purchase Price constitutes (a) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (b) fair consideration under the Uniform Fraudulent Conveyance Act, and (c) reasonably equivalent value, fair consideration and fair value under any other applicable laws of the United States, any state, territory or possession, or the District of Columbia, for the Assets.

Z. Time is of the essence in consummating the Sale. In order to maximize the value of the Assets, it is essential that the Sale of the Assets occur within the time constraints set forth in the APA. Accordingly, there is cause to lift the stays contemplated by Bankruptcy Rule 6004.

AA. The Buyer shall have no obligations with respect to any liabilities of the Debtors other than the Assumed Liabilities and its obligations under the APA.

BB. For purposes of section 363(b)(1) of the Bankruptcy Code, the Debtors have not, in connection with offering a product or service, disclosed to any individual a policy prohibiting

the transfer of "personally identifiable information" (as defined in section 101(41A) of the Bankruptcy Code) about individuals to persons that are not affiliated with the Debtors.

CC. The Debtors and/or the Buyer, as provided for under the APA, have cured, or have provided adequate assurance of cure of, any default existing prior to the Closing Date, which is the effective date of assumption of the Assumed Agreement, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, under the Assumed Agreements, and have provided compensation or adequate assurance of compensation to any non-Debtor party to such contracts or leases for any of their actual pecuniary losses resulting from any default arising prior to the Closing Date under any such Assumed Agreements, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code and as reflected on Exhibit B hereto (collectively, the "Cure Amounts").

DD. As of the Closing Date each of the Assumed Contracts and Leases will be in full force and effect and enforceable against the non-Debtor party thereto.

EE. On or before the Closing Date, the Debtors and/or the Buyer, as provided for under the APA, will pay in full all undisputed Cure Amounts and all Cure Amounts that each is obligated to pay under the terms of the APA and that have been determined by this Court pursuant to a Final Order as of the Closing Date. On the Closing Date, the Debtors will segregate an amount of the Sale Proceeds equal to the asserted amount of any disputed Cure Amounts that the Debtors are obligated to pay pursuant to the APA pending the resolution of any such dispute by this Court or mutual agreement of the parties. Any non-Debtor party to any Assumed Agreement who objected to the Cure Amounts (a "Cure Amount Objection") is protected by having such disputed portion of such Cure Amount segregated on or before the date on which such Assumed Agreement is assumed. Notwithstanding the foregoing, the Debtors,

after consultation with the Committee, may elect to reject any Assumed Agreement previously designated as an Assumed Agreement within ten business days following entry of a Final Order determining the Cure Amount for such Assumed Agreement or execution of a written agreement between the Debtors, the Buyer, and the non-Debtor party to such Assumed Agreement establishing such Cure Amount, and any claims arising from such rejection shall, pursuant to section 365(g)(1) of the Bankruptcy Code, be deemed to arise immediately prior to the Petition Date.

FF. The Debtors and the Buyer have, to the extent necessary, satisfied the requirements of sections 365(b)(1) and 365(f) of the Bankruptcy Code in connection with the Sale and the assumption and assignment of the Assumed Agreement and shall upon assignment thereof on the Closing Date, be relieved from any liability for any breach thereof (other than the liability to pay Cure Amounts on or before the Closing or following the Closing, as applicable).

NOW, THEREFORE, BASED UPON ALL OF THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The relief requested in the Motions with respect to the Sale of the Purchased Assets, the assumption and assignment of the Assumed Agreements, and related matters is granted in its entirety, subject to the terms and conditions contained herein.
2. All objections, responses, and requests for continuance concerning the Motions are resolved in accordance with the terms of this Order and as set forth in the record of the Sale Hearing. To the extent any such objection, response or request for continuance was not otherwise withdrawn, waived, or settled, it, and all reservations of rights contained therein, is overruled and denied.

3. Notice of the Sale Hearing was fair and equitable under the circumstances and complied in all respects with 11 U.S.C. § 102(1) and Bankruptcy Rules 2002, and 6004.

4. The sale of the Purchased Assets, the terms and conditions of the APA (including all schedules and exhibits affixed thereto), the bid by the Buyer, the assumption and assignment of the Assumed Agreements effective upon the Closing of the Sale to the Buyer (except as otherwise set forth herein), and the transactions contemplated thereby be, and hereby are, authorized and approved in all respects.

5. The sale of the Purchased Assets and the consideration provided by the Buyer under the APA is fair and reasonable and shall be deemed for all purposes to constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law.

6. The Buyer is hereby granted and is entitled to all of the protections provided to a good faith buyer under Bankruptcy Code section 363(m).

7. Subject to the terms of the APA, the Debtors hereby are authorized to assume, perform under, consummate, and implement the terms of the APA together with any and all additional instruments and documents that may be reasonably necessary or desirable to implement and effectuate the terms of the APA, this Order and sale of the Assets contemplated thereby including, without limitation, deeds, assignments, stock powers and other instruments of transfer, and to take all further actions as may reasonably be requested by the Buyer for the purpose of assigning, transferring, granting, conveying and conferring to the Buyer, or reducing to possession any or all of the Assets or Assumed Liabilities, as may be necessary or appropriate to the performance of the Debtors' obligations as contemplated by the Agreement, without any further corporate action or orders of this Court. The Buyer shall have no obligation to proceed

with the Closing of the Agreement until all conditions precedent to its obligations to do so have been met, satisfied or waived.

8. The Debtors and each other person or entity having duties or responsibilities under the APA, any agreements related thereto or this Order, and their respective directors, officers, employees, members, agents, representatives, and attorneys, are authorized and empowered, subject to the terms and conditions contained in the APA, to carry out all of the provisions of the APA and any related agreements; to issue, execute, deliver, file, and record, as appropriate, the documents evidencing and consummating the APA, and any related agreements; to take any and all actions contemplated by the APA, any related agreements or this Order; and to issue, execute, deliver, file, and record, as appropriate, such other contracts, instruments, releases, indentures, mortgages, deeds, bills of sale, assignments, leases, or other agreements or documents and to perform such other acts and execute and deliver such other documents, as are consistent with, and reasonably necessary or appropriate to implement, effectuate, and consummate, the APA, any related agreements and this Order and the transactions contemplated thereby and hereby, all without further application to, or order of, the Court or further action by their respective directors, officers, employees, members, agents, representatives, and attorneys, and with like effect as if such actions had been taken by unanimous action of the respective directors, officers, employees, members, agents, representatives, and attorneys of such entities. The secretary or any assistant secretary of the Debtors shall be, and hereby is, authorized to certify or attest to any of the foregoing actions (but no such certification or attestation shall be required to make any such action valid, binding, and enforceable). The Debtors are further authorized and empowered to cause to be filed with the secretary of state of any state or other applicable officials of any applicable governmental units any and all certificates, agreements, or

amendments necessary or appropriate to effectuate the transactions contemplated by the APA, any related agreements and this Order, including amended and restated certificates or articles of incorporation and by-laws or certificates or articles of amendment, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of all applicable governmental units or as any of the officers of the Debtors may determine are necessary or appropriate. The execution of any such document or the taking of any such action shall be, and hereby is, deemed conclusive evidence of the authority of such person to so act.

9. Effective as of the Closing, (a) the sale of the Purchased Assets by the Debtors to the Buyer shall constitute a legal, valid, and effective transfer of the Purchased Assets notwithstanding any requirement for approval or consent by any person and shall vest Buyer with all right, title, and interest of the Debtors in and to the Purchased Assets, free and clear of all Claims, Liens, Interests, and Encumbrances of any kind, pursuant to Bankruptcy Code section 363(f), and (b) the assumption of any Assumed Liabilities by the Buyer shall constitute a legal, valid, and effective delegation of any Assumed Liabilities to the Buyer and shall divest the Debtors of all liability with respect to any Assumed Liabilities.

10. The sale of the Purchased Assets is not subject to avoidance pursuant to Bankruptcy Code section 363(n).

11. On or before the Closing Date, the Buyer shall pay its share of Transfer Taxes, utility charges, real property Taxes, personal property taxes or similar ad valorem obligations which the Buyer is obligated to pay under the Agreement. On or before the Closing Date, the Seller shall segregate and reserve Sale Proceeds sufficient to pay when due, to the extent not paid on the Closing Date, (i) its share of Transfer Taxes, prorations, utility charges, real property Taxes, personal property taxes or similar ad valorem obligations which the Seller is



obligated to pay under the Agreement, (ii) all Cure Amounts payable by the Seller pursuant to the Agreement and the terms of this Order, and (iii) any success fee that may be payable to CRG Partners Group, LLC pursuant to an order of this Court.

12. Except to the extent specifically provided in the APA, upon the Closing, the Debtors shall be, and hereby are, authorized, and empowered, pursuant to Bankruptcy Code sections 105 and 363(b), to sell the Purchased Assets to the Buyer. The sale of the Purchased Assets shall vest the Buyer with all right, title, and interest of the Debtors to the Purchased Assets free and clear of any and all Claims, Liens, Interests, and Encumbrances and other liabilities and claims, whether secured or unsecured, choate or inchoate, filed or unified, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, disputed or undisputed, or known or unknown, whether arising prior to or subsequent to the Petition Date, whether imposed by agreement, understanding, law, equity or otherwise, with all such Claims, Liens, Interests, and Encumbrances to attach only to the proceeds of the sale with the same priority, validity, force, and effect, if any, as they now have in or against the Purchased Assets, subject to all claims and defenses the Debtors may possess with respect thereto. Following the Closing Date, no holder of any Claims, Liens, Interests, and Encumbrances in the Assets shall interfere with the Buyer's use and enjoyment of the Purchased Assets based on or related to such Claims, Liens, Interests and Encumbrances, or any actions that the Debtors may take in their chapter 11 cases and no person shall take any action to prevent, interfere with or otherwise enjoin consummation of the transactions contemplated in or by the APA or this Order.

