

ASSET PURCHASE OFFER AND AGREEMENT

ROBOTIC SWEEPERS, INC. (the "Buyer"), a Grand Cayman corporation with offices in Littleton, New Hampshire, hereby makes this offer to purchase the assets of CONSOLIDATED DUST, INC. ("DUST" or "Seller").

RECITALS:

On May 12, 2003, DUST, a North Dakota corporation, and certain of its subsidiaries, including Seller, filed voluntary petitions (the "**Petitions**") for relief under Chapter 11 of the Bankruptcy Code (defined below) with the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), which Petitions were procedurally consolidated for joint administration pursuant to order of the Bankruptcy Court dated May 14, 2003, commencing a case titled *In re CONSOLIDATED DUST, CORPORATION, et. al.*, Case No. 03-89892 (TSG) (the "**Bankruptcy Cases**").

ARTICLE I. Definitions

As used in this Agreement, the following definitions shall apply:

"**Accounting Referee**" means KPMG.

"**Accounts Payable**" has the meaning set forth in Section 2.3(d).

"**Accounts Receivable**" has the meaning set forth in Section 2.1(a).

"**Acquired Assets**" has the meaning set forth in Section 2.1.

"**Affiliate**" of a Person means a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the first Person. The term "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"**Agreed-to Net Working Capital**" means \$6,183,000.

"**Agreement**" means this Asset Purchase Agreement, including all exhibits and schedules hereto, as the same may be amended or supplemented from time to time in accordance with its terms.

"**Alternative Transaction**" means any transfer or disposition of all or any significant portion of the Acquired Assets, directly or indirectly, in a single transaction or series of related transactions to any Person other than Buyer.

There are a couple of schools of thought on how to present an offer to a debtor or trustee. Some like to make a simple offer which includes a term for execution of a subsequent purchase and sale agreement. Others like to make the purchase and sale agreement the offer. The former often includes a term that prevents the debtor or a trustee from continuing to shop the assets while the terms of the purchase and sale agreement are being negotiated. The problem with such a term is that if the negotiations breakdown, then the assets will have been off the market for a considerable period. I prefer the offer that includes most, if not all, the terms that the offeror wants in the purchase and sale agreement.

In the larger transaction, definitions are important.

If you anticipate that there will be issues as to the value of certain assets, offsets to the purchase price or other items to be decided later, then it behooves you to seek a third party referee. You can avoid litigation or arbitration by appointing a referee up front.

If you are buying a going business, then you have to anticipate your working capital needs especially where you might be leaving the monies in the working capital accounts behind. I have seen several businesses in which the purchase price was exceeded by the monies in the debtor's accounts which accounts were sold along with the rest of the assets.

“Assigned Contracts” has the meaning set forth in Section 2.1(g). Notwithstanding the foregoing, Assigned Contracts shall not include Contracts identified in a separate schedule provided by Buyer to Seller on or before the date the Sale Order is entered, as Contracts to be excluded from the Assigned Contracts list in Schedule 2.1(g), notwithstanding their initial inclusion.

“Assumed Employee Obligations” means all liabilities, commitments and obligations of Seller for employee-related liabilities for which a related reserve amount is included within the Line Item on Schedule 3.3(a) captioned “Agreed-to Net Working Capital – Reserve for Employee Obligations”, including, but not limited to, liabilities for health care/dental/disability claims, payroll, accrued vacation and workers’ compensation claims -- normal (being workers’ compensation claims *other than* Workers’ Compensation Claims in Litigation). For greater clarity, an employee-related liability is an Assumed Employee Obligation so long as a reserve account is included for claims of the same *type*, notwithstanding the fact that there is no specific reserve for any particular claim. Workers’ Compensation Claims in Litigation are specifically excluded from “Assumed Employee Obligations”.

“Assumed Obligations” has the meaning set forth in Section 2.3.

“Bankruptcy Actions” means any claim or cause of action arising under the Bankruptcy Code including, but not limited to, claims or causes of action arising under Sections 506(a), 544, 547, 548, 549 and 550 of the Bankruptcy Code and equivalent or analogous state Law actions.

“Bankruptcy Case” has the meaning set forth in the Recitals.

“Bankruptcy Code” means Title 11 of the United States Code, 11 U.S.C. Section 101 *et seq.*, commonly known as the Bankruptcy Code, as it may be amended from time to time.

“Bankruptcy Court” has the meaning set forth in the Recitals.

“Bidding Procedures” means the bidding procedures included in the Bidding Procedures Order.

“Bidding Procedures Hearing” has the meaning set forth in Section 4.1.

“Bidding Procedures Order” has the meaning set forth in Section 4.1.

“Business” means the business currently conducted by Seller of manufacturing and selling commercial hollow metal doors, frames and stick-framing systems for commercial, industrial and institutional applications.

“Business Day” means any day other than a Saturday, Sunday or other day (a) on which the Bankruptcy Court is closed or (b) banking institutions in the City of Nashua, New Hampshire are authorized or required to close by Law or other action of a Governmental Authority.

“Closing” has the meaning set forth in Section 5.1.

“Closing Date” means the time and date of the Closing determined pursuant to Section 5.1.

“Closing Net Working Capital” has the meaning set forth in Section 3.3(a).

“Closing Statement” has the meaning set forth in Section 3.3(a).

“COBRA” has the meaning set forth in Section 9.2(a).

“Code” means the Internal Revenue Code of 1986, as amended.

This particular offer and agreement includes the assumption of certain employee obligations. This can be a black hole and should be thoroughly reviewed in the due diligence phase. If you are seeking only to purchase assets and not a going business, then you can eliminate the problem by stating that you are assuming no obligations of the seller.

You should also be aware of a recent decision by Judge Rosenthal in the Western Division of the U.S. Bankruptcy Court in Massachusetts. In summary he appeared to find that because employees were not notified of a sale of the assets, the buyer became liable for their claims. The case is on appeal, but the decision appears to put a burden on a buyer to make sure that the seller provides complete notice of the sale including, perhaps, newspaper advertising in the community in which the assets are located.

“Confidentiality Agreement” has the meaning set forth in Section 8.2.

“Continuing Plans” has the meaning set forth in Section 9.2(a).

“Contract” means any executory contract (as such term is used in Section 365 of the Bankruptcy Code) to which Seller is a party (a) as of the date hereof or (b) which is entered into by Seller between the date hereof and the Closing Date in accordance with Section 8.3 that concerns or is related to the Business, including, but not limited to, real and personal property leases, license agreements and agreements with employees, consultants or agents.

“Cure Costs” has the meaning set forth in Section 6.3(a).

“Deposit” has the meaning set forth in Section 3.1.

“Designated Restructuring Costs” means all out-of-pocket fees and expenses incurred or owed in connection with the administration of the Bankruptcy Cases, including, but not limited to, the U.S. Trustee fees, the fees and expenses of attorneys, accountants, financial advisors (including, without limitation, Really Expensive Consultants LLC), consultants and other professionals retained by DUST or Seller, the creditors’ committee, the postpetition lenders or the prepetition lenders incurred or owed in connection with the administration of the Bankruptcy Cases, and all out-of-pocket expenses of DUST, Seller and their Affiliates in connection with the transactions contemplated by this Agreement.

A definition such as this should raise warning flags for the buyer. This suggests that the buyer might be obligating itself to pay the debtor’s costs of administration in the Chapter 11.

“Effective Time” means 12:01 a.m. on the Closing Date.

“Employment Losses” has the meaning set forth in Section 9.2(c).

“Environmental Laws” means Laws or Orders of any Governmental Authority relating to pollution, protection of the environment or health and safety.

“Equipment” has the meaning set forth in Section 2.1(b).

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

“Escrow Agent” means Bank With the Ever Changing Name, NA.

“Escrow Agreement” has the meaning set forth in Section 3.1.

In a transaction of any size it may be well advised to use an escrow agent for the payment of funds.

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

“Excluded Liabilities” has the meaning set forth in Section 2.4.

“Expense Reimbursement” has the meaning set forth in Section 12.2.

“Final Net Working Capital” has the meaning set forth in Section 3.3(e).

“GAAP” means generally accepted accounting principles in the United States.

“Governmental Authority” means any government or any agency, bureau, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

“Intellectual Property” means all of the following, as they exist in the United States, to the extent owned by, licensed to, or otherwise used by Seller in connection with its conduct of the Business:

(a) patents, patent applications, industrial rights and the inventions, designs and improvements described and claimed therein, patentable inventions, and other patent rights (including any divisionals, continuations, continuations-in-part, renewals, substitutions or reissues thereof, whether or not patents are issued on any such applications and whether or not any such applications are amended modified, withdrawn or refiled);

(b) trademarks, service marks, trade dress, trade names, brand names, designs, logos or corporate names (including, in each case, the goodwill associated therewith), whether registered or unregistered, and all registrations and applications for registration thereof;

(c) copyrights, including all renewals and extensions thereof, copyright registrations and applications for registration thereof, and non-registered copyrights;

(d) trade secrets, confidential business information and other proprietary information including, but not limited to, designs, research and development information, technical information, specifications, operating and maintenance manuals, methods, engineering drawings, know-how, data, mask works, discoveries, inventions, industrial designs and other proprietary rights (whether or not patentable or subject to copyright, mask work, or trade secret protection);

(e) all web sites and web pages relating primarily to the Business and related rights and items (but specifically excluding the web site of DUST); and

(f) computer software programs and software systems, including, without limitation, all databases, compilations, tool sets, compilers, higher level or “proprietary” languages, and all related material documentation and information, whether in source code, object code or human readable form.

“Inventory” has the meaning set forth in Section 2.1(c).

“Knowledge of Seller” and any similar phrase means the actual knowledge of the officers or directors of DUST as of the date of this Agreement.

“Laws” means all applicable laws (including common law), statutes, rules, codes, ordinances or any requirement of any Governmental Authority.

“Leases” has the meaning set forth in Section 2.1(e).

“Liens” means any mortgage, lien, pledge, covenant, restriction, security interest, claim, charge, title defect or other encumbrance.

“Loss” means any cost, damage, injury, expense, liability, loss, claim, deficiency or penalty of any kind or nature, including interest, penalties and reasonable legal, accounting and other

Sometimes buyers will simply make an offer for the tangible assets forgetting to offer for the intangibles. Even though there may be nothing there, go for it.

