

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
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<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Marco Wood Products, Inc.		11/04/2005	CORPORATION: MICHIGAN
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Backyard Storage Solutions, LLC		
<b>Street Address:</b>	1000 Ternes Drive		
<b>City:</b>	Monroe		
<b>State/Country:</b>	MICHIGAN		
<b>Postal Code:</b>	48162		
<b>Entity Type:</b>	LIMITED LIABILITY COMPANY: DELAWARE		
<b>PROPERTY NUMBERS Total: 2</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	2563891	SHEDMASTER	
<b>Registration Number:</b>	2562022	SHEDMASTER	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	(248)433-4363		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
<b>Phone:</b>	248-433-7300		
<b>Email:</b>	tedfarmer@tedfarmerlaw.com		
<b>Correspondent Name:</b>	Ted C. Farmer, Esq.		
<b>Address Line 1:</b>	41000 Woodward Avenue Suite 395 East		
<b>Address Line 4:</b>	Bloomfield Hills, MICHIGAN 48304-5134		
<b>NAME OF SUBMITTER:</b>	Ted C. Farmer, Esq.		
<b>Signature:</b>	/tedcfarmer/		
<b>Date:</b>	11/28/2008		

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Total Attachments: 37

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ASSET PURCHASE AGREEMENT dated as of October \_\_, 2005, among Marco Wood Products Inc., Backyard Buildings, Inc. and Heartland Industries, Inc. (DE) (“Sellers”), which are debtors-in-possession under chapter 11 of title 11, United States Code (as amended from time to time, the “Bankruptcy Code”), and Marco Acquisition, LLC, a Delaware limited liability company, (“Purchaser”).

WHEREAS, Purchaser desires to purchase substantially all of the assets used or usable in connection with Sellers’ business (the “Business”), and Purchaser desires to assume certain of Sellers’ liabilities which are related to the Business, all on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, on September 6, 2005 (the “Filing Date”), Sellers commenced cases in the United States Bankruptcy Court for the Eastern District of Michigan, Southern Division, under Chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”); and

WHEREAS, Sellers continue in the management and possession of their properties as debtors-in-possession in the Chapter 11 Cases pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code; and

WHEREAS, the transactions contemplated by this Agreement shall be implemented through the filing of a motion for the sale of the assets (other than the Excluded Assets) pursuant to Section 363 of the Bankruptcy Code in accordance with the terms of this Agreement; and

WHEREAS, subject to the entry of the Sale Order (as hereinafter defined) and on the terms and conditions set forth herein, Purchaser shall purchase such assets of Sellers;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

## ARTICLE 1 DEFINITIONS

Section 1.1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

“Action” means any claim, action, suit, arbitration, mediation, inquiry, proceeding or investigation by any private Person or Governmental Authority before any Governmental Authority.

“Affiliate” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the first mentioned Person.

“Agreement” means this Agreement, including the Schedules and the Exhibits, as amended from time to time in accordance with its terms.

“Assets” means the assets of every type and description, tangible or intangible, real or personal, that are owned, leased or licensed by Sellers.

“Assumed Contracts” has the meaning set forth in Section 3.1.1(b).

“Assumed Liabilities” has the meaning set forth in Section 3.1.1.

“Attendant Documents” has the meaning set forth in Section 5.1.1.

“Auction” has the meaning set forth in Section 7.1.2.

“Bank Debt” means that certain debt of Sellers owed to JPMorgan Chase Bank, N.A. (“Lender”) (i) in the aggregate principal amount of approximately \$11,182,085.54 in respect of loans made, and in the aggregate principal amount of approximately \$700,000 in respect of letters of credit issued, in each case by the Lender pursuant to, and in accordance with the terms of, the Credit Agreement, dated as of December 30, 2001, as amended and restated as of September 1, 2004 (as heretofore amended, supplemented or otherwise modified, the “Sellers’ Pre-Petition Bank Agreements”) plus interest thereon and other fees, expenses (including any attorneys’, accountants’, appraisers’ and financial advisors’ fees that are chargeable or reimbursable under the Sellers’ Pre-Petition Bank Agreements), charges and other obligations incurred in connection therewith as provided in the Sellers’ Pre-Petition Bank Agreements, and (ii) in the aggregate principal amount not to exceed \$750,000 (the actual available principal amount at any time being subject to those conditions set forth in the 8<sup>th</sup> Amendment to the Credit Agreement (as heretofore amended, supplemented or otherwise modified, the “DIP Agreements”)) owed by the Sellers for post-petition borrowings pursuant to the DIP Agreements.

“Bankruptcy Code” has the meaning set forth in the Preamble.

“Bankruptcy Court” means the United States Bankruptcy Court for the Eastern District of Michigan, Southern Division.

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as amended from time to time.

“Benefit Plans” has the meaning set forth in Section 4.1.9.

“Business” has the meaning set forth in the Preamble.

“Business Day” means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in the City of Detroit, Michigan.

“Chapter 11 Cases” has the meaning set forth in the Recitals.

“Closing” has the meaning set forth in Section 9.1.

“Closing Date” has the meaning set forth in Section 9.1.

“COBRA” has the meaning set forth in Section 6.2.3.

“Code” means the Internal Revenue Code of 1986, as amended, together with the rules and regulations promulgated thereunder.

“Consent” means a consent, approval, authorization, waiver or notification from any Governmental Authority or other Person.

“Control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly or as trustee or executor, of the power to direct or cause the direction of the management policies of a Person, whether through the ownership of capital stock, as trustee (other than a Chapter 11 trustee) or executor, by contract or credit arrangement or otherwise.

“Creditors’ Committee” means the official committee of unsecured creditors appointed by the United States trustee in the Chapter 11 Cases, as such committee may be constituted from time to time.

“Encumbrance” means any encumbrance, lien, security interest, pledge claim, interest, hypothecation, restriction, reservation, infringement, conditional sale agreement, title retention or other security arrangement, defect of title, adverse right, claim, or interest, charge or other claim, of any nature whatsoever.

“Environmental Law” means any federal, state, local or foreign statute, law, ordinance, regulation, rule, code or order or rule of law, including common law, and any enforceable judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to pollution or protection of the environment, health, safety or natural resources, including the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Substances.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, together with the rules and regulations promulgated thereunder.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, together with the rules and regulations promulgated thereunder.

“Excluded Assets” has the meaning set forth in Section 2.2.

“Excluded Liabilities” has the meaning set forth in Section 3.1.2.

“Filing Date” has the meaning set forth in the Recitals.

“Final Order” means an order of the Bankruptcy Court (a) as to which the time to appeal shall have expired and as to which no appeal shall then be pending, or (b) if an appeal shall have been timely filed or sought, either (i) no stay of the order shall be in effect or (ii) if such a stay shall have been granted by the Bankruptcy Court, then (A) the stay shall have been dissolved or (B) a final order of the district court having jurisdiction to hear such appeal shall have affirmed the order and the time allowed to appeal from such affirmance or to seek review or rehearing thereof shall have expired and the taking or granting of any further hearing, appeal or petition for certiorari shall not be permissible, and if a timely appeal of such district court order

or timely motion to seek review or rehearing of such order shall have been made, any court of appeals having jurisdiction to hear such appeal or motion (or any subsequent appeal or motion to seek review or rehearing) shall have affirmed the district court's (or lower appellate court's) order upholding the order and the time allowed to appeal from such affirmance or to seek review or rehearing thereof shall have expired and the taking or granting of any further hearing, appeal or petition for certiorari shall not be permissible; provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or the local court rules, may be filed with respect to such order shall not prevent such order from being considered a Final Order; and provided further, however, that Purchaser in its sole discretion may treat as not being a Final Order, any order for which an timely filed appeal, motion to seek review, motion to seek rehearing, or any similar motion is pending notwithstanding that such order is not then subject to stay.

"Governmental Authority" means any United States federal, state or local or any foreign government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal or judicial or arbitral body.

"Governmental Order" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

"Hazardous Substances" means (a) any petroleum, petroleum products, by-products or breakdown products, radioactive materials, asbestos-containing materials or polychlorinated biphenyls or (b) any chemical, material or substance defined or regulated as toxic or hazardous or as a pollutant or contaminant under any Environmental Law.

"Hired Employees" has the meaning set forth in Section 6.1.1

"IRS" means the Internal Revenue Service.

"Knowledge" of a party with respect to a representation and warranty means the knowledge of such party after reasonable inquiry of each of those persons responsible for the business matters covered by such representation and warranty.

"Law" means any federal, state, local or foreign statute, law, ordinance, regulation, rule, code, order, other requirement or rule of law (other than an Environmental Law).

"Lease Obligations" means the obligations of Sellers to pay rent or other monetary amounts under the Leases.

"Leases" means a lease or other arrangement conveying the right to use real or personal property (tangible or intangible, or a combination thereof) in effect as of the date of this Agreement.