13. The provisions of this Order authorizing the sale of the Purchased Assets free and clear of Liens, Claims, Encumbrances, and Interests, other than Assumed Liabilities,

shall be self-executing, and neither the Debtors nor the Buyer shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate and implement the provisions of this Order. However, subject to the terms of the APA the Debtors and the Buyer, and each of their respective officers, employees and agents are hereby authorized and empowered to take all actions and execute and deliver any and all documents and instruments that either the Debtors or the Buyer deem reasonably necessary or appropriate to implement and effectuate the terms of the APA and this Order. Moreover, effective as of the Closing, the Buyer, its successors and assigns, shall be designated and appointed the Debtors' true and lawful attorney and attorneys with respect to the Purchased Assets, with full power of substitution, in the Debtors' name and stead, on behalf and for the benefit of the Buyer, its successors and assigns, to demand and receive any and all of the Purchased Assets and to give receipts and releases for and in respect of the Purchased Assets, or any part thereof, and from time to time to institute and prosecute the Debtors' name, for the benefit of the Buyer, its successors and assigns, any and all proceedings at law, in equity or otherwise, which the Buyer, its successors and assigns, may deem proper for the collection or reduction to possession of any of the Purchased Assets, and to do all acts and things with respect to the Purchased Assets that the Buyer, its successors and assigns, shall deem reasonably desirable. The foregoing powers are coupled with an interest and are and shall be irrevocable by the Debtors.

14. Upon the Closing Date, the Debtors' creditors are authorized to execute such documents and take all other actions as may be necessary to release any Encumbrances of any kind against the Assets, as such Encumbrances may have been recorded or may otherwise exist. If any person or entity that has filed financing statements or other documents or

agreements evidencing any Liens, Claims, Encumbrances, or Interests in or against the Purchased Assets shall not have delivered to the Debtors prior to the Closing after request therefor, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of all such Liens, Claims, Encumbrances, or Interests that the person or entity has with respect to the Purchased Assets, the Debtors are hereby authorized to execute and file such statements, and empowered to perform under, all instruments, releases and other documents on behalf of the person or entity with respect to such Purchased Assets prior to the Closing, and the Buyer is authorized to file such documents after Closing.

15. To the greatest extent available under applicable law, the Buyer shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Debtors with respect to the Purchased Assets, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to the Buyer as of the Closing Date.

16. All of the Debtors' interests in the Purchased Assets to be acquired by the Buyer under the APA shall be, as of the Closing Date and upon the occurrence of the Closing, transferred to and vested in the Buyer. Upon the occurrence of the Closing, this Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Purchased Assets acquired by the Buyer under the APA and/or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in the Purchased Assets to the Buyer.

17. To the extent permitted by applicable law, except as expressly provided in the APA, the Buyer is not assuming nor shall it or any affiliate of Buyer be in any way liable or responsible, as a successor or otherwise, for any liabilities, debts, or obligations of the Debtors in any way whatsoever relating to or arising from the Debtors' ownership or use of the Purchased Assets prior to the consummation of the transactions contemplated by the APA, or any liabilities calculable by reference to the Debtors or their operations or the Purchased Assets, or relating to continuing or other conditions existing on or prior to consummation of the transactions contemplated by the APA, which liabilities, debts, and obligations are hereby extinguished insofar as they may give rise to liability, successor or otherwise, against Buyer or any affiliate of the Buyer.

18. Except as otherwise provided in the APA, upon the Closing, each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release their respective Interests or Claims against the Purchased Assets, if any, as may have been recorded or may otherwise exist.

19. Except as otherwise expressly provided in the APA, all persons or entities presently on or after the Closing in possession of some or all of the Assets are directed to surrender possession of the Purchased Assets to the Buyer on the Closing Date, or at such time thereafter as the Buyer may request.

20. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA and this Order.

21. The Buyer has not assumed or is otherwise not obligated for any of the Debtors' liabilities other than the Assumed Liabilities as set forth in the APA, and the Buyer has

not purchased any of the Excluded Assets. Consequently, all persons, Governmental Units (as defined in Bankruptcy Code sections 101(27) and 101(41)) and all holders of Claims, Liens, Interests, or Encumbrances based upon or arising out of liabilities retained by the Debtors are hereby enjoined from taking any action against the Buyer or the Purchased Assets to recover any Claims, Liens, Interests, or Encumbrances or on account of any liabilities of the Debtors other than Assumed Liabilities pursuant to the APA. All persons holding or asserting any Interest in the Excluded Assets are hereby enjoined from asserting or prosecuting such Claims, Liens, Interests, or Encumbrances or cause of action against the Buyer or the Purchased Assets for any liability associated with the Excluded Assets.

22. To the extent permitted under applicable law, the Buyer is not a “successor” to the Debtors or their estates by reason of any theory of law or equity, and the Buyer shall not assume, nor be deemed to assume, or in any way be responsible for any liability or obligation of any of the Debtors and/or their estates including, but not limited to, any bulk sales law, successor liability or similar liability except as otherwise expressly provided in the APA. Except to the extent the Buyer assumes the Assumed Liabilities pursuant to the APA, neither the purchase of the Purchased Assets by the Buyer or its affiliates, nor the fact that the Buyer or its affiliates are using any of the Purchased Assets previously operated by the Debtors, will cause the Buyer or any of its affiliates to be deemed a successor in any respect to the Debtors’ businesses within the meaning of any foreign, federal, state or local revenue, pension, ERISA, tax, labor, employment, environmental, or other law, rule or regulation (including without limitation filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors’ liability under such law, rule or regulation or doctrine, or under any product warranty liability law or doctrine with respect to the

Debtors' liability under such law, rule or regulation or doctrine. Buyer and its affiliates shall have no liability or obligation under the WARN Act (29 U.S.C. §§ 210 et seq.) or the Comprehensive Environmental Response Compensation and Liability Act, or any foreign, federal, state or local labor, employment, or environmental law by virtue of the Buyer's purchase of the Purchased Assets.

23. Pursuant to Bankruptcy Code sections 105 and 363, all persons and entities, including, but not limited to, the Debtors, all debt security holders, equity security holders, the Debtors' employees or former employees, governmental, tax and regulatory authorities, lenders, parties to or beneficiaries under any benefit plan, trade and other creditors asserting or holding a Lien, Claim, Encumbrance, or Interest of any kind or nature whatsoever against, in or with respect to any of the Debtors or the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to the Debtors, the Purchased Assets, the operation of the Debtors' businesses prior to the Closing Date or the transfer of the Purchased Assets to the Buyer, shall be forever barred, estopped, and permanently enjoined from asserting, prosecuting or otherwise pursuing such Lien, Claim, Encumbrance or Interest against the Buyer or any affiliate, successor or assign thereof and each of their respective current and former members, officers, directors, managed funds, investment advisors, attorneys, employees, partners, affiliates and representatives (each of the foregoing in its individual capacity), or the Purchased Assets.

24. Subject to the terms of the APA, the APA and any related agreements may be waived, modified, amended, or supplemented by agreement of the Debtors and the Buyer, without further action or order of the Court; provided, however, that any such waiver,

modification, amendment, or supplement is not material and substantially conforms to, and effectuates, the APA and any related agreements.

25. The failure specifically to include any particular provisions of the APA or any related agreements in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court, the Debtors, and the Buyer that the APA and any related agreements are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Order prior to Closing.

26. The Debtors are hereby authorized, in accordance with sections 105(a), 363, and 365 of the Bankruptcy Code, to (a) assume and assign to the applicable Buyer, effective upon the Closing Date (except as otherwise expressly set forth herein), the Assumed Agreements and/or to transfer, sell, and deliver to the Buyer all of Debtors' right, title and interest in and to the Assumed Agreements, free and clear of all Liens, Interests and Claims of any kind or nature whatsoever, and (b) execute and deliver to the Buyer such other documents or other instruments as may be necessary to assign and transfer the Assumed Agreements to the Buyer.

27. The requirements of sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code are hereby deemed satisfied with respect to the Assumed Agreements (subject to the "Cure Amount" procedures set forth herein).

28. The Assumed Agreements shall be transferred to, and remain in full force and effect for the benefit of, the Buyer, without any default or event of default thereunder, notwithstanding any provision in any such Assumed Agreement (including provisions of the type described in sections 365(b)(2), (e)(1) and (f)(1) of the Bankruptcy Code) which prohibits, restricts or conditions such assignment or transfer. The non-Debtor party to each Assumed Agreement shall be deemed to have consented to such assignment under section 365(c)(1)(B) of

the Bankruptcy Code, and the Buyer shall enjoy all of the rights and benefits under each such Assumed Agreement as of the applicable Closing Date without the necessity of obtaining such non-Debtor party's written consent to the assumption and assignment thereof.

