

TRADEMARK ASSIGNMENT

Electronic Version v1.1
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SUBMISSION TYPE:		NEW ASSIGNMENT	
NATURE OF CONVEYANCE:		RELEASE BY SECURED PARTY	
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
BANK ONE NA		11/03/2005	CORPORATION: OHIO
RECEIVING PARTY DATA			
Name:	HEARTLAND INDUSTRIES, INC.		
Street Address:	2350 NORTH SHADELAND AVENUE		
City:	INDIANAPOLIS		
State/Country:	INDIANA		
Postal Code:	46219		
Entity Type:	CORPORATION: INDIANA		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	1549174	YOUR SOLUTION TO GARAGE POLLUTION	
CORRESPONDENCE DATA			
Fax Number:	(404)962-6736		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	(404) 885-3038		
Email:	michael.brignati@troutmansanders.com		
Correspondent Name:	MICHAEL J. BRIGNATI, PH.D.		
Address Line 1:	TROUTMAN SANDERS LLP		
Address Line 2:	600 PEACHTREE STREET, N.E.		
Address Line 4:	ATLANTA, GEORGIA 30308-2216		
ATTORNEY DOCKET NUMBER:	036857.000010		
NAME OF SUBMITTER:	Michael J. Brignati, Ph.D.		
Signature:	/Michael J. Brignati 60,890/		
Date:	09/16/2009		

OP \$40.00 1549174

Total Attachments: 11

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:)	Chapter 11
MARCO WOOD PRODUCTS INC., <u>et al.</u> , ¹)	Case No. 05-68820
)	(Jointly Administered)
Debtors.)	Tax Identification #32-0106861
)	Honorable Thomas J. Tucker

ORDER UNDER 11 U.S.C. §§ 105(a), 363(b), (f), (l) AND (m) AND FED. R. BANKR. P. 2002 AND 6004 AUTHORIZING A SALE OF SUBSTANTIALLY ALL OF DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES AND GRANTING RELATED RELIEF

This matter having come before the Court upon the Motion (the "Sale Motion") of the above-captioned debtors (collectively, the "Debtors") for an order under 11 U.S.C. §§ 105(a), 363(b), (f), (l) and (m) and Fed. R. Bankr. P. 2002 and 6004 authorizing the sale of substantially all of the assets purchased by the Purchaser at the Auction (the "Assets")² used in the conduct of the Business of Debtors as sellers, free and clear of all liens, claims, encumbrances, rights of first refusal, and other interests (the "Sale") and granting related relief; and a hearing on the Sale Motion having been held on November 1, 2005 (the "Sale Hearing"), at which time all interested parties were offered an opportunity to be heard with respect to the Sale Motion; and the Court having considered (i) the Sale Motion, (ii) any objections thereto, and (iii) the arguments of counsel made, and the evidence proffered or adduced at the Sale Hearing; and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and upon the record of the Sale Hearing and this cases; and after due deliberation thereon; and good cause appearing therefor;

IT IS HEREBY FOUND AND DETERMINED THAT:

1. The findings of fact and conclusions of law set forth herein constitute the Court's

¹ The Debtors in these jointly administered proceedings are: Backyard Buildings, Inc. (Case No. 05-68824), Marco Wood Products Inc. (Case No. 05-68820), and Heartland Industries, Inc. (DE) (Case No. 05-68825).

² All capitalized terms not defined herein shall have the meanings ascribed to them in the Sale Motion.

finding of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed and vice versa.

2. The Court has jurisdiction over this Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334, and over the entities which are subject to the terms of this Order, including but not limited to all creditors, all persons and entities who have a claim (as defined in §101(5) of the Bankruptcy Code) against the Debtors or the bankruptcy estates, and all parties in interest, including those entities claiming an interest in the Assets and those entities who are parties to the Contracts. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these cases and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief sought in the Sale Motion are sections 105(a), 363(b), (f), (l), and (m) of the United States Bankruptcy Code, 11 U.S.C. 101 et seq., as amended (the "Bankruptcy Code" or the "Code"), and Fed. R. Bankr. P. 2002 and 6004.

4. As evidenced by the affidavits of service previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (1) adequate and sufficient notice of the Sale Motion, the Sale Hearing and the Sale has been provided in accordance with the Bankruptcy Code, Federal Rules of Bankruptcy Procedures, including 11 U.S.C. §§ 102(1) and 363 and Fed. R. Bankr. P. 2002 and 6004, and the Local Bankruptcy Rules or orders of this Court, (2) such notice was good and sufficient, and appropriate under the particular circumstances, and (3) no other or further notice of the Sale, the Sale Motion, or the Sale Hearing shall be required.