You want an escape just in case. You may also want to consider a clause voiding the sale if something materially adverse occurs within a defined period after the closing. That may be tough to get.

professional fees and expenses incurred in the investigation, collection, prosecution and defense of claims.

“Material Adverse Effect” means any change or effect that is materially adverse to the Business or the condition of the Acquired Assets taken as a whole, in each case excluding any change or effect (a) caused by changes in economic, regulatory or political conditions generally; (b) or any condition generally affecting the non-residential building industry; (c) caused by any act(s) of war or terrorism; (d) caused by any generally applicable change in GAAP or the interpretation thereof; (e) as may be reasonably expected to occur as a result of or in connection with the Bankruptcy Cases; or (f) caused by any breach of this Agreement by Buyer.

“Material Contracts” has the meaning specified in Section 6.3(a).

“Motion” means the “Motion of Debtors for Order Pursuant to Sections 105, 363, 365 and 1146 of the Bankruptcy Code”, a copy of which Motion is attached to this Agreement as Exhibit A.

“Net Working Capital” at any date means the following at that date, each amount (a “**Line Item**”) determined as though it were a line item in a balance sheet prepared in accordance with GAAP and Seller’s historical internal reporting accounting practices, consistently applied between June 30, 2003 and the Closing Date, and as reflected on Schedule 3.3(a):

(a) the sum of (i) Accounts Receivable, (ii) Inventory and (iii) prepaid expenses relating to the Assigned Contracts and other Acquired Assets, *minus* (b) the sum of (i) Accounts Payable and (ii) the amount reserved by Seller for Assumed Employee Obligations.

For greater clarity, Net Working Capital is *not* reduced for the amount of any reserve for an Excluded Liability, such as Workers’ Compensation Claims in Litigation, sales Taxes, payroll Taxes or FICA.

“Order” means any decree, injunction, judgment, order, ruling or writ of any Governmental Authority.

“Ordinary Course” of Business has the meaning set forth in Section 6.4.

“Owned Real Property” has the meaning set forth in Section 2.1(f).

“Permits” means licenses, permits, franchises, approvals, authorizations, certificates of authority, and orders, or any waiver of the foregoing, issued or issuable by any Governmental Authority.

“Permitted Encumbrances” means: (a) Liens for current Taxes, assessments or charges or levies of any Governmental Authority on property not yet due and delinquent; (b) interests of any lessors (in their capacity as such) in items constituting part of the Acquired Assets which are leased by Seller from such lessor; (c) assessments, rights of way and other similar non-monetary Liens; (d) mechanics’ and materialman’s Liens for amounts not yet due and payable, but only to the extent such Liens secure Assumed Obligations or amounts accruing after the Closing under Assigned Contracts, which do not, individually or in the aggregate, materially detract from the use or value of the Acquired Assets; (e) Liens securing Seller Indebtedness; (f) zoning, building and land use Laws imposed by any Governmental Authority; (g) as to real property subject to a Lease or Owned Real Property, (i) such

other Liens, imperfections in title, charges, easements, restrictions, covenants, conditions and encumbrances (but in all cases excluding those which secure borrowed money or any other monetary obligation) of record, (ii) zoning and other applicable Laws, (iii) rights-of-way and railroads and (iv) matters which would be disclosed by an accurate survey; (h) the Liens set forth on Schedule 1; and (i) Liens which do not, in the aggregate, have a Material Adverse Effect.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, trust, association, unincorporated organization, other entity, or governmental body or subdivision, agency, commission or authority thereof.

"Petitions" has the meaning set forth in the Recitals.

"Petition Date" means the date the Petitions were filed with the Bankruptcy Court.

"Purchase Price" has the meaning set forth in Section 3.2.

"Purchase Price Amount" has the meaning set forth in Section 3.2.

"Rejected Contracts" has the meaning set forth in Section 2.4(c).

"Retirement Plan" has the meaning set forth in Section 9.2(b).

"Sale Hearing" has the meaning set forth in Section 4.1.

"Sale Order" means an Order from the Bankruptcy Court substantially in the form of the "Sale Order" attached as Exhibit __ to the Motion and approving and authorizing Seller to enter into this Agreement and to consummate the transactions contemplated hereby, and ordering that (a) the Acquired Assets sold to Buyer pursuant to this Agreement shall be free and clear of all Liens, other than Permitted Encumbrances and except for such Liens which attach to the Purchase Price payable pursuant to Article III; (b) Buyer has acted in good faith within the context of Section 363(m) of the Bankruptcy Code; (c) Buyer is not acquiring any of Seller's liabilities except as expressly provided in this Agreement; and (d) except with respect to claims expressly assumed by Buyer pursuant to this Agreement, all Persons are enjoined from in any way pursuing Buyer or the Acquired Assets by suit or otherwise to recover on any claim which they had, have or may have against Seller.

"Seller Employees" has the meaning set forth in Section 6.11(a).

"Seller Indebtedness" means all indebtedness of Seller for borrowed monies, as borrower or guarantor (but excluding in any event indebtedness to trade creditors).

"Tax" or **"Taxes"** means any income, gross receipts, property, sales, use, license, excise, franchise, employment, social security, governmental pension or insurance, withholding or similar taxes or contributions, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

"Termination Fee" has the meaning set forth in Section 12.3.

"Transferred Employee(s)" has the meaning set forth in Section 9.1.

"WARN" has the meaning set forth in Section 9.2(e).

"Workers' Compensation Claims in Litigation" means all workers compensation claims arising prior to the Closing Date and as to which litigation actually is pending on the Closing Date.

ARTICLE II. Purchase and Sale

2.1 Purchase and Sale of Assets. Pursuant to Sections 363 and 365 (and other applicable provisions) of the Bankruptcy Code and on the terms and subject to the conditions of this Agreement, at the Closing, Seller will sell, transfer and convey to Buyer, and Buyer will purchase and acquire from Seller, free and clear of all Liens except for Permitted Encumbrances, on an "as-is-where-is" basis, all right, title and interest of Seller, if any, in and to all of the assets of Seller used in the Business as of the Closing Date, including, but not limited to, the following assets (but eliminating all Excluded Assets) (collectively, the "**Acquired Assets**"):

Here is where you list the assets that you want to purchase. If you are limiting the assets to be purchased, then you could merely attach a list of specific assets to be acquired.

(a) all trade and vendor accounts receivable arising in connection with the Business, net of customer credits and any customer deposits held (collectively, the "**Accounts Receivable**");

(b) subject to Section 8.1, all machinery, equipment, tools, dies, molds, baskets, bins, furniture, fixtures, supplies, computer hardware of Seller and all parts, spares and accessories thereof and accessions thereto, vehicles and all other items of tangible personal property listed individually or by category on Schedule 2.1(b) (collectively, the "**Equipment**");

(c) subject to Section 8.1, all of Seller's interest in all supplies and inventories of the Business, wherever located as of the Effective Time, of finished goods, work in process, components, purchased parts, raw materials and all packaging materials and labels (collectively, the "**Inventory**");

(d) subject to Section 8.1, all Intellectual Property owned, licensed or used by Seller in connection with its conduct of the Business on the Closing Date, all documents embodying proprietary information and copyright-protected material and all evidence of ownership of such Intellectual Property, including the names "Republic Builders Products" and "Republic Doors/Frames";

(e) subject to Section 8.1, all rights of Seller in and to all leases and subleases of real property set forth in Schedule 2.1(e), as such leases and subleases may be amended, modified or supplemented from time to time prior to the Closing Date as contemplated by Schedule 6.11 or otherwise with the consent of Buyer (which consent may not be unreasonably withheld, conditioned or delayed), together with all buildings, facilities, fixtures and other improvements thereon and all easements, rights-of-way, transferable licenses and permits and other appurtenances thereto, and any prepaid rent and security deposit in respect thereof (collectively, the "**Leases**");

(f) all rights of Seller in the real property owned by Seller which is used in the Business and listed on Schedule 2.1(f), together with all buildings, facilities, fixtures and other improvements thereon and all easements, rights-of-way, transferable licenses and permits and other appurtenances thereto (the "**Owned Real Property**");

(g) subject to Section 8.1, all rights of Seller under all Contracts, including, but not limited to, commitments, employment agreements, purchase orders, agreements and

unexpired leases (other than the Leases) of Seller, other than Rejected Contracts (collectively, the “**Assigned Contracts**”);

(h) with respect to Seller only, complete and correct copies of all books, records and other data and information of the Business, as such relate to customers of the Business, including, but not limited to, all books, records, materials, manuals, financial and accounting statements, creative, sales and promotional materials and records, advertising materials, customer lists, supplier lists, mailing lists, distribution lists, business plans, credit information, cost and pricing information, reference catalogs, data and information derived from management information systems, and other similar property and rights that relate solely to or are used solely in connection with the Business, wherever located, but in any event excluding any and all books, records and other data and information relating exclusively to the organizational proceedings of Seller and excluding Seller’s stock registers;

(i) all stationery and other imprinted material and office supplies, packaging and shipping materials of Seller, and existing telephone, telecopier and telex numbers used solely by Seller;

(j) subject to Section 8.1, all rights of Seller under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers and contractors relating to the Acquired Assets; and

(k) the goodwill and other intangible assets associated with the Business.

2.2 Excluded Assets. Seller and Buyer agree that Buyer is purchasing only the Acquired Assets. Accordingly, at the Closing, Seller shall retain all of its right, title and interest in and to, there shall be excluded from the sale to Buyer hereunder, and the Acquired Assets shall not include, the following (collectively, the “**Excluded Assets**”):

(a) all cash on hand, in transit and in banks, cash equivalents, certificates of deposit, notes, drafts, checks and similar instruments;

(b) general books of account and books of original entry that comprise Seller’s permanent or Tax records and books and records that Seller is required to retain pursuant to any statute, rule or regulation or that do not relate primarily to the Business;

(c) all capital stock, interests in partnerships, interests in limited liability companies and all other equity interests and securities owned by Seller;

(d) intercompany account balances owed to Seller from any Affiliate of Seller *other than* Accounts Receivable and Accounts Payable arising in the Ordinary Course (which are Acquired Assets);

(e) all insurance policies of Seller or its Affiliates and all rights of Seller of every nature and description under or arising out of such insurance policies, *provided*, that the Acquired Assets shall include any property insurance claim of Seller for a casualty loss arising after the date of this Agreement and relating to the Acquired Assets or tangible personal property of Seller that, but for such casualty, would have been an Acquired Asset;

(f) all rights under the Rejected Contracts;

(g) any refund, rebate, credit or similar claim for Taxes paid by Seller or any of its Affiliates, whether known or unknown on the Closing Date, relating to the Business or any of the Acquired Assets;

Excluded assets are important to the seller. Usually the Debtor wants to keep cash on hand and its books of account. The buyer usually wants the former, but is often loathe to retain the latter.

