

## **ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT is dated as of February 15, 2007, by and between Williamston Products, Inc., a Michigan corporation (“Purchaser”), and Collins & Aikman Plastics, Inc., a Delaware corporation (“Seller”), and for purposes of Article IV and Section 13.1 only, Collins & Aikman Corporation, a Delaware corporation (“C&A” and collectively, with Seller and the other debtors, the “Debtors”). C&A and the Seller are each debtors and debtors in possession under cases jointly administered under chapter 11 Case No. 05-55927 pending in the United States Bankruptcy Court for the Eastern District of Michigan. In consideration of the mutual covenants, agreements and warranties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **ARTICLE I DEFINITIONS AND RULES OF CONSTRUCTION**

1.1 Definition. Unless otherwise defined herein, capitalized terms used herein shall have the meanings set forth below:

“Acquired Assets” shall have the meaning set forth in Section 2.1 hereof.

“Acquisition Proposal” means a proposal relating to any merger, consolidation, business combination, sale or any other disposition of all or a substantial portion of the Acquired Assets pursuant to one or more transactions, including under a plan of reorganization, liquidation or otherwise, or any other proposed transaction involving the Seller the result of which would be the transfer of all or a substantial portion of the Acquired Assets to a person or persons other than the Purchaser.

“Affiliate” shall have the meaning set forth in Rule 405 promulgated under the Securities Act of 1933, as amended.

“Agreement” means this Asset Purchase Agreement, including all Exhibits and Schedules hereto, as the same may be amended from time to time in accordance with its terms.

“Allocation” shall have the meaning set forth in Section 14.10(b) hereof.

“Alternative Transaction” means any of the following: (i) consummation of a transaction contemplated by an Acquisition Proposal; or (ii) the confirmation of a plan of reorganization or liquidation pursuant to which all or a substantial portion of the Acquired Assets are part of a reorganized entity or all or a substantial portion of the Acquired Assets are conveyed to a person or persons other than the Purchaser.

“Ancillary Documents” shall have the meaning set forth in Section 14.7 hereof.

“Assignment and Assumption” shall have the meaning set forth in Section 11.2 hereof.

“Assumed Contracts” means all Contracts identified in Schedule 2.1(d)(i) hereto.

“Assumed Equipment Leases” means the leases identified in Schedule 2.1(d)(ii) hereto pursuant to which the Seller leases, as the lessee, Leased Equipment.

“Assumed Obligations” shall have the meaning set forth in Section 2.2 hereof.

“Assumed Progress Court Lease” means the lease pursuant to which the Seller leases, as the lessee, the Progress Court Facility.

“Bankruptcy Code” means title 11 of the United States Code.

“Bankruptcy Court” means the United States Bankruptcy Court for the Eastern District of Michigan, having jurisdiction over the Seller, C&A, their respective assets and the Chapter 11 Cases.

“Bid Protections” means the Break-Up Fee and the Overbid Protections.

“Bid Protections Order” means, as contemplated under the Sale Procedures Order, an order of the Bankruptcy Court approving the Bid Protections.

“Break-Up Fee” shall have the meaning set forth in Section 12.3 hereof.

“Business” means the businesses of the Seller now conducted at the Progress Court Facility and the Noble Road Facility.

“Chapter 11 Cases” means the pending cases commenced by the Debtors on May 17, 2005 and jointly administered under chapter 11 of the Bankruptcy Code in the Bankruptcy Court under case no. 05-55927.

“Claim” means any claim, lawsuit, demand, suit, inquiry made, hearing, investigation, notice of violation, litigation, proceeding, arbitration, or other dispute, whether civil, criminal, administrative or otherwise.

“Closing” means the consummation of the transactions contemplated herein in accordance with Article XI hereof.

“Closing Date” shall have the meaning set forth in Section 11.1 hereof.

“Closing Statement” shall have the meaning set forth in Section 3.2(b) hereof.

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

“Confidentiality Agreement” means the Confidentiality Agreement, dated March 28, 2006 between Purchaser and C&A.

“Contaminant” means any substance regulated under any Environmental Law, or any substance defined as or included in the statutory or regulatory definitions of pollutant, hazardous substance, hazardous or toxic waste, hazardous material, or “toxic substance” under any Environmental Law.

“Contract” means any agreement, contract, commitment or other binding arrangement or understanding exclusively related to the Business, whether written or oral, to which the Seller is a party and which the Seller is capable of assuming and assigning.

“Cure Costs” shall have the meaning set forth in Section 2.2 hereof.

“Current C&A Products” shall have the meaning set forth in Section 4.7 hereof.

“Designated Equipment” means the equipment identified on Schedule 2.1(b)(ii).

“Designated Intellectual Property” shall have the meaning set forth in Section 2.1(e) hereof.

“Dollars” or “\$” means dollars of the United States of America.

“Employee” means each active employee, full-time or part-time, including, without limitation, employees on authorized leave of absence or short-term disability, of the Seller (or an Affiliate of the Seller) who, as of the date of this Agreement, is determined by the Seller to have performed (during the 12-month period immediately preceding the date of this Agreement (or the period of the employee’s employment with the Seller and its Affiliates, if less)) substantially all of such employee’s services in connection with or for the benefit of the Business.

“Employee Benefit Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA.

“Employee Liabilities” means all of the Seller’s liabilities and obligations (including, without limitation, resulting from formal or informal or written or unwritten arrangements) to provide benefits or compensation to or on behalf of any Employee, or the spouse or dependents of any Employee, including, without limitation, profit-sharing, deferred compensation, incentive compensation, bonuses, commissions, stock options, stock purchases, severance pay, unemployment benefits, vacation pay, savings plans, dependent care, scholarships, accident insurance, disability, weekly income, salary continuation, the employer tax obligations of the Seller (excluding any employee paid portion thereof) arising as a result of payments to Employees or any other payments of any kind to Employees as of the Closing Date.

“Environmental Costs and Liabilities” means all losses by a Person from any Claim, whether based on contract, tort, implied or express warranty, strict liability, criminal or civil statute, including under any Remedial Action, any Environmental Law, any Permit required by or pursuant to any applicable Environmental Law, any Lien in favor of any authority for Environmental Costs and Liabilities, any Order or agreement with any authority, arising from environmental, health or safety conditions, or the Release of a Contaminant into the environment to the extent incurred at the Williamston Facilities prior to the Closing Date or resulting from operations at the Williamston Facilities prior to the Closing Date.

“Environmental Law” means any Law that relates to or otherwise imposes liability or standards of conduct concerning discharges, releases or threatened releases of noxious odors or any Contaminants into ambient air, water or land, or otherwise relating to the manufacture,

processing, generation, distribution, use, treatment, storage, disposal, cleanup, transport or handling of Contaminants.

“Equipment” shall have the meaning set forth in Section 2.1(b) hereof.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended and all regulations issued thereunder.

“ERISA Affiliate” means any entity that with the subject Person is:

(a) a member of a controlled group of corporations within the meaning of Section 414(b) of the Code;

(b) a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Code;

(c) a member of an affiliated service group within the meaning of Section 414(m) of the Code; or

(d) a member of a group of organizations required to be aggregated under Section 414(o) of the Code.

“Excluded Assets” shall have the meaning set forth in Section 2.3 hereof.

“Excluded Liabilities” shall have the meaning set forth in Section 2.4 hereof.

“Excluded Records” means all information, files, records, data, plans, contracts and recorded knowledge, including, without limitation, customer and supplier lists, advertising and marketing data and records, credit records and all copies of marketing brochures and materials, related to or used in connection with the Business to the extent that any of the foregoing are privileged or are otherwise subject to Third Party privacy rights, and shall include, but not be limited to, (a) all tax and financial accounting records of the Seller, (b) all minute books of the Seller and (c) all written materials that the Seller are required by law to retain.

“Exhibits” means the exhibits hereto.

“Final Inventory Amount” shall have the meaning set forth in Section 3.2(b) hereof.

“Final Order” means the Sale Order, provided that no appeal thereof has been filed and that the time for appeal thereof shall have expired; and provided, further, that no Order or injunction shall have been issued restricting, prohibiting or staying the consummation of the transactions contemplated thereby.

“Governmental Entity” means any court, administrative agency or commission or other governmental authority or instrumentality, domestic or foreign.