5. A reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested persons and entities, including (i) the United States Trustee; (ii) the Creditors' Committee appointed in these cases; (iii) any and all entities known to have expressed an interest in an acquisition transaction regarding the Debtors or their assets during the past twelve (12) months; (iv) all entities known to have asserted any lien, claim, encumbrance, right of first refusal, or other property interest in or upon any of the Assets and Contracts which are to be sold or assigned; (v) all entities who had filed a

notice of appearance and request for service of papers in these cases; and (vi) all parties to executory contracts or unexpired leases proposed to be assumed and assigned pursuant to the results of the Auction.³

6. The Debtors have full corporate power and authority to sell the Assets, have all of the corporate power and authority necessary to consummate the transactions required to sell the Assets, and require no further consents or approvals, other than those expressly set forth herein, to consummate such transactions.

7. On October 31, 2005, the Debtors conducted an auction (the "Auction") and, at the conclusion of the Auction, the Debtors determined that Marco Acquisition, LLC (the "Purchaser") made the highest and best offer to purchase the Assets.

8. Consummation of the Sale at this time is in the best interests of the Debtors, their creditors, their estates, and the public.

9. The Debtors have demonstrated both (i) good, sufficient, and sound business purpose and justification and (ii) compelling circumstances for the Sale pursuant to the applicable provisions of the Bankruptcy Code, including 11 U.S.C. §§ 105 and 363 prior to, and outside of, a plan of reorganization.

10. The Debtors diligently and in good faith marketed the Assets of the Business to secure the highest and best offer for them. In that regard, the Debtors sought bids for all of the Businesses and Assets. The purchase price for the Assets resulting from the Auction represents a fair and reasonable purchase price and constitutes the highest and best offer obtainable for the Business and the Assets.

11. A sale of the Assets is the only viable alternative for preserving and capturing the value of the Assets and ensuring the continuation of the Debtors' Business. The Debtors cannot continue to operate their Business for the time required to confirm and consummate a plan of reorganization without risking an immediate and material decline in the value of the Business

³ Assumption and Assignment of certain of the Debtors' unexpired leases and executory contracts is the subject of a separate motion that has been filed with the Court and which will be scheduled for hearing in the event there are objections.

and Assets. Thus, the only way to preserve and maximize value is to consummate the Sale and sell the Assets of the Business, thereby insuring an orderly and equitable sale process and distribution of proceeds.

12. Potentially significant and long-term claims against the Debtors' estates will be minimized as a result of the prompt consummation of the Sale.

13. A sale of the Assets and/or the Business at this time to the Purchaser would result in the highest possible purchase price. Thus, unless the Sale to the Purchaser is concluded expeditiously, as provided for in the Sale Motion, the value of the Business and Assets will decline and the Debtors, their estates and their creditors may realize little or no value for the Business or the Assets.

14. All Interests (as hereafter defined) shall attach to the proceeds of the Sale.

15. The Purchaser is an entity purchasing Assets in good faith within the meaning of 11 U.S.C. § 363(m) and, as such, is entitled to the protections afforded thereby. The Asset Purchase Agreement was negotiated, proposed and entered into by the parties without collusion, in good faith, and from arm's length bargaining positions, including without limitation:

- a. All negotiations by the Purchaser on the one hand and any other party in interest, including without limitation the Debtors and their secured creditors, were at arms-length;
- b. All payments to be made by the Purchaser under this Sale Order and the Asset Purchase Agreement have been disclosed;
- c. All consideration to be paid by Purchaser pursuant to this Sale Order and the Asset Purchase Agreement shall be remitted to the Debtors' estate and the Purchaser will not control when or how such proceeds shall be distributed;
- d. The Purchaser is unrelated to the Debtors, their secured creditors, or any other party in interest in any manner; and
- e. The Purchaser submitted its offer and negotiated for the purchase of the Acquired Assets under the terms of the Asset Purchase Agreement in good faith.

16. Neither the Debtors nor the Purchaser engaged in any conduct that would cause or permit the Asset Purchase Agreement and the Sale to be avoided under Section 363(n) of the Bankruptcy Code.

17. Except as expressly provided in the Asset Purchase Agreement, the Purchaser is

not assuming nor shall it in any way whatsoever be liable or responsible, as a successor or otherwise, for any liabilities, debts or obligations of the Debtors or any liabilities, debts, or obligations in any way whatsoever relating to the Debtors or arising from the operation of the Debtors' businesses or the Acquired Assets prior to Closing or any liabilities calculable by reference to the Debtors or the Acquired Assets or Debtors' operations, or relating to continuing conditions existing on or prior to Closing, which liabilities, debts and obligations are hereby extinguished insofar as they may give rise to successor liability, without regard to whether the claimant asserting any such liabilities, debts, or obligations has delivered to the Purchaser a release thereof.