"Material Adverse Effect" means, with respect to Sellers, any change or effect that is materially adverse to the business, operations, results of operation, properties, financial condition or Assets of Sellers, taken as a whole; other than, (a) general changes in the U.S. economy (except if there would otherwise be a Material Adverse Effect to Sellers, taken as a

whole, as a result thereof), (b) general changes in the industry in which Sellers do business (except if there would otherwise be a Material Adverse Effect to Sellers, taken as a whole, as a result thereof) or (c) any change or effect resulting directly or indirectly from (i) commencement of the Chapter 11 Cases or (ii) this Agreement or the transactions contemplated hereby or the announcement thereof.

“Person” means an individual, corporation, partnership, association, limited liability company, trust, joint venture, unincorporated organization, other entity or group (as defined in Section 13(d)(3) of the Exchange Act).

“Purchase Price” has the meaning set forth in Section 4.1.

“Purchased Assets” has the meaning set forth in Section 2.1.

“Purchaser” has the meaning set forth in the Preamble.

“Purchaser’s Other Plans” has the meaning set forth in Section 6.2.2.

“Sale Date” means the date on which the Bankruptcy Court enters the Sale Order.

“Sale Order” means an order or orders of the Bankruptcy Court in form and substance reasonably satisfactory to Purchaser and Sellers providing for, among other things, (i) the sale of the Purchased Assets to Purchaser pursuant to section 363(b) and (f) of the Bankruptcy Code free and clear of all Encumbrances except the Assumed Liabilities, and (ii) the assumption by Sellers and assignment to Purchaser pursuant to Section 365 of the Bankruptcy Code of all contracts, agreements, and leases to be assigned to Purchaser pursuant to this Agreement.

“Sellers” has the meaning set forth in the Preamble.

“Sellers’ Employees” has the meaning set forth in Section 6.1.1.

“Successful Bid” has the meaning set forth in Section 7.1.6.

“Successful Bidder” has the meaning set forth in Section 7.1.6.

“Tax” or “Taxes” means all income, gross receipts, sales, use, transfer, payroll, employment, franchise, profits, property, excise or other similar taxes, estimated import duties, fees, stamp taxes and duties, value added taxes, assessments or charges of any kind whatsoever (whether payable directly or by withholding), together with any interest and any penalties, additions to tax or additional amounts imposed by any taxing authority with respect thereto.

Section 1.2. Terms Generally. As used in this Agreement (a) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other genders as the context requires, (b) the terms “hereof,” “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement and not to any particular provision of this Agreement, and Article, Section, paragraph, Exhibit and Schedule references are to the Articles, Sections, paragraphs, Exhibits

and Schedules to this Agreement unless otherwise specified, (c) the word "including" and words of similar import when used in this Agreement, shall mean "including, without limitation," unless otherwise specified, and (d) the word "or" shall not be exclusive.

## ARTICLE 2 PURCHASE AND SALE OF ASSETS

Section 2.1. Purchase and Sale of the Assets. On the Closing Date, Sellers shall transfer, sell, assign, and deliver to Purchaser, and Purchaser shall purchase from Sellers, on the terms and subject to the conditions set forth in this Agreement and the Sale Order, all of Sellers' right title and interests in to and under any and all assets properties and business of every kind and description, whether tangible or intangible, real, personal or fixed wherever situated, owned held or used by Sellers or in which Sellers have any right, title or interest, other than the Excluded Assets (all such assets and properties are referred to in this Agreement as the "Purchased Assets"), free and clear of all Encumbrances other than the Assumed Liabilities. The Purchased Assets include the following:

2.1.1. All furniture, fixtures and other fixed assets which are used in the Business;

2.1.2. The goodwill and all other intangible assets associated with the Business;

2.1.3. All patents, patent applications, trademarks, trademark applications and registrations, copyrights, copyright applications and registrations, commercial and technical trade secrets, licenses engineering, production and other designs, drawings, specifications, formulae, technology, computer and electronic data processing programs and software, software licenses inventions, processes, know-how, confidential information and other proprietary property rights and interests that are used in connection with the operation of the Business;

2.1.4. All employment, sales and business records, customer and supplier lists, advertising and promotional materials and all other books and records of every kind and nature, and in whatever format used in connection with the operation of the Business; provided that employment records shall only be Purchased Assets to the extent their transfer to Purchaser is valid under applicable Law;

2.1.5. All equipment, machinery, tools, dies, jigs, patterns, molds, parts, engineering and office equipment vehicles, communications equipment and other tangible or personal property;

2.1.6. All written and oral contracts, agreements, and purchase orders entered into by Sellers in connection with or related to the Business;

2.1.7. All franchises, permits, licenses or other authorizations held by Sellers in connection with the Business or the Assets;

2.1.8. All raw materials, work-in-progress, finished goods, supplies and inventories of or relating to the Business regardless of nature or kind;



2.1.9. All notes, accounts receivable and other receivables of Sellers;

2.1.10. All rights, claims, credits, causes of action, rights of set-off or other rights against third parties, except as set forth in Sections 2.2.5, 2.2.6, and 2.2.7;

2.1.11. Any and all policies of insurance other than Directors and Officers liability insurance, and insurance with respect to Excluded Liabilities;

2.1.12. All of Sellers' cash and cash equivalents; and

2.1.13. All proceeds received by Sellers from the Excluded Assets set forth in Sections 2.2.3 and 2.2.5.

Section 2.2. Excluded Assets. Any provision of this Agreement to the contrary notwithstanding, the following (collectively, the "Excluded Assets") shall not be included in the Assets and shall not be sold or assigned by Sellers to Purchaser pursuant to this Agreement:

2.2.1. the minute books, stock books, corporate seals and other corporate records of Sellers relating to its organization and existence;

2.2.2. [intentionally omitted];

2.2.3. retainers held by professionals for Sellers or the Committee to the extent not ultimately used to pay allowed fees and expenses of the professionals;

2.2.4. all stock, membership interests, partnership interests or the like held by Sellers;

2.2.5. all tax returns of Sellers and the right to refunds of Taxes paid by Sellers;

2.2.6. all Benefit Plans that are not expressly assumed by Purchaser;

2.2.7. claims under chapter 5 of the Bankruptcy Code and the proceeds thereof (other than causes of action against third parties for turnover of property otherwise constituting part of the Purchased Assets or for a determination as to whether any property constitutes part of the Purchased Assets);

2.2.8. all Directors and Officers liability insurance and insurance with respect to Excluded Liabilities; and

2.2.9. any other assets or items listed on the attached Schedule 2.2.9, which will be agreed upon by the parties and filed with the Bankruptcy Court by October 26, 2005.

ARTICLE 3  
LIABILITIES OF SELLERS

Section 3.1. Assumption of Liabilities. In connection with its acquisition of the Purchased Assets, Purchaser shall assume the following liabilities and obligations of Sellers, and no others (collectively, the "Assumed Liabilities"):

3.1.1. obligations to fill open purchase orders from those customers of the Business set forth on Schedule 3.1.1, which schedule will be agreed upon by Sellers and Purchaser and filed with the Bankruptcy Court by October 26, 2005, and promptly posted to Sellers' restructuring website, [www.bmcgroup.com/bbi](http://www.bmcgroup.com/bbi);

3.1.2. executory obligations arising or continuing after the Closing Date under the contracts and agreements set forth on Schedule 3.1.2 (the "Assumed Contracts"), which schedule will be agreed upon by Sellers and Purchaser and filed with the Bankruptcy Court by October 26, 2005, and promptly posted to Sellers' restructuring website, [www.bmcgroup.com/bbi](http://www.bmcgroup.com/bbi); and

3.1.3. all liabilities for wages and benefits for Hired Employees, whenever incurred, except as specifically set forth in Section 6.4.

Section 3.2. Excluded Liabilities. Other than the Assumed Liabilities, Purchaser shall not assume and shall not be liable for any liabilities of Sellers, regardless of the type or nature of such liabilities (collectively, the "Excluded Liabilities").

ARTICLE 4  
PURCHASE PRICE

Section 4.1. Purchase Price for Assets. The purchase price for the Purchased Assets (the "Purchase Price") shall be (a) the amount of the Bank Debt as of the date of Closing, payable through Purchaser's assumption of the Bank Debt and (b) Purchaser's assumption of the Assumed Liabilities.

Section 4.2. Payment of Purchase Price. Purchaser shall pay Sellers the Purchase Price as follows:

4.2.1. Purchaser shall execute such loan documents, satisfactory to both Lender and Purchaser, necessary and appropriate to accomplish Purchaser's assumption of the Bank Debt; and

4.2.2. Purchaser shall execute and deliver to Sellers an agreement, in form reasonably satisfactory to Sellers and Purchaser, assuming the Assumed Liabilities.

