

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:		NEW ASSIGNMENT	
NATURE OF CONVEYANCE:		Assignment of Existing Lien	
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Citizens Bank		11/25/2009	Banking Institution: MICHIGAN
RECEIVING PARTY DATA			
Name:	DMC Holdings, Inc.		
Street Address:	1951 Bloyd Avenue		
City:	Indianapolis		
State/Country:	INDIANA		
Postal Code:	46218		
Entity Type:	CORPORATION: INDIANA		
PROPERTY NUMBERS Total: 5			
Property Type	Number	Word Mark	
Registration Number:	1564184	LI'L HOE	
Registration Number:	0747085		
Registration Number:	0713768	KLINCHER	
Registration Number:	0713769	KL	
Registration Number:	0775160		
CORRESPONDENCE DATA			
Fax Number:	3172317433		
	<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>		
Phone:	3172361313		
Email:	dwong@btlaw.com		
Correspondent Name:	David A.W. Wong, Barnes & Thornburg LLP		
Address Line 1:	11 South Meridian Street		
Address Line 4:	Indianapolis, INDIANA 46204-3535		
ATTORNEY DOCKET NUMBER:	51243-1		

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TRADEMARK
REEL: 004975 FRAME: 0061

NAME OF SUBMITTER:	David A.W. Wong
Signature:	/dwong/
Date:	03/05/2013
Total Attachments: 7 source=Lien#page1.tif source=Lien#page2.tif source=Lien#page3.tif source=Lien#page4.tif source=Lien#page5.tif source=Lien#page6.tif source=Lien#page7.tif	

ASSIGNMENT AND ASSUMPTION AGREEMENT

Citizens Bank, a Michigan banking corporation ("Bank") and DMC Holdings, Inc. ("Purchaser") enter into this Agreement as of November 25, 2009.

BACKGROUND

A. Tenax Corporation ("Tenax"), Dual Machine Corporation ("Dual"), and Hoffco/Comet Industries, Inc. ("Hoffco"), and together with Tenax and Dual, the "Borrowers" and each individually a "Borrower") and Lender, as successor to GMAC Commercial Finance LLC, entered into a Loan and Security Agreement dated September 14, 2004 (as amended from time to time, the "Loan Agreement"). Capitalized terms used but not defined in this Amendment have the meanings given in the Loan Agreement.

B. Purchaser has requested that Bank assign and sell to Purchaser certain of Bank's rights, claims and interests against Dual and/or Dual's assets; Bank has agreed to do so subject to the terms of this Agreement.

C. As of the date set forth above, Dual is indebted to Bank under the Loan Documents in the principal amount of [REDACTED] for Revolving Loans made by Bank to Dual a Term Loan made by Bank to Dual (together, the "Direct Obligations").

D. In addition to the Direct Obligations, Dual has guaranteed the Obligations of the other Borrowers to Bank (the "Dual Guaranty Obligations") or together with the Direct Obligations, the "Dual Obligations").

Based on the foregoing recitals and other good and valuable consideration, the parties agree as follows:

TERMS AND CONDITIONS

1. Bank hereby assigns, sells, transfers and conveys to Purchaser, without recourse of any type or kind, and except as expressly provided in Section 5 of this Agreement, without representation, warranty or liability, whether express or implied in fact or in law, all of Bank's right, title and interest in and to the Dual Loan Assets (as defined below). The term "Dual Loan Assets" means:

(a) the balance owing under the Term Note dated September 22, 2004, executed by Dual in favor of GMAC Commercial Finance LLC in the original principal amount of [REDACTED] (the "Note");

(b) the outstanding principal balance of any Revolving Loans made by Bank to Dual;

(c) the Mortgage and Security Agreement dated September 22, 2004, executed by Dual in favor of GMAC Commercial Finance LLC ("GMAC/CF") purporting to encumber real estate better known as 1951 Bloyd Avenue, Indianapolis, Indiana (the "Mortgage") but only to the extent such mortgage secures the Direct Obligations;

(d) the security interest and liens, if any, in Dual's personal property granted under the Loan Agreement to the extent such security interests and liens cover personal property that is not otherwise Excluded Property (defined below);

(e) the security interests and liens in assets of Dual, if any, that are listed as Dual's property in that certain Intellectual Property Security Agreement and Collateral Assignment dated September 22, 2004, executed by Dual in favor of GMAC/CF; and

(f) all UCC financing statements filed by Bank (or Bank's predecessor in interest) against Dual or Dual's assets to the extent such financing statements are still in effect as of the date of this Agreement.