18. The consideration provided by the Purchaser for the Assets and the Business constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

19. The consideration offered for the Assets will provide a greater recovery for the Debtors' creditors than would be provided by any other practical available alternative.

20. The Sale must be approved and consummated promptly in order to preserve the value of the Business as a going concern.

21. The transfer of the Assets and the Business to the Purchaser at Closing will be a legal, valid, and effective transfer of the Assets and the Business and will vest the Purchaser with all right, title, and interest of the Debtors to the Assets and the Business free and clear of mortgages, security interests, conditional sale or other title retention agreements, pledges, liens, claims, judgments, demands, easements, charges, encumbrances, defects, options, rights of first refusal, restrictions of all kind and any other interest (including, without limitation, liens, claims, encumbrances and interests (i) that purport to give to any party a right or option to effect any forfeiture, modification or termination of the Debtors' or the Purchaser's interest in the Assets, or (ii) in respect of Taxes) (collectively, "Interests").

22. The Purchaser would not have agreed to purchase the Assets, thus adversely affecting the Debtors, the estates, and the Debtors' creditors, if the Sale of the Assets and the Business to the Purchaser were not free and clear of all Interests.

23. The Debtors may sell the Assets of the Business free and clear of all Interests because, in each case, the requirements of the Bankruptcy Code, including one or more of the standards set forth in 11 U.S.C. § 363(f)(1) - (5) have been satisfied or such sale otherwise is authorized pursuant to 11 U.S.C. §105. Those holders of Interests and other parties in interest who did not object, or who withdrew their objections, to the Sale and/or the Sale Motion are deemed to have consented to the Sale pursuant to 11 U.S.C. §§ 363(f)(2). Those holders of Interests who did object fall within one or more of the other subsections of 11 U.S.C. § 363(f) are adequately protected by having their Interests, if any, attach to the cash proceeds of the Sale ultimately attributable to the property in which they claim an Interest as set forth in this Order.

24. Except with respect to any Assumed Liabilities, the transfer of the Assets and/or the Business to the Purchaser will not subject the Purchaser to any liability by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law, including, without limitation, any theory of antitrust or successor or transferee liability or otherwise.

25. The Debtors have good and marketable title to the Assets;

26. All findings of facts and conclusions of law made herein or announced in open court in connection with the Sale Motion are incorporated herein.

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

General Provisions

(1) All of the findings of fact and conclusions of law set forth above are incorporated herein by reference, and the Sale Motion as modified by any announcements in open court is granted, as provided herein.

(2) All objections, responses, and requests for continuances concerning the Sale Motion or the relief requested therein are resolved in accordance with the terms of this Order and as set forth in the record of the Sale Hearing, and those that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections, are overruled on the merits.

(3) the transfer of the Assets by the Debtors to Purchaser upon Closing will be a legal, valid, and effective transfer of the Assets notwithstanding any requirement for approval or consent by any entity (as defined in Section 101(15) of the Bankruptcy Code);

(4) the transfer of the Assets by the Debtors to Purchaser vests the Purchaser with good and indefeasible title to the Assets free and clear of all Interests, except those expressly assumed by the Purchaser thereunder; and any such Interests which existed prior to the Closing shall attach to the proceeds of the sale in the same order and priority as existed before the sale;

(5) the transfer of the Assets is in exchange for consideration being paid by the Purchaser that constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia;

(6) The transfer of the Assets does not and will not subject the Purchaser to any liability by reason of such transfers and assignments under the laws of the United States, any state, territory or possession thereof or the District of Columbia based, in whole or in part, directly or indirectly, on any theory of law, including, without limitation, any theory of successor or transferee liability;

(7) the Bankruptcy Court retains jurisdiction to interpret and enforce the provisions of this Order, including, without limitation, jurisdiction to protect the Purchaser against any claims or other liabilities related to the transactions contemplated by the Sale and jurisdiction to resolve any and all objections to, or disputes among the parties to the Sale regarding all issues or disputes with respect to claims for indemnification, provided, however, that in the event the court abstains from exercising, or declines to exercise, jurisdiction with respect to any matter referred to in this Paragraph or is without jurisdiction, such abstention, refusal, or lack of jurisdiction shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction of any other court or arbitral body having competent jurisdiction with respect to any such matter;