Section 4.3. Allocation of Purchase Price. The parties agree that for all tax and other reporting purposes, the Purchase Price shall be allocated among the Assets as set forth on Schedule 4.3, which shall be agreed upon by the parties by the Closing. Sellers and Purchaser hereby affirm that such allocation is fair and equitable. The parties shall make all tax reports, returns and claims and other statements consistent with the allocation set forth in Schedule 4.3

and shall not make any inconsistent written statement on any returns or during the course of any IRS or other tax audit, except to the extent required by law. Each party shall promptly notify the other if the IRS or any other taxation authority proposes a different allocation. In the event the IRS proposes a different allocation either party may file amended returns based on such allocation or any other allocation.

## ARTICLE 5 REPRESENTATIONS AND WARRANTIES

Section 5.1. Representations and Warranties of Sellers. Sellers hereby represents and warrants to Purchaser as follows:

5.1.1. Good Standing and Authority Backyard Buildings, Inc. and Heartland Industries, Inc. (DE) are Delaware corporations, and Marco Wood Products Inc. is a Michigan corporation, each validly existing and in good standing under the laws of its state of incorporation. Sellers have the power and authority to enter into this Agreement, to enter into any and all documents contemplated in this Agreement (the "Attendant Documents") to which it is a party and to consummate the transactions contemplated in this Agreement. This Agreement and all of the Attendant Documents to which a Seller is a party, and the consummation of the transactions contemplated in this Agreement, have been or will be, on or prior to the Closing Date, duly authorized and approved by all necessary and proper corporate action on the part of Sellers. This Agreement, and all of the Attendant Documents to which a Seller is a party, when executed and delivered, will constitute legal, valid and binding obligations of Sellers enforceable against Sellers in accordance with their respective terms.

5.1.2. Assets Upon consummation of the transactions contemplated hereby, Purchaser will have acquired good and marketable or sufficient title in and to, or a valid leasehold interest in or assignment of each of the Purchased Assets, free and clear of all Encumbrances, except for Assumed Liabilities.

5.1.3. Consents, Appraisals or Authorizations. Subject to Article 8 hereof, no consent, approval, or authorization of, filing or registration with, or notification to, any governmental or regulating authority is required in connection with the execution and delivery of this Agreement by Sellers or the consummation of the transactions contemplated hereby, other than any consent, approval or authorization, filing or registration with, or notification to, which if not obtained or made would not materially and adversely affect Sellers' ability to consummate the transactions contemplated hereby.

5.1.4. Personal Property. Sellers owns or holds under a valid lease all personal property reflected on their August 26, 2005 financial statements and all personal property of Sellers acquired by Sellers since the date thereof (except such property as have been disposed of in the ordinary course of business), free and clear of any Encumbrance, except for those that will be discharged concurrently with the Closing.

Section 5.2. Representations and Warranties of Purchaser. Purchaser hereby represents and warrants to Sellers the following:

5.2.1. Good Standing and Authority. Purchaser is a limited liability company organized, validly existing and in good standing under the laws of the state of Delaware. Purchaser is duly qualified to do business as a foreign limited liability company and is in good standing in each jurisdiction it is required to be qualified, except where the failure to be so qualified would not have a material adverse effect on Purchaser or its business. Purchaser has full limited liability company power and authority to enter into this Agreement, to enter into the Attendant Documents to which it is a party and to consummate the transactions contemplated in this Agreement. This Agreement and all of the Attendant Documents to which Purchaser is a party, and the consummation of the transactions contemplated in this Agreement, have been or will be, on or prior to the Closing Date, duly authorized and approved by all necessary and proper limited liability company action on the part of Purchaser. This Agreement, and all of the Attendant Documents to which Purchaser is a party, when executed and delivered, will constitute legal, valid and binding obligations of Purchaser enforceable against Purchaser in accordance with their respective terms.

5.2.2. Non-Violation. Neither the execution and delivery of this Agreement and the Attendant Documents to which Purchaser is a party nor the consummation of the transactions contemplated in this Agreement will conflict with, result in the breach or violation of or constitute a default under the terms, conditions or provisions of Purchaser's Articles of Organization or any other agreement or instrument to which Purchaser is a party, or by which Purchaser may be bound or to which it may be subject.

5.2.3. Consents, Approvals or Authorizations. No consent, approval or authorization of, filing or registration with, or notification to, any governmental or regulatory authority is required in connection with the execution and delivery of this Agreement by Purchaser or the consummation of the transactions contemplated hereby, other than any consent, approval or authorization, filing or registration with, or notification to, which if not obtained or made would not materially and adversely affect Purchaser's ability to consummate the transactions contemplated hereby. No consent, approval or authorization of any person, partnership, corporation or entity is required in connection with the execution and delivery of this Agreement by Purchaser or the consummation by Purchaser of the transactions contemplated hereby, other than those which, if not obtained, would not materially and adversely affect Purchaser's ability to consummate the transactions contemplated hereby.

5.2.4. Financial Capacity. Purchaser has cash on hand or definitive committed financing arrangements that are sufficient to satisfy all of its obligations under this Agreement. Purchaser has no Knowledge of any event or occurrence as a result of which any of the conditions to its right to funds under such financing agreements would not be satisfied.

Section 5.3. Certain Limitations. Each of the Parties is a sophisticated legal entity that was advised by knowledgeable counsel and, to the extent it deemed necessary, other advisors in connection with this Agreement. Accordingly, each of the Parties hereby acknowledges that (i) no Party has relied or will rely upon any document or written or oral information previously furnished to or discovered by it or its representatives, other than this Agreement and the Exhibits and Schedules attached hereto or such of the foregoing as are delivered at the Closing, (ii) there are no representations or warranties by or on behalf of any Party hereto or any of its respective Affiliates or representatives other than those expressly set

forth in this Agreement, and (iii) the Parties' respective rights and obligations with respect to all of the foregoing matters shall be solely as set forth in Article 10.

Section 5.4. Disclosure Schedules. The representations and warranties made in this Agreement by Sellers will be deemed for all purposes to be qualified by the disclosures made in the Schedules, whether or not in the case of any particular representation or warranty such representation or warranty refers to the Schedule in which the disclosure is made or to any other Schedule. The inclusion of an item on a Schedule does not constitute an admission that such item is material to the Business.

Section 5.5. Expiration of and Liability for Representations and Warranties. The representations and warranties of Sellers and Purchaser contained in this Agreement shall expire at the Closing. No officer of Sellers shall have liability for breach of a representation or warranty except for his or her fraud or intentional misrepresentation.

## ARTICLE 6 EMPLOYEE MATTERS

### Section 6.1. Employees.

6.1.1. Termination and Rehire of Sellers' Employees. Effective as of the Closing Date, Sellers shall terminate the employment of all employees of Sellers ("Sellers' Employees"), and Purchaser shall offer employment to those individuals among Sellers' Employees set forth on Schedule 6.1.1, which Schedule 6.1.1 shall be provided to Sellers within 48 hours prior to the Closing. For purposes of this Agreement, Sellers' Employees who, on or after the Closing Date, become employees of Purchaser shall be referred to herein as the "Hired Employees."

### Section 6.2. Employee Benefit Plans.

6.2.1. Employee Benefit Plans and Fringe Benefit Plans and Policies. Effective as of the Closing Date, Purchaser shall cause the Hired Employees to be covered under new or existing employee benefit plans and fringe benefit plans and policies of Purchaser ("Purchaser's Plans"), which shall provide to the extent practicable provisions substantially similar to those provisions in Sellers' plans with respect to eligibility and participation conditions, vesting schedules, contributions and benefit accrual levels. For all purposes of Purchaser's Plans, including, without limitation, for purposes of eligibility to participate, eligibility to receive benefits, vesting, benefit accruals, pre-existing condition limitation and other waiting and elimination periods, to the extent practicable each Hired Employee shall receive credit for his or her periods of service with Sellers and with each predecessor employer of Sellers, if any, to the extent such predecessor employer service was credited for purposes of any comparable Plan, program, policy, contract or arrangement of Sellers. With respect to each of Purchaser's Plans that is a health, dental, vision or other medical or surgical plan, to the extent practicable each Hired Employee shall receive credit for his or her year-to-date deductibles and co-payments toward meeting the deductible and co-payment requirements of such plan of

Purchaser. Purchaser's Plans shall cover all eligible claims and expenses incurred thereunder on and after the Closing Date.

6.2.2. COBRA. To the extent Purchaser's insurance provider will allow for such coverage to Sellers' Employees, notwithstanding anything in this Article 6 to the contrary, Purchaser shall assume the obligations, and Sellers shall cease to have all obligations or liability, with respect to the provision of notices, election periods and benefits pursuant to Section 4980B of the Code or Part 6 of Subtitle B of Title I of ERISA ("COBRA") to all Sellers' Employees, former Employees and other individuals associated with Sellers' Employees and former Employees who, as of the Closing Date, are receiving, entitled to receive or entitled to elect to receive continuation of group health plan benefits pursuant to COBRA.