(h) except as set forth in Section 2.1(e) with respect to the Leases, any deposits (including security deposits), prepaid expenses, deferred items and similar assets (including any refunds or rebates in respect thereof);

(i) all past, present and future claims, causes of action (including, without limitation, avoidance claims and causes of action of Seller's bankruptcy estate), choses in action, rights of recovery and rights of set-off of any kind to the extent relating to (x) the ownership or operation of the Acquired Assets prior to the Closing Date or (y) the operation of the Business prior to the Closing Date;

(j) all machinery, equipment and other assets not owned by Seller but subject to lease agreements that do not constitute Assigned Contracts; and

(k) Seller's rights under this Agreement and all consideration payable or deliverable to Seller pursuant to the terms and provisions hereof.

2.3 Assignment and Assumption of Obligations. On the terms and subject to the conditions of this Agreement, at the Closing, Seller will assign to Buyer and Buyer will assume and agree to pay, perform and discharge when due, the following categories and types of liabilities, commitments and obligations (collectively, the "**Assumed Obligations**"):

(a) liabilities, commitments and obligations of Seller arising from and after the Effective Time under or in connection with the ownership or operation of the Business or any of the Acquired Assets, including, but not limited to, the obligations under the Assigned Contracts and the Leases;

(b) the Cure Costs for the Assigned Contracts and the Leases;

(c) liabilities, commitments and obligations of Buyer pursuant to Article IX;

(d) all trade and vendor accounts payable related to the Business and other current liabilities incurred in the operation of the Business in the Ordinary Course, in each case incurred after the Petition Date (other than those related to the Excluded Assets or Excluded Liabilities) (collectively, the "**Accounts Payable**"); and

(e) the Assumed Employee Obligations.

2.4 Excluded Liabilities. Notwithstanding Section 2.3, Buyer is assuming only the Assumed Obligations and no other liability, commitment or obligation of the Business or Seller or any other Person whatsoever, whether presently in existence or arising hereafter. Buyer shall not be deemed to be a successor-in-interest to Seller for any purposes whatsoever. All liabilities, commitments and obligations other than the Assumed Obligations will be retained by, and remain liabilities, commitments and obligations of, Seller (collectively, the "**Excluded Liabilities**") and such Excluded Liabilities shall include, but not be limited to, the following:

(a) any and all liabilities, commitments and obligations resulting from any litigation, claim, arbitration, investigation or other proceeding pending on the Closing Date, including, but not limited to, those resulting from the Bankruptcy Cases, and all other liabilities,

There may be contracts associated with the business that the buyer wants to acquire. The buyer should insist that the seller establish any cure amounts prior to the sale either by a motion compelling the other party to the contract to file a statement of the cure amount or getting a written representation from the contracting party.

commitments and obligations arising directly from actions, suits, claims, arbitrations, investigations or proceedings pending on the Closing Date or arising after the Closing Date relating to the operation of the Business prior to the Closing Date, *provided*, that (i) as to workers' compensation claims, there shall be included in this clause (a) only Workers' Compensation Claims in Litigation, and (ii) Assumed Employee Obligations (which are Assumed Obligations) are specifically excluded from this clause (a);

(b) any and all liabilities, commitments and obligations arising from any Seller Indebtedness;

(c) any and all liabilities in respect of or under all Contracts set forth in Schedule 2.4(c) or which are otherwise determined not to be Assigned Contracts pursuant to the definition thereof (the "**Rejected Contracts**");

(d) except as expressly set forth in Article IX, any and all liabilities, commitments and obligations relating to employee benefits or compensation arrangements of Seller or any of its Affiliates existing on or prior to the Closing Date;

(e) any and all liabilities for Taxes of Seller and any and all liabilities for Taxes attributable to the ownership or operation of the Business or any of the Acquired Assets on or prior to the Closing Date;

(f) any and all liabilities or obligations of Seller (other than Cure Costs) arising from the breach by Seller of any term, covenant or provisions of any of the Assigned Contracts or the Leases to the extent such breach is in no manner, directly or indirectly, caused by Buyer;

(g) any and all liabilities, commitments and obligations for Designated Restructuring Costs and any contracts related thereto;

(h) all trade and vendor accounts payable incurred prior to the Petition Date; and

(i) any and all other liabilities, commitments and obligations not expressly assumed by Buyer pursuant to Section 2.3.

2.5 Limitation on Representations. Buyer hereby acknowledges and agrees that, notwithstanding anything to the contrary contained herein, except as expressly set forth in Article VI of this Agreement, neither Seller nor any Affiliate of Seller makes any representation or warranty whatsoever, express or implied, with respect to any matter relating to the Acquired Assets (including, but not limited to, income to be derived or expenses to be incurred in connection with the Acquired Assets, the physical condition of any personal property comprising a part of the Acquired Assets or which is the subject of any of the Assigned Contracts or the Leases to be assumed by Buyer at the Closing, the environmental condition or any other matter relating to the physical condition of any real property or improvements which are the subject of any Lease to be assumed by Buyer at the Closing or the Owned Real Property, the zoning of any such real property or improvements, the value of the Acquired Assets (or any portion thereof), the terms, amount, validity or enforceability of any Assumed Obligations, the merchantability or fitness of the Acquired Assets for any particular purpose, or any other matter or thing relating to the Acquired Assets (or any portion thereof)). Buyer further acknowledges that Buyer has conducted an independent inspection and investigation of the physical condition of all portions of the Acquired Assets and all such other matters relating to or affecting the Acquired Assets as Buyer deemed necessary or appropriate and that in proceeding with its acquisition of the Acquired Assets, Buyer is doing so based solely upon such independent inspections and investigations.

With rare exceptions, bankruptcy sales are basically "as is, where is" sales. The key to success for the buyer has to be in its due diligence. Where an executory contract is key to the success or failure of the business, then it is incumbent on the buyer to make sure that it can keep the relationship. I am aware of a situation in which the buyer of a kosher food distribution business failed to adequately investigate one of the seller's distribution agreements. About 90 days after the sale, the seller's supplier properly terminated the agreement causing the value of the newly acquired business to drop dramatically. Had the buyer properly performed its due diligence, it would have discovered the problem and reduced its price or tried to get a longer commitment from the supplier.

ARTICLE III. Purchase Price and Payment

3.1 **Deposit.** Contemporaneously with the execution and delivery of this Agreement, Buyer shall pay to the Escrow Agent, by wire transfer, the sum of \$_____ [amount equal to 10% of stated Purchase Price] (together with interest, if any, actually earned thereon, the "**Deposit**") to be held in an escrow account subject to the terms of the Escrow Agreement substantially in the form attached hereto as Exhibit B (the "**Escrow Agreement**").

If you are putting up large deposits well in advance of the sale closing date, then require the deposit to earn interest. While the rule of thumb is a 10% deposit, the larger the price the lower the deposit should be sought.

3.2 Purchase Price; Payment of Purchase Price Amount.

(a) The Purchase Price ("**Purchase Price**") payable to Seller by Buyer as consideration for the sale, conveyance, transfer and assignment of the Acquired Assets will consist of, in addition to Buyer's assumption of the Assumed Obligations, an amount in cash equal to \$_____ (the "**Purchase Price Amount**"). The Purchase Price will be subject to adjustment as set forth in Section 3.3.

(b) At the Closing, (i) Buyer shall pay to Seller by wire transfer of immediately available funds to such bank account(s) designated in writing by Seller an amount equal to the Purchase Price Amount *minus* an amount equal to the Deposit and (ii) pursuant to the terms of the Escrow Agreement, the Escrow Agent shall pay to Seller by wire transfer to such bank account(s) designated in writing by Seller, an amount equal to the Deposit. Seller shall designate its bank account(s) at least one Business Day prior to Closing.

3.3 Net Working Capital Adjustment.

(a) Schedule 3.3(a) sets forth the calculation of the Agreed-to Net Working Capital, including the amount of each Line Item at June 30, 2003. On or before the 15th Business Day following the Closing Date, Seller will deliver to Buyer a statement (the "**Closing Statement**"), certified by an appropriate senior officer of Seller, setting forth Seller's calculation of Net Working Capital at the Effective Time (the "**Closing Net Working Capital**") and the amount of each Line Item. Each Line Item in the Closing Net Working Capital shall be determined as set forth in the definition of Net Working Capital.

While this offer and agreement deals with an increase or decrease in the purchase price depending on the net working capital in the business, other offers may deal with post-closing inventory counts.

(b) If Buyer disagrees with Seller's calculation of Closing Working Capital delivered pursuant to Section 3.3(a), Buyer may, within 15 Business Days after delivery of the Closing Statement, deliver a notice to Seller disagreeing with such calculation and setting forth Buyer's calculation of such amount. Any such notice of disagreement shall specify those Line Items as to which Buyer disagrees, and Buyer shall be deemed to have agreed with the amounts of all other Line Items contained in the Closing Statement and the calculation of Closing Net Working Capital delivered pursuant to Section 3.3(a).

(c) If a notice of disagreement is duly delivered pursuant to Section 3.3(b), Seller and Buyer shall, during the 15 days following such delivery, use their respective best efforts to reach agreement on the disputed Line Items or amounts in order to determine, as may be required, the amount of Closing Net Working Capital, which amount shall not be more than the amount thereof shown in Buyer's calculation delivered pursuant to Section 3.3(a) nor less than the amount thereof shown in Seller's calculation delivered pursuant to Section 3.3(b). If, during such 15-day period, Seller

and Buyer are unable to reach such agreement, they shall promptly thereafter cause the Accounting Referee to review this Agreement and the disputed Line Items or amounts for the purpose of calculating Closing Net Working Capital. In making such calculation, the Accounting Referee shall consider only those items or amounts in the Closing Statement as to which Buyer has disagreed. The Accounting Referee shall deliver to Seller and Buyer, as promptly as practicable (but in any case no later than 30 days from the date of engagement of the Accounting Referee), a report setting forth its calculation of the Closing Net Working Capital. Such report shall be final and binding upon Seller and Buyer. The cost of such review and report shall be borne equally by Seller and Buyer.