29. The information provided by and about the applicable Buyer is and shall be deemed to constitute "adequate assurance of future performance" under the Bankruptcy Code (including under section 365(f)(2)(B) thereof).

30. Pursuant to section 365(k) of the Bankruptcy Code, the Debtors and their estates shall be relieved from any liability for any breach of any Assumed Agreement after such assignment to and assumption by the Buyer on the Closing Date.

31. All liquidated monetary defaults, claims or other obligations of the Debtors arising or accruing or relating to time periods under each Assumed Agreement prior to the assumption of such Assumed Agreement (without giving effect to any acceleration clauses or any default provisions of the kind specified in Bankruptcy Code section 365(b)(2)), determined in accordance with the Procedures Order, shall be fixed in the amount reflected on Exhibit B hereto, and any undisputed portion of such defaults, claims or other obligations shall be promptly cured and paid as provided for under the APA upon the Closing Date or, or as soon as practicable thereafter, for any disputed portion thereof, upon the later determination of the Cure Amount.

32. Subject to the terms hereof with respect to the Cure Amounts, all defaults or other obligations of the Debtors under the Assumed Agreements arising or accruing prior to the Closing Date have been cured or shall promptly be cured by the Debtors or the Buyer, as provided for under the APA, in accordance with the terms hereof such that the Buyer and its



successors and assigns shall have no liability or obligation with respect to any default or obligation arising or accruing under any Assumed Agreement on or prior to the Closing Date.

33. Upon assignment of the Assumed Agreements to the Buyer on the Closing Date, no default shall exist under any Assumed Agreement and no non-Debtor party to any Assumed Agreement shall be permitted to declare a default by the Buyer under such Assumed Agreement or otherwise take action against the Buyer as a result of any Debtors' financial condition, bankruptcy or failure to perform any of their obligations under the Assumed Agreements, including any failure to pay any amounts necessary to cure any Debtors' defaults thereunder. Upon entry of this Order and assumption and assignment of the Assumed Agreements in accordance with the terms hereof, the Buyer shall be deemed in compliance with all terms and provisions of the Assumed Agreements.

34. Notwithstanding any other provision in this Order, upon assumption of the Assumed Agreements, the Buyer shall assume all liabilities arising under the Assumed Agreements that arise and accrue on and after the Closing Date.

35. No bulk sale law or any similar law of any state or other jurisdiction shall apply in any way to the sale and the transactions contemplated by the APA.

36. To the extent any provisions of this Order conflict with the terms and conditions of the APA, this Order shall govern and control.

37. Nothing in this Order shall alter or amend the APA and the obligations of the Debtors and Buyer thereunder.

38. This Order and APA shall be binding upon and govern the acts of all Persons and entities, including without limitation, the Debtors and the Buyer, their respective successors and permitted assigns, including, without limitation, any Chapter 11 trustee

hereinafter appointed for the Debtors' estates or any trustee appointed in a Chapter 7 case if this case is converted from Chapter 11, all creditors of any Debtor (whether known or unknown), filing agents, filing officers, title agents, recording agencies, secretaries of state, 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 in or to the Assets.

39. The provisions of this Order are non-severable and mutually dependent.

40. Nothing in any order of this Court or contained in any plan of reorganization or liquidation confirmed in the Chapter 11 Cases, or in any subsequent or converted cases of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code, shall conflict with or derogate from the provisions of the APA or the terms of this Order.

41. In resolution of the Objection of SimplexGrinnell, LP to Notice to Counterparties to Executory Contracts and Unexpired Leases That May Be Assumed and Assigned (Docket No. 303), the cure amounts with respect to the SimplexGrinnellContracts is fixed at \$8,107.18.

42. Upon the Debtors' representation that no trailers that are the subject of rental agreements with Transport International Pool, Inc., are to be sold or assumed and assigned to the Buyer, the Limited Objection of Transport International Pool, Inc. to the Motion of the Debtors for an Order (A) Approving Sale Procedures Relating to Sale of Assets Not Included in the Simmons Sale, (B) Approving Sale of Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests Pursuant to 11 U.S.C. Section 363 (b), (f), and (m), and (C) Granting Related Relief (Docket No. 290) is withdrawn.

43. Notwithstanding Bankruptcy Rules 6004, 6006, and 7062, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any person or entity obtaining a stay pending appeal, the Debtors and the Buyer are free to close under the APA at any time, subject to the terms of the APA. In the absence of any person or entity obtaining a stay pending appeal, if the Debtors and the Buyer close under the APA, the Buyer shall be deemed to be acting in "good faith" and shall be entitled to the protections of Bankruptcy Code section 363(m) as to all aspects of the transactions under and pursuant to the APA if this Order or any authorization contained herein is reversed or modified on appeal.

44. This Court shall retain exclusive jurisdiction to enforce the terms and provisions of this Order, the Procedures Order, and the APA in all respects and to decide any disputes concerning this Order, the APA, or the rights and duties of the parties hereunder or thereunder or any issues relating to the APA and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Purchased Assets and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the Purchased Assets free and clear of all Liens, Claims, Interests, and Encumbrances. To the extent there are any inconsistencies between the terms of this Order and the APA, the terms of this Order shall control.

Dated: Aug 20, 2008

  
Honorable Peter J. Walsh  
United States Bankruptcy Judge

**EXHIBIT A**

## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (the "**Agreement**") is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2008, by and between HARVEST CONSUMER INSULATION, INC., a Delaware corporation (the "**Buyer**"), on the one hand, and Western Nonwovens, Inc., a Delaware corporation (the "**Seller**" and, together with Buyer, the "**Parties**"), a Debtor and Debtor in Possession under Case No. \_\_\_\_\_ (the "**Case**") in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**").

### RECITALS

A. Seller is in the business of designing and manufacturing consumer insulation products and materials for use in various applications and at 641 Northpark Drive, Clinton, Tennessee 33716 (the "**Business**").

B. Seller wishes to sell to Buyer, pursuant to Sections 363 of Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**"), the assets of Seller more particularly described below and heretofore used exclusively in connection with or arising out of the operation of the Business, all at the price and on the other terms and conditions specified in detail below, and Buyer wishes to so purchase and acquire such assets from Seller.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### 1. Transfer of Assets.

1.1 Purchase and Sale of Assets. On the Closing Date, as hereinafter defined, in consideration of the covenants, representations and obligations of Buyer hereunder, and subject to the conditions hereinafter set forth, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, the Seller's right, title and interest as of the Closing Date in and to the following (collectively, excluding the Excluded Assets (as defined in Section 1.2 below), the "**Property**"):

1.1.1 Leases and Contracts. Seller's right, title and interest in and to (i) the lessee's interest under that real property lease described on **Schedule 1.1.1-(i)** attached to this Agreement and incorporated herein by this reference (collectively, the "**Real Property Lease**"), and (ii) those other contracts, leases, orders, purchase orders, licenses, agreements and similar arrangements described on **Schedule 1.1.1-(ii)** attached to this Agreement and incorporated herein by this reference (collectively, the "**Other Contracts**" and together with the Real Property Lease, the "**Leases and Contracts**").

1.1.2 INTENTIONALLY OMITTED

1.1.3 Personal Property. Those items of equipment and tangible personal property owned by Seller and heretofore used exclusively in connection with the

Business (which includes all Personal Property located at 641 Northpark Drive, Clinton, Tennessee), including, without limitation, all such furniture, vehicles, machinery, equipment, tools, spare parts, computers, fixtures and furnishings and other items of tangible personal property listed or described in **Schedule 1.1.3** attached to this Agreement and incorporated herein by this reference (collectively, the **"Personal Property"**). As used herein, the Personal Property does not include the Inventory (as defined below). The Personal Property shall also expressly exclude any equipment or other tangible property held by Seller pursuant to a lease, rental agreement, contract, license or similar arrangement (a **"Contract"**) where Buyer does not assume the underlying Contract relating to such personal property at the Closing.

1.1.4 Intangible Property. All intangible personal property owned or held by Seller and heretofore used exclusively in connection with the Business, but in all cases only to the extent of Seller's interest and only to the extent transferable, together with all books, records and like items pertaining to the Business, including, without limitation, the names "Climashield" and all of its variants, Climashield.com and the associated website and URLs, the goodwill of the Business, patents, processes, trademarks, trade names, service marks, catalogues, customer lists and other customer data bases, correspondence with present or prospective customers and suppliers, advertising materials, software programs, and telephone exchange numbers identified with the Business and any right, title and interest of Seller in and to those items described on **Schedule 1.1.4** attached hereto and incorporated herein by this reference (collectively, the **"Intangible Property"**). As used in this Agreement, Intangible Property shall in all events exclude (i) any materials containing privileged communications or information about employees, disclosure of which would violate an employee's reasonable expectation of privacy and any other materials which are subject to attorney-client or any other privilege, and (ii) any software or other item of intangible property held by Seller pursuant to a license or other Contract where Buyer does not assume the underlying Contract relating to such intangible personal property at the Closing.

1.1.5 Governmental Permits. To the extent transferable and assignable, all of Seller's interest in all licenses, certificates of occupancy, permits, registrations, certificates of public convenience and necessity, approvals, licenses, easements, authorizations and operating rights issued or granted by any governmental or similar authority having jurisdiction over the Business and relating exclusively to the operation of the Business, as listed and described on **Schedule 1.1.5** attached hereto and incorporated herein by this reference (collectively, the **"Permits and Licenses"**).