6.2.3. Current Vacation and Sick Day Accruals. Effective as of the Closing Date, Purchaser shall provide each Hired Employee with the number of his or her unused accrued vacation and/or sick days outstanding as of the Closing Date under the applicable vacation and/or sick pay policy of Sellers and shall not cause any forfeiture of any such days such that Purchaser shall pay the cash equivalent of any such days that remain unused as of the Hired Employee's termination of employment with Purchaser to the extent applicable.

Section 6.3. Workers' Compensation. Purchaser shall not assume any liabilities, and Sellers shall retain and continue to have all liability, with respect to any and all workers' compensation injuries and claims of Sellers' Employees relating to the Business arising prior to the Closing Date.

Section 6.4. Self-Insured Employee Health Plans. Notwithstanding anything to the contrary in this Agreement or this Article 6, Seller shall retain its obligations to Sellers' Employees, regardless of whether any such Employee is a Hired Employee, related to Seller's self-insured employee health insurance plans with respect to any claim arising prior to the Closing Date. To the extent Sellers have reserves being held by insurance companies with respect to such obligations, Sellers shall provide that such reserves be used to pay such obligations.

Section 6.5. WARN Notices. Seller represents and affirms that notice under the Worker Adjustment and Retraining Act, 29 U.S.C. Sections 2101, *et seq.* was given by Sellers to all Employees on September 6, 2005.

Section 6.6. Mutual Cooperation. Each of the parties hereto shall mutually cooperate and provide the other party with such records, information, documentation and assistance as such party reasonably requests in order to carry out the party's respective obligations under this Article 6.

## ARTICLE 7 ADDITIONAL AGREEMENTS

Section 7.1. Sale Order. Sellers within 1 day from the date of this Agreement, shall file with the Bankruptcy Court a motion or motions and supporting papers (including a proposed order or orders) in form and substance reasonably satisfactory to Purchaser seeking the entry of the Sale Order. The motion seeking entry of the Sale Order shall:

7.1.1. request that the Sale Hearing occur on or before November 16, 2005 and that the stays under Rules 6004(g) and 6006(d) of the Bankruptcy Rules shall be waived ;

7.1.2. provide that Sellers will conduct an auction of their assets (the "Auction") at 10:00 a.m. on November 15, 2005, at the offices of Pepper Hamilton LLP, 100 Renaissance Center, Suite 3600, Detroit, MI 48243 and that Sellers do not intend to entertain or accept any bid at the Auction unless such bid:

(a) is on terms no less favorable (and no more burdensome or conditional) to Sellers than the terms of this Agreement as determined by Sellers and Lender,

(b) remains open through 10 days after the date set for Closing,

(c) does not include any contingency relating to due diligence or financing, or any other material conditions precedent to the bidder's obligation to close that exist as of the Auction and that are not otherwise contained in this Agreement,

(d) designates the executory contracts and unexpired Leases that the bidder may request the Sellers to assume and assign to the bidder and any other assets of Sellers that are subject to the bid,

(e) is made by one or more bidders, each of which can demonstrate that, individually or in the aggregate, it is (or they are) financially able to consummate the transaction contemplated by such bid(s) on the terms contemplated therein, and

(f) is for an aggregate purchase price at least equal to the Purchase Price plus \$100,000, provided that for purposes of this requirement Sellers shall be permitted to aggregate bids

(a bid which meets the foregoing requirements (a) – (f) is hereinafter referred to as a "Qualified Bid");

7.1.3. provide that the Auction shall be conducted in such a manner so as to maximize the return to Sellers' estate, and Sellers shall establish reasonable procedures ("Auction Procedures") at the commencement of the Auction for the conduct of the Auction so as to accomplish such goal, provided that the Auction Procedures shall, in any event, provide that: (A) at the commencement of the Auction, the Sellers will determine based on the nature of the Qualified Bids the bid to serve as the lead bid in the Auction, which bid will at the commencement of the Auction be announced to all Qualified Bidders participating at the Auction; (B) participating bidders (including the Purchaser to the extent Purchaser so chooses) will be permitted to increase their bids and to agree to modifications to their bids in order to make their bids more favorable to the Debtors, provided, subject to the following clause (C), that each bid after the first bid shall exceed the preceding bid by an increment to be announced at the Auction; and (D); at the conclusion of the Auction, Sellers shall determine, considering factors such as the financial and contractual terms of each bid and factors affecting the speed, certainty of closing each bid and net proceeds to Sellers, the highest or otherwise best bid(s) (the

“Successful Bid(s)” and the person(s) submitting the Successful Bid(s) referenced herein as the “Successful Bidder(s)”) and submit such bid(s) for approval to the Bankruptcy Court;

7.1.4. provide that, if Purchaser is not the proponent of the Successful Bid, Purchaser’s offer to purchase the Assets pursuant to this Agreement (as modified by Purchaser at the auction) shall remain open to the same extent other bids are required to remain open;

Section 7.2. Reorganization Proceedings.

7.2.1. Sellers shall (i) use their reasonable best efforts to cause the entry of the Sale Order by the Bankruptcy Court on or before November 18, 2005, and (iii) use their reasonable best efforts to obtain, and shall refrain from knowingly taking any action that would be likely to delay, prevent, materially impede or result in the revocation of the entry by the Bankruptcy Court of the the Sale Order.

7.2.2. Purchaser shall use its reasonable best efforts to assist Sellers in the performance of their obligations in obtaining the approval of the Sale Order and the matters described in Section 7.1, including providing such financial and other information as Sellers shall reasonably request in connection therewith.

7.2.3. Notwithstanding any provision to the contrary, Purchaser shall not have any right to direct Sellers to include any provision in, or to take any action under, the Sale Order, a Plan or Confirmation Order other than as set forth in this Agreement.

Section 7.3. Notification of Certain Matters. Sellers shall give prompt notice to Purchaser, and Purchaser shall give prompt notice to Sellers, of (i) the occurrence or nonoccurrence of any event the occurrence or nonoccurrence of which would be likely to cause any representation or warranty contained in this Agreement to be materially untrue or inaccurate (without giving effect to any limitation as to “materiality” set forth therein), (ii) any failure of Sellers or Purchaser, as the case may be, to comply materially with or satisfy materially any covenant, condition or agreement to be complied with or satisfied by it hereunder and (iii) the occurrence or non-occurrence of any event the occurrence or non-occurrence of which would have a Material Adverse Effect; provided, however, that the delivery of any notice pursuant to this Section 7.3 shall not limit or otherwise affect the remedies available hereunder to the party receiving such notice.

Section 7.4. Further Action.

7.4.1. Upon the terms and subject to the conditions hereof, each of the parties hereto shall use its reasonable best efforts to take or cause to be taken all appropriate action and to do or cause to be done all things necessary, proper or advisable under applicable Laws to consummate the transactions contemplated by this Agreement as promptly as practicable, including using its reasonable best efforts to obtain all licenses, permits, consents, approvals, authorizations, qualifications and orders of Governmental Authorities and parties to contracts with Sellers as are necessary for the consummation of the transactions contemplated by this Agreement and to fulfill the conditions to the Closing.



7.4.2. Each party hereto agrees to cooperate in obtaining any other consents and approvals that may be required in connection with the transactions contemplated by this Agreement; provided, however, that no party hereto shall be required to compensate any third party to obtain any such consent or approval.

Section 7.5. Inspection by Sellers; Use of Hired Employees. From and after the Closing Date, Purchaser will permit the agents, representatives, attorneys and accountants of Sellers, at all reasonable times during regular business hours, to inspect and copy, at the expense of Sellers, the books, files, records, and accounts of Sellers then in the possession of Purchaser relating to periods prior to Closing for any reasonable purpose including (a) analysis or verification of amounts payable in respect of Taxes, (b) reconciliation of claims against, or other liabilities of, Sellers, and (c) administration of the Chapter 11 Cases; provided, however, that any such inspection or copying shall be done so as not to interfere with the business of Purchaser. In addition, at reasonable times, Purchaser shall make available to Sellers at Lender's request those Hired Employees Sellers or Lender reasonably determines are necessary to assist Sellers in liquidating the Excluded Assets and administering the Chapter 11 Cases, for which Sellers shall reimburse Purchaser as set forth on Exhibit 7.5.

Section 7.6. Conduct of the Business. From the date hereof until the Closing date, subject to the requirements of the Bankruptcy Code, Sellers shall conduct the Business in the ordinary course consistent with the business plan provided to Purchaser and use reasonable efforts to preserve intact the business organizations and relationships with third parties and keep available the services of present employees of the Business. Sellers will not (i) take or agree or commit to take any action that would make any representation and warranty of Sellers hereunder materially inaccurate at the Closing Date or (ii) omit or agree or commit to omit to take any action necessary to prevent any such representation or warranty from being materially inaccurate at the Closing Date.