(d) Seller and Buyer shall, and shall cause their respective representatives to, cooperate and assist in the preparation of the Closing Statement and the calculation of Closing Net Working Capital and in the conduct of the review referred to in this Section 3.3, including, but not limited to, making available to the extent necessary books, records, work papers and personnel.

(e) If Final Net Working Capital exceeds the Agreed-to Net Working Capital by more than \$100,000, then the Purchase Price shall be correspondingly increased on a dollar-for-dollar basis and Buyer will pay the full amount of such increase (from the first dollar) to Seller, with interest, as provided in Section 3.3(f). If Final Net Working Capital is less than the Agreed-to Net Working Capital by more than \$100,000, then the Purchase Price shall be reduced on a dollar-for-dollar basis (from the first dollar) and Seller will pay the full amount of such decrease to Buyer with interest, as provided in Section 3.3(f). If Final Net Working Capital is equal to the Agreed-to Net Working Capital, or if the difference between Final Net Working Capital and the Agreed-to Net Working Capital is \$100,000 or less, then no adjustment to the Purchase Price shall be made. "**Final Net Working Capital**" means Closing Net Working Capital (i) as shown in Seller's calculation delivered pursuant to Section 3.3(a) if no notice of disagreement with respect thereto is duly delivered pursuant to Section 3.3(b); or (ii) if such a notice of disagreement is delivered, (x) as agreed by Seller and Buyer pursuant to Section 3.3(c) or (y) in the absence of such agreement, as shown in the Accounting Referee's calculation delivered pursuant to Section 3.3(c); *provided*, however, that in no event shall Final Net Working Capital be more than Seller's calculation of Closing Net Working Capital delivered pursuant to Section 3.3(a) or less than Buyer's calculation of Closing Net Working Capital delivered pursuant to Section 3.3(b).

(f) Any payment pursuant to this Section 3.3 shall be made at a mutually convenient time and place within three Business Days after Final Net Working Capital has been determined by wire transfer by Seller or Buyer, as the case may be, of immediately available funds to the account of such other party as may be designated in writing by such other party. The amount of any payment to be made pursuant to this Section 3.3 shall bear interest from and including the Closing Date to but excluding the date of payment at a rate per annum equal to the rate of interest announced by Citibank, N.A. from time to time as its base rate in New York City in effect from time to time during the period from the Closing Date to the date of payment. Such interest shall be payable at the same time as the payment to which it relates and shall be calculated daily on the basis of a year of 365 days and the actual number of days elapsed.

3.4 Allocation of Purchase Price. The Purchase Price shall be allocated among the Acquired Assets in accordance with Section 1060 of the Code, as Seller and Buyer shall agree in a writing referencing this Section 3.4 and executed and delivered at the Closing, *provided*, that amounts allocated to Accounts Receivable and Inventory shall be subject to appropriate adjustments to reflect the Adjustment Amount as calculated on the Final Price Adjustment Statement. Seller and Buyer hereby undertake and agree to file timely any information that may be required to be filed pursuant to Treasury Regulations promulgated under Section 1060(b) of the Code. Neither Seller nor Buyer shall file any Tax return or other document or otherwise take any position which is inconsistent with any allocation agreed upon by them.

ARTICLE IV. Bankruptcy Court Approval

4.1 Motion Filing. Promptly following the execution and delivery of this Agreement, Seller will file the Motion with the Bankruptcy Court seeking an order (the "**Bidding Procedures Order**," and the hearing to consider approval of the Bidding Procedures Order, the "**Bidding Procedures Hearing**") approving, among other things, the Bidding Procedures, establishing notice and service requirements to creditors and parties in interest of the proposed sale contemplated hereby, approving the Expense Reimbursement and the Termination Fee, establishing a deadline for submission of competing bids for the Acquired Assets, establishing thresholds for initial and subsequent overbids, and setting a date for the hearing to consider approval of the proposed sale (the "**Sale Hearing**"). Seller's Motion and Notice of Sale shall provide that Buyer shall be provided with the right of first refusal to match any competing offers (net of any "breakage fee") for a period of ten (10) business days subsequent to the acceptance of said competing offers.

4.2 Hearings. Seller will use commercially reasonable efforts to schedule the Bidding Procedures Hearing for no later than _____, 2003, and the Sale Hearing for no later than _____, 2003. The Bidding Procedures Order will be substantially in the form annexed as an exhibit _____ to the Motion and the "**Sale Order**" will be substantially in the form annexed as Exhibit _____ to the Motion (in each case, provided that any changes to the form of order that are likely to have a Material Adverse Effect must be approved by Buyer in its sole discretion).

4.3 Appeal. In the event an appeal is taken, or a stay pending appeal is requested or reconsideration is sought, from either the Bidding Procedures Order or the Sale Order, Seller will immediately notify Buyer of such appeal or stay request and will provide to Buyer, within two Business Days of Seller's actual awareness of such appeal, a copy of the related notice of appeal or Order of stay or application for reconsideration. Seller will also provide Buyer with written notice and copies of any other or further notice of appeal, motion or application filed in connection with any appeal from or application for reconsideration of, any of such orders and any related briefs.

4.4 Notices. Seller will notify, as is required by the Bankruptcy Code and Buyer, all parties entitled to notice of all motions, notices and orders required to consummate the transactions contemplated by this Agreement, including, but not limited to, the Bidding Procedures Order and/or the Sale Order, as modified by orders in respect of notice which may be issued at any time and from time to time by the Bankruptcy Court.

It is important to get bankruptcy court approval of breakage fees, topping fees, etc. prior to going forward with the sale. This offer contains a breakage fee, but more importantly it contains a right of first refusal, a term which has been rarely allowed.

See Judge Rosenthal's Memorandum Decision in *Act Manufacturing, Inc.*, Case No. 01-47641-JBR, dealing with a buyer's attempt to prevent employee creditors from asserting their claims against the buyer of the debtor's assets. A decision such as that suggests that a buyer must be vigilant as to the scope of the seller's notice and to even give notice itself if it believes that the seller has not adequately noticed a sale. That appears to go against self interest, but it may be cheaper than having to address unknown claims after the sale.

ARTICLE V. Closing

5.1 Closing. Subject to the satisfaction or waiver by the parties of the conditions to their respective obligations to effect the Closing set forth in Articles X and XI, the closing of the purchase and sale of the Acquired Assets and the assignment and assumption of the Assumed Obligations (the "**Closing**") will take place at the offices of Learned Counsel at 10:00 a.m. (Nashua time) on _____, 2004 or, if all of the conditions to the parties' obligations hereunder have not been satisfied or waived by the appropriate party by such time of day on such date, at such time of day as the parties may agree on the second Business Day to occur following the date on which all of the conditions to the parties' obligations hereunder have been satisfied or waived by the appropriate party, or such other date as may be agreed upon by the parties, but in no event later than _____, 2003 (the date of the Closing being referred to as the "**Closing Date**"). All transactions to be effected at the Closing shall be deemed to have occurred simultaneously at the Effective Time.

5.2 Deliveries by Seller. At the Closing, Seller will deliver, or cause to be delivered (in addition to any other instruments required by this Agreement to be delivered by Seller at the Closing), to Buyer the following (in form and substance reasonably satisfactory to Buyer):

- (a) a limited warranty deed transferring title to and interest in the Owned Real Property to Buyer;
- (b) a duly executed bill or bills of sale and assignment or other appropriate instruments transferring title to and interest in all of the Acquired Assets to Buyer;
- (c) an executed amendment to the certificate of incorporation of Seller changing its name to a name not using the name "Republic", in a form appropriate for the filing and recording thereof in the appropriate state governmental office;
- (d) a certified copy of the Sale Order; and
- (e) the certificate referred to in Section 10.1(c).

5.3 Deliveries by Buyer. At the Closing, Buyer will deliver, or cause to be delivered (in addition to any other instruments required by this Agreement to be delivered by Buyer at the Closing), to Seller, the following (in form and substance reasonably satisfactory to Seller):

- (a) the Purchase Price Amount payable in the manner described in Section 3.2;
- (b) a duly executed assumption agreement, whereby Buyer will assume and agree to pay, perform and discharge the Assumed Obligations; and
- (c) the certificate referred to in Section 11.1(c).

5.4 Further Assurances. After the Closing and without further consideration, each party will from time to time, at the reasonable request of the other party, execute and deliver such other instruments of conveyance and transfer and such other instruments, documents and agreements, and take such other actions, as such other party may reasonably request, in order to more effectively consummate the transactions contemplated hereby and to vest in Buyer the right, title and interest in, to and under the Acquired Assets, to assist Buyer in the collection and reduction to possession of the Acquired Assets (and the exercise of rights with respect thereto) and to provide for the assumption by Buyer of the Assumed Obligations, *provided* that the requesting party will prepare such additional documents and instruments and will handle any submittal, applications, processing, recording and registrations. Without limiting the provisions of Article XIV, Buyer and Seller hereby irrevocably consent to the personal and subject-matter jurisdiction of the Bankruptcy Court for all purposes

necessary to effectuate this Section 5.4.

ARTICLE VI. Representations and Warranties of Seller

Seller hereby represents and warrants to Buyer, to the Knowledge of Seller, as follows:

6.1 Organization of Seller; Authorization. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of North Dakota and, subject to entry of the Sale Order, has the requisite corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. Subject to entry of the Sale Order, the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action of Seller. This Agreement has been duly and validly executed by Seller and, subject to the entry of the Sale Order, constitutes a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except for the provisions of the bidding procedures which will become the binding obligation of Seller upon the entry of the Bidding Procedures Order.