2. For certainty, the Dual Loan Assets do not include the Excluded Property. For purposes of this Agreement "Excluded Property" means:

(a) subject to paragraph 6 below, any guaranties of the Dual Obligations given by Hoffco or Tenax;

(b) 

(c) security interests and liens granted to Bank by Hoffco or Tenax;

(d) any rights or interests arising under the Loan Documents against any person or entity other than Dual;

(e) any rights or interests arising under the Loan Documents against any assets or collateral other than personal or real property owned by Dual;

(f) any rights or interests in or against any assets in the possession or control of Hoffco or Tenax;

(g) any rights or interests in or to any assets surrendered to Bank by Hoffco or Tenax;

(h) subject to paragraph 6 below, any liens or security interests in the capital stock of Dual; or

(i) any of the Loan Documents other than the Mortgage and the Note.

3. Purchaser assumes and agrees to honor and perform all of Bank's obligations, duties, liabilities and responsibilities to Dual under the Loan Documents arising from and after the date of this Agreement. Purchaser hereby indemnifies and agrees to hold Bank harmless from any damage, loss, liability, expense or responsibility actually incurred by Bank in any way arising from or as a result of any act or omission of Purchaser from and after the date hereof with respect to Dual or any of the Dual Loan Assets, except to the extent related to or based upon the willful misconduct of Bank.

4. Purchaser and Dual shall not enter into any agreements or amendments that affect, in any way, Bank's rights, interests and remedies under the Loan Documents in respect of Hoffco, Tenax or any collateral security for the Obligations of Hoffco and/or Tenax. Except as provided in paragraph 6 below, Bank is reserving (and nothing in this Agreement is intended to waive or modify) all rights, interests or remedies Bank has under the Loan Documents (other than the Mortgage and Note) or applicable law against Hoffco, Tenax or [REDACTED] or any collateral security for such Obligations.

5. In consideration for the sale and assignment memorialized hereby, concurrently with the execution of this Agreement, Purchaser will wire transfer to Bank [REDACTED] (the "Purchase Price") in immediately available funds as follows:

Citizens Bank
Flint, MI
ABA [REDACTED]
Account [REDACTED]
Reference: [REDACTED]

6. Effective upon Bank's receipt of the Purchase Price, Bank agrees:

(a) that the Dual Guaranty Obligations (as to Dual only) will be deemed fully satisfied;

(b) that any pledges of the capital stock of Dual will be deemed terminated and released.

7. Pursuant to the Loan Documents, Dual maintains a lockbox and blocked account for the benefit of Bank. Subject to Bank's receipt of the Purchase Price, Bank will promptly execute and deliver any reasonably requested documents and notifications to cause the depository bank(s) with whom any blocked accounts or lockbox have been established to (i) recognize Purchaser's rights in or to all existing and future items received into such lockbox and deposits in such blocked account, and (ii) remit to Purchaser all sums now or in the future received in any such lockboxes or deposited into any such blocked accounts. Any payments to be made to Purchaser under this Section 7 will be wire transferred to Purchaser (net of any wire transfer fees customarily charged by Bank) as follows:

[REDACTED]
ABA Number: [REDACTED]
Account Number: [REDACTED]
Reference: [REDACTED]

8. Bank represents and warrants to Purchaser:

(a) Bank has all requisite power and authority to execute and deliver and to perform all of its obligations under this Agreement.

(b) The execution, delivery and performance of this Agreement has been duly authorized by all necessary action of Bank.

(c) This Agreement constitutes a legal, valid and binding obligation of Bank enforceable against it in accordance with its terms.

(d) Bank has not previously assigned, pledged or transferred the Dual Loan Assets.

(e) Bank does not consider the sale of the Loan Assets as the "purchase" or "sale" of a "security" within the meaning of the Securities Act of 1933, the Securities Exchange Act of 1934 or Rule 10b-5 promulgated thereunder, the Trust Indenture Act of 1939, or any state securities law.

(f) As of the date of this Agreement, the outstanding principal amounts owing by Dual to Bank are as set forth in Recital C above. The Direct Obligations also include accrued but unpaid interest in the amount of [REDACTED] and unpaid fees in the amount of [REDACTED].

9. Purchaser represents and warrants to Bank:

(a) Purchaser has all requisite power and authority to execute and deliver and to perform all of its obligations under this Agreement.

(b) The execution, delivery and performance of this Agreement has been duly authorized by all necessary action of Purchaser and does not and will not (i) require any consent or approval of shareholders, (ii) violate any law, rule, regulation, order, writ, judgment, injunction, determination or award presently in effect having applicability to Purchaser or any provision of Purchaser's articles or by-laws, or (iii) result in a breach or constitute a default under any agreement to which Purchaser is a party or by which it is bound.

(c) This Agreement constitutes a legal, valid and binding obligation of Purchaser enforceable against it in accordance with its terms.

(d) Purchaser (i) has such knowledge and experience in financial matters that it is capable of evaluating the economic and legal merits and risks of purchasing of the Dual Loan Assets; (ii) is knowledgeable regarding the financial status of Dual; (iii) has agreed to purchase the Dual Loan Assets on the basis of its own independent investigation, evaluation and credit determination and has not sought or relied upon any representation or warranty from Bank (except those limited representations expressly stated in this Agreement) or information provided by or statements made by Bank or its representatives or agents; and

(iv) is purchasing the Dual Loan Assets for its own account and not with a view to, or for sale in connection with, any public distribution thereof which would violate applicable securities laws.

(e) Purchaser does not consider the sale of the Loan Assets as the "purchase" or "sale" of a "security" within the meaning of the Securities Act of 1933, the Securities Exchange Act of 1934 or Rule 1 Ob-5 promulgated thereunder, the Trust Indenture Act of 1939, or any state securities law.

10. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE DUAL LOAN ASSETS ARE BEING TRANSFERRED AND ASSIGNED TO PURCHASER WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY NATURE OR TYPE AND SUCH ASSETS ARE BEING TRANSFERRED AS-IS WHERE-IS AND WITH ALL FAULTS. FOR CERTAINTY, PURCHASER ACKNOWLEDGES AND AGREES THAT BANK IS MAKING NO REPRESENTATIONS OR WARRANTIES REGARDING THE VALUE, ENFORCEABILITY, PRIORITY, PERFECTION OR EXISTENCE OF ANY OF THE DUAL LOAN ASSETS.

11. Purchaser acknowledges that (i) Bank may possess or hereafter come into possession of certain non-public information concerning the Dual Loan Assets and the Loan Documents not known to Purchaser, including all information contained in the Excluded Property (the "Excluded Information"), (ii) Bank is not providing, and has no obligation to provide, the Excluded Information to Purchaser, (iii) Purchaser has decided to purchase the Dual Loan Assets notwithstanding its lack of knowledge of the Excluded Information, and (iv) Bank shall have no liability to Purchaser with respect to Bank's non-disclosure of the Excluded Information.

12. The parties covenant and agree to execute and deliver all such documents and instruments as the other may reasonably deem necessary, from time to time, to carry out the intent and purpose of this Agreement and to consummate the transaction contemplated by this Agreement, provided that the cost and expense of preparing any such documents shall be borne by the party requesting the documents. Upon receipt of the Purchase Price, Bank will deliver to Purchaser: the original Note, endorsed to the order of Purchaser (or an originally executed lost note affidavit), an assignment of the Mortgage in recordable form, and UCC financing statement assignments for the UCC financing statements referenced in paragraph 1(f) above, all without representation, warranty or recourse.

13. 

14. Any notices given under this Agreement shall be given as follows (or as otherwise directed in a writing which references this Agreement and directs that notices be provided otherwise):

If to Bank:



If to Purchaser:

15. The agreements, representations and warranties of the parties shall survive the consummation of the assignment contemplated hereby and the satisfaction of Dual's obligations to Purchaser arising under the Dual Loan Assets.

16. This Agreement sets forth the entire agreement and understanding of the parties, and supersedes all prior agreements and understandings between the parties with respect to the assignment. This Agreement shall be binding on, and inure to the benefit of, the parties and their successors and assigns.

17. This Agreement may be signed in counterparts, each of which shall be an original and both of which taken together shall constitute one agreement, and facsimile signatures will be treated as original for all purposes.

18. This Agreement may not be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

19. **THE PARTIES HERETO ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL RIGHT, BUT THAT THIS RIGHT MAY BE WAIVED. THE PARTIES EACH HEREBY KNOWINGLY, VOLUNTARILY AND WITHOUT COERCION, WAIVE ALL RIGHTS TO A TRIAL BY JURY OF ALL DISPUTES ARISING OUT OF OR IN RELATION TO THIS AGREEMENT. NO PARTY SHALL BE DEEMED TO HAVE RELINQUISHED THE BENEFIT OF THIS WAIVER OF JURY TRIAL UNLESS SUCH RELINQUISHMENT IS IN A WRITTEN INSTRUMENT SIGNED BY THE PARTY TO WHICH SUCH RELINQUISHMENT WILL BE CHARGED.**

DMC HOLDINGS, INC.

By: Marcy J. Pratt
Title: ~~CEO~~ CEO

[signatures continued on next page]

[signatures continued from prior page]

CITIZENS BANK

By: John A Zimbr
Title: FVP