Section 7.7. Cooperation. Upon the reasonable prior request of a Party, the other Party will use its reasonable efforts to fulfill or obtain the fulfillment of all conditions precedent set forth in this Agreement prior to the Closing Date.

Section 7.8. Litigation. Each Party will promptly supply to the other Party copies of all litigation or legal proceedings pertaining to the Assets which may arise subsequent to the execution of this Agreement but prior to the Closing Date and will also advise the other Party promptly in writing of any threat of litigation or other legal proceeding pertaining to the Assets or that party's ability to perform its obligations under this Agreement which is made between the date of this Agreement and the Closing Date.

Section 7.9. Public Announcements. Prior to the Closing Date, the Parties shall consult with each other before issuing any press release or otherwise making any public statement with respect to this Agreement and the transactions contemplated hereby, and shall not issue any such press release or make any such public statement without the prior approval thereof by the other Party, which approval shall not be unreasonably withheld; provided that Sellers may file this Agreement as an attachment to the motion(s) seeking entry of the Sale Order, may serve such motion(s) upon the 20 largest creditors, the Creditors' Committee, all

parties who have expressed an interest in acquiring Sellers' assets, and as further required by the Bankruptcy Court and may advertise for and solicit other buyers.

Section 7.10. Filings and Authorizations. Each of Sellers and Purchaser, as promptly as practicable, shall (i) make, or cause to be made, all such filings or submissions under laws, rules and regulations applicable to it as may be required for it to consummate the transaction contemplated herein; (ii) use its and their best efforts to obtain, or cause to be obtained, all authorizations, approvals, consents and waivers from all persons and governmental authorities necessary to be obtained by it in order for it so to consummate such transactions; and (iii) use its and their best efforts to take, or cause to be taken, all other actions necessary, proper or advisable in order for it to fulfill its obligations hereunder. Sellers and Purchaser shall coordinate and cooperate with one another in exchanging such information and supplying such reasonable assistance as may be reasonably requested by each of the other in connection with the foregoing.

Section 7.11. Designees. At or before the Closing, with the consent of Lender, Purchaser may designate an Affiliate to be the buyer of all or any portion of the Acquired Assets, the assignee of any Assumed Liabilities or the entity that will perform all or any portion of Purchaser's obligations under Article 6 hereof.

## ARTICLE 8 CONDITIONS TO THE CLOSING

Section 8.1. Conditions to Obligations of Purchaser. The obligations of Purchaser to effect the Closing shall be subject to the prior fulfillment or written waiver by Purchaser of each of the following conditions:

8.1.1. Sale Order. The Sale Order shall have been entered by November 16, 2005. The Sale Order shall not have been modified, amended, dissolved, revoked or rescinded and shall be in full force and effect on the Closing Date. The Sale Order shall be in form and substance reasonably acceptable to Purchaser and shall provide, among other things, (1) that, pursuant to Sections 363(b) and 363(f) of the Bankruptcy Code, such sale shall be free and clear of all Encumbrances other than Assumed Liabilities, (2) that all agreements, contracts, and leasehold interests required to be assumed by Sellers and assigned to Purchaser are so assumed and assigned free and clear of all Encumbrances other than Assumed Liabilities pursuant to Section 365 of the Bankruptcy Code, (3) that Purchaser is deemed to have purchased the Purchased Assets in good faith pursuant to Section 363(m) of the Bankruptcy Code so that the reversal or modification of the order does not affect the validity of the sale to Purchaser of the Purchased Assets pursuant to the order, (4) the stays under Rules 6004(g) and 6006(d) of the Bankruptcy Rules are waived, and (5) that Sellers are authorized and directed to execute, upon request by Purchaser, one or more assignments in form, substance, and number reasonably acceptable to Purchaser, evidencing the conveyance of the Purchased Assets to Purchaser.

8.1.2. Representations and Warranties; Covenants. (i) The representations and warranties of Sellers contained in this Agreement that are qualified as to materiality shall be true and correct and the representations and warranties of Sellers contained in this Agreement that are not qualified as to materiality shall be true and correct in all material

respects, in each case on and as of the Closing Date with the same force and effect as if made thereon, other than representations and warranties expressly made as of another date, which representations and warranties shall have been true and correct, or true and correct in all material respects, as the case may be, as of such date; (ii) the covenants contained in this Agreement to be complied with by Sellers on or before the Closing shall have been complied with in all material respects; and (iii) Purchaser shall have received a certificate of Sellers to such effect signed by a duly authorized executive officer of Sellers.

8.1.3. No Order. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, injunction or other Governmental Order (whether temporary, preliminary or permanent) which is in effect and has the effect of making the transactions contemplated by this Agreement illegal or otherwise restraining or prohibiting consummation of such transactions; or which would otherwise materially adversely affect or interfere with the operation of the Business following Closing; provided, however, that the parties hereto shall use all reasonable best efforts to have any such order or injunction vacated.

8.1.4. No Material Adverse Effect. No event or change that constitutes a Material Adverse Effect shall have occurred subsequent to the date of this Agreement and prior to the Closing.

8.1.5. Non-termination. This Agreement shall not have been terminated pursuant to Article 10.

8.1.6. Customer Setoffs. Purchaser and Lender shall have reached a satisfactory arrangement regarding the treatment of possible setoffs by Lowe's and Home Depot after the Closing of claims against Sellers existing as of the Closing.

Section 8.2. Conditions to Obligations of Sellers. The obligations of Sellers to effect the Closing shall be subject to the prior fulfillment or written waiver by Sellers of each of the following conditions:

8.2.1. Sale Order. The Sale Order shall have been entered by November 16, 2005. The Sale Order shall not have been modified, amended, dissolved, revoked or rescinded and shall be in full force and effect on the Closing Date. The Sale Order shall be in form and substance reasonably acceptable to Sellers and shall provide, among other things, (1) that such sale shall be, pursuant to Sections 363(b) and 363(f) of the Bankruptcy Code, free and clear of all Encumbrances other than assumed Liabilities (2) that all agreements, contracts, and leasehold interests required to be assumed by Sellers and assigned to Purchaser are so assumed and assigned free and clear of all Encumbrances other than Assumed Liabilities pursuant to Section 365 of the Bankruptcy Code, (3) that Purchaser is deemed to have purchased the Purchased Assets in good faith pursuant to Section 363(m) of the Bankruptcy Code so that the reversal or modification of the order does not affect the validity of the sale to Purchaser of the Purchased Assets pursuant to the order, (4) the stays under Rules 6004(g) and 6006(d) of the Bankruptcy Rules are waived, and (5) that Sellers are authorized and directed to execute, upon request by Purchaser, one or more assignments in form, substance, and number reasonably acceptable to Purchaser, evidencing the conveyance of the Purchased Assets to Purchaser.

8.2.2. Representations and Warranties; Covenants. (i) The representations and warranties of Purchaser contained in this Agreement that are qualified as to materiality shall be true and correct and the representations and warranties of Purchaser and the Guarantor contained in this Agreement that are not qualified as to materiality shall be true and correct in all material respects, in each case on and as of the Closing Date with the same force and effect as if made thereon, other than representations and warranties expressly made as of another date, which representations and warranties shall have been true and correct, or true and correct in all material respects, as the case may be, as of such date; (ii) the covenants contained in this Agreement to be complied with by Purchaser on or before the Closing shall have been complied with in all material respects; and (iii) Sellers shall have received a certificate of Purchaser to such effect signed by a duly authorized executive officer.

8.2.3. No Order. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, injunction or other Governmental Order (whether temporary, preliminary or permanent) which is in effect and has the effect of making the transactions contemplated by this agreement illegal or otherwise restraining or prohibiting consummation of such transactions; provided, however, that the parties hereto shall use all reasonable best efforts to have any such order or injunction vacated.

8.2.4. Non-termination. This Agreement shall not have been terminated pursuant to Article 10.

## ARTICLE 9 CLOSING

Section 9.1. Closing. The closing of the transactions contemplated in this Agreement (the "Closing") shall take place on or before November 18, 2005 (the "Closing Date") at the office of Pepper Hamilton LLP, 100 Renaissance Center, suite 3600, Detroit, Michigan 48243, or such other time and place as the parties may agree.

Section 9.2. Documents to Be Delivered at Closing by Sellers. At the Closing, Sellers shall properly execute (if necessary) and deliver (or cause to be delivered) to Purchaser:

9.2.1. A Bill of Sale for the Owned Personal Property; and an Assignment and Assumption Agreement for the Assumed Contracts and the Assumed Liabilities (the "Transfer Documents"), in form and substance as agreed to by the Parties;

9.2.2. Certificates of title to the vehicles listed included in the Purchased Assets, if any;

9.2.3. A copy of Sellers' Certificates of Formation or Articles of Incorporation and Certificates of Good Standing certified by the Delaware Secretary of State and Michigan Department of Labor & Economic Growth, as applicable;

9.2.4. A certified copy of the Sale Order and a copy of the docket sheet for the Chapter 11 Cases showing its entry;

9.2.5. Such other documents and instruments as are contemplated in this Agreement or as Purchaser or Purchaser's counsel may reasonably request in order to evidence or consummate the transactions contemplated in this Agreement or to effectuate the purpose or intent of this Agreement.