6.2 Consents and Approvals; No Violations. Assuming (a) the receipt of the necessary approvals of the Bankruptcy Court (including, but not limited to, the Sale Order) and (b) the payment by Buyer of applicable Cure Costs, the execution and delivery of this Agreement by Seller and the consummation of the transactions contemplated hereby (i) will not violate the provisions of the Certificate of Incorporation or By-laws or other constituent documents of Seller, (ii) will not violate any Law by which Seller is bound or by which any of its properties or assets are bound and (iii) will not require any filing with, or permit, consent or approval of, or the giving of any notice to, any Governmental Authority on or prior to the Closing Date, excluding from the foregoing clauses (ii) and (iii) such filings, notices, permits, consents and approvals the absence of which, in the aggregate, would not (x) have a Material Adverse Effect or (y) have a material adverse effect on the ability of Seller to consummate the transactions contemplated hereby.

6.3 Material Contracts. (i) Except as set forth in Schedule 6.3 and other than Seller Indebtedness, Seller is not a party to nor bound by: (i) any collective bargaining agreement; (ii) any oral or written employment contract with any employee; (iii) any contract which involves the payment of more than \$50,000 in any calendar year, including each Lease; (iv) any contract granting to any Person a right of first refusal or first offer or any option to purchase or acquire any of the Acquired Assets; (v) any contract with respect to any equity interest held by Seller and included in the Acquired Assets; (vi) any agreement relating to the acquisition or disposition of any of the Acquired Assets, other than purchase orders or similar instruments entered into in the Ordinary Course; (vii) any agreement that restricts or prohibits Seller from engaging in the Business or from competing with any Person in connection with the Business; (viii) any management service, consulting or any other similar type of contract; and (ix) any other Contract that is material to the conduct of the Business (the Contracts specified in clauses (i) through (viii), the "**Material Contracts**"). Schedule 6.3 identifies the amount required to cure all defaults under each Contract that constitutes an Assigned Contract at the date of this Agreement so as to permit the assumption and assignment of such Contract pursuant to Section 365 of the Bankruptcy Code (as to each Contract, the "**Cure Costs**").

(b) In the event Buyer, after the date of this Agreement but before the Effective Time, identifies any Contract that should have been listed on Schedule 6.3 as an executory contract (as such term is used in Section 365 of the Bankruptcy Code), then Seller shall amend Schedule 6.3 to include such Contract.

(c) Copies of all written Material Contracts (other than Contracts identified pursuant to Section 6.3(b)) have been made available to Buyer. Except as otherwise set forth on Schedule 6.3, assuming the payment by Buyer of the related Cure Costs, each of the Contracts will at the Closing be in full force and effect and enforceable in accordance with its terms. Seller has not received any written notice of any cancellation or termination of any Material Contract. None of the Material Contracts is the subject of, or has been threatened to be made the subject of, any arbitration, suit or other legal proceeding (other than the bankruptcy proceedings related to the Bankruptcy Cases). As of the Closing and assuming the payment by Buyer of the related Cure Costs, there will be no event of default or occurrence, condition or act on the part of Seller or on the part of the other parties to the Material Contracts which constitutes or would constitute (with notice or lapse of time or both) a breach of or default under any Material Contract, excluding breaches and defaults which would not, in the aggregate, have a Material Adverse Effect.

6.4 Equipment. **Schedule 2.1(b)** is a complete and correct list of all Equipment as of _____, 2003 that is material to the conduct of the Business in the ordinary course of business, consistent with past custom and practice (the "**Ordinary Course**"). The Equipment is sufficient to operate the Business in the Ordinary Course.

6.5 Inventory. With respect to the Business, the amount of Inventory on hand has been manufactured and/or purchased in the Ordinary Course.

6.6 Intellectual Property.

(a) Schedule 6.6 sets forth the Intellectual Property owned or licensed by Seller or otherwise used by Seller and that is material to the conduct of the Business by Buyer after the Closing Date, but specifically excluding "shrink-wrap" or "click-wrap" or "off-the-shelf" software.

(b) Schedule 6.6 sets forth all material licenses granted by or to Seller which relate to the conduct of the Business, and all other material Contracts to which Seller is a party which relate to the conduct of the Business, which create rights in Seller or in any third party regarding any Intellectual Property included in the Acquired Assets, but specifically excluding "shrink-wrap" or "click-wrap" license agreements or license agreements relating to "off-the-shelf" software.

(c) The operation of the Business in the Ordinary Course as of the Closing Date requires no rights under Intellectual Property other than the Intellectual Property included in the Acquired Assets, except where the failure to have such rights would not have a Material Adverse Effect. There are no pending proceedings or litigations or other adverse claims made in writing affecting, or with respect to, the Intellectual Property included in the Acquired Assets, except where the existence of such proceedings or litigations or other adverse claims would not have a Material Adverse Effect.

6.7 Compliance with Law. Except as set forth on **Schedule 6.7**, (a) the Business is being conducted in compliance with all applicable Laws, except where the failure to so comply would not have a Material Adverse Effect and (b) Seller has not received any written notification from any Governmental Authority of any asserted present or past failure by Seller to comply with any such Laws during the past twelve months which apply to the operation of the Business.

6.8 Books and Records. All of the books of account and other records of Seller relating to the Acquired Assets and the Business have been made available to Buyer. Such books and records are complete and correct in all material respects.

ARTICLE VII. Permits. Set forth on **Schedule 6.9** is a list of all of Seller's material Permits relating to the Acquired Assets and the Business.

7.1 Employees. (i) Seller has previously provided to Buyer a materially correct and complete list of the following information as to each employee of Seller engaged in the conduct of the Business at the date of this Agreement, including each employee on leave of absence or lay-off status

(collectively, the “**Seller Employees**”): name; job title; job description; hire date; job classification (*i.e.*, full-time or part-time); current compensation paid or payable (or wage rate, as to non-salaried employees); vacation accrued; and service credited for purposes of vesting and eligibility to participate under Seller’s existing employee benefit plans.

(b) Set forth on **Schedule 6.10** is the following: (a) identification of the collective bargaining agreement to which Seller is a party; and (b) a list of all “employee benefit plans” (within the meaning of Section 3(3) of ERISA), whether or not subject to ERISA, in which current or former employees of the Business participate. A copy of such collective bargaining agreement and employee benefit plans have been made available to Buyer on or prior to the date of this Agreement.

7.2 Absence of Certain Changes. Except as set forth in **Schedule 6.11**, since June 30, 2003:

(a) there has been no damage, destruction or other casualty loss (whether or not covered by insurance) affecting the Business or any Acquired Asset that in the aggregate has had or could reasonably be expected to have a Material Adverse Effect;

(b) other than in connection with the proposed sale of the Acquired Assets and the Business, and the effects of the pendency of the Bankruptcy Cases, the Business has been conducted only in the Ordinary Course;

(c) Seller has not increased the compensation of any officer or granted any general salary or benefits increase to its employees other than in the Ordinary Course; and

(d) the post-Petition liabilities have been paid in the Ordinary Course.

7.3 Taxes. All Tax returns, reports and forms of Seller due prior to the date hereof with respect to the Business or the Acquired Assets have been timely filed (taking into account any extension of time to file granted to or on behalf of Seller) and properly reflect the Tax liability of Seller with respect to the applicable periods. All Taxes and withholding amounts shown to be due and payable (or required to be withheld) prior to the date hereof have been paid (or withheld). Except as set forth on **Schedule 6.12**, no claim for any Taxes has been proposed, threatened in writing or assessed against Seller and no facts exist that make such a claim likely. Except as set forth on **Schedule 6.12**, no ongoing audit, litigation or similar proceeding concerning any Tax returns of Seller with respect to the Business or the Acquired Assets has been proposed, threatened, or is in progress nor does there exist any waiver or agreement for the extension of time for the assessment of any Taxes against Seller with respect to the Business or the Acquired Assets.

7.4 Accounts Receivable. The Accounts Receivable constitute bona fide, and collectible claims arising in the Ordinary Course in a manner consistent with Seller’s normal credit practices.

7.5 Owned Real Property. Seller owns good and marketable fee title to the Owned Real Property. At the Closing Date, such title shall be free and clear of all Liens other than Permitted Encumbrances. Except for the real property subject to the Leases and except as set forth in Schedule 6.14, the Owned Real Property constitutes all of the real property used by Seller in the conduct of the Business. There is no pending or threatened condemnation (or any sale in lieu thereof) affecting the Owned Real Property.

7.6 Litigation. Except as set forth on Schedule 6.15 or claims made in connection with the Bankruptcy Cases, there are no actions, claims, causes of action, proceedings, suits or investigations pending or threatened, against Seller before any Governmental Authority relating to the Business or the Acquired Assets which, if adversely determined, would have a Material Adverse Effect. Seller is not subject to any Order entered in any lawsuit or proceeding that would have a Material Adverse Effect.

7.7 Brokers; Agents. Except for Chanin Capital LLC, whose fees will be paid by CONSOLIDATED DUST, neither CONSOLIDATED DUST nor Seller has dealt with any agent, finder, broker or other representative in any manner which could result in Buyer being liable for any fee or commission in the nature of a finder's fee or originator's fee in connection with the subject matter of this Agreement.

7.8 TERMS OF SALE. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT AND WITHOUT LIMITING THE PROVISIONS OF SECTION 2.5, THE ACQUIRED ASSETS ARE BEING SOLD TO BUYER ON AN "AS-IS-WHERE-IS" BASIS, WITHOUT WARRANTY. SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT BUYER, AND ITS SUCCESSORS AND ASSIGNS, SHALL BEAR ALL RISKS OF INJURY OR DAMAGE TO PERSONS OR PROPERTY TO THE EXTENT RELATING TO THE OWNERSHIP OR OPERATION OF THE BUSINESS OR THE ACQUIRED ASSETS ON AND AFTER THE EFFECTIVE TIME.

ARTICLE VIII. Representations and Warranties of Buyer

Buyer represents and warrants to Seller as follows:

8.1 Organization of Buyer; Authorization. Buyer is a company duly organized, validly existing and in good standing under the laws of Grand Cayman, and has the requisite organizational power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement have been duly authorized by all necessary organizational action of Buyer. This Agreement has been duly and validly executed by Buyer and constitutes a legal, valid and binding obligation of Buyer, enforceable against it in accordance with its terms.