“Indebtedness” with respect to any Person means any obligation of such Person for borrowed money, and in any event shall include (a) any obligation incurred for all or any part of

the purchase price of property or other assets or for the cost of property or other assets constructed or of improvements thereto, other than accounts payable included in current liabilities and incurred in respect of property purchased in the Ordinary Course of Business, (b) the face amount of all letters of credit issued for the account of such Person, (c) obligations (whether or not such Person has assumed or become liable for the payment of such obligation) secured by Liens on the assets of such Person, (d) capitalized lease obligations, (e) all guarantees of such Person, (f) all accrued interest, fees and charges in respect of any Indebtedness and (g) all prepayment premiums and penalties, and any other fees, expenses, indemnities and other amounts payable as a result of the prepayment or discharge of any Indebtedness.

“Intellectual Property” means (a) patents, patent applications and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions and reexaminations thereof, (b) trademarks, service marks, trade dress, logos, trade names, internet domain names and corporate names, together with all goodwill associated therewith and applications, registrations and renewals in connection therewith, (c) copyrights, mask works and copyrightable works and applications, registrations and renewals in connection therewith, (d) trade secrets and confidential business information (including, without limitation, ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, designs, drawings and specifications), (e) proprietary computer software (including data) and (f) copies and tangible embodiments of any of the foregoing in whatever form or medium.

“Inventory” shall have the meaning set forth in Section 2.1(c) hereof.

“Inventory Count” shall have the meaning set forth in Section 3.2(b) hereof.

“Law” means any federal, state, provincial, local or foreign law, statute, rule, regulation or ordinance of any Governmental Entity.

“Leased Equipment” means all equipment used in the Business and leased by the Seller, as lessee, pursuant to the Assumed Equipment Leases, which shall not be deemed to include the Designated Equipment.

“Legal Proceeding” means any judicial, administrative, regulatory or arbitral suit or proceeding, investigation or inquiry or administrative charge or complaint pending at law or in equity before any court or other Governmental Entity.

“Lien” means any security interest, lien, charge, mortgage, pledge, encumbrance, easement, restriction or claim.

“Material Acquired Contract” shall have the meaning set forth in Section 5.11 hereof.

“Material Adverse Effect” means any change or effect that is materially adverse to the Acquired Assets or the Business, other than, (a) changes in and effects on the U.S. economy in general, (b) changes in and effects on the industries or markets in general in which the Seller operates or (c) any change or effect resulting directly or indirectly from (i) commencement or continuation of the Chapter 11 Cases or (ii) this Agreement or the transactions contemplated hereby or the announcement thereof.

“New Products” shall have the meaning set forth in Section 4.10 hereof.

“Noble Road Facility” means the premises located at 1560 Noble Road, Williamston, Michigan 48895 at which the Seller conducts the Business.

“Order” means any decree, order, injunction, rule, judgment, consent of or by any court or Governmental Entity.

“Ordinary Course of Business” means the operation of the Business by the Seller in the usual and ordinary course in a manner substantially similar to the manner in which the Seller operated since the commencement of the Chapter 11 Cases.

“Overbid Protections” shall have the meaning set forth in Section 3.3 hereof.

“Owned Equipment” means all Equipment used in the Business and owned by the Seller.

“Permits” means all transferable licenses, permits, approvals, certificates of occupancy, authorizations, operating permits, registrations, plans and the like relating exclusively to the conduct of the Business for which consent is obtained.

“Permitted Encumbrances” means (A) zoning, entitlement, building and other land use regulations imposed by Governmental Entities having jurisdiction over the Noble Road Facility and the Progress Court Facility which are not violated by the current use and operation of those facilities; (B) covenants, conditions, restrictions, easements and other matters of record affecting title to the Noble Road Facility and the Progress Court Facility which do not materially interfere with the current use or occupancy of the Williamston Facilities or materially impair the value or marketability of title of the Noble Road Facility; and (C) statutory liens for current taxes or other governmental charges with respect to the Noble Road Facility not yet delinquent.

“Person” means any corporation, partnership, joint venture, limited liability company, organization, entity, authority or natural person.

“Progress Court Facility” means the premises located at 845 Progress Court, Williamston, Michigan 48895 at which the Seller conducts the Business.

“Purchaser” shall have the meaning set forth in the Preamble hereto.

“Purchaser Ancillary Documents” shall have the meaning set forth in Section 6.2 hereof.

“Purchase Price” shall have the meaning set forth in Section 3.1 hereof.

“Release” means any release, spill, emission, leaking, pumping, disposal, discharge, dispersal or migration of any Contaminant into the indoor or outdoor environment or into or out of any property or assets (including the Acquired Assets) owned or leased by the Seller, including the movement of Contaminants through or in the air, soil, surface water, groundwater or property.

“Remedial Action” means all actions required under any applicable Environmental Law to (a) clean up, remove, treat or in any other way address Contaminants in the indoor or outdoor environment; (b) prevent the Release or threat of Release or minimize the further Release of Contaminants so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; or (c) perform pre-remedial studies and investigations and post-remedial monitoring and care.

“Sale Order” means the order of the Bankruptcy Court, in form and substance satisfactory to Purchaser and the Seller, to be entered by the Bankruptcy Court pursuant to sections 363 and 365, and to the extent possible section 1146(c), of the Bankruptcy Code (a) approving this Agreement and the transactions contemplated hereby; (b) approving the sale of the Acquired Assets to Purchaser free and clear of all Liens, Claims, interests and encumbrances pursuant to section 363(f) of the Bankruptcy Code; (c) approving the assumption and assignment to Purchaser of the Assumed Progress Court Lease, the Assumed Equipment Leases and the Assumed Contracts, as applicable; (d) finding that Purchaser is a good faith purchaser entitled to the protections of section 363(m) of the Bankruptcy Code; and (e) waiving the automatic stay of orders authorizing (i) the sale, use or lease of property of the estate, as set forth in Bankruptcy Rule 6004(g), and (ii) the assignment of an executory contract or unexpired lease, as set forth in Bankruptcy Rule 6006(d).

“Sale Procedures Order” means the order of the Bankruptcy Court approving the Debtors’ Motion for the Entry of an Order Approving Standard Procedures to Be Utilized in Connection with Certain Asset Sales [Docket No. 4082].

“Schedules” means the schedules hereto.

“Seller Benefit Plans” shall have the meaning set forth in Section 5.7(a) hereof.

“Seller” shall have the meaning set forth in the Preamble hereto.

“Seller’s Ancillary Documents” shall have the meaning set forth in Section 5.2 hereof.

“Taxes” means all taxes, charges, fees, duties, levies or other assessments, including, without limitation, income, gross receipts, net proceeds, ad valorem, real and personal property (tangible and intangible), sales, use, franchise, excise, value added, payroll, unemployment, stamp, leasing, lease, user, transfer, occupational, employees’ income withholding and Social Security taxes imposed on the sale by the United States or any other country or by any state, municipality, subdivision or instrumentality of the United States or of any other country or by any other tax authority, including all applicable penalties and interest.

“Tax Return” means any report, return or other information required to be supplied by the Seller to a taxing authority in connection with Taxes.

“Third Party” means any Person other than the Seller, Purchaser or any of their respective Affiliates.

“Trade Payables” means the trade accounts of the Business representing the Seller’s obligations to pay for goods and services received.

“WARN” means the Worker Adjustment and Retaining Notification Act of 1988, as amended.

“Williamston Facilities” means the Noble Road Facility and the Progress Court Facility.

Rules of Construction Unless the context otherwise clearly indicates, in this Agreement:

- (a) the singular includes the plural;
- (b) “includes” and “including” are not limiting;
- (c) “may not” is prohibitive and not permissive; and
- (d) “or” is not exclusive.