Section 9.3. Documents to be Delivered at Closing by Purchaser. At the Closing, Purchaser shall properly execute (if necessary) and deliver (or caused to be delivered) to Sellers:

9.3.1. The Purchase Price, as provided in Section 4.2 above;

9.3.2. An executed Assignment and Assumption Agreement for the Assumed Contracts and the Assumed Liabilities;

9.3.3. A copy of Purchaser's Articles of Organization, certified by the Delaware Secretary of State, and a Certificate of Good Standing for Purchaser issued by the Delaware Secretary of State and by each state in which Purchaser is qualified to do business;

9.3.4. A certificate, executed by an officer of Purchaser, attached to which shall be a copy of Purchaser's minutes or resolutions approving the transactions contemplated in this Agreement, and the officer of Purchaser executing such certificate shall certify that, as of the Closing Date, such minutes or resolutions are true, complete and correct, have not be altered or repealed and are in full force and effect;

9.3.5. Such other documents and instruments as are contemplated in this Agreement or as Sellers or Sellers' counsel may reasonably request in order to evidence or consummate the transactions contemplated in this Agreement or to effectuate the purpose or intent of this Agreement.

## ARTICLE 10 TERMINATION, AMENDMENT AND WAIVER

Section 10.1. Termination. Notwithstanding anything herein to the contrary, this Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing:

10.1.1. by mutual written consent of Purchaser and Sellers; or

10.1.2. by Purchaser if the Bankruptcy Court enters an order that contemplates the sale of the Purchased Assets to a Person other than Purchaser or any of its Affiliates on the terms of this Agreement and the sale to such other Person closes; or

10.1.3. by Purchaser or Sellers if the Bankruptcy Court or any other court of competent jurisdiction in the United States or other United States Governmental Authority shall have issued an order, decree, ruling or taken any other action restraining, enjoining or otherwise prohibiting the purchase of the Purchased Assets on the terms and conditions contained herein and such order, decree, ruling or other action shall have become a Final Order; or

10.1.4. by Purchaser (provided that it is not in material breach of any representation, warranty or covenant or other agreement contained herein) if:

(a) the Sale Order shall not have been entered by the Bankruptcy Court on or prior to November 16, 2005; or

(b) [intentionally omitted]

10.1.5. by Sellers (provided that they are not in material breach of any representation, warranty or covenant or other agreement contained herein) if the Closing shall not have occurred on or before November 18, 2005, or by Purchaser (provided that it is not in material breach of any representation, warranty or covenant or other agreement contained herein) if the Closing shall not have occurred on or before November 18, 2005; or

10.1.6. by either Sellers or Purchaser (provided that the terminating party is not then in material breach of any representation, warranty, covenant or other agreement contained herein) if there shall have been a material breach by the other party of its covenants herein, which breach either (i) is not cured within 30 days following written notice to the party committing such breach or (ii) by its nature, cannot be cured prior to November 18, 2005; or

10.1.7. by Sellers (provided that they are not then in material breach of any representation, warranty or covenant or other agreement contained herein) if Sellers have given written notification to Purchaser on or after November 18, 2005 of the satisfaction of the conditions set forth in Section 8.1 (other than any condition the satisfaction of which shall have required an action of Purchaser or which shall not have been satisfied because of a breach by Purchaser) and the Closing shall not have occurred within 30 days thereafter but only if such conditions shall have been satisfied during all of such 30-day period; or

10.1.8. by Purchaser (provided that it is not then in material breach of any representation, warranty or covenant or other agreement contained herein) if Purchaser has given written notification to Sellers on or after November 18, 2005 of the satisfaction of the conditions set forth in Section 8.2 (other than any condition the satisfaction of which shall have required an action of Sellers or which shall not have been satisfied because of a breach by Sellers) and the Closing shall not have occurred within 30 days thereafter due to the failure of such conditions to be satisfied or waived; or

10.1.9. by Purchaser (provided that Purchaser is not then in material breach of any representation, warranty, covenant or other agreement contained herein) if a representation or warranty of Sellers contained this Agreement shall not have been true and correct in all material respects on the date made (without giving effect to any limitation on materiality set forth therein), which inaccuracy either (i) is not cured within 30 days following written notice to Sellers by Purchaser or (ii) by its nature, cannot be cured prior to November 18, 2005; or

10.1.10. by Sellers (provided that Sellers is not then in material breach of any representation, warranty, covenant or other agreement contained herein) if a representation or warranty of Purchaser contained in this Agreement shall not have been true and correct in all material respects on the date made (without giving effect to any limitation on

materiality set forth therein), which inaccuracy either (i) is not cured within 30 days following written notice to Purchaser by Sellers or (ii) by its nature, cannot be cured prior to November 18, 2005.

Section 10.2. Effect of Termination.

10.2.1. Upon termination of this Agreement by Sellers pursuant to Section 10.1.3, 10.1.5, 10.1.6, 10.1.7, or 10.1.10, neither party shall have any further obligations or rights under this Agreement.

10.2.2. Upon termination of this Agreement by Purchaser pursuant to Section 10.1.2, 10.1.8, or 10.1.9, , neither party shall have any further obligations or rights under this Agreement.

10.2.3. The provisions of this Section 10.2 shall be the exclusive remedies of the non-breaching party in the event that this Agreement is terminated pursuant to Section 11.1.

Section 10.3. Amendment. This Agreement may be amended by the parties hereto by action taken by or on behalf of their respective Boards of Directors at any time prior to the Closing Date. This Agreement may not be amended except by an instrument in writing signed by the parties hereto.

Section 10.4. Waiver. At any time prior to the Closing Date, any party hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions contained herein. Any such extension or waiver shall be valid if set forth in an instrument in writing signed by the party or parties to be bound thereby. The failure of any party to assert any of its rights hereunder shall not constitute a waiver of any such rights.

ARTICLE 11  
MISCELLANEOUS

Section 11.1. Expenses. Sellers and Purchaser shall each bear the expenses incurred by them in connection with the preparation and negotiation of this Agreement and the Attendant Documents and the consummation of the transactions contemplated in this Agreement.

Section 11.2. Dispute Resolution. Any and all disputes between the Parties arising out of any provision of this Agreement shall be resolved by the Bankruptcy Court.

Section 11.3. Notices. Any and all notices, requests, demands and other communications permitted under or required pursuant to this Agreement shall be in writing and shall be deemed given if personally delivered or if mailed, postage prepaid, certified or registered mail, return receipt requested, to the Parties at the addresses set forth below, or at such other addresses as they may indicate by written notice given as provided in this Section 12.3:

If to Purchaser:

Marco Acquisition, LLC  
c/o Thomas Harbin  
Source Capital LLC  
1776 Peachtree Road  
Suite 220 South  
Atlanta, GA 30309

With a required copy to:

Wendy W. Ponader  
Ponader & Associates, LLP  
5241 N. Meridian Street  
Indianapolis, Indiana 46208  
317-496-3072  
Fax: 317-257-5776

If to Sellers:

Marco Wood Products Inc.  
6400 E. 11 Mile Road  
Warren, Michigan  
Attn: Robert Blair

With required copies to:

Pepper Hamilton, LLP  
100 Renaissance Center, 36<sup>th</sup> Floor  
Detroit, Michigan 48243-1157  
Attn: I. William Cohen

Section 11.4. Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

Section 11.5. Construction. This Agreement has been executed in, and shall be construed and enforced in accordance with the laws of, the State of Michigan.

Section 11.6. No Assignment; Benefit. No Party may assign its rights and obligations under this Agreement without the prior written consent of the other Parties. This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and assigns.

Section 11.7. Entire Agreement. This Agreement, including the Exhibits and the Schedules attached or to be attached to it, is and shall be deemed to be the complete and final expression of the agreement between the Parties as to the matters contained in and related to this Agreement and supersedes any previous agreements between the Parties pertaining to such matters.

Section 11.8. Books and Records. Purchaser shall preserve all documents, books and records concerning the Business which Sellers delivers to Purchaser pursuant to this Agreement for a period of 4 years from the Closing Date. During such 4-year period, on reasonable notice and during normal business hours, Purchaser shall allow Sellers full access to such documents and shall permit Sellers to make copies and extracts from such documents.

Section 11.9. Counterparts, Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of, which together shall be considered one and the same agreement, and by facsimile signatures.

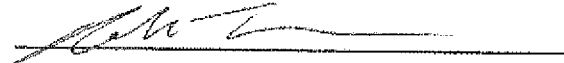


Section 11.10. Waiver. The waiver by any Party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or similar breach.