8.2 Consents and Approvals; No Violations. Assuming the receipt of the necessary approvals of the Bankruptcy Court (including, but not limited to, the Sale Order), the execution and delivery of this Agreement by Buyer and the consummation of the transactions contemplated hereby (a) will not violate any provisions of the [constituent documents] of Buyer, (b) will not violate any Law by which Buyer is bound or by which any of its properties or assets are bound, (c) will not require any filing with, or permit, consent or approval of, or the giving of any notice to, any Governmental Authority on or prior to the Closing Date and (d) will not result in a violation or breach of, conflict with, constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation, payment or acceleration) under, or result in the creation of any Lien upon any of the properties or assets of Buyer or any of its subsidiaries under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, franchise, permit, agreement, lease, franchise agreement or any other instrument or obligation to which Buyer or any of its subsidiaries is a party, or by which it or any of its properties or assets may be bound, excluding from the foregoing clauses (b), (c) and (d) filings, notices, permits, consents and approvals the absence of which, and violations, breaches, defaults, conflicts and Liens which, would not prevent, materially interfere or delay Buyer from performing its obligations under this Agreement or the consummation of the transactions contemplated by this Agreement.

8.3 Litigation. As of the date of this Agreement, there is no action, claim, cause of action, proceeding, suit or investigation, pending or, to the knowledge of Buyer, threatened against or

affecting Buyer or Buyer's assets which, if adversely determined, would materially and adversely affect Buyer's ability to pay the Purchase Price Amount and to satisfy the Assumed Obligations or would prevent, materially interfere or delay Buyer from performing its obligations under this Agreement or consummating the transactions contemplated by this Agreement.

8.4 Available Funds. The Buyer has, or will have on the Closing Date, sufficient funds available to it to perform all of its obligations under this Agreement, including, without limitation, to pay the Purchase Price Amount in accordance with the terms of this Agreement and to assume the Assumed Obligations.

8.5 Brokers; Agents. Buyer has not dealt with any agent, finder, broker or other representative in any manner which could, solely as a result of action by Buyer, result in Seller being liable for any fee or commission in the nature of a finder's fee or originator's fee in connection with the subject matter of this Agreement.

ARTICLE IX. Additional Agreement of the Parties

9.1 Reasonable Efforts; Cooperation.

(a) Upon the terms and subject to the conditions of this Agreement, Buyer and Seller will each use its reasonable best efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable consistent with applicable Law to cause the conditions precedent to Closing to be satisfied and to cause the Closing to occur on or prior to the date set forth in Section 12.1(a), including, without limitation, to obtain the consent or approval of any third party or Governmental Authority necessary to consummate the transactions contemplated hereby in accordance with the terms hereof.

(b) Seller agrees that it will promptly take such actions as are reasonably required to obtain the Bankruptcy Court's approval of the Sale Order, including, but not limited to, demonstrating that (i) Buyer is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code, (ii) Buyer has provided adequate assurance of future performance as assignee of the Assigned Contracts and (iii) Section 363(f) of Bankruptcy Code shall apply to the sale of the Acquired Assets. In the event that stay of the Sale Order is sought or any such Order is appealed, Seller shall use its reasonable best efforts to oppose such request for a stay or defend any such appeal, as applicable. Buyer shall provide Seller with all information reasonably requested by Seller in connection with such actions.

(c) Seller will provide Buyer with copies of all motions, applications and supporting papers prepared by Seller (including forms of the Sale Order and other orders and notices to interested parties) relating to Buyer, this Agreement or the Acquired Assets prior to the filing thereof in the Bankruptcy Court, shall consult with Buyer and its counsel with respect thereto, and shall incorporate therein such changes or additions as Buyer may reasonably request. In connection with the Sale Order, Seller shall seek and obtain Buyer's approval of such order (such approval not to be unreasonably withheld, conditioned or delayed).

(d) Seller will give appropriate notice, and provide appropriate opportunity for hearing, to all parties entitled thereto, of all motions, orders, hearings or other proceedings relating to this Agreement.

(e) Seller will give prompt notice to Buyer, and Buyer will give prompt notice to Seller, of (i) the occurrence, or failure to occur, of any event that would be likely to cause any representation or warranty contained in this Agreement to be untrue or inaccurate in any material respect at any time from the date of this Agreement to the Closing Date, and (ii) any failure of Buyer or Seller, as the case may be, to comply with or satisfy, in any material respect, any covenant, condition or agreement to be complied with or satisfied by it under this Agreement.

(f) To the extent that the assignment to Buyer of any outstanding Contract, agreement, license, lease, permit or authorization pursuant to this Agreement is not permitted without the consent of another Person, court or entity and such restriction cannot be effectively overridden or canceled by the Sale Order, or other related order of the Bankruptcy Court, then this Agreement will not be deemed to constitute an assignment of or an undertaking or attempt to assign the same or any right or interest therein if such consent is not given, *provided*, Seller and Buyer will use commercially reasonable efforts, before and after the Closing, to obtain all such consents. Schedule 8.1 identifies each Material Contract, other than Rejected Contracts, and other Acquired Assets which are subject to any such consent. If any such consents, including, but not limited to, the consents identified on Schedule 8.1, are not obtained prior to the Closing, Seller will, at Buyer's request, reasonably cooperate with Buyer in any lawful and feasible arrangement designed to provide Buyer (at the sole cost and expense of Buyer) with the benefits and obligations of any such Contract, agreement, license, lease, permit or authorization.

9.2 Access; Records; Bankruptcy Papers. From and after the date hereof, authorized representatives of Buyer (including its accountants, advisors, potential financing sources, consultants and legal counsel) shall have the right, upon reasonable notice and at reasonable times during normal business hours, to inspect the Acquired Assets and their condition and shall be provided reasonable access to Seller's officers, advisors, counsel, trade vendors, customers, properties and facilities, but specifically excluding access for the purpose of environmental sampling, and, *provided*, that Buyer shall not take any action which unreasonably interferes with Seller's operation of the Business prior to the Closing Date, and *provided further*, that Buyer shall not approach Seller's trade vendors or customers without Seller's consent (such consent not to be unreasonably withheld, conditioned or delayed). From and after the date hereof, Seller will give Buyer and its authorized representatives full access, upon reasonable notice and at reasonable times during normal business hours, to their books and records relating solely to the Business, as Buyer may reasonably request, permit Buyer to make inspections thereof, and cause Seller's officers and advisors to furnish Buyer with such financial, Tax and other operating data and other information relating solely to the Business as Buyer may reasonably request. The parties acknowledge that Buyer (of an Affiliate of Buyer) and DUST have entered into a Confidentiality Agreement dated _____, 2003 (the "**Confidentiality Agreement**") and Buyer confirms that it and its Affiliates and representatives (including its accountants, advisors, potential financing sources, consultants and legal counsel) will comply with their respective obligations thereunder and that information obtained during any such review will be subject to the terms of the Confidentiality Agreement. Seller agrees that it will retain, until all appropriate statutes of limitations (including any extensions) expire, copies of all Tax returns and supporting work schedules and other records or information which may be relevant to such Tax returns, except for such Tax returns, supporting work schedules and other records which Buyer shall acquire as a consequence of this Agreement (*provided*, that Seller may elect not to retain any such copies if it gives such copies or makes such copies available to Buyer), and that it will not destroy or otherwise dispose of such materials without first providing Buyer with a reasonable opportunity to review and copy such materials. Buyer agrees that it will retain, until all appropriate statutes of limitations (including any extensions) expire, copies of all Tax returns and supporting work schedules received from Seller pursuant to this Agreement and other records or information which may be relevant to such Tax returns, and that it will not destroy or otherwise dispose of such materials without first providing Seller with a reasonable opportunity to review and copy such materials. After the Closing Date, Buyer will give DUST, Seller and their authorized representatives full access, upon reasonable notice and at reasonable times, to the books and records acquired as a consequence of this Agreement for purposes of and relating to the prosecution of any claims of Seller or which may otherwise be needed to enforce their remaining rights and defend their remaining obligations relating to the Acquired Assets and the Business or in connection with the Bankruptcy Cases.

9.3 Operation in the Ordinary Course. Prior to the Closing Date, Seller shall operate the Business in the Ordinary Course, subject to changes resulting from the Bankruptcy Cases and the requirements of the Bankruptcy Code and the Bankruptcy Court. In furtherance of and without limiting the foregoing, Seller shall:

(a) maintain and preserve all of the physical Acquired Assets in the same condition as of the date hereof, ordinary wear and tear excepted; and

(b) perform all of its obligations under the Assigned Contracts, *provided*, that Seller shall not be required to pay any Cure Costs.

9.4 Collection of Accounts Receivable. If, following the Closing, Seller shall collect any Accounts Receivable belonging to Buyer, Seller shall hold the same in trust and shall promptly pay the same over to Buyer.

ARTICLE X. Employees

10.1 Transferred Employees. (a) Within a reasonable period of time prior to the Closing Date, Buyer shall offer "at will" employment, commencing as of the Closing Date, to all Seller Employees who are not subject to a collective bargaining agreement (and are still employed by Seller on the date of such offer of employment) on such terms and conditions as Buyer may determine, but in any event at compensation and benefits substantially similar to their then present wage and benefits and, if Buyer currently conducts a business similar to the business of Seller or any of its Affiliates, then in no event on terms and conditions less favorable in the aggregate than those provided to similarly situated employees of Buyer, *provided*, that with respect to any such employee on long-term disability or other approved leave of absence, such offer of employment shall be effective upon such employee's resumption of active employment. Buyer, in its sole discretion, may also offer employment, commencing as of the Closing Date, to additional employees of Seller engaged in the conduct of the Business who are not subject to a collective bargaining agreement and are hired after the date hereof in the Ordinary Course, as disclosed to Buyer.

(b) Within a reasonable period of time prior to the Closing Date, Buyer shall offer employment, commencing as of the Closing Date, to all Seller Employees, and any additional employees of Seller engaged in the conduct of the Business hired after the date hereof in the Ordinary Course, who are the subject of the collective bargaining agreement identified in Schedule 6.11, under terms consistent with Buyer's duties under that agreement(s).

(c) Each such employee of Seller who accepts Buyer's offer of employment is referred to as a "**Transferred Employee**", and all such employees collectively as the "**Transferred Employees**".