1.1.6 Deposits, Etc. All cash deposits and prepaid items relating to or arising exclusively in connection with the operation of the Business that are listed and described on **Schedule 1.1.6** attached hereto and incorporated herein by this reference (collectively, the **"Sellers' Deposits"**).

1.1.7 INTENTIONALLY OMITTED

1.1.8 Inventory. All supplies, goods, materials, work in process, inventory and stock in trade owned and held by Seller for use solely in connection with the

operation of the Business that are listed and described on **Schedule 1.1.8** attached hereto and incorporated herein by this reference (collectively, the **"Inventory"**).

1.1.9 Vendor Items. All promotional allowances and vendor rebates and similar items relating exclusively to the operation of the Business that are listed and described on **Schedule 1.1.9** attached hereto and incorporated herein by this reference (collectively, the **"Vendor-Related Assets"**).

1.1.10 Warranties, Etc. All prepayments, warranties, guarantees, refunds, reimbursements, rights of set-off and rights of recoupment relating exclusively to the Property and that are listed and described on **Schedule 1.1.10** attached hereto and incorporated herein by this reference (collectively, the **"Claims"**).

#### 1.1.11 INTENTIONALLY OMITTED

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the Property shall be limited to the items identified or described in Section 1.1 above and shall in any event exclude all of the following (collectively, the **"Excluded Assets"**): (i) those items excluded pursuant to the provisions of Section 1.1 above; (ii) all cash or cash equivalents; (iii) Seller's rights under this Agreement and all cash and non-cash consideration payable or deliverable to Seller pursuant to the terms and provisions hereof; (iv) insurance proceeds, claims and causes of action with respect to or arising in connection with (A) any Contract which is not assigned to Buyer at the Closing, or (B) any item of tangible or intangible property not acquired by Buyer at the Closing; (v) any Real Property Lease, Other Contract or any other contract, lease or agreement to which Seller is a party which is not listed or described on **Schedule 1.1.1-(i)** or **Schedule 1.1.1-(ii)** and any Real Property Lease or Other Contract which is not assumable and assignable as a matter of applicable law (including, without limitation, any with respect to which any consent requirement in favor of the counter-party thereto may not be overridden pursuant to Section 365 of the Bankruptcy Code) (collectively, **"Excluded Contracts"**), (vi) all securities, whether capital stock or debt, of Seller or any other entity; (vii) all rights and claims in or to any refunds or credits of or with respect to any taxes, assessments or similar charges paid by or on behalf of Seller; (viii) tax records, minute books, stock transfer books and corporate seal of Seller; (ix) any letters of credit or similar financial accommodations issued to any third party(ies) for the account of Seller and any collateral therefor and other collateral deposits and prepaid items associated with the Property; (x) all rights, claims and causes of action of Seller that are not specified on **Schedule 1.1.10**, including without limitation all rights, claims and causes of action of Seller against former officers, directors, employees, members, principals, agents, and representatives of Seller, (xi) all preference or avoidance claims and actions of the Seller, including, without limitation, any such claims and actions arising under Sections 544, 547, 548, 549, and 550 of the Bankruptcy Code; (xii) all tax refunds, rebates, credits and similar items to which Seller is or may be entitled, (xiii) all accounts and notes receivable (whether current or non-current) and all causes of action specifically pertaining to the collection of the foregoing (collectively, the **"Accounts Receivable"**) and (xiv) those additional assets, if any, listed on **Schedule 1.2** attached hereto and incorporated herein by this reference.

1.3 Instruments of Transfer. The sale, assignment, transfer, conveyance and delivery of the Property to Buyer shall be made by deeds, assignments, bill of sale, and other instruments of assignment, transfer and conveyance provided for in Section 3 below and such other instruments as may reasonably be requested by Buyer to transfer, convey, assign and deliver the Property to Buyer, but in all events only to the extent that the same do not impose any monetary obligations upon Seller or in any other respect increase in any material way the burdens imposed by the other provisions of this Agreement upon Seller.

2. Consideration.

2.1 Purchase Price.

2.1.1. Subject to the provisions of Section 2.5 below, the cash consideration to be paid by Buyer to Seller for the Property (the "**Purchase Price**") shall be an amount equal to One Million Fifty Thousand Dollars (\$1,050,000), plus, to the extent not taken into account in the adjustment to be made pursuant to Section 2.5 below, an amount equal to the Sellers' Deposits (if any).

2.1.2 The Purchase Price shall be paid as follows:

(a) Concurrently with the mutual execution and delivery of this Agreement (the date of such mutual execution and delivery is sometimes referred to herein as the "**Execution Date**"), Buyer shall deposit into an escrow (the "**Escrow**") with an escrow agent (the "**Escrow Holder**") reasonably designated by Seller an amount equal to \$120,000 (the "**Purchase Deposit**") in immediately available, good funds (funds delivered in this manner are referred to herein as "**Good Funds**"), pursuant to joint escrow instructions to be delivered to the Escrow Holder on or before the Execution Date. In turn, the Escrow Holder shall immediately deposit the Purchase Deposit into an interest-bearing account. The Purchase Deposit shall become nonrefundable upon the termination of the transaction contemplated by this Agreement by reason of Buyer's default of any obligation hereunder (a "**Buyer Default Termination**"), it being agreed that Seller shall not have the right to so terminate this Agreement unless Buyer has failed to cure the applicable default within five (5) days following its receipt of written notice thereof from Seller. At the Closing, the Purchase Deposit (and any interest accrued thereon) shall be credited and applied toward payment of the Purchase Price. In the event the Purchase Deposit becomes nonrefundable by reason of a Buyer Default Termination, Escrow Holder shall immediately disburse the Purchase Deposit and all interest accrued thereon to Seller to be retained by Seller for its own account. If the transactions contemplated herein terminate by reason of (A) Seller's material default under this Agreement, it being agreed that Buyer shall not have the right to so terminate this Agreement unless Seller has failed to cure the applicable default within five (5) days following their receipt of written notice thereof from Buyer, or (B) the failure of a condition to Buyer's obligations hereunder, the Escrow Holder shall return to Buyer the Purchase Deposit (together with all interest accrued thereon), but less Buyer's one-half share of the Escrow Holder's escrow fees and charges.



(b) On the Closing Date, Buyer shall (A) cause the Escrow Holder to deliver the Purchase Deposit (together with all accrued interest thereon) to Seller, and (B) pay and deliver, in Good Funds, the balance of the Purchase Price to Seller.

## 2.2 Assumed Liabilities.

2.2.1. Notwithstanding any other provision in this Agreement, Buyer shall not directly or indirectly assume any liabilities or obligations of Seller of any kind or nature, except, effective as of the Closing Date, Buyer shall assume only the following liabilities and obligations of Seller, and no others: (i) all obligations of Seller arising or accruing after the Closing Date under the Leases and Contracts, (ii) all cure obligations required to be paid pursuant to the Approval Order as a condition to Buyer's assumption and assignment of the Leases and Contracts and (iii) with respect to any such additional liabilities and obligations as may be set forth or described on **Schedule 2.2.1-(ii)** hereto (collectively, the "**Assumed Liabilities**").

2.3 Purchase Price Allocation. On the Closing Date, Buyer shall prepare and deliver to Seller a schedule (the "**Allocation Schedule**") allocating the Purchase Price among the various assets comprising the Property in accordance with Treasury Regulation 1.1060-1 (or any comparable provisions of state or local tax law) or any successor provision. Buyer and Seller shall report and file all tax returns (including any amended tax returns and claims for refund) consistent with the Allocation Schedule, and shall take no position contrary thereto or inconsistent therewith (including in any audits or examinations by any taxing authority or any other proceedings). Buyer and Seller shall file or cause to be filed any and all forms (including U.S. Internal Revenue Service Form 8594), statements and schedules with respect to such allocation, including any required amendments to such forms.

## 3. Closing Transactions.

3.1 Closing Conference. The Closing of the transactions provided for herein (the "**Closing**") shall take place at such place or places as the Parties may mutually agree upon.

3.2 Closing Date. Unless otherwise agreed to in writing by the Seller and the Buyer, the Closing shall occur on the date (the "**Closing Date**") that is the later to occur of (i) satisfaction or waiver, as applicable, of all conditions precedent set forth in Sections 4.2 (setting forth the conditions precedent to Buyer's obligation to close) and 4.1 hereof (setting forth the conditions precedent to Seller's obligation to close), and (ii) the later of August 22, 2008 or two business days following entry of the Approval Order in the Case; provided, however, in no event shall the Closing take place later than August 25, 2008 (unless said date is extended by Buyer).

3.3 Seller's Deliveries to Buyer at Closing. On the Closing Date, Seller shall make the following deliveries to Buyer:

3.3.1 An Assignment and Assumption of Leases and Contracts substantially in the form and content attached as **Exhibit "A"** hereto, duly executed by Seller

pursuant to which Seller shall assign to Buyer Seller's interest, if any, in the Leases and Contracts (the "**Assignment of Leases**").