(8) the transactions contemplated by the Sale are undertaken by the Purchaser in good faith, as that term is used in Section 363(m) of the Bankruptcy Code, and the Purchaser is entitled to the rights and protection granted thereby;

- (9) there exist exigent business reasons for the sale of the Assets to the Purchaser;
- (10) the sale is in the best interests of the Debtors' estates and the Debtors' creditors, and is otherwise in the public interest;
- (11) there has been such notice as is appropriate in the particular circumstances given to all entities required by law to receive notice of the sale and such opportunity for hearing as is appropriate in the particular circumstances;
- (12) the Assets have been adequately marketed and will lose value absent a sale; and
- (13) all of the requirements of Sections 105 and 363 of the Bankruptcy Code for a sale free and clear of Interests have been met

Miscellaneous

(14) the Debtors and each other entity having duties or responsibilities pursuant to the Sale, or under the terms of this Order, and their respective directors, officers, general partners, agents, representatives, and attorneys, are authorized and empowered to carry out all actions necessary to effect the Sale of the Assets to the Purchaser 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 necessary or appropriate to implement, effectuate, and consummate, the Sale of the Assets, 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, stockholders, or partners, and with like effect as if such actions had been taken by unanimous action of the respective directors, stockholders, and partners 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 certifications 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 Sale of the Assets, 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 entity to so act. Without limiting the generality of the foregoing, this Order shall constitute all approvals and consents, if any, required by the general corporation law of the state of incorporation of each of the entities and all other applicable business corporation, trust, and other laws of the applicable governmental units with respect to the consummation of the Sale of the Assets, this Order and the transactions contemplated thereby and hereby;

(15) consummation of the Sale does not and will not subject the Purchaser to any debts, liabilities, obligations, commitments, responsibilities or claims of any kind or nature whatsoever, whether known or unknown, contingent or otherwise, existing as of the date hereof or hereafter arising, of or against the Debtors, or any other person by reason of such transfers and assignments under the laws of the United States or any state applicable to such transactions, except that the Purchaser shall be liable for payment only of the Assumed Liabilities and other performance as expressly provided or required in the Asset Purchase Agreement.

(16) all entities in possession of some or all of the Assets are directed to surrender possession of the Assets to the Purchaser on the Closing Date or at such time thereafter as Purchaser may request;

(17) on the Closing Date, each of the Debtors' creditors is directed to execute such documents and take all other actions as may be necessary to release its liens on or claims against the Assets, if any, as such liens or claims may have been recorded or may otherwise exist;

(18) this Order is and shall be binding upon and govern the acts of all entities including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other Persons and entities who may be required by operation of law, the duties of their office, or

contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets;

(19) 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 necessary to effect the Sale of the Assets and to implement this Order;

(20) if any Person or entity that has filed financing statements or other documents or agreements evidencing liens on or interests in the Assets shall not have delivered to the Debtors prior to the closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all liens or other interests which the Person or entity has with respect to the Assets, the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Assets immediately prior to the Closing;

(21) all Persons are enjoined from in any way pursuing the Purchaser or its affiliates to recover any claim which such Person has against the Debtors or the Assets, except with respect to any claim which is independently assertable against the Purchaser or its affiliates and does not arise directly or indirectly from their dealings with the Debtors or the assignments and transfers contemplated by this Order;

(22) all other documents, agreements, and instruments necessary to effectuate and consummate the Sale of the Assets, together with the terms and provisions of this Order, shall be binding upon and shall inure to the benefit of the Debtors, the Purchaser, and their respective successors and assigns, notwithstanding any subsequent appointment of a trustee for the Debtors, under any chapter of the Bankruptcy Code, as to which trustee such documents, agreements, and instruments (and the terms and provisions thereof) otherwise shall be binding;

(23) The Asset Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment or supplement is not material.

(24) this Order shall be effective immediately upon entry of same and the ten (10) day stay as provided for in F.R.Bankr.P. 6004(g) shall be, and hereby is, waived without further notice and the Purchaser shall be entitled to the protections of Section 363(m) of the Bankruptcy Code if this Sale Order or any authorization contained herein is reversed or modified on appeal. Neither the Debtors nor the Purchaser engaged in any conduct that would cause or permit the Asset Purchase Agreement and the Sale to be avoided under Section 363(n) of the Bankruptcy Code.

Date: November 3, 2005

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge

I hereby certify that the foregoing is a true copy of the original on file in this office.

**CLERK, U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN**

BY: Kay Thomas Deputy Clerk:
DATE: 11-8-05