10.2 Benefit Plans. (a)

(a) From and after the Closing Date, Buyer shall assume, and shall honor, pay, perform and satisfy when due, any and all liabilities, obligations and responsibilities to, or in respect of, each Transferred Employee and each former employee and officer of Seller arising under the terms of, or in connection with, the employee benefit plans identified on Schedule 9.2 (collectively, the "**Continuing Plans**"), in each case, in accordance with the terms thereof in effect immediately prior to

the Closing Date, with respect to events or claims arising at any time, *provided*, that, subject to the last sentence of Section 9.2(b), nothing contained herein shall constitute a commitment or obligation on the part of Buyer to continue any such plan after the Closing Date (other than Buyer's obligations with respect to the Self-Insured Employee Obligations), except that Buyer shall provide, or shall cause to be provided, commencing on the Closing Date, coverage to all current and former employees of Seller (including Transferred Employees and any employees of Seller who do not accept the offer of employment described in Section 9.1) and their spouses and dependents, under a group health plan which does not contain any waiting period or exclusion or limitation with respect to any pre-existing conditions, and Buyer shall be solely responsible for compliance with the requirements of Section 4980B of the Code and Part 6 of Subtitle B of Title I of ERISA ("**COBRA**"), including, but not limited to, the provision of continuation coverage with respect to all such current and former employees of Seller, their spouses and dependents for whom a qualifying event occurs before, on or after the Closing Date. The terms "group health plan", "continuation coverage" and "qualifying event" are used in this Section 9.2(a) with the respective meanings ascribed thereto in COBRA.

10.3 Effective upon the Closing, Seller shall (i) amend the retirement plan set forth on Schedule 9.2(b) (the "**Retirement Plan**") to provide for Buyer as sponsor and employer thereunder and (ii) as requested by Buyer, cause any employer trustee to resign and appoint as a successor employer trustee a person or persons designated by Buyer. On the Closing Date, Buyer shall adopt and assume sponsorship of the Retirement Plan and related trust, and the liabilities thereunder, with respect to all individuals entitled to benefits under the provisions of the Retirement Plan, and Seller shall cause all right, title, interest, authorities, obligations, duties, liabilities and assets of Seller in, to and under the Retirement Plan and related trust to be transferred to and assumed by Buyer and any successor trustee, respectively, in accordance with applicable Law. At Closing, the parties shall execute and deliver such documents and instruments as may be required to effect the transfer and assumption of the Retirement Plan and all other Continuing Plans to and by Buyer and to ensure that all assets, contracts and agreements of or associated with the Retirement Plan and other Continuing Plans, as the same exist immediately prior to the Closing Date, shall be transferred with the respective Retirement Plan and Continuing Plans and such obligations, as provided in this Section 9.2(b). For a period of at least 12 months following the Closing Date, Buyer covenants and agrees to maintain the Retirement Plan in accordance with the terms thereof as in effect on the date hereof, except to the extent that Buyer is required to amend the Retirement Plan to comply with applicable Law.

(a) Buyer shall be solely responsible for, and shall indemnify and hold Seller, its Affiliates and their respective shareholders, officers, directors, employees and agents harmless from, any obligations or any loss, cost, liability, damage or expense (including, but not limited to, attorneys' fees and costs in all trial and appellate proceedings) (collectively, "**Employment Losses**") due or which may become due to, or in respect of, any of the Continuing Plans, the Retirement Plan and with respect to the Transferred Employees arising from or related to their employment or termination from employment with Seller or Buyer or its Affiliates, whether arising prior to, at or after the Closing Date.

(a)a Accrued but unpaid vacation, sick or other paid time off with respect to all employees of Seller as of the Closing Date (including, but not limited to, the Transferred Employees) shall, to the extent permitted by applicable Law, be assumed by Buyer and paid by Buyer in accordance with the terms of the applicable policies and procedures of Seller in effect on the date hereof.

(a)b In the event of any "plant closing" or "mass layoff" by Buyer, as defined by the Federal Worker Adjustment Retraining Notification Act, 29 U.S.C. § 2101 *et seq.* ("**WARN**"), or any state Law equivalent, which shall occur as of or after the Closing Date, Buyer shall comply with all of the requirements of WARN and any applicable state Law equivalent and shall indemnify CONSOLIDATED DUST and Seller from and against any Employment Losses incurred by CONSOLIDATED DUST or Seller as the result of any action against Buyer or CONSOLIDATED DUST or Seller under WARN or any applicable state Law equivalent.

(a)c Following the Closing, (i) Buyer shall waive or cause to be waived any waiting periods, exclusions, or pre-existing condition limitations that may otherwise be applicable to

Transferred Employees and their spouses and eligible dependents under any welfare benefit plans of Buyer or its Affiliates and (ii) Buyer shall honor or cause to be honored all premiums, co-payments and deductibles paid by the Transferred Employees and their spouses and eligible dependents during the plan year in which the Closing occurs under the employee welfare benefit plans and arrangements of Seller up to (and including) the Closing Date. Following the Closing, each employee benefit plan or arrangement and employee compensation policy or practice sponsored by Buyer or its Affiliates shall credit, for all purposes (except for benefit accruals under any defined benefit pension plans), all service of the Transferred Employees and other employees and officers of Seller with Seller or CONSOLIDATED DUST (and their respective predecessors) to the same extent such service was taken into consideration under comparable employee benefit plans of Seller and CONSOLIDATED DUST.

ARTICLE XI Conditions to Buyer's Obligation to Effect Closing

The obligation of Buyer to effect the Closing shall be subject to the satisfaction, on or before the Closing Date, of the following conditions, any one or more of which may be waived by Buyer:

11.1 Representations and Warranties and Covenants. a) The representations and warranties of Seller set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date, except for changes permitted by this Agreement and except to the extent that any representation or warranty is made as of a specified date, in which case such representation or warranty shall be true in all material respects as of such date, *provided*, that the failure of a representation or warranty to be true and correct at any time shall not constitute a failure of the condition contained in this Section 10.1(a) if, ignoring for this purpose all qualifications as to materiality or Material Adverse Effect in such representation or warranty, such failure, in conjunction with all other such failures, has not had a Material Adverse Effect.

(d) Seller shall have performed and complied in all material respects with the agreements contained in this Agreement required to be performed and complied with by Seller on or before the Closing.

(e) Seller shall have delivered to Buyer at the Closing a certificate, dated the Closing Date, signed by its Chief Executive Officer, President or any Vice President, certifying as to compliance with paragraphs (a) and (b) above.

11.2 Effectiveness of Sale Order. The Bankruptcy Court shall have entered the Sale Order, 10 days shall have elapsed since such Sale Order was entered (*provided*, that if the tenth day after such Sale Order is entered is not a Business Day, such period shall be deemed to have elapsed on the first Business Day following such tenth day), the Sale Order shall not have been modified, reversed or amended in any manner materially adverse to Buyer, and the effectiveness of the Sale Order shall not have been stayed or, if stayed, such stay shall no longer be in effect.

11.3 No Injunction. No Governmental Authority shall have issued an Order which shall then be in effect restraining or prohibiting the completion of the transactions contemplated hereby.

11.4 Statutes. No Law of any kind shall have been enacted, entered, promulgated or enforced by any Governmental Authority which prohibits, or has the effect of making illegal, the consummation of the transactions contemplated hereby.

11.5 Governmental Approvals. All material approvals and consents of Governmental Authorities necessary to permit the consummation of the transactions contemplated by this Agreement shall have been received.

11.6 Assumption and Rejection of Contracts. The Contracts designated hereunder for assumption or rejection shall be so assumed or rejected, as the case may be, by final Order of the Bankruptcy Court.

ARTICLE XII Conditions to Seller's Obligation to Effect Closing

The obligation of Seller to effect the Closing shall be subject to the satisfaction, on or before the Closing Date, of the following conditions, any one or more of which may be waived by Seller:

12.1 Representations, Warranties and Agreements. a)a The representations and warranties of Buyer set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date, except for changes permitted by this Agreement and except to the extent that any representation or warranty is made as of a specified date, in which case such representation or warranty shall be true in all material respects as of such date, *provided* that the failure of a representation or warranty to be true and correct at any time shall not constitute a failure of the condition contained in this Section 12.1(a) if, ignoring for this purpose all qualifications as to materiality or material adverse effect in such representation or warranty, such failure, in conjunction with all other such failures, has not had a material adverse effect.

(f) Buyer shall have performed and complied in all material respects with the agreements contained in this Agreement required to be performed and complied with by Buyer on or before the Closing.

(g) Buyer shall have delivered to Seller at the Closing a certificate, dated the Closing Date, signed by the [title] of Buyer certifying as to compliance with paragraphs (a) and (b) above.

(h) Effectiveness of Sale Order. The Bankruptcy Court shall have entered the Sale Order, 10 days shall have elapsed since the Sale Order was entered (*provided*, that if the tenth day after the Sale Order is entered is not a Business Day, such period shall be deemed to have elapsed on the first Business Day following such tenth day), the Sale Order shall not have been modified, reversed or amended in any manner materially adverse to Seller, and the effectiveness of the Sale Order shall not have been stayed or, if stayed, such stay shall no longer be in effect.

1.2 No Injunction. No Governmental Authority shall have issued an Order which shall then be in effect restraining or prohibiting the completion of the transactions contemplated hereby.

1.3 Statutes. No Law of any kind shall have been enacted, entered, promulgated or enforced by any Governmental Authority which prohibits, or has the effect of making illegal, the consummation of the transactions contemplated hereby.

1.4 Governmental Approvals. All material approvals and consent of Governmental Authorities necessary to permit the consummation of the transactions contemplated by this Agreement shall have been received.

ARTICLE XIII Termination; Effect of Termination

13.1 Termination. This Agreement may be terminated before the Closing occurs only as follows:

(a) by Buyer or by Seller, if the Closing shall not have occurred for any reason on or before _____, 2003, *provided*, the right to terminate this Agreement under this

Section 13.1(a) shall not be available to any party whose delay or non-performance of any obligation under this Agreement shall be the cause of the failure of the Closing Date to occur on or before such date;

(b) by Buyer, if one or more of the conditions specified in Article X is not satisfied on the Closing Date or if satisfaction of such condition becomes impossible (for reasons other than the failure of Buyer to comply with its obligations under this Agreement);

(c) by Seller, if one or more of the conditions specified in Article XI is not satisfied on the Closing Date or if satisfaction of such condition becomes impossible (for reasons other than the failure of Seller to comply with its obligations under this Agreement);

(d) by either party, if (i) the Bidding Procedures Order has not been entered by _____, 2003 or (ii) the Sale Order has not been entered by _____, 2003, *provided*, that if Buyer does not terminate this Agreement under this Section 13.1(d) by _____, 2003, then Buyer shall be deemed to have waived its rights under this Section 13.1(d);

(e) by either party if an Alternative Transaction is approved by the Bankruptcy Court, whether or not in accordance with the Bidding Procedures; or

(f) by the mutual written agreement of Buyer and Seller.