3.3.2 A Bill of Sale and Assignment, duly executed by Seller in the form and on the terms of the bill of sale attached hereto as **Exhibit "B,"** pursuant to which Seller transfers and assigns to Buyer Seller's right, title and interest in and to the Personal Property and the Assignment Property (the "**Bill of Sale**").

3.3.3 A counterpart Assignment of Intangible Property, duly executed by Seller, in the form and content of the assignment of intangible property attached as **Exhibit "C"** hereto, pursuant to which Seller assigns to Buyer Seller's interest, if any, in and to the Intangible Property (the "**Assignment of Intangible Property**").

3.3.4 Any such other documents, funds or other things reasonably contemplated by this Agreement to be delivered by Seller to Buyer at the Closing.

3.3.5 A copy of the Approval Order.

3.4 Buyer's Deliveries to Seller at Closing. On the Closing Date, Buyer shall make or cause the following deliveries to Seller:

3.4.1 Payment of the Purchase Price.

3.4.2 A counterpart of the Assignment of Leases, duly-executed by Buyer.

3.4.3 An Assumption of Liabilities with respect to the Assumed Liabilities, in the form and content attached as **Exhibit "D"** hereto and incorporated herein by this reference, duly-executed by Buyer (the "**Assumption of Liabilities**").

3.4.4 Any such other documents, funds or other things reasonably contemplated by this Agreement to be delivered by Buyer to Seller at the Closing.

3.5 Prorations. Rent, current taxes, prepaid advertising, utilities and other items of expense (including, without limitation, any prepaid insurance, maintenance, tax or common area or like payments under the Real Property Lease, or any of them) relating to or attributable to the Business and/or the Property shall be prorated between Sellers and Buyer as of the Closing Date. All liabilities and obligations due in respect of periods prior to or as of the Closing Date shall be paid in full or otherwise satisfied by Seller and all liabilities and obligations due in respect of periods after the Closing Date shall be paid in full or otherwise satisfied by Buyer at Closing, to the extent calculable and, otherwise promptly upon calculation. Rent shall be prorated on the basis of a thirty (30) day month.

3.6 Sales, Use and Other Taxes. Any sales, purchase, transfer, stamp, documentary stamp, use or similar taxes under the laws of the states in which any portion of the Property is located, or any subdivision of any such state, or under any federal law or the laws or

regulations of any federal agency or authority, which may be payable by reason of the sale or transfer of the Property under this Agreement or the transactions contemplated herein shall be borne and paid by Buyer.

3.7 Possession. Right to possession of the Property shall transfer to Buyer on the Closing Date. Seller shall transfer and deliver to Buyer on the Closing Date such keys, locks and safe combinations and other similar items as Buyer may reasonably require to obtain occupation and control of the Property, and shall also make available to Buyer at their then existing locations the originals of all documents in Seller's actual possession that are required to be transferred to Buyer by this Agreement.

#### 4. Conditions Precedent to Closing.

4.1 Conditions to Seller's Obligations. Seller's obligation to make the deliveries required of Seller at the Closing Date and otherwise consummate the transaction contemplated herein shall be subject to the satisfaction or waiver by Seller of each of the following conditions:

4.1.1 All of the representations and warranties of Buyer contained herein shall continue to be true and correct at the Closing in all material respects.

4.1.2 Buyer shall have executed and delivered to Seller the Assignment of Leases and the Assumption of Liabilities.

4.1.3 Buyer shall have delivered, or shall be prepared to deliver to Seller at the Closing, all cash and other documents required of Buyer to be delivered at the Closing.

4.1.4 Buyer shall have delivered to Seller appropriate evidence of all necessary entity action by Buyer in connection with the transactions contemplated hereby, including, without limitation: (i) certified copies of resolutions duly adopted by Buyer's Board of Directors approving the transactions contemplated by this Agreement and authorizing the execution, delivery, and performance by Buyer of this Agreement; and (ii) a certificate as to the incumbency of those officers of Buyer executing this Agreement and any instrument or other document delivered in connection with the transactions contemplated by this Agreement.

4.1.5 No action, suit or other proceedings shall be pending before any court, tribunal or governmental authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

4.1.6 Buyer shall have substantially performed or tendered performance of each and every material covenant on Buyer's part to be performed which, by its terms, is required to be performed at or before the Closing.

4.1.7 The Bankruptcy Court shall have entered the Approval Order and Procedures Order in accordance with Sections 8(a) and 8(b) below and the Approval Order shall not have been stayed as of the Closing Date.

4.2 Conditions to Buyer's Obligations. Buyer's obligation to make the deliveries required of Buyer at the Closing and otherwise consummate the transaction contemplated herein shall be subject to the satisfaction or waiver by Buyer of each of the following conditions:

4.2.1 Seller shall have substantially performed or tendered performance of each and every covenant on Seller's part to be performed which, by its terms, is required to be performed or capable of performance at or before the Closing.

4.2.2 All of the representations and warranties of Seller contained herein shall continue to be true and correct at the Closing in all material respects.

4.2.3 Seller shall have executed and be prepared to deliver to Buyer the Assignment of Leases, the Assumption of Liabilities, the Bill of Sale and the Assignment of Intangible Property.

4.2.4 Seller shall have delivered, or shall be prepared to deliver to Buyer at the Closing, all other documents required of Seller to be delivered at the Closing.

4.2.5 Seller shall have delivered to Buyer appropriate evidence of all necessary corporate action by Seller in connection with the transactions contemplated hereby, including, without limitation: (i) certified copies of resolutions duly adopted by Seller's directors approving the transactions contemplated by this Agreement and authorizing the execution, delivery, and performance by Seller of this Agreement; and (ii) a certificate as to the incumbency of officers of Seller executing this Agreement and any instrument or other document delivered in connection with the transactions contemplated by this Agreement.

4.2.6 No action, suit or other proceedings shall be pending before any court, tribunal or governmental authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

4.2.7 The Bankruptcy Court shall have entered the Approval Order and Procedures Order in accordance with Sections 8(a) and 8(b) below and the Approval Order shall not have been stayed as of the Closing Date. The Approval Order shall be reasonably acceptable to Buyer and shall contain findings that (i) notice of the hearing on the Sale Motion was given in accordance with the United States Bankruptcy Code (the "Code") and such notice was appropriate under the circumstances, and (ii) Buyer is a "good faith" purchaser entitled to the protections afforded by section 363(m) of the Code.

Any waiver of a condition shall be effective only if such waiver is stated in writing and signed by the waiving Party; provided, however, that the consent of a Party to the Closing shall constitute a waiver by such Party of any conditions to Closing not satisfied as of the Closing Date.

5. Seller's Representations and Warranties. Seller hereby makes the following representations and warranties to Buyer:

5.1 Organization, Standing and Power. Seller is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware. Seller has all requisite entity power and authority to own, lease and, subject to the provisions of the Bankruptcy Code applicable to debtors in possession, operate its properties, to carry on Seller's business as now being conducted. Subject to entry of the Approval Order, Seller has the power and authority to execute, deliver and perform this Agreement and all writings relating hereto.

5.2 Validity and Execution. This Agreement has been duly executed and delivered by Seller and, upon entry of the Approval Order, will constitute the valid and binding obligation of Seller enforceable against it in accordance with its terms, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other laws (whether statutory, regulatory or decisional), now or hereafter in effect, relating to or affecting the rights of creditors generally or by equitable principles (regardless of whether considered in a proceeding at law or in equity).

5.3 No Conflict. Subject to the entry of the Approval Order, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Seller do not and will not: (i) conflict with or result in a breach of the articles of incorporation or by-laws of Seller; (ii) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court or governmental authority, or (iii) violate or conflict with or constitute a default under any agreement, instrument or writing of any nature to which Buyer is a Party or by which Buyer or its assets or properties may be bound.

6. Buyer's Warranties and Representations. In addition to the representations and warranties contained elsewhere in this Agreement, Buyer hereby makes the following representations and warranties to Seller:

6.1 Organization, Standing and Power. Buyer is a corporation duly organized, validly existing and in good standing under the laws of Delaware. Buyer has all requisite entity power and authority to own, lease and operate its properties, to carry on its business as now being conducted and to execute, deliver and perform this Agreement and all writings relating hereto.

6.2 No Conflict. The execution, delivery and performance of this Agreement and all writings relating hereto by Buyer have been duly and validly authorized. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Buyer do not and will not: (i) conflict with or result in a breach of the articles of incorporation or by-

laws of Buyer or, if applicable, other organizational documents or agreements of Buyer; (ii) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court or governmental authority; or (iii) violate or conflict with or constitute a default under any agreement, instrument or writing of any nature to which Buyer is a Party or by which Buyer or its assets or properties may be bound.