Section 11.11. Further Assurances. From time to time after the Closing Date, at Purchaser's request and without further consideration, but at Purchaser's expense, Sellers shall execute and deliver or cause to be executed and delivered such further instruments of conveyance, assignment and transfer and shall take such other action as Purchaser may reasonably request in order more effectively to convey, transfer, reduce to possession or record title to any of the Purchased Assets. On Purchaser's request, Sellers shall cooperate and use its best efforts to have its officers, directors, employees and agents cooperate with Purchaser on or after the Closing Date by furnishing information, evidence, testimony and other assistance in connection with any actions, proceedings, arrangements or disputes involving Purchaser and which are based on contracts, leases, arrangements or acts of Sellers which were in effect or occurred on or prior to the Closing Date. Purchaser shall reimburse Sellers, as is appropriate, for the reasonable out-of-pocket expenses, which it incurs in connection with such cooperation.


IN WITNESS WHEREOF, the Parties have caused this Asset Purchase Agreement among Sellers and Buyer to be executed on October 21, 2005.

**BACKYARD BUILDINGS, INC., MARCO  
WOOD PRODUCTS INC., AND HEARTLAND  
INDUSTRIES, INC. (DE), Sellers**

By: 

Their: Secretary

**MARCO ACQUISITION, LLC, Purchaser**

By: 

Its: Chairman

JPMORGAN CHASE BANK N.A.  
100 East Broad Street, 12<sup>th</sup> Floor  
Columbus, Ohio 43271-0225

Phone: 614/248-8201; Fax: 614/248-6438

November 4, 2005

Marco Acquisition LLC  
Backyard Storage Solutions, LLC  
c/o Source Capital, LLC  
1776 Peachtree Road  
Suite 220 South  
Atlanta, Georgia 30309

Attention: Mr. Tom Harbin

Dear Mr. Harbin:

This letter sets forth the agreements reached over the past several weeks among Marco Acquisition, LLC ("Newco I), Backyard Storage Solutions, LLC ("Newco II"), and JPMorgan Chase Bank N.A. ("JPM"). JPM is a secured lender to Marco Wood Products, Inc., Backyard Buildings, Inc. and Heartland Industries, Inc. (collectively, "the Debtors"). The Debtors are each in Chapter 11 proceedings pending in the U. S. Bankruptcy Court for the Eastern District of Michigan ("the Court"), jointly administered under Case No. 05-68820 (the "Proceedings").

The Asset Purchase Agreement (the "Newco I APA") among the Debtors and Newco I, dated October 21, 2005, which the Debtors were authorized to consummate by an Order entered by the Court in the Proceedings on entered November 3, 2005 (the "Sale Order"), sets forth the terms and conditions under which Newco I will acquire substantially all of the assets of the Debtors (the "Acquired Assets") used or usable in connection with Debtors' business (the "Business"). It is the intention of Newco II to (i) to acquire from Newco I and operate certain assets of the Debtors (the "Newco II Assets," as further defined and described below) and (ii) to

act as the Liquidating Agent for remaining assets acquired and retained by Newco I (the "Newco I Assets") for the benefit of JPM. In its capacity as Liquidating Agent, Newco II is referred to as the "Liquidating Agent." All obligations assumed by Newco I will be non-recourse obligations of Newco I to JPM (the "Non-Recourse Debt"). At the closing of the APA and this Agreement, scheduled to occur on November 4, 2005 ("the Closing"), JPM and Newco I shall execute such documents and instruments reasonably required by either party to both evidence the Non-Recourse Debt and the other agreements set forth herein. The Closing and the agreements contained herein shall be effective as of the opening of business on November 4, 2005.

#### I. NEWCO II

A. Simultaneous with the transfer of the assets from the Debtors to Newco I pursuant to the APA, Newco I will transfer to Newco II the Newco II Assets, defined below, free and clear of any liens and security interests held by JPM, as the Security interests relate to the indebtedness assumed by Newco I owed to JPM by the Debtors, against such assets. The Newco II Assets consist of the following:

- (i) All furniture, fixtures and other fixed assets which are used in the Business;
- (ii) The goodwill and all other intangible assets which are used in the Business;
- (iii) All patents, patent applications, trademarks, trademark applications and registrations, copyrights, copyright applications and registrations, commercial and technical trade secrets, licenses engineering, production and other designs, drawings, specifications, formulae, technology, computer and electronic data processing programs and software, software licenses inventions, processes, know-how, confidential information and

other proprietary property rights and interests that are used in connection with the operation of the business;

- (iv) All employment, sales and business records, customer and supplier lists, advertising and promotional materials and all other books and records of every kind and nature, and in whatever format used in connection with the operation of the Business; provided that employment records shall only be Newco II Assets to the extent their transfer to Newco II is valid under applicable Law;
- (v) All equipment, machinery, tools, dies, jigs, patterns, molds, parts, engineering and office equipment vehicles, communications equipment and other tangible or personal property;
- (vi) All written and oral contracts, agreements, and purchase orders in connection with or related to the Business;
- (vii) All franchises, permits, licenses or other authorizations in connection with the Business or the Acquired Assets;
- (viii) All raw materials, work-in-progress, finished goods, supplies and inventories of or relating to the Business regardless of nature or kind (collectively, the "Inventory");
- (ix) All rights, claims, credits, causes of action, rights of set-off or other rights against third parties; and
- (x) Any and all policies of insurance.

B. As consideration for the acquisition of the Newco II Assets (the "Newco II Purchase Price"), Newco II will:

1. With regard to "Hired Employees" under the Newco I APA and identified in Schedule 6.1.1 of the Newco I APA, Newco II shall be and perform as Newco I's designee as permitted under Section 7.11 of the Newco I APA
2. With regard to the assumed and assigned contracts, agreements and purchase orders identified on Schedules 3.1.1 and 3.1.2 of the Newco I APA, Newco II shall be and perform as Newco I's designee as permitted under Section 7.11 of the Newco I APA.
3. Newco II will pay Newco I the aggregate sum of \$4,900,000 in cash.

Other than as specifically set forth in I B (1) and (2) above, and under the terms of the Sale Order, Newco II shall not assume or be liable for any obligations of the Debtors.

4. Purchase Price Adjustment. All parties to this Agreement agree and acknowledge that Debtors' payroll obligations to Debtors' employees shall be paid by Debtors through the pay period ending November 4, 2005. The parties further acknowledge that a segment of Debtors' employees who work as installers or builders of Debtors' products in various markets will not have been paid prior to Closing for their work the week of October 31, 2005 (the "Builders' Pay Gap"). All parties to this Agreement agree that Newco II has no obligation to pay the Builders' Pay Gap under the Newco I APA or the Sale Order; but have asked Newco II to fund payment of the Builders' Pay Gap and Newco II has agreed subject to the terms herein. Upon notice from Newco II of payment of the Builders' Pay Gap up to an amount that shall not exceed \$100,000, JPM shall either (i) directly reimburse Newco II the aggregate amount of the Builders' Pay Gap, or (ii) credit Newco II's obligations to JPM in an amount equal to the aggregate amount of the Builders' Pay Gap.

5. The parties acknowledge that the following represents accounts receivable and not inventory as of the Closing: Goods delayed in warehouse: \$258,388.54; goods shipped but unbilled, \$62,836.81; and any amounts being held by Paymentech related to sales on or prior to November 3, 2005, estimated to be \$101,968.80.

## II. NEWCO I

The "Liquidating Assets" consist of all of the Acquired Assets that are not Newco II Assets under this Agreement. The Liquidating Assets will consist of and be liquidated as follows:

- (i) Accounts Receivable: Liquidating Agent shall collect all accounts receivable that were created on or prior to the close of business on date of Closing. Newco II shall be entitled to receive ten percent (10%) of all collections of accounts receivable collected after the Closing exceeding Four Million (\$4,000,000.00) (the "A/R Collections Incentive"). All amounts collected on accounts receivable, after payment of the A/R Collections Incentive, if any, shall be paid by Newco I or Liquidating Agent to JPM and applied against the Non-Recourse Debt.
- (ii) Cash: All cash transferred by the Debtors to Newco I as part of the Acquired Assets shall immediately, at Closing, be transferred by Newco I to JPM and applied against the Non-Recourse Debt.
- (iii) Proceeds of Newco II Assets. Simultaneous with the Closing, the purchase price of the Newco II Assets sold by Newco I to Newco II shall be paid by Newco I to JPM and applied against the Non-Recourse Debt.
- (iv) Notes: Certain notes payable to the Debtors will be endorsed by the Debtors to Newco I on the Closing of the APA. Fifty percent (50%) of all amounts collected under such notes will

be paid to JPM to be applied against the Non-Recourse Debt and 50% will be paid to the Liquidating Agent.