## **ARTICLE II**

### **PURCHASE AND SALE; ASSIGNMENT AND ASSUMPTION OF CERTAIN LEASES AND CONTRACTS**

2.1 Purchase and Sale of Assets. Subject to the terms and conditions set forth in this Agreement, at the Closing the Seller shall sell, assign, transfer and deliver to Purchaser, and Purchaser shall purchase, acquire and take assignment and delivery of, for the consideration specified in Section 3.1, the Acquired Assets, free and clear of any Liens, Claims, interests, encumbrances and obligations whatsoever (other than the Assumed Obligations and the Permitted Encumbrances). The Acquired Assets include all of the rights, title, interests and goodwill that the Seller possesses in and to all of the assets, properties and rights of the Seller, whether real, personal, tangible or intangible, of every kind, nature and description, used in the operation of the Business and, as to tangible personal property, located at the Williamston Facilities, including, without limitation, the following items (to the extent such items are used in the operation of the Business, but excluding therefrom the Excluded Assets) (all of the assets to be sold, assigned, transferred and delivered to Purchaser hereunder are herein called the “Acquired Assets”):

- (a) fee simple title to the Noble Road Facility, including all tenements, hereditaments, easements, rights of way, privileges and appurtenances thereto and improvements and fixtures thereon;
- (b) all machinery, equipment (including the Designated Equipment) and other tangible personal property owned by Seller located at the Williamston Facilities and used in connection with the Business, including all accessions, additions, appurtenances and improvements to, parts, products and replacements of and documents and substitutes for the foregoing, as set forth on Schedule 2.1(b)(i) (collectively, the “Equipment”);
- (c) all finished goods, work in process, raw materials, goods in transit, goods at customer sites and other inventory or goods held for sale in all of its forms, wherever located, now or hereafter existing in connection with the Business (collectively, the “Inventory”);



(d) all of Seller's rights in, to and under the Assumed Progress Court Lease, the Assumed Contracts and the Assumed Equipment Leases;

(e) all of the Seller's rights and interests in and to the three (3) patents heretofore identified in writing to the Purchaser relating to the Business (the "Designated Intellectual Property");

(f) all (i) transferable Permits; (ii) the right to carry on the Business; and (iii) books of account, general, financial, accounting and personnel records, files, invoices and customer's and supplier's lists, but excluding the Excluded Records; and

(g) all other tangible and intangible assets and properties of the Seller located at or relating solely to the Williamston Facilities and used in the operation of the Business, including all pre-paid expenses and pre-paid taxes.

2.2 Assumption and Assignment of Leases and Contracts. Subject to the terms and conditions set forth in this Agreement, the Seller will assume, and assign and transfer to Purchaser, effective as of the Closing Date, all of the Seller's right, title and interest in, and to, and Purchaser will accept assignment of, the Seller's rights, title and interest under (a) the Assumed Progress Court Lease, (b) the Assumed Equipment Leases and (c) the Assumed Contracts, each of which shall be deemed included in the term "Acquired Assets" as used herein; provided that to the extent an Assumed Contract is not an executory contract under the Bankruptcy Code, the Seller shall take such other action as may be necessary or required to enable the Seller, consistent with previous orders of the Bankruptcy Court, to transfer such Assumed Contract to Purchaser. Subject to the terms and conditions set forth in this Agreement, Purchaser will assume those of Seller's obligations under the Assumed Progress Court Lease, the Assumed Equipment Leases and the Assumed Contracts that arise and are first required to be performed after the Closing Date (collectively the "Assumed Obligations"). The Seller shall be responsible for any cure payments required under Section 365 of the Bankruptcy Code to be made in connection with the assumption and assignment to Purchaser of the Assumed Progress Court Lease, the Assumed Equipment Leases and the Assumed Contracts ("Cure Costs"). With respect to the Designated Equipment, the Seller shall, at its expense (including any Cure Costs), prior to or at Closing, purchase the Designated Equipment from the applicable party or take such other action as may be necessary or required to enable the Seller, consistent with previous orders of the Bankruptcy Court, to convey title to the Designated Equipment to Purchaser, free and clear of Liens, Claims, interests and encumbrances of any nature, subject only to Permitted Encumbrances and the Assumed Obligations, and the Designated Equipment, as assets owned by the Seller, shall thereupon be included in the Acquired Assets.

2.3 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the following assets of the Seller, as well as any other assets not defined as Acquired Assets, shall be retained by the Seller and are not being sold or assigned to Purchaser hereunder (all of the following are referred to collectively as the "Excluded Assets"):

(a) any and all rights under this Agreement, claims, counterclaims, demands and causes of action of the Seller, including, without limitation, avoidance claims or causes of action arising under the Bankruptcy Code or applicable state law, including, without

limitation, all rights and avoidance claims of the Seller arising under chapter 5 of the Bankruptcy Code and any rights, claims or causes of action of the Seller in any Legal Proceedings against Third Parties relating to assets, properties, business or operations of the Facilities arising out of events occurring on or prior to the Closing Date;

(b) all accounts receivable, or portions thereof, as of the Closing, including, without limitation: (i) all trade accounts receivable and other rights to payment from customers of the Business existing as of the Closing Date and the full benefit of all security for such accounts or rights to payment, including, without limitation, all trade accounts receivable representing amounts receivable in respect of goods shipped or products sold or services rendered to customers of the Business; (ii) all other accounts or notes receivable and the full benefit of all security for such accounts or notes; and (iii) any claim, remedy or other right related to any of the foregoing;

(c) any and all Intellectual Property, other than the Designated Intellectual Property;

(d) any and all Excluded Records;

(e) any and all Tax refunds for periods (or portions thereof) ended prior to the Closing Date;

(f) any and all cash and cash equivalents, including, without limitation, the Purchase Price; and

(g) except as otherwise provided in Section 12.2, all rights (i) under the Seller's insurance policies (including the insurance policies themselves), including, without limitation, those relating to any of the Acquired Assets (including, without limitation, health insurance, worker's compensation insurance and life insurance), and any right to refunds due with respect to such insurance policies, and (ii) under or pursuant to all warranties (express or implied), representations and guarantees made by Third Parties relating to (x) any Excluded Assets or (y) obligations of the Seller to the extent such obligations are not Assumed Obligations.

2.4 No Other Liabilities Assumed. The Excluded Liabilities shall remain the sole responsibility of and shall be retained, paid, performed and discharged solely by the Seller. The excluded liabilities consist of all liabilities and obligations that are not Assumed Obligations (collectively, the "Excluded Liabilities") including, without limitation, the following:

(a) All liabilities, responsibilities and obligations of the Seller under this Agreement and the Ancillary Documents;

(b) All liabilities, responsibilities and obligations of the Seller related exclusively to any of the Excluded Assets;

(c) All Taxes of the Seller or its Affiliates or Taxes attributable to the ownership of the Acquired Assets or operation of the Business for all Tax periods (or portions thereof) ending prior to the Closing Date;

(d) All Employee Liabilities, all liabilities, responsibilities and obligations of the Seller or any of Seller's Affiliates under all Employee Benefit Plans of the Seller and its Affiliates and all liabilities, responsibilities and obligations of the Seller to the Seller's retired and inactive Employees;

(e) All Trade Payables;

(f) Any liability or obligation of the Seller owed to the Seller's or the shareholders or any shareholder of any of the Seller's Affiliates as such or any accrued or declared dividends, distributions or other such obligations;

(g) Any liability or obligation with respect to any Indebtedness;

(h) Any liability or obligation which arises out of or results from any income, sales, use or other tax or any expense arising from the distribution to, or ownership by the Seller of any of the Excluded Assets or associated with the realization of the benefits of any of the Excluded Assets;

(i) Any liability or obligation of the Seller incurred on or after the Closing Date;

(j) Any liability or obligation arising out of, relating to or otherwise attributable to a collective bargaining agreement or other understanding or agreement with any union or employee group;

(k) Any liability or obligation arising out of, relating to or otherwise attributable to any, action, judgment, verdict, ruling, decree or settlement that is pending or completed on or prior to the Closing Date, including, without limitation, (i) litigation involving the Seller's trade creditors and (ii) discrimination, sexual harassment claims and any other claims arising out of or otherwise related to the employment or termination of employment by the Seller;

(l) Any Environmental Costs and Liabilities which occurred or exists on or prior to the Closing Date, regardless of whether it was discovered or was capable of discovery on or prior to the Closing Date; and

(m) Any other liability or obligation not expressly included in the Assumed Obligations.

### **ARTICLE III PURCHASE PRICE AND PAYMENT**

3.1 Purchase Price; Payment of Purchase Price. Subject to any adjustment provided for in Section 3.2, the aggregate purchase price for the Acquired Assets shall be the sum of \$2,900,000 (the "Purchase Price"), payable as follows:

(a) An earnest money deposit in the amount of \$145,000 (the “Deposit”) to be paid by Purchaser upon execution of this Agreement, which Deposit shall be held pursuant to the Sale Procedures Order.

(b) The sum of \$2,555,000 to be paid by Purchaser on the Closing Date by wire transfer of immediately available funds.

(c) \$200,000 payable by Purchaser to the Seller (the “Inventory Holdback”) as set forth in Section 3.2(d).

### 3.2 Purchase Price Adjustment; Certain Obligations of Debtors to Third Parties.

(a) The parties agree and understand that the Purchase Price is comprised of (a) for the Acquired Assets other than the Inventory, \$2,450,000, and (b) for the Inventory constituting part of the Acquired Assets, \$450,000, subject to the purchase price adjustment set forth in this Section 3.2.

(b) Prior, and as close as practicable, to the Closing Date, Seller shall make, or cause to be made by a reputable third party acceptable to Purchaser, a physical count of the Inventory (the “Inventory Count”), providing representatives of Purchaser full access to the Inventory Count. Promptly, but in any event within ten (10) business days after the Closing Date, Purchaser shall cause to be prepared in good faith and delivered to the Seller a written statement setting forth in reasonable detail its calculation of the value of the Inventory as of the Closing Date (the “Final Inventory Amount”) and the resulting final Purchase Price (the “Closing Statement”). Purchaser’s calculation of the Final Inventory Amount shall be based upon the Inventory Count and the following provisions regarding valuation: (i) Inventory comprised of Seller’s raw materials inventory at the Williamston Facilities, exclusive of obsolete, past model service and prototype items, shall be valued at Seller’s average actual cost for said raw materials inventory for the three month period most recently ended; any such obsolete, past model service and prototype items shall be valued at zero; (ii) Inventory comprised of Seller’s finished goods inventory at the Williamston Facilities, exclusive of obsolete, past model service and prototype items, shall be valued at Seller’s purchase order price therefor; any such obsolete, past model service and prototype items shall be valued at zero; and (iii) any work in process Inventory shall be valued at zero. Subject to resolution of any dispute between the parties as contemplated by this Section 3.2, if the Final Inventory Amount is greater than \$450,000, the portion of the Purchase Price for Inventory (and, accordingly, the Purchase Price) shall be increased by an amount equal to the difference between the Inventory Valuation and \$450,000. If the Final Inventory Amount is less than \$450,000, the portion of the Purchase Price for Inventory (and, accordingly, the Purchase Price) shall be reduced by an amount equal to the difference between the Final Inventory Amount and \$450,000; provided, however, that the Seller, in lieu of any such reduction of the Purchase Price, may at or prior to Closing deliver additional Inventory to the Williamston Facilities, of such types and in such amounts as are satisfactory to Purchaser in its sole discretion, with such additional Inventory valued consistent with this Section 3.2. From and after the delivery of the Closing Statement, Purchaser shall provide the Seller and its employees, counsel, accountants, financial advisers and consultants reasonable access to the records of the Business and shall reasonably cooperate with the Seller in

connection with the Seller's review of documents and information relating to the preparation of the Closing Statement as the Seller shall reasonably request and that are available to Purchaser.

(c) If within ten (10) business days following delivery of the Closing Statement the Seller has not given Purchaser written notice of its objection as to Purchaser's calculation of the Final Inventory Amount (which notice shall state with reasonable specificity the basis of the Seller's objection), then the Final Inventory Amount calculated by Purchaser shall be binding and conclusive on the parties and be used in computing the amount of the adjustment to the Purchase Price, if any, as set forth in this Section 3.2. If the Seller gives Purchaser such notice of objection, and if the Seller and Purchaser fail to resolve the issues outstanding with respect to the calculation of the Final Inventory Amount, in good faith, within ten (10) business days of Purchaser's receipt of the Seller's objection notice, the dispute shall be submitted to an independent accounting firm jointly designated by the Seller and Purchaser for final resolution. Such resolution shall be final and binding upon the Seller and Purchaser. The fees, costs and expenses of any accounting firm jointly retained by the Seller and Purchaser shall be shared equally by the Seller and Purchaser.

(d) Payment of the amount described in Section 3.2(b) (the "Inventory Adjustment") by the Purchaser or the Seller, as applicable, and the Inventory Holdback described in Section 3.1(c) by Purchaser, shall be made by wire transfer of immediately available funds within five (5) business days after the calculation of the Final Inventory Amount becomes binding and conclusive on the parties pursuant to this Section 3.2, as follows: (i) if the Purchase Price is reduced by an amount less than \$200,000, Purchaser shall pay the Seller an amount equal to the difference between \$200,000 and the Inventory Adjustment; (ii) if the Purchase Price is reduced by an amount greater than \$200,000, the Seller shall pay the Purchaser an amount equal to the difference between \$200,000 and the Inventory Adjustment; and (iii) if the Purchase Price is increased, Purchaser shall pay the Seller an amount equal to \$200,000 plus the Inventory Adjustment.

3.3 Right to Market; Alternative Transaction. The parties agree that the Seller shall have the right prior to entry by the Bankruptcy Court of the Sale Order, with the assistance of the Seller's representatives, to market the Business and the Acquired Assets to Third Parties. The parties agree that the Seller shall be entitled to consider and enter into one or more Alternative Transactions with Third Parties consistent with the Seller's fiduciary obligations as a debtor in possession in the Chapter 11 Cases; provided, however, that the Seller shall require competing bidders, if any, for all or a substantial part of the Acquired Assets to submit an initial minimum overbid of \$200,000 more than the Purchase Price, and require that bids made thereafter shall be in minimum additional increments of at least \$100,000 (collectively, the "Overbid Protections").

## **ARTICLE IV PURCHASE AND SUPPLY AGREEMENT**

4.1 Purchase and Supply Agreement. Seller, C&A (on behalf of itself and its Affiliates), on the one hand, and the Purchaser (on behalf of itself and its Affiliates), on the other hand, covenant to supply goods to, and purchase goods from, as applicable, each other pursuant to the terms set forth in this Article IV. Unless otherwise provided in this Article IV, the provisions of this Article IV, upon Closing, shall be deemed to amend and supersede all

conflicting provisions contained in any Assumed Contract, purchase order, or any other agreement, arrangement or understanding relating to the purchase or supply by the Seller, C&A or any of their Affiliates from or to the Williamston Facilities.

4.2 Pricing. The present prices for model year 2007 and all prior year model parts sold by C&A, Seller or any of their Affiliates to the Purchaser shall remain in effect through the production life of those parts. The present prices for model year 2007 and all prior year model parts shipped from the Williamston Facilities to C&A, Seller or any of their Affiliates shall remain in effect through the production life of those parts. Payment on account of any goods supplied under this Article IV by any party shall be net thirty (30) days from the date of receipt by the buyer of those goods. C&A, the Seller and any of their Affiliates agree not to exercise at any time any rights of setoff, recoupment or deduction with respect to any amounts owed, or which may in the future be owed, by C&A, the Seller and any of their Affiliates to the Purchaser or any of its Affiliates pursuant to this Article IV.

4.3 New Business.

(a) Unless otherwise provided in this Section 4.3, C&A, the Seller and any of their Affiliates shall purchase exclusively from the Purchaser in such quantities as may be necessary to meet C&A's, the Seller's and any of their Affiliates' requirements (i) all replacement parts to be used by OEM's on the same vehicle lines as those where the parts presently sourced between C&A, Seller or any of their Affiliates, on the one hand, and the Williamston Facilities, on the other hand, are used; and (ii) all new business awarded by OEM's to the parties to this Agreement and any of their Affiliates.

(b) Unless otherwise provided in this Section 4.3, the Purchaser shall purchase exclusively from C&A, the Seller or any of their Affiliates, as applicable, in such quantities as may be necessary to meet the Purchaser's requirements (i) all replacement parts to be used by OEM's on the same vehicle lines as those where the parts presently sourced between the Purchaser, on one hand, and C&A, Seller or any of their Affiliates, on the other hand, are used; and (ii) all new business awarded by OEM's to the parties to this Agreement and any of their Affiliates.

(c) Notwithstanding anything to the contrary contained herein, the provisions of Section 4.3(a) and Section 4.3(b) apply only to goods that the Purchaser, C&A, the Seller or their Affiliates currently produce, or are capable of producing, at their respective facilities.

(d) C&A and its Affiliates, and the Purchaser, as suppliers to each other, shall take all commercially reasonable steps to obtain new sourcing from OEM's. C&A, Seller and their Affiliates grant to Purchaser, and Purchaser grants to C&A, Seller and their Affiliates the right to match any bids for that sourcing submitted by any Third Party until December 31, 2009.

#### 4.4 Packaging Costs.

(a) When the Purchaser is acting as the seller of goods pursuant to this Article IV, unless otherwise specified in the purchase order from C&A, the Seller or any of their Affiliates, the Purchaser shall be responsible for all packaging costs relating to those goods.

(b) When the Seller, C&A or any of their Affiliates is acting as the seller of goods pursuant to this Article IV, unless otherwise specified in the purchase order from the Purchaser, C&A, the Seller or their Affiliates, as applicable, shall be responsible for all packaging costs relating to those goods.

#### 4.5 Freight and Inventory Costs.

(a) When C&A, the Seller or any of their Affiliates is acting as the buyer of goods pursuant to this Article IV, unless otherwise specified in the purchase order from C&A, the Seller or any of their Affiliates, C&A, the Seller or any of their Affiliates, as applicable, shall be responsible for all freight and inventory costs relating to those goods.

(b) When the Purchaser is acting as the buyer of goods pursuant to this Article IV, unless otherwise specified in the purchase order from the Purchaser, the Purchaser shall be responsible for all freight and inventory costs relating to those goods.

4.6 FOB Terms. All goods sold pursuant to this Article IV shall be FOB Williamston Facilities.

4.7 Current C&A Products. For the design life of all goods currently manufactured at the Williamston Facilities and provided to C&A, the Seller or any of their Affiliates (the “Current C&A Products”), C&A, the Seller or any of their Affiliates shall purchase the Current C&A Products exclusively from the Purchaser in such quantities as are necessary to satisfy C&A’s, the Seller’s or any of their Affiliates’ requirements.

4.8 OEM Charge Backs. Notwithstanding anything to the contrary contained in this Article IV, any Assumed Contract, any purchase order or any other agreement, arrangement or understanding relating to the purchase or supply by the Seller, C&A or any of their Affiliates from or to the Williamston Facilities, the Purchaser shall not be responsible for any charge backs by any OEM arising out of or relating to any alleged quality problems of the Purchaser’s goods resulting from damage caused to those goods after those goods were shipped from the Williamston Facilities.

#### 4.9 Currently Outstanding Purchase Orders.

(a) The Purchaser shall complete performance under the purchase orders identified on Schedule 4.9(a) relating to the purchase of goods by C&A, the Seller or any of their Affiliates. C&A, Seller or their Affiliates, as applicable, shall render payment to the Purchaser for all goods supplied by the Purchaser pursuant to those purchase orders.

(b) C&A, the Seller or their Affiliates, as applicable, shall complete performance under the purchase orders identified on Schedule 4.9(b) relating to the purchase of

goods by the Williamston Facilities from C&A, the Seller or any of their Affiliates. The Purchaser shall render payment to C&A, the Seller or their Affiliates, as applicable, for all goods supplied by C&A, the Seller or their Affiliates, as applicable, pursuant to those purchase orders.

4.10 New Products. From the date of this Agreement until December 31, 2008, if C&A, the Seller or any of their Affiliates, as applicable, are awarded new automotive interior trim business that requires the production of goods which the Purchaser is capable of producing at the Williamston Facilities, C&A, the Seller or their Affiliates, as applicable, shall buy those new goods (the “New Products”) exclusively from Purchaser in such quantities as may be necessary to meet C&A’s, the Seller’s or any of their Affiliates’ requirements, subject to the last sentence of this Section 4.10. C&A, the Seller and their Affiliates may solicit written quotations for the New Products from Third Parties, provided, however, that if any such Third Party makes available to C&A, the Seller or their Affiliates, as applicable, more favorable terms than those offered by Purchaser at that time, C&A, the Seller or their Affiliates, as applicable, shall disclose to Purchaser all relevant information regarding the Third Party’s quoted terms. Purchaser shall then have ten (10) business days to indicate whether it is willing to meet the Third Party’s quoted terms. If Purchaser is willing to meet such Third Party’s quoted terms, C&A, the Seller or their Affiliates, as applicable, shall exclusively purchase its requirements for those New Products from Purchaser. If Purchaser is not willing to meet such Third Party’s quoted terms, C&A, the Seller or its Affiliates, as applicable, may purchase its requirements for those New Products from that Third Party.

4.11 Transfer(s) of C&A Facilities. If C&A, Seller or any of their Affiliates to which Purchaser is supplying goods, or from which Purchaser is purchasing goods, enters into bona fide negotiations with a Third Party regarding a transaction which, if consummated, would result in a Third Party owning or operating any facility of C&A, the Seller or any of their Affiliates, as applicable, to which the Purchaser ships goods, or from which the Purchaser receives goods, C&A, the Seller or their Affiliates, as applicable, shall (a) promptly notify the Purchaser of any such negotiations; and (b) make all commercially reasonable efforts during those negotiations to (i) ensure that C&A’s, the Seller’s and any Affiliates’ accounts with Purchaser relating to the facility to be owned or operated by a Third Party following the closing of any such transaction are brought current prior to the consummation of any such transaction; and (ii) cause the rights and obligations of C&A, the Seller or any of their Affiliates, as applicable, to be assumed, assigned or delegated, as applicable, to the Third Party buyer in any such transaction.

4.12 Transition Services. Purchaser, at no cost or expense to Purchaser, shall have the right to use Seller’s and Seller’s Affiliates’ MRP IT system for a period of three (3) months following the Closing Date. For a period of three (3) months, Seller shall provide to Purchaser, at no cost or expense to Purchaser, adequate information technology support to Purchaser for the use of the MRP IT system referred to in this Section 4.12, and Seller’s information technology support personnel shall provide reasonable assistance to Purchaser in the Purchaser’s transition from the MRP IT system to the Purchaser’s new information technology system.



## **ARTICLE V**

### **REPRESENTATIONS AND WARRANTIES OF THE SELLER**

Subject to the Bankruptcy Court's approval of this Agreement, entry of the Sale Order and obtaining any of the consents required by this Agreement or the Sale Order, the Seller represents and warrants to Purchaser as follows:

5.1 Organization, Standing and Power. The Seller is a corporation duly organized validly existing and in good standing under the laws of the state of Delaware. The Seller has the requisite power and authority to own, lease and operate all properties relating to the Business, including the Williamston Facilities.

5.2 Authority.

(a) The Seller has all requisite power and authority necessary to execute this Agreement and the Ancillary Documents to which it is or will be a party (the "Seller's Ancillary Documents") and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby by the Seller has been duly authorized by all necessary corporate action, and the execution and performance of the Seller's Ancillary Documents by the Seller will be authorized by all necessary corporate action prior to the Closing. This Agreement constitutes, and upon execution of the Seller's Ancillary Documents such documents will constitute, valid and binding obligations of the Seller, enforceable against the Seller in accordance with their respective terms.

(b) Notwithstanding anything to the contrary contained herein, no provision of this Agreement is binding upon the Seller unless and until the entry of the Sale Order.

5.3 No Breach or Conflict. Neither the execution, delivery or performance of this Agreement and the Seller's Ancillary Documents, nor the consummation of the transactions contemplated hereby and thereby, will (a) cause the Seller to breach any material Law or Order that is applicable to the Business and the Williamston Facilities, or (b) conflict with or result in a violation of the Seller's organizational documents.

5.4 Assets.

(a) Seller has title to all of the Acquired Assets, including without limitation insurable title to the Noble Road Facility.

(b) On the Closing Date, Purchaser will acquire all of the Seller's right, title and interest in the Acquired Assets, free and clear of any and all Liens, Claims, interests and encumbrances of any kind or nature, other than (i) Permitted Encumbrances and (ii) the Assumed Obligations.

(c) All Acquired Assets are being transferred to Purchaser "as is," "where is" and "with all faults."

## 5.5 Assumed Leases and Contracts.

(a) The Seller has delivered to Purchaser true and complete copies of the Assumed Progress Court Lease, the Assumed Contracts and the Assumed Equipment Leases, and all amendments to any of the foregoing, including all superior leases. The Seller is not a party to any oral real property leases with respect to the Williamston Facilities. The Seller has not assigned, subleased, mortgaged, deeded in trust or otherwise transferred the Assumed Progress Court Lease, the Assumed Contracts or the Assumed Equipment Leases, or any interest in any of the foregoing.

(b) There are no pending or, to the Seller's knowledge, threatened condemnation or eminent domain proceedings with respect to either of the Williamston Facilities.

(c) The current use of the Williamston Facilities does not violate in any material respect any instrument of record or agreement affecting the Williamston Facilities. There is no violation of any covenant, condition, restriction, easement, agreement or Order of any Governmental Entity having jurisdiction over the Williamston Facilities that materially affects the use or occupancy of the Williamston Facilities.

5.6 Taxes. (a) The Seller has filed or has caused to be filed on a timely basis all Tax Returns that are or were required to be filed with respect to the Acquired Assets and the operation of the Business; (b) all such Tax Returns accurately reflect all liabilities required to be reflected thereon; and (c) all Taxes due and payable by the Seller with respect to the Acquired Assets and the operation of the Business shown in such Tax Returns have been paid.

## 5.7 Employees and Related Matters.

(a) Schedule 5.7(a) sets forth a complete and correct list of all Employees, including their position and date of hire.

(b) None of the Employees are represented by a labor union or labor organization; and the Seller is not subject and is not a party to any collective bargaining agreement covering any Employee.

(c) There are no labor strikes, slowdowns, work stoppages or lockouts currently pending or, to Seller's knowledge, threatened against the Seller with respect to any Employees. To Seller's knowledge, during the two years preceding the date of this Agreement, there have not been any labor union organizational campaigns by or directed at any Employees. There is no unfair practice complaint pending or, to Seller's knowledge, threatened against the Seller with respect to any Employees before the National Labor Relations Board or any other Governmental Entity. There is no grievance alleging unfair labor practices or collective bargaining breaches pending or, to Seller's knowledge, threatened against or involving the Seller with respect to any Employees.

5.8 Environmental Matters. The operations conducted by the Seller at the Williamston Facilities are currently being conducted under all environmental, health and safety permits, licenses and other authorizations required under all applicable Environmental Laws to

operate the Business as it is currently being operated, except for such permits, licenses and other authorizations, the failure of which to obtain would not reasonably be expected to have a Material Adverse Effect. All such permits, licenses and authorizations are in full force and effect. To Seller's knowledge, within the last 12 months with respect to the Williamston Facilities: (a) no written notice, notification, demand, request for information, citation, summons or order has been issued to the Seller, (b) no written complaint has been filed against the Seller, (c) no material penalty has been assessed and (d) no investigation or review is pending or threatened by any Governmental Entity with respect to any alleged failure by the Seller to have any material environmental, health or safety permit, license or other authorization required under any applicable Environmental Law in connection with the operation of the Business. Seller's operations at the Williamston Facilities are conducted in compliance in all material respects with all applicable Environmental Laws.

5.9 Brokerage Fees. No Person acting on behalf of the Seller is entitled to any brokerage or finder's fee or commission in connection with the transactions contemplated by this Agreement.

5.10 Claims, Litigation and Disputes. Except for the Chapter 11 Cases, there is no proceeding before a Governmental Entity pending or, to Seller's knowledge, threatened, challenging or adversely affecting (i) the Seller's ability to perform its obligations hereunder or (ii) the ownership, use, maintenance or operation of the Acquired Assets by the Seller.

5.11 Material Acquired Contracts. Each Material Acquired Contract is valid, binding upon the Seller and in full force and effect, and except for any breach or default in connection with or resulting from Seller's filing of the Chapter 11 Cases, neither the Seller, nor, to Seller's knowledge, any other party to any Material Acquired Contract is in material breach thereof or default thereunder and there does not exist, to Seller's knowledge, any event, occurrence, condition or act that, with the giving of notice, the lapse of time or the happening of any further event or condition, would become a material breach or default under any Material Acquired Contract. As of the date hereof, to Seller's knowledge, the Seller has not received any written notice of the intention of any party to terminate or materially modify any Material Acquired Contract. The term "Material Acquired Contract" means, collectively, (i) each Assumed Contract or Assumed Equipment Lease that provides for aggregate future annual payments to or from the Seller in excess of \$25,000, and (ii) the Assumed Progress Court Lease.

5.12 Compliance With Laws. The Seller is in material compliance with all Laws applicable to the Business, except in any case where the failure to be in compliance would not have a Material Adverse Effect. The Seller has not received any written notice within the past 12 months relating to violations or alleged violations or defaults under any applicable Law or Order, where the failure to cure would result in a Material Adverse Effect.

5.13 Disclaimer. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT AND THE ANCILLARY DOCUMENTS, NEITHER THE SELLER NOR ANY OF ITS AFFILIATES MAKE ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO THE BUSINESS, THE ACQUIRED ASSETS (INCLUDING, WITHOUT LIMITATION, THE VALUE, CONDITION OR USE OF ANY ACQUIRED ASSET) OR OTHERWISE WITH RESPECT TO

ANY OTHER INFORMATION PROVIDED TO PURCHASER, WHETHER ON BEHALF OF THE SELLER OR ITS AFFILIATES, INCLUDING, WITHOUT LIMITATION, AS TO (A) MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE OR PURPOSE, (B) THE OPERATION OF THE BUSINESS AFTER THE CLOSING IN ANY MANNER, OR (C) THE PROBABLE SUCCESS OR PROFITABILITY OF THE OWNERSHIP, USE OR OPERATION OF THE ACQUIRED ASSETS BY PURCHASER AFTER THE CLOSING. The Seller makes no representations or warranties with respect to any oral or written estimates, projections, forecasts or forward-looking information provided to Purchaser. There is no assurance that any estimated, projected or forecasted results will be achieved. Neither the Seller nor any other Person will have or be subject to any liability or indemnification obligation to Purchaser or any other Person resulting from the distribution to Purchaser, or Purchaser's use of, any such information, including, without limitation, any information, document or material made available to Purchaser in "data rooms," management presentations, functional "break out" discussions, site visits, responses to questions submitted by or on behalf of Purchaser, whether orally or in writing, or in any other form in expectation of the transactions contemplated by this Agreement.

5.14 Survival of Representations and Warranties. None of the representations or warranties of the Seller set forth in this Agreement shall survive the Closing.

## **ARTICLE VI REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser represents and warrants to the Seller as follows:

6.1 Organization, Standing and Power. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Michigan.

6.2 Authority. Purchaser has all requisite power and authority necessary to execute this Agreement and the Ancillary Documents to which it is or will be a party (the "Purchaser Ancillary Documents") and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action of Purchaser, and the execution and performance of the Purchaser Ancillary Documents will be authorized by all necessary corporate action prior to Closing. This Agreement constitutes, and upon execution each of the Purchaser Ancillary Documents will constitute, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, such enforcement subject to bankruptcy, insolvency, reorganization, moratorium, or similar laws of general application affecting creditors' rights and the application of general principles of equity.

6.3 No Breach or Conflict. Neither the execution, delivery or performance of this Agreement and the Purchaser Ancillary Documents, nor the consummation of the transactions contemplated hereby and thereby will (a) cause Purchaser to breach any Law or Order, or (b) conflict with or result in a violation of the organizational documents or bylaws of Purchaser.

6.4 Brokerage Fees. No Person or other entity acting on behalf of Purchaser is entitled to any brokerage or finder's fee or commission in connection with the transactions contemplated by this Agreement or the Purchaser Ancillary Documents.

6.5 Adequate Assurances Regarding Executory Contracts. Purchaser is and will be capable of satisfying the conditions contained in section 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assumed Contracts, the Assumed Progress Court Lease and the Assumed Equipment Leases.

6.6 Purchaser's Investigation. Purchaser represents that it is a sophisticated entity that was advised by knowledgeable counsel and financial and other advisors and hereby acknowledges that it has conducted its own investigation of the Business, the Acquired Assets (including the physical plants of the Business) and the Assumed Obligations. Purchaser acknowledges that as of the date hereof, Purchaser has no actual knowledge that any of Seller's representations or warranties is untrue in any material respect. Purchaser acknowledges that, subject to satisfaction of the conditions set forth in Article IX, it will accept the Acquired Assets under the terms of this Agreement in their present condition and locations and with their present operating capabilities. Purchaser acknowledges that the Seller makes no warranty, express or implied, as to the condition of the Acquired Assets except as expressly set forth in this Agreement. Purchaser has not relied upon, and the Seller shall not be liable for or bound in any manner by, any express or implied oral or written information, warranties, guarantees, promises, statements, inducements, representations or opinions pertaining to the Business or the Acquired Assets, except as may be contained in this Agreement and the Seller's Ancillary Documents and certificates delivered hereunder.

6.7 Claims, Litigation and Disputes. There is no claim or litigation or investigative proceeding pending or, to the knowledge of Purchaser, threatened against Purchaser which (a) in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated hereunder and under the Purchaser Ancillary Documents or (b) would materially affect Purchaser's ability to perform its obligations hereunder and under the Purchaser Ancillary Documents.

6.8 Financing. Purchaser has received a commitment from a financing source, which together with cash on hand, shall provide all funds necessary to consummate the transactions contemplated hereby and in the Ancillary Documents, to pay all of its related fees and expenses, to satisfy any applicable requirement relating to financial capacity or capital imposed by any Governmental Entity in any state in which Purchaser will conduct its business from and after the Closing Date. Purchaser has no reason to believe that such available financing shall not be available, and Purchaser has not made any material misrepresentation in connection with obtaining any financing commitments.

6.9 Survival of Representations and Warranties. None of the representations or warranties of Purchaser set forth in this Agreement shall survive the Closing.

## ARTICLE VII COVENANTS OF THE SELLER

7.1 Access and Right of Inspection. The Seller agrees that, prior to the Closing Date, Purchaser shall, upon reasonable notice and so long as such access does not unreasonably interfere with the Seller's business operations, through its authorized officers, employees, agents and representatives (including, without limitation, its counsel and accountants), have reasonable access during normal business hours to the Williamston Facilities, and the officers and employees of the Seller engaged in the operation thereof, and shall be entitled to make such reasonable investigation of the properties, businesses and operations of the Seller relating to the Business and such examination of the books, records and financial condition of the Seller relating to the Business as it reasonably requests; provided that Purchaser shall be bound by and shall comply with the terms of the Confidentiality Agreement with respect to Purchaser's ability to use or disclose any such information; and provided further that no investigation pursuant to this Section 7.1 shall affect any representations or warranties made herein or the conditions to the obligations of the respective parties to consummate the transactions contemplated by this Agreement. Notwithstanding the foregoing, Purchaser will not contact any customer or supplier of the Seller relating to the Business without providing the Seller a reasonable opportunity to participate in any such contact. Such investigation shall be conducted so as not to unreasonably interfere with the use of the Williamston Facilities by the Seller. Purchaser agrees to repair at its sole cost any material damage to the Williamston Facilities caused solely by the Purchaser's investigation.

7.2 Conduct of the Business Pending the Closing. Subject to any obligations as debtors in possession under the Bankruptcy Code and except as otherwise expressly contemplated by this Agreement or the Orders of the Bankruptcy Court, from the date hereof until the Closing Date, the Seller shall conduct the Business substantially in the manner as conducted on the date of this Agreement. Without limiting the generality of the foregoing, subject to any obligations as debtors in possession under the Bankruptcy Code and except as otherwise expressly contemplated by this Agreement or the Orders of the Bankruptcy Court or with the prior written consent of Purchaser (which consent shall not be unreasonably withheld or delayed), from the date hereof until the Closing Date, the Seller shall:

(a) Use, preserve and maintain the Acquired Assets in the Ordinary Course of Business and not cause material damage to or destruction or loss of any of such Acquired Assets;

(b) Continue to maintain the insurance covering the Acquired Assets in effect as of the date of this Agreement;

(c) Pay all debts and obligations incurred by it in the operation of the Business in the Ordinary Course of Business;

(d) Not commit any act, or fail to make any payment or perform any act, which would cause or result in a material breach of any of the Material Acquired Contracts;

(e) Except as contemplated by Section 3.3 and except for sales of inventory in the Ordinary Course of Business, not enter into any agreement or agreements for the sale of any of the Acquired Assets;

(f) Not create, assume or permit to exist any Lien upon the Acquired Assets except for Permitted Encumbrances; and

(g) Maintain levels of Inventory at the Williamston Facilities generally consistent with the Seller's past practices in their operation of the Business.

7.3 Commercially Reasonable Efforts. The Seller will use all commercially reasonable efforts to obtain the Sale Order required for the consummation of the transactions contemplated by this Agreement.

7.4 Bankruptcy Actions. No later than March 20, 2007, or such other date as may be mutually agreed upon by Purchaser and the Seller, the Seller will file with the Bankruptcy Court a motion, supporting papers and a form of Sale Order seeking the Bankruptcy Court's approval of this Agreement, the Seller's performance under this Agreement and the assignment and the assumption of the Assumed Contracts, the Assumed Progress Court Lease and the Assumed Equipment Leases.

7.5 Further Assurances. The Seller shall execute such documents and take such further actions as may be reasonably required to carry out the provisions of this Agreement and the transactions contemplated hereby. The Seller shall use all commercially reasonable efforts to fulfill or obtain the fulfillment of the conditions set forth in Article IX of this Agreement.

## **ARTICLE VIII COVENANTS OF PURCHASER**

8.1 Assumed Obligations. Subsequent to the Closing, Purchaser agrees to pay, perform and discharge the Assumed Obligations as they become due, including, without limitation, the discharge and performance when due of each and every obligation of the Seller that arises and is first required to be performed after the Closing Date under the Assumed Contracts. Purchaser shall not renew or extend (by action or inaction) any Assumed Contract unless the Seller has been released by all parties to such Assumed Contract from all obligations that would arise under such Assumed Contract following any such renewal or extension.

8.2 Confidentiality. Purchaser covenants and agrees that for a period of two years after the date of the Closing, it will not, directly or indirectly, except in connection with the transactions contemplated hereby or to the extent required by Law, regulatory process or proceeding or Order (provided prior timely notice has been provided to the Seller to permit the Seller to limit such disclosure or to seek appropriate protective orders), make use of or divulge, or permit any of its agents or employees to make use of or divulge, nonpublic information heretofore disclosed in writing by the Seller to the Purchaser, and identified as nonpublic information concerning the business, financial or other affairs of or any of the methods of doing business used by the Seller or any of its Affiliates. The obligations contained in this Section 8.2 are in addition to and independent of the obligations contained in the Confidentiality Agreement.

8.3 Further Assurances. Purchaser shall execute such documents and take such further actions as may be reasonably required to carry out the provisions of this Agreement and the transactions contemplated hereby. Purchaser shall use commercially reasonable efforts to fulfill or obtain the fulfillment of the conditions set forth in Article X of this Agreement.

8.4 Deposits. On or prior to the tenth (10th) business day following the Closing Date, the Purchaser shall replace all of the Seller's security, vendor, utility and other similar deposits directly related to the Acquired Assets (collectively, "Seller's Deposits") with Purchaser's deposits and Purchaser shall request that the Seller to be released from all liability under such Seller's Deposits for events which occur on and after the Closing Date. Purchaser shall promptly reimburse the Seller for any Seller's Deposits which have been paid or credited to Purchaser by the holder of the deposit.

8.5 Financing. Purchaser shall promptly notify the Seller of any proposal by any financing source of the Purchaser for the transactions contemplated by this Agreement to withdraw, terminate or make a material change in the terms of (including, without limitation, the amount of financing contemplated by), such financing being provided by such financing source in connection with the transactions contemplated by this Agreement. In addition, upon the Seller's request, Purchaser shall, subject to applicable confidentiality obligations, advise and update the Seller, using a level of detail reasonably satisfactory to the Seller, with respect to the status and proposed closing date of the proposed financing. In the event of a withdrawal or termination of the financing described in this Section 8.5, Purchaser shall use commercially reasonable efforts to obtain alternative financing.

8.6 Commercially Reasonable Efforts. Purchaser shall use all commercially reasonable efforts to (a) obtain all consents and approvals of all Governmental Entities and all other Persons required to be obtained by Purchaser to effect the transactions contemplated by this Agreement and (b) take, or cause to be taken, all action, and to do, or cause to be done, all things necessary or proper, consistent with applicable Law, to consummate and make effective in an expeditious manner the transactions contemplated hereby.

8.7 Adequate Assurances Regarding Executory Contracts and Required Orders. With respect to each Assumed Contract, Purchaser shall provide adequate assurance of the future performance of such Assumed Contract by Purchaser. Purchaser agrees that it will promptly take all actions as are reasonably requested by the Seller to assist in obtaining the Bankruptcy Court's entry of the Sale Order, including, without limitation, furnishing affidavits, financial information or other documents or information for filing with the Bankruptcy Court and making Purchaser's employees and representatives to be selected by the Purchaser in its sole discretion available to testify before the Bankruptcy Court.

## **ARTICLE IX**

### **CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER**

The obligations of Purchaser under this Agreement are subject to satisfaction, in the Purchaser's sole and absolute discretion, of the following conditions precedent on or before the Closing Date.



9.1 Warranties True as of Closing Date; Covenants.

(a) Each of the representations and warranties of the Seller contained herein shall be true and correct in all material respects (except for representations and warranties that include a materiality qualification, which shall be true and correct in all respects) on and as of the Closing Date (except for representations and warranties made with respect to a specified date, which shall be true and correct as of that date (in all material respects, if applicable)) with the same force and effect as though made on and as of the Closing Date.

(b) The Seller shall have performed and complied in all material respects with the obligations and covenants required by this Agreement to be performed or complied with by the Seller on or prior to the Closing Date.

(c) Purchaser shall have been furnished a certificate (dated the Closing Date and in form and substance reasonably satisfactory to Purchaser) executed by the Seller certifying as to the fulfillment of the conditions set forth in this Section 9.1.

9.2 Bankruptcy Condition. The Sale Order shall have been entered by the Bankruptcy Court, and shall be a Final Order, provided, however, that if the Sale Order shall have been appealed from, Purchaser agrees to consummate the sale notwithstanding the pendency of such appeal, but only if no stay of the Sale Order shall be in effect.

9.3 Damage or Destruction of Acquired Assets. There shall not have occurred any material damage to or destruction of all or any substantial portion of the Acquired Assets by reason of fire or other casualty, whether or not covered by Seller's insurance.

9.4 Intentionally Omitted.

9.5 Litigation. No Order shall have been issued restricting, prohibiting or staying the consummation of the transactions contemplated by this Agreement.

9.6 Instruments of Conveyance and Transfer; Title. The Seller shall have delivered to Purchaser such deeds, bills of sale, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form and substance satisfactory to Purchaser and its counsel as are effective to vest in Purchaser insurable title to the Acquired Assets free and clear of any Liens, except for Permitted Encumbrances.

9.7 Seller's Deliveries. The Seller shall have executed and delivered to Purchaser the Seller's Ancillary Documents and other documents referred to in Section 11.2.

**ARTICLE X**  
**CONDITIONS PRECEDENT TO OBLIGATIONS OF THE SELLER**

The obligations of the Seller under this Agreement are, at the option of the Seller, subject to the satisfaction of the following conditions precedent on or before the Closing Date.

10.1 Warranties True as of Closing Date; Covenant.

(a) Each of the representations and warranties of the Purchaser contained herein shall be true and correct in all material respects (except for representations and warranties that include a materiality qualification, which shall be true and correct in all respects) on and as of the Closing Date (except for representations and warranties made with respect to a specified date, which shall be true and correct as of that date (in all material respects, if applicable)) with the same force and effect as though made on and as of the Closing Date.

(b) Purchaser shall have performed and complied in all material respects with the obligations and covenants required by this Agreement to be performed or complied with by Purchaser on or prior to the Closing Date.

(c) The Seller shall have been furnished a certificate (dated the Closing Date and in form and substance reasonably satisfactory to the Seller) executed by Purchaser certifying as to the fulfillment of the conditions set forth in this Section 10.1.

10.2 Bankruptcy Condition. The Sale Order shall have been entered by the Bankruptcy Court, and shall be a Final Order, provided, however, that if the Sale Order shall have been appealed from, the Seller agrees to consummate the sale notwithstanding the pendency of such appeal, but only if no stay of the Sale Order shall be in effect.

10.3 Payment. Purchaser shall have paid the Purchase Price in accordance with Section 3.1 hereof.

10.4 Litigation. No Order shall have been issued restricting, prohibiting or staying the consummation of the transactions contemplated by this Agreement.

10.5 Purchaser Documents. The Seller shall have received all documents it may reasonably request relating to the existence of Purchaser and the authority and ability of Purchaser to execute this Agreement and the Purchaser Ancillary Documents and to perform its obligations hereunder and thereunder, all in form and substance reasonably satisfactory to the Seller.

10.6 Purchaser's Deliveries. Purchaser shall have executed and delivered to the Seller the Purchaser Ancillary Documents and other documents referred to in Section 11.3 hereof.

**ARTICLE XI  
CLOSING**

11.1 Closing. Provided that the Sale Order shall have been entered, and subject to satisfaction of the applicable conditions, the Closing shall take place at the offices of Kirkland & Ellis LLP, 200 East Randolph Drive, Chicago, Illinois 60601 or at such other place as may be mutually agreed upon by Purchaser and the Seller and on a date and time (the "Closing Date") to be mutually agreed upon by Purchaser and the Seller, not later than March 30, 2007.

11.2 Deliveries by the Seller. At the Closing, the Seller will deliver the following to Purchaser: (a) a covenant deed substantially in the form attached hereto as Exhibit A duly

executed by Seller, (b) a Bill of Sale substantially in the form attached hereto as Exhibit B duly executed by the Seller, (c) an Assignment and Assumption of the Assumed Contracts, the Assumed Progress Court Lease and the Assumed Equipment Leases, in form and content mutually satisfactory to Purchaser and the Seller (the “Assignment and Assumption”) duly executed by the Seller, and (d) a certificate executed on behalf of the Seller by the Seller’s Secretary or Assistant Secretary certifying as to the incumbency, and authenticating the signatures of, officers executing this Agreement, the Seller’s Ancillary Documents and any certificates delivered hereunder or thereunder on behalf of the Seller, and certifying as to the adoption and continuing effect of appropriate resolutions authorizing the Seller’s execution, delivery and performance of this Agreement.

11.3 Deliveries by Purchaser. At the Closing, Purchaser will deliver the following (a) the Purchase Price less the Deposit pursuant to and in accordance with Section 3.1, (b) the Assignment and Assumption duly executed by Purchaser, and (c) a certificate executed on behalf of Purchaser by Purchaser’s Secretary or Assistant Secretary certifying as to the incumbency, and authenticating the signatures of, officers executing this Agreement, the Purchaser Ancillary Documents and any certificates delivered hereunder or thereunder on behalf of Purchaser, and certifying as to the adoption and continuing effect of appropriate resolutions authorizing Purchaser’s execution, delivery and performance of this Agreement.

## **ARTICLE XII**

### **TERMINATION; TERMINATION PAYMENT**

12.1 Termination. This Agreement may be terminated prior to the Closing as follows:

- (a) by mutual written agreement of Purchaser and the Seller;
- (b) (i) by either Purchaser or the Seller if there shall be in effect a final nonappealable court order restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby, or (ii) by either Purchaser or Seller if the Sale Order has been vacated, overruled or stayed;
- (c) by either Purchaser or the Seller (provided that the terminating party is not then in material breach of any representation, warranty, covenant or other agreement contained herein) if there shall have been a material breach of any of the representations, warranties or covenants set forth in this Agreement on the part of the other party and, with respect to a breach of covenant (but not otherwise), the breach is not cured within five (5) business days after the non-breaching party has given notice to the other party of such breach;
- (d) by either Purchaser or the Seller upon the occurrence of an Alternative Transaction;
- (e) by Purchaser if (i) on or before February 23, 2007, the Sale Procedures Order has not been entered by the Bankruptcy Court in substantially the form referred to in the definition thereof, or (ii) on or before March 13, 2007, the Break-Up Fee and Overbid Protections