7. "AS IS" Transaction. Buyer hereby acknowledges and agrees that, except only as provided in Section 5 above, Seller makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Property (including, without limitation, income to be derived or expenses to be incurred in connection with the Property, the physical condition of the Personal Property or Inventory, the environmental condition or other matter relating to the physical condition or the value of the Property (or any portion thereof), the transferability of the Property or any portion thereof, the terms, amount, validity, collectibility or enforceability of the Accounts Receivable or any Assumed Liabilities or Lease or Contract, the merchantability or fitness of the Personal Property, the Inventory or any other portion of the Property for any particular purpose, whether the assignment of any Lease or Contract without the consent of the counterparties thereto or any Lease or Contract would constitute a default or give rise to a right of termination thereunder, or any other matter or thing relating to the Property or any portion thereof). Without in any way limiting the foregoing, Seller hereby disclaims any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Property. Buyer further acknowledges that Buyer has conducted an independent inspection and investigation of the physical condition of all portions the Property and all such other matters relating to or affecting or comprising the Property and/or the Assumed Liabilities (including, without limitation, those matters, if any, disclosed to Buyer pursuant to **Schedule 7** attached hereto and incorporated herein by this reference) as Buyer deemed necessary or appropriate and that in proceeding with its acquisition of the Property, Buyer is doing so based solely upon such independent inspections and investigations. Accordingly, Buyer will accept the Property at the Closing **"AS IS, "WHERE IS," and "WITH ALL FAULTS."**

8. Bankruptcy Court Approvals. On or about July 14, 2008, Seller filed a motion (the **"Sale Motion"**) for an order (the **"Approval Order"**) from the Bankruptcy Court which (i) approves the sale of the Property to Buyer and the assignment to Buyer of the Leases and Contracts on the terms and conditions set forth in this Agreement and authorizes the Seller to proceed with this transaction, (ii) includes a specific finding that Buyer is a good faith Buyer of the Property, (iii) orders Buyer to pay, concurrently with the Closing and as a condition to Buyer's assumption and assignment thereof, all cure amounts owing to the counterparties to the Leases and Contracts, and (iv) states that the sale of the Property to Buyer shall be free and clear of all liens, claims, interests and encumbrances whatsoever (other than the lien of current taxes not yet payable with respect to any Property and those other liens, claims, interests and encumbrances, if any, listed on **Schedule 8(a)(iii)** attached hereto and incorporated herein by this reference). If requested by Seller or the Bankruptcy Court, Buyer shall provide adequate assurance of future performance (satisfactory to the Bankruptcy Court) to the counterparties to the Leases and Contracts. Seller shall use reasonable efforts to obtain the Approval Order. Both Buyer's and Seller's obligations to consummate the transactions contemplated in this Agreement which the Buyer and Seller may hereafter enter into shall be conditioned upon the Bankruptcy

Court's entry of the Approval Order. If the Bankruptcy Court refuses to issue the Approval Order or to approve any third party Buyer at the hearing on the Sale Motion, then this transaction shall automatically terminate and the Seller and the Buyer shall be relieved of any further liability or obligation hereunder. In the event that a third party (an "Upset Buyer" and the underlying agreement between the Upset Buyer and Seller, the "Upset Agreement") is approved by the Bankruptcy Court as the Buyer of the Property at the hearing on the Sale Motion, however, notwithstanding anything to the contrary in this Agreement, this Agreement shall not terminate, but rather shall become a "back-up bid" which shall remain open for acceptance by Seller for a period of ten (10) days following such hearing, but subject and subordinate in all respects to the rights of the Upset Buyer under the Upset Agreement; provided, however, this Agreement shall automatically terminate if the Approval Order is for any reason whatsoever not entered by the Bankruptcy Court on or before August 25, 2008. Upon entry of the Approval Order in accordance with the provisions of this Section 8(a) (such entry date being referred to herein as the "Sale Approval Date"), the condition set forth in this Section 8(a) shall conclusively be deemed satisfied.

9. Operation Pending Closing. Except (i) as otherwise expressly contemplated by this Agreement, (ii) with the prior written consent of Buyer, (iii) as prohibited or restricted by the Bankruptcy Code, or (iv) as described on **Schedule "9"** attached hereto and incorporated herein by this reference, from the date hereof until the Closing Date, the Seller shall: maintain the Business in a manner substantially similar to the manner in which the Seller was operating or maintaining the Business immediately prior to the date hereof and consistent with practice since the commencement of its bankruptcy case (including with respect to the payment of accounts payable of Seller), (b) use commercially reasonable efforts to preserve intact the Business in the form in which it existed as of the date hereof, to keep available the services of any current employees and agents and to maintain any relations and goodwill with its suppliers, customers, distributors and any others with whom or with which it has business relations as of the date hereof, (c) to maintain appropriate levels of Inventory (consistent with practice since the commencement of its bankruptcy case) and (d) not take any action inconsistent with this Agreement or with the consummation of the Closing.

10. Hart-Scott Rodino Act. RESERVED

11. Employee Matters.

11.1 Prior to the Closing, Buyer shall offer to employ, commencing immediately following the Closing, each of the Employees listed on Schedule 11.1 at their salaries, compensation levels and terms and conditions of employment applicable to their employment by Seller immediately prior to the Closing. Such employees who become employees of Buyer shall be collectively referred to as the "**Transferred Employees.**"

11.2 Buyer shall give Transferred Employees full credit for purposes of eligibility and vesting and benefit accrual (other than benefit accrual under a defined benefit pension plan) under the employee benefit plans or arrangements maintained by the Buyer in which such Transferred Employees participate for such Transferred Employees' service with the Seller.

11.3 With respect to any welfare benefit plans maintained by Buyer for the benefit of Transferred Employees on and after the Closing Date, Buyer shall (i) cause there to be waived any eligibility requirements or pre-existing condition limitations, and (ii) give effect, in determining any deductible and maximum out-of-pocket limitations, amounts paid by such Transferred Employees with respect to benefit plans maintained by the Seller.

11.4 Buyer shall assume and shall be responsible for all liabilities for vacation time, sick leave, personal leave and other compensated time off accrued by Transferred Employees as of the Closing Date.

11.5 Buyer shall provide group health plan continuation coverage, pursuant to the requirements of COBRA, to all employees of the Business, former employees of the Business receiving group health plan continuation coverage from Seller on the Closing Date, and former employees of the Business who are in a COBRA-election period on the Closing Date, each only to the extent that such persons: (i) properly request such coverage; (ii) will not be hired by Buyer; (iii) timely pay for such coverage; and (iv) are identified on Schedule 11.5.

## 12. Miscellaneous.

12.1 Risk of Loss, Damage and Destruction; Condemnation. Seller shall promptly notify Buyer of the occurrence of any material damage to or destruction of the Property that occurs prior to the Closing Date. In the event of any uninsured damage to or destruction of the Property prior to the Closing Date the cost of which to repair would total \$50,000 or less, then such damage or destruction shall have no effect whatsoever on the Purchase Price or Buyer's or Seller's obligation to close. Should any uninsured damage or destruction to the Property occur prior to the Closing Date the cost of which to repair would total more than \$50,000 but less than \$100,000, then unless Seller causes the same to be repaired and restored in all material respects prior to the Closing Date (in which case the Purchase Price shall be unaffected and the parties shall proceed with the Closing as though such damage, destruction or proceedings had never occurred or been initiated), Buyer's sole remedy shall be to receive a dollar-for-dollar reduction in the Purchase Price in an amount equal to the sum of (i) the cost of such repairs, less (ii) the amount of any insurance proceeds with respect thereto assigned to Buyer at the Closing, and consummate the transaction contemplated herein. If any uninsured damage or destruction to the Property occurs prior to the Closing Date the cost of which to repair would total \$100,000 or more, then irrespective of whether the same can be repaired and/or restored prior to the Closing Date, Buyer shall have the right and option to either (i) terminate the transaction contemplated herein, or (ii) elect to receive, as its sole and exclusive remedy by reason of such damage, destruction, a Purchase Price reduction in the amount of \$200,000 and consummate the transaction contemplated herein as though the damage or destruction had never occurred or been initiated. In all other events or in the event that Buyer elects to consummate the purchase pursuant to clause (ii) above, (xx) all insurance or condemnation proceeds, including business interruption and rental loss proceeds, collected by or paid to Seller prior to the Closing Date, shall be credited against the Purchase Price on Buyer's account or the Purchase Price shall be adjusted by an amount agreed between Buyer and Seller, and (yy) all entitlement to all other insurance or condemnation proceeds arising out of such damage or destruction or proceedings and not collected prior to the Closing Date shall be assigned to Buyer at the Closing.



Notwithstanding anything to the contrary in this Agreement, the risk of loss or damage to the Property shall unconditionally shift to the Buyer on the Closing Date. For avoidance of doubt, Buyer and Seller intend that the provisions of this Section 12.1 shall control over any right or remedy to which the Buyer may otherwise be entitled under this Agreement by reason of the occurrence of any event subject to this Section 12.1.

12.2 Attorneys' Fees. In the event that either Party hereto brings an action or other proceeding to enforce or interpret the terms and provisions of this Agreement, the prevailing Party in that action or proceeding shall be entitled to have and recover from the non-prevailing Party all such fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing Party may suffer or incur in the pursuit or defense of such action or proceeding.

12.3 Reasonable Access to Records and Certain Personnel. In order to facilitate Seller's efforts to administer and close the Case (including, without limitation, the preparation of filings in the Case and state, local and federal tax returns and other filings, reconciliation of claims filed in the Case, removal of corporate and other records and information relating or belonging to entities other than Seller), for the later of a period of three (3) years following the Closing or the closing of the Case, (i) the Buyer shall permit Seller's counsel and other professionals and counsel for any successor to Seller and its respective professionals (collectively, "**Permitted Access Parties**") reasonable access to the financial and other books and records relating to the Property or the Business and the systems containing such information, books and records, which access shall include (xx) the right of such Permitted Access Parties to copy or remove, as applicable, at such Permitted Access Parties' expense, such documents and records as they may request in furtherance of the purposes described above, and (yy) Buyer's copying and delivering to the relevant Permitted Access Parties such documents or records as they may request, but only to the extent such Permitted Access Parties furnish Buyer with reasonably detailed written descriptions of the materials to be so copied and the applicable Permitted Access Party reimburses the Buyer for the reasonable costs and expenses thereof, and (ii) Buyer shall provide the Permitted Access Parties (at no cost to the Permitted Access Parties) with reasonable access to such records during regular business hours to assist Seller and the other Permitted Access Parties in their post-Closing activities (including, without limitation, preparation of tax returns), provided that such access does not unreasonably interfere with the Buyer's business operations. Buyer shall not destroy financial and other books and records of the Seller acquired pursuant to this Agreement without first offering the Seller an opportunity to copy, access, and/or obtain such records.

12.4 Notices. Unless otherwise provided herein, any notice, tender, or delivery to be given hereunder by any Party to the other may be effected by personal delivery in writing, or by registered or certified mail, postage prepaid, return receipt requested or by facsimile, and shall be deemed communicated as of the date of mailing or facsimile transmission (with answer back confirmation of such transmission). Mailed notices shall be addressed as set forth below, but each Party may change his address by written notice in accordance with this Section 12.4.

To Seller: \_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_  
Facsimile: ( ) \_\_\_\_\_

With a copy to: Pachulski Stang Ziehl & Jones LLP  
919 North Market Street, 17<sup>th</sup> Floor  
Wilmington, Delaware 19899  
Attn: Laura Davis Jones, Esq.  
Facsimile: (302) 652-4400

To Buyer: Harvest Consumer Insulation, Inc.  
c/o Jon S. Vesely  
18 Carnoustie Lane  
Inverness, IL 60067  
Facsimile: (847) 963-6780

With a copy to: Reinhart Boerner Van Deuren s.c.  
1000 North Water Street, Suite 2100  
Milwaukee, WI 53202  
Attn: Albert S. Orr, Esq.  
Facsimile: (414) 298-8097

To Official Committee of Unsecured Creditors:

Hahn & Hessen LLP  
488 Madison Avenue  
14<sup>th</sup> and 15<sup>th</sup> Floor  
New York, NY 10022  
Attn: Mark T. Power, Esq., and Mark S. Indelicato, Esq.  
Facsimile: (212) 478-7400

12.5 Entire Agreement. This instrument, that certain Confidentiality Agreement dated August \_\_, 2008, between Seller and Buyer, and the documents to be executed pursuant hereto contain the entire agreement between the Parties relating to the sale of the Property. Any oral representations or modifications concerning this Agreement or any such other document shall be of no force and effect excepting a subsequent modification in writing, signed by the Party to be charged.

12.6 Modification. This Agreement may be modified, amended or supplemented only by a written instrument duly executed by all the Parties hereto.

12.7 Closing Date. All actions to be taken on the Closing pursuant to this Agreement shall be deemed to have occurred simultaneously, and no act, document or transaction shall be deemed to have been taken, delivered or effected until all such actions, documents and transactions have been taken, delivered or effected.

12.8 Severability. Should any term, provision or paragraph of this Agreement be determined to be illegal or void or of no force and effect, the balance of the Agreement shall survive.

12.9 Captions. All captions and headings contained in this Agreement are for convenience of reference only and shall not be construed to limit or extend the terms or conditions of this Agreement.

12.10 Further Assurances. Each Party hereto will execute, acknowledge and deliver any further assurance, documents and instruments reasonably requested by any other Party for the purpose of giving effect to the transactions contemplated herein or the intentions of the Parties with respect thereto; provided that nothing herein shall be deemed to require any Party to execute or deliver any such further assurance, document or instrument to the extent that the same could in any material way increase the burdens, obligations or liabilities otherwise imposed upon such Party by this Agreement.

12.11 Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

12.12 Brokerage Obligations. Seller and the Buyer each represent and warrant to the other that, other than \_\_\_\_\_ (the "**Broker**"), Seller's investment banker, such Party has incurred no liability to any broker or agent with respect to the payment of any commission or other compensation regarding the consummation of the transaction contemplated hereby. It is agreed that if any claims for commissions, fees or other compensation, including, without limitation, brokerage fees, finder's fees, or commissions are ever asserted against Buyer or Seller in connection with this transaction by any party other than the Broker (for whose commission or other compensation Seller shall be solely responsible), all such claims shall be handled and paid by the Party whose actions form the basis of such claim and such Party shall indemnify, defend (with counsel reasonably satisfactory to the Party entitled to indemnification), protect and save and hold the other harmless from and against any and all such claims or demands asserted by any person, firm or corporation in connection with the transaction contemplated hereby.

12.13 Payment of Fees and Expenses. Except as provided in Section 12.2 above, each Party to this Agreement shall be responsible for, and shall pay, all of its own fees and expenses, including those of its counsel, incurred in the negotiation, preparation and consummation of the Agreement and the transaction described herein.

12.14 Survival. The respective representations and warranties of Buyer and Seller under this Agreement, and any covenants of Seller to be performed prior to the Closing, shall lapse and cease to be of any further force or effect effective upon the Closing. Except as provided in the immediately preceding sentence, the covenants and agreements of Seller and Buyer herein, or in any certificates or other documents delivered prior to or at the Closing, shall not be deemed waived or otherwise affected by the Closing.

12.15 Assignments. This Agreement shall not be assigned by any Party hereto without the prior written consent of the other Party hereto, which consent the Parties may grant or withhold in their sole and absolute discretion.

12.16 Binding Effect. Subject to the provisions of Section 12.15, above, this Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the Parties hereto.

12.17 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. Each party to this Agreement irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Bankruptcy Court (or a United States district court in the same district as the Bankruptcy Court), and any appellate court from such court, in any suit, action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, or for recognition or enforcement of any judgment resulting from any such suit, action or proceeding, and each party hereby irrevocably and unconditionally agrees that all claims in respect of any such suit, action or proceeding may be heard and determined in the Bankruptcy Court.

12.18 Good Faith. All Parties hereto agree to do all acts and execute all documents required to carry out the terms of this Agreement and to act in good faith with respect to the terms and conditions contained herein before and after Closing.

12.19 Construction. In the interpretation and construction of this Agreement, the Parties acknowledge that the terms hereof reflect extensive negotiations between the Parties and that this Agreement shall not be deemed, for the purpose of construction and interpretation, drafted by either Party hereto.

12.20 Counterparts. This Agreement may be signed in counterparts. The Parties further agree that this Agreement may be executed by the exchange of facsimile signature pages provided that by doing so the Parties agree to undertake to provide original signatures as soon thereafter as reasonable in the circumstances.

12.21 Time is of the Essence. Time is of the essence in this Agreement, and all of the terms, covenants and conditions hereof.

12.22 Interpretation and Rules of Construction. In this Agreement, except to the extent that the context otherwise requires:

12.22.1 when a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or an Exhibit or a Schedule to, this Agreement unless otherwise indicated;

12.22.2 the headings and captions used in this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement;

12.22.3 whenever the words "include," "includes" or "including" are used in this Agreement, they are deemed to be followed by the words "without limitation";

12.22.4 the words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement;

12.22.5 all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein;

12.22.6 the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms;

12.22.7 any law defined or referred to herein or in any agreement or instrument that is referred to herein means such law or statute as from time to time amended, modified or supplemented, including by succession of comparable successor laws;

12.22.8 references to a person are also to its permitted successors and assigns; and

12.22.9 the use of "or" is not intended to be exclusive unless expressly indicated otherwise.

**In Witness Whereof, Buyer and Seller have executed this Asset Purchase Agreement as of the day and year first above written.**

**BUYER:**

**HARVEST CONSUMER INSULATION, INC., a Delaware corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**SELLER:**

**Western Nonwovens, Inc., a Delaware corporation and Debtor and Debtor in Possession**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**All SCHEDULES**

**[To be attached]**

Exhibit "A"

**ASSIGNMENT AND ASSUMPTION OF LEASES AND CONTRACTS**

This Assignment and Assumption of Leases and Contracts (this "Assignment") is entered into as of this \_\_\_th day of \_\_\_\_\_, 2008, between Western Nonwovens, Inc., a Delaware corporation and Chapter 11 Debtor and Debtor in Possession under Case No. \_\_\_\_\_ in the Bankruptcy Court (the "Assignor"), on the one hand, and Harvest Consumer Insulation, Inc., a Delaware corporation (the "Assignee"), on the other hand, with respect to the following facts and circumstances:

A. Assignor, as Seller, and Assignee, as Buyer, have heretofore entered into that certain Asset Purchase Agreement dated \_\_\_\_\_, 2008 (the "Purchase Agreement"). Except for terms specifically defined herein, the capitalized terms used in this Assignment shall have the same meanings as capitalized terms used in the Purchase Agreement.

B. Concurrently with the mutual execution and delivery of this Assignment, Assignor and Assignee are consummating the transactions contemplated by the Purchase Agreement. Assignor and Assignee are executing and delivering this Assignment in satisfaction of their respective obligations pursuant to Sections 3.3.1 and 3.4.2 of the Purchase Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which Assignor and Assignee hereby acknowledge, Assignor and Assignee hereby agree as follows:

1. **Assignment.** Effective as of the Closing Date, Assignor hereby assigns to Assignee all of his right, title and interest in and to the Leases and Contracts (collectively, the "Assigned Contracts").

2. **Assumption.** Effective as of the Closing Date, Assignee hereby accepts the foregoing assignment and assumes and agrees to be bound by the terms and provisions of the Assigned Contracts and to faithfully perform all of Assignor's obligations thereunder to be performed from and after the Closing Date as though Assignee had been the original contracting Party thereunder.

3. **Attorneys' Fees.** In the event that either Party hereto brings an action or other proceeding to enforce or interpret the terms and provisions of this Assignment, the prevailing Party in that action or proceeding shall be entitled to have and recover from the non-prevailing Party therein all such fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing Party may suffer or incur in the pursuit or defense of such action or proceeding.

4. Amendments. This Assignment may only be amended by a writing signed by both Assignor and Assignee.

5. Execution in Counterparts. This Assignment may be executed in counterparts and delivered by the delivery of facsimile signatures; provided, however, that if the Parties exchange facsimile signatures, each of them agrees to provide the other with a copy of this Assignment bearing their original signature promptly thereafter.

6. Delivery Pursuant to Purchase Agreement. Notwithstanding anything to the contrary herein, Assignor and Assignee are executing and delivering this Assignment in accordance with and subject to all of the terms and provisions of the Purchase Agreement (including, without limitation, the acknowledgement and disclaimer set forth in Section 7).

7. Governing Law. This Assignment shall be governed by and construed and enforced in accordance with the laws of the State of Delaware.



**IN WITNESS WHEREOF**, Assignor and Assignee have executed this Assignment as of the day and year first set forth above.

**ASSIGNOR:**

**Western Nonwovens, Inc., a Delaware corporation and Debtor and Debtor in Possession**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Its:** \_\_\_\_\_

**ASSIGNEE:**

**HARVEST CONSUMER INSULATION, INC., a Delaware corporation**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Its:** \_\_\_\_\_

**Exhibit "B"**

**BILL OF SALE AND ASSIGNMENT**

Pursuant to Section 3.3.2 of that certain Asset Purchase Agreement dated \_\_\_\_\_, 2008 (the "**Agreement**"), by and between HARVEST CONSUMER INSULATION, INC., a Delaware corporation ("**Buyer**"), on the one hand, and Western Nonwovens, Inc., a Delaware corporation and Chapter 11 Debtor and Debtor in Possession under Case No. \_\_\_\_\_ in the Bankruptcy Court ("**Seller**"), on the other hand, and for good and valuable consideration, the receipt and sufficiency of which Seller hereby expressly acknowledges, Seller hereby sells, transfers, assigns and delivers to Buyer all of his right, title and interest in and to (i) the Personal Property, and (ii) the Assignment Property.

Except for terms specifically defined in this Bill of Sale, all capitalized terms used in herein shall have the same meanings as such terms have when utilized in the Agreement.

Seller covenants and agrees to execute and deliver further instruments of transfer and assignment and take such other action as Buyer may reasonably request to more effectively transfer and assign to and vest in Buyer each of the Personal Property and Assignment Property; provided that nothing herein shall be deemed to require Seller to execute or deliver any such further document or instrument or take any such action to the extent that the same could impose any monetary obligations upon Seller or could in any other respect increase in any material way the burdens, obligations or liabilities otherwise imposed upon Seller by this Agreement.

Notwithstanding anything to the contrary herein, Seller is executing and delivering this Bill of Sale and Assignment in accordance with and subject to all of the terms and provisions of the Agreement (including, without limitation, the acknowledgement and disclaimer set forth in Section 7 of the Agreement).

IN WITNESS WHEREOF, Seller has caused this Bill of Sale and Assignment to be executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**SELLER:**

**Western Nonwovens, Inc., a Delaware  
Corporation and Debtor and Debtor in Possession**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Exhibit "C"

**ASSIGNMENT OF INTANGIBLE PROPERTY**

Western Nonwovens, Inc., a Delaware corporation and Chapter 11 Debtor and Debtor in Possession under Case No. \_\_\_\_\_ in the Bankruptcy Court (the "Assignor") is executing this Assignment of Intangible Property (the "Assignment") in favor of HARVEST CONSUMER INSULATION, INC., a Delaware corporation (the "Assignee"), with respect to the following facts and circumstances:

(A) Assignor and Assignee have heretofore entered into that certain Asset Purchase Agreement dated \_\_\_\_\_, 2008 (the "Agreement"). Except for terms specifically defined in this Assignment, the capitalized terms used in this Assignment shall have the same meanings as such terms when used in the Agreement.

(B) Concurrently with the execution and delivery of this Assignment, Assignor and Assignee are consummating the transactions contemplated by the Agreement. Pursuant to Section 3.3.3 of the Agreement, Assignor is required to execute and deliver this Assignment at the Closing.

**NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which Assignor hereby expressly acknowledges, Assignor hereby assigns, conveys, transfers and sets over unto Assignee, all of its right, title and interest, if any, in and to all Intangible Property. This Assignment shall inure to the benefit of, and be binding upon, the successors, executors, administrators, legal representatives and assigns of Assignor and Assignee.

Notwithstanding anything to the contrary herein, Assignor is executing and delivering this Assignment in accordance with and subject to all of the terms and provisions of the Agreement (including, without limitation, the acknowledgement and disclaimer set forth in Section 7).

In the event that Assignor or Assignee brings an action or other proceeding to enforce or interpret the terms and provisions of this Assignment, the prevailing Party in that action or proceeding shall be entitled to have and recover from the non-prevailing Party all such fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing Party may suffer or incur in the pursuit or defense of such action or proceeding.

This Assignment shall be governed by and construed and enforced in accordance with the laws of the State of Delaware.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of  
the \_\_\_ day of \_\_\_\_\_, 2008.

**ASSIGNOR:**

**Western Nonwovens, Inc., a Delaware  
Corporation and Debtor and Debtor in Possession**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**ASSIGNEE:**

**HARVEST CONSUMER INSULATION, INC., a  
Delaware corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Exhibit "D"

**ASSUMPTION AGREEMENT**

This Assumption Agreement (this "**Assumption**") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2008, by HARVEST CONSUMER INSULATION, INC., a Delaware corporation (the "**Buyer**") in favor of Western Nonwovens, Inc., a Delaware corporation and Chapter 11 Debtor and Debtor in Possession under Case No. \_\_\_\_\_ in the Bankruptcy Court (the "**Seller**"), with respect to the following facts and circumstances:

A. Seller and Buyer have heretofore entered into that certain Asset Purchase Agreement dated \_\_\_\_\_, 2008 (the "**Purchase Agreement**"). Except for terms specifically defined herein, the capitalized terms used in this Assumption shall have the same meanings as capitalized terms used in the Purchase Agreement.

B. Concurrently with the execution and delivery of this Assumption, Buyer and Seller are consummating the transactions contemplated by the Purchase Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which Buyer hereby acknowledges, Buyer hereby agrees as follows:

1. **Assumption**. Effective as of the Closing Date, Buyer hereby assumes and agrees fully and faithfully to perform all of the Assumed Liabilities.
2. **Attorneys' Fees**. In the event that either Party hereto brings an action or other proceeding to enforce or interpret the terms and provisions of this Assumption, the prevailing Party in that action or proceeding shall be entitled to have and recover from the non-prevailing Party therein all such fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing Party may suffer or incur in the pursuit or defense of such action or proceeding.
3. **Amendments**. This Assumption may only be amended by a writing signed by both Buyer and Seller.
4. **Governing Law**. This Assumption shall be governed by and construed and enforced in accordance with the laws of the State of Delaware.
5. **Execution in Counterparts**. This Assumption may be executed in counterparts and delivered by the delivery of facsimile signatures; provided, however, that if the parties exchange facsimile signatures, each of them agrees to provide the other with a copy of this Assumption bearing their original signature promptly thereafter.

**IN WITNESS WHEREOF**, Buyer has executed this Assumption as of the day and year first set forth above.

**BUYER:**

**HARVEST CONSUMER INSULATION, INC.,  
a Delaware corporation**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Its:** \_\_\_\_\_

**EXHIBIT B**



**Exhibit B**

<b><u>Counterparty</u></b>	<b><u>Assumed Contract or Unexpired Lease</u></b>	<b><u>Cure Amount if Any</u></b>
Summit Properties Partnership Hollingsworth Companies Two Centre Plaza Clinton, TN 37716	641 Northpark Drive, Clinton, TN 37716	\$20,352
Aqua Clear Water Systems 10523 Kingston Pike, Suite D Knoxville, TN 37922	Water system	\$333
Clinton Utilities Board 1001 Charles G Seivers Blvd Clinton, TN 37717	Power Agreement	\$5,253
Powell - Clinch Utility District P.O. Box 428 Lake City, TN 37769	Gas Contract	\$24,684
Professional Compressed Air Services P.O. box 66 Hwy. 61 Andersonville, TN 37705	Compressed Air	\$1,231
Simplex Grinnell 11042 Terrapin Station Lane Knoxville, TN 37932	Security System	\$8,107.18
Waste Management P.O. Box 9001054 Louisville, KY 40290	Waste Services	\$889