- (v) Termination of Liquidation Agreement. Should JPM decide that it no longer wishes for Newco I to use the services of the Liquidating Agent, upon five (5) days prior written notice and JPM's payment of the above agreed amounts to the effective date of terminating the agency relationship, JPM shall have the right to elect to terminate the relationship. Upon such termination, JPM shall have the right to appoint a new liquidating agent, and Newco I shall thereupon execute such new agreements as may be reasonably necessary or desirable to retain such new liquidating agent.

### III. CLOSING.

- (i) Closing Date. The closing of the transactions contemplated by this Letter Agreement shall occur on November 4, 2005 or such other date as the parties to this Agreement agree.
- (ii) Documents to Be Delivered at Closing. At the Closing, the appropriate party shall properly execute (if necessary) and deliver (or cause to be delivered) to Purchaser:
1. A Bill of Sale from Newco I to Newco II for the Newco II Assets.
  2. With regard to the items being assumed by Newco II set forth in I.B.1. and 2. above, Assignment and Assumption Agreement executed by Newco II, in form and substance as agreed to by the parties hereto;



3. A copy of Newco I and Newco II's Certificates of Formation or Articles of Incorporation and Certificates of Good Standing certified by the Delaware Secretary of State and Michigan Department of Labor & Economic Growth, as applicable;
4. UCC assignments from the Debtors to Newco I in connection with the Non-Recourse Debt;
5. Release executed by JPM, evidencing that the assets transferred from Newco I to Newco II are free and clear of the JPM security interests in such assets as it relates to the indebtedness assumed by Newco I owed to JPM by the Debtors;
6. Assumption Agreement by Newco I assuming all of the obligations of the Debtors to JPM and all asset security agreement from Newco I to JPM;
7. Such other documents and instruments as are contemplated in this Agreement or as the counsel for any party hereto may reasonably request in order to evidence or consummate the transactions contemplated in this Agreement or to effectuate the purpose or intent of this Agreement; and
8. A certificate, executed by an officer of both Newco I and Newco II, attached to which shall be a copy of Newco I and Newco II's minutes or resolutions approving the transactions contemplated in this Agreement, and the officer of Newco I or Newco II executing such certificate shall certify that, as of the Closing Date, such minutes or resolutions are true, complete and correct, have not be altered or repealed and are in full force and effect.

#### IV. MISCELLANEOUS PROVISIONS.

(i) Arbitration.

1. Any dispute between the parties to this Letter Agreement (the "Parties") shall be submitted to arbitration before a single, neutral arbitrator under the Commercial Arbitration Rules of the American Arbitration Association as the same may be in effect from time to time.
2. Each Party shall bear its own expenses in connection with the arbitration, and the expenses of the arbitrator and the American Arbitration Association shall be borne by the Parties equally, unless the determination by the arbitrator includes an award of any

or all of the expenses of the arbitrator or the American Arbitration Association, in which case such expenses shall be borne in accordance with such award.

3. The award of the arbitrator shall be final and conclusive upon the Parties, in lieu of all other legal, equitable, or judicial proceedings between them, as to the matters submitted to the arbitrator, and no appeal or judicial review of the award of the arbitrator shall be taken, but any such may be entered as a judgment and enforced in any court having jurisdiction over the Party against whom enforcement is sought. The arbitration proceedings do not apply to equitable relief sought by either party against the other.
4. The place of arbitration shall be in Wayne or Macomb County, Michigan.

(ii) Notices. Any and all notices, requests, demands and other communications permitted under or required pursuant to this Agreement shall be in writing and shall be deemed given if personally delivered, or if mailed, postage prepaid, certified or registered mail, return receipt requested, to the Parties at the addresses set forth below, or at such other addresses as they may indicate by written notice given as provided in this Paragraph:

If to Newco I or Newco II:

Marco Acquisition, LLC  
c/o Thomas Harbin  
Source Capital LLC  
1776 Peachtree Road  
Suite 220 South  
Atlanta, GA 30309

With a required copy to:

Wendy W. Ponader  
Ponader & Associates, LLP  
5241 N. Meridian Street  
Indianapolis, Indiana 46208  
317-496-3072  
Fax: 317-257-5776

If to JPM:

JPMorgan Chase Bank, N.A.  
100 East Broad Street, 12th Floor  
Columbus, Ohio 43271-0225  
Attn : David C. Savage

With required copies to:

Dykema Gossett PLLC  
400 Renaissance Center  
Detroit, Michigan 48243  
Attn: Ronald L. Rose & Sheryl Toby

- (iii) Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
- (iv) Construction. This Agreement has been executed in, and shall be construed and enforced in accordance with the laws of, the state of Michigan.
- (v) No Assignment; Benefit. No Party may assign its rights and obligations under this Agreement without the prior written consent of the other Parties. This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and assigns.
- (vi) Entire Agreement. This Agreement, including the Exhibits and the Schedules attached or to be attached to it, is and shall be deemed to be the complete and final expression of the agreement between the Parties as to the matters contained in and related to this Agreement and supersedes any previous agreements between the Parties pertaining to such matters.
- (vii) Counterparts, Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of, which together shall be considered one and the same agreement, and by facsimile signatures.
- (viii) Waiver. The waiver by any Party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or similar breach.

- (ix) Further Assurances. From time to time after the Closing Date, at Party's request and without further consideration, but at such Party's expense, the other Party or Party's shall execute and deliver or cause to be executed and delivered such further instruments of conveyance, assignment and transfer and shall take such other action as such Party may reasonably request in order more effectively to convey, transfer, reduce to possession or record title to any of the Acquired Assets or Newco II Assets. On a Party's request, the other Parties shall cooperate and use their best efforts to have its officers, directors, employees and agents cooperate with such Party on or after the Closing Date by furnishing information, evidence, testimony and other assistance in connection with any actions, proceedings, arrangements or disputes involving such Party and which are based on contracts, leases, arrangements or acts of Sellers which were in effect or occurred on or prior to the Closing. Such requesting Party shall reimburse the other Parties, as is appropriate, for the reasonable out-of-pocket expenses, which it incurs in connection with such cooperation.
- (x) Special Acknowledgement. The parties acknowledge that none of JPM, Newco I or Newco II have operated or provided management or direction to the Debtors' business. This Agreement is made without representations or warranties as to any aspect of the business operations of the Debtors' business, and each party acknowledges that it has done its own investigation and due diligence as it has deemed necessary or desirable to enter into this Agreement and the transactions contemplated hereby, and is

not relying on the advice, statements, financial or other information, or instruments or documents provided by any party to this Agreement to another.

\_\_\_\_\_

Please sign a copy of this letter below if it correctly represents our agreement.

Sincerely,

JPMORGAN CHASE BANK, N.A.

By: \_\_\_\_\_  
David C. Savage, Vice President

**AGREED:**

**MARCO ACQUISITION, LLC**

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

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

**BACKYARD STORAGE SOLUTIONS, LLC**

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

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

**BILL OF SALE AND RELEASE OF LIEN**

For value received, the sufficiency of which is hereby acknowledged, and pursuant to a Letter Agreement, dated the date hereof, among Marco Acquisition, LLC ("Seller"), Backyard Storage Solutions, LLC ("Purchaser") and JPMorgan Chase Bank, N.A. ("Bank") (the "Letter Agreement"), Seller hereby GRANTS, BARGAINS, SELLS, TRANSFERS, ASSIGNS, CONVEYS AND DELIVERS to Purchaser all of Sellers' right, title, and interest in the Newco II Assets (as defined in the Letter Agreement), free and clear of all liens and encumbrances of Bank.

Except as expressly set forth in the Letter Agreement, the Newco II Assets are sold "as is, where is" and no other representation is made, including a warranty of fitness for a particular purpose or otherwise.


The terms and conditions of this Bill of Sale shall survive the delivery hereof by Seller to Purchaser and Purchaser's acceptance hereof.

MARCO ACQUISITION, LLC

Dated: November \_\_\_\_\_, 2005

By   
Their 

Accepted: BACKYARD STORAGE SOLUTIONS, LLC

By 

Its 

**Release of Liens:** Bank has been granted by Seller a security interest in all of Seller's assets, including the Newco II Assets. Bank hereby consents to the sale by Seller to Purchaser of the Newco II Assets free and clear of all liens, claims and encumbrances and RELEASES its security interest, as it relates to the security interest granted to Bank by Seller, in and any and all other interest in, to or against all of the Newco II Assets.

JPMORGAN CHASE BANK, N.A.

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

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

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MARCO ACQUISITION, LLC

Dated: November \_\_\_\_\_, 2005

By \_\_\_\_\_  
Their \_\_\_\_\_

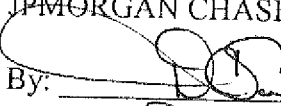
Accepted: BACKYARD STORAGE SOLUTIONS, LLC

By \_\_\_\_\_

Its \_\_\_\_\_

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JPMORGAN CHASE BANK, N.A.

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

Its: Vice President \_\_\_\_\_

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