1.5 Transaction Expenses. Subject to Section 13.4, and provided that Buyer has not breached its obligations under this Agreement in any material respect before this Agreement was terminated, then if this Agreement is terminated by Buyer pursuant to Section 13.1(b) *other than a termination for failure to satisfy the condition specified in Section 10.6*, or if this Agreement is terminated pursuant to Section 12.1(e), Seller will reimburse Buyer for all reasonable and documented out-of-pocket expenses (including, but not limited to, the reasonable fees and expenses of Buyer's professionals) incurred by Buyer in connection with the preparation and negotiation of this Agreement, all documents to be prepared in connection with the consummation of the transactions contemplated by this Agreement (whether consummated or not), and all of Buyer's other reasonable fees and expenses related to the transactions contemplated by this Agreement; *provided*, that in no event shall the aggregate amount of such reimbursement exceed \$25,000 (the "**Expense Reimbursement**"). The Expense Reimbursement shall constitute an allowed administrative expense claim against Seller under Sections 503 and 507(a) of the Bankruptcy Code.

1.6 Termination Fee. If this Agreement is terminated pursuant to Section 12.1(e), upon the consummation of an Alternative Transaction, Seller shall be required to pay Buyer a termination fee in an amount equal to (a) \$ _____ *minus* (b) the actual amount of the Expense Reimbursement (the "**Termination Fee**"). This obligation shall constitute an allowed administrative expense claim against Seller under Sections 503 and 507(a) of the Bankruptcy Code, payable from the proceeds of an Alternative Transaction, *provided*, that Buyer shall not be entitled to the Termination Fee if Buyer shall have breached its obligations under this Agreement in any material respect before this Agreement was terminated.

1.7 Liquidated Damages. The parties agree that it is impossible to determine accurately the amount of damages that Seller would suffer if the transactions contemplated herein were not consummated as a result of a material breach of this Agreement by Buyer. As a result, notwithstanding anything in this Agreement to the contrary, the parties agree that (a) in the event this

You might also consider the expenses of others who might have contributed to the sale effort, e.g., a union. See *In re Bethlehem Steel Corporation*, (SDNY 2003) 2003 U.S. Dist. LEXIS 12909, July 23, 2003, Decided

Agreement is terminated in accordance with Section 12.1 as a result of a breach by Buyer of any of its obligations under this Agreement, Buyer shall be obligated to pay liquidated damages in an amount equal to the Deposit and (b) such liquidated damages shall be the sole and exclusive remedy of Seller against Buyer by reason of such breach and such termination. Accordingly, if liquidated damages are payable hereunder, upon termination of this Agreement the Deposit shall be paid to Seller.

1.8 Deposit. If the Closing does not occur or this Agreement is terminated, except as specifically provided in Section 12.4, the Deposit shall be paid to Buyer in accordance with joint written instructions from Buyer and Seller to the Escrow Agent.

1.9 No Further Liability. Subject to Sections 12.2, 12.3, 12.4 and 12.5, if this Agreement is terminated by either or both of Seller and Buyer pursuant to this Article XII, all further obligations of the parties under this Agreement shall terminate without further liability or obligation of either party to the other hereunder except for those provisions that expressly survive the termination of this Agreement.

ARTICLE II.

No Survival of Representations, Warranties or Covenants

The representations, warranties and covenants of the parties will not survive beyond the Closing and neither party will have any liability therefor after the Closing, except that the obligations of Seller and Buyer under the last sentence of Section 8.1(f), the fourth, fifth and sixth sentences of Section 8.2, Section 8.4, Section 9.2, Section 15.2 and Section 15.11 will survive the Closing.

ARTICLE III. Jurisdiction

The parties agree that the Bankruptcy Court shall retain jurisdiction to resolve any controversy or claim arising out of or relating to this Agreement, or the breach hereof.

ARTICLE IV. Miscellaneous

4.1 Notices. All notices, requests, demands, consents and other communications required or permitted under this Agreement shall be in writing and shall be considered to have been duly given when (a) delivered by hand, (b) delivered by telecopier (with receipt confirmed), provided that a copy is mailed (on the same date) by certified or registered mail, return receipt requested, postage prepaid, or (c) delivered to the addressee, if sent by Express Mail, Federal Express or other express delivery service (receipt requested), in each case to the appropriate addresses and telecopier numbers set forth below (or to such other addresses and telecopier numbers as a party may from time to time designate as to itself by notice similarly given to the other party in accordance herewith). Any notice delivered after business hours on a Business Day or a day that is not a Business Day will be deemed to have been given on the next following Business Day.

If to Buyer, to it at:

Facsimile No.:
Telephone No.
Attention:

with a copy to:

Facsimile No.:

Telephone No.
Attention:

If to Seller, to it at:

c/o Consolidated Dust Corporation
10 Essex Street
Nashua, New Hampshire 03050
Facsimile No.:
Telephone No.:
Attention: President

with a copy to:

Learned Counsel LLP
Park Avenue
New York, New York 10022
Facsimile No.:
Telephone No.:
Attention: Michael Learned, Esq.

4.2 Transfer Taxes. In the event transfer Taxes are assessed at Closing or at any time thereafter on the transfer of any Acquired Assets, such Taxes incurred as a result of the transactions contemplated hereby will be paid by Buyer.

4.3 Press Releases; Disclosure. (a) The parties hereto will cooperate in the issuance of any press releases or otherwise in making any public statements with respect to this Agreement and the transactions contemplated hereby. Neither Buyer nor Seller shall issue any press release regarding this Agreement or the transactions contemplated hereby without the other party's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Buyer acknowledges and agrees that Seller may provide copies of this Agreement and the schedules and exhibits attached hereto to the parties in interest in the Bankruptcy Cases, and those parties Seller determine it is necessary to provide copies to in connection with the auction contemplated by the Bidding Procedures or as otherwise necessary in connection with the Bankruptcy Cases. Seller also shall be entitled to file copies of this Agreement and the schedules and exhibits attached hereto with the Bankruptcy Court or as otherwise required by Law and shall publish notice of this Agreement and the transactions contemplated hereby as required by the bankruptcy Law.

(b) Nothing in this Agreement or the Confidentiality Agreement shall restrict Buyer or Seller (or their respective employees, representatives or other agents) from disclosing to any Person the tax treatment and tax structure of the transactions contemplated by this Agreement or any related materials.

4.4 Entire Agreement. This Agreement and the instruments, agreements, exhibits and other documents contemplated hereby supersede all prior discussions and agreements between the parties with respect to the matters contained herein (but excluding the Confidentiality Agreement, which shall remain in full force and effect), and this Agreement and the instruments, agreements and other documents contemplated hereby contain the entire agreement between the parties hereto with respect to the transactions contemplated hereby.

4.5 Waiver. Any term or condition of this Agreement may be waived at any time by the party thereto which is entitled to the benefit thereof, but such waiver shall only be effective if evidenced by a writing signed by such party. A waiver on one occasion shall not be deemed to be a waiver of the same of any other breach on a future occasion.

4.6 Amendment. Except as otherwise expressly provided herein, this Agreement may be amended only by a writing signed by all the parties hereto.

4.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

4.8 Binding Agreement; Assignment; No Third Party Beneficiaries. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement may not be assigned by any party hereto, without the prior written consent of the other parties. Any purported assignment without such consent shall be void. Notwithstanding the foregoing, Buyer may, by written notice delivered to Seller not less than five Business Days prior to the Closing Date, designate one of its Affiliates to assume all of the obligations and rights of Buyer hereunder effective as of the Closing Date in a writing reasonably satisfactory to Seller; *provided*, that such assignment shall not release [insert name of Buyer] from liability hereunder. Except as provided in Section 9.2(c), this Agreement is not made for the benefit of any third party (including any non-Seller parties to the Contracts or any employee or former employee of Seller), and no third party shall be deemed to be a beneficiary hereof.

4.9 Governing Law. This Agreement is to be governed and construed in accordance with Federal bankruptcy Law, to the extent applicable, and where state law is implicated, including all matters of contract construction, validity and performance, the Laws of the State of New York shall govern, without regard to the conflicts of laws principles thereof.

4.10 Headings. The headings in this Agreement are for convenience of reference only and shall not be deemed a part of this Agreement.

4.11 Expenses. Except as otherwise expressly provided herein, each of the parties hereto shall pay their own fees and expenses in connection with the negotiation, preparation, execution and delivery of this Agreement and the other instruments and agreements entered into pursuant to this Agreement, and any amendments to the same.

4.12 Schedules. Notwithstanding anything to the contrary contained in this Agreement or in any of the Schedules, any information disclosed in one Schedule shall be deemed to be disclosed in all Schedules. Certain information set forth in the Schedules is included solely for informational purposes and may not be required to be disclosed pursuant to this Agreement. The disclosure of any information shall not be deemed to constitute an acknowledgment that such information is required to be disclosed in connection with the representations and warranties made by Seller in this Agreement or that it is material, nor shall such information be deemed to establish a standard of materiality.

4.13 Severability; Enforcement. The invalidity of any portion hereof shall not affect the validity, force or effect of the remaining portions hereof. If it is ever held that any restriction hereunder is too broad to permit enforcement of such restriction to its fullest extent, each party agrees that a court of competent jurisdiction may enforce such restriction to the maximum extent permitted by law, and each party hereby consents and agrees that such scope may be judicially modified accordingly in any proceeding brought to enforce such restriction.

4.14 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by all parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any

"No, your honor, I did not draft the agreement. We did."

provision of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on the date first above written.

SELLER:

CONSOLIDATED DUST, INC.

By: _____

Name:

Title:

BUYER:

[NAME OF BUYER]

By: _____

Name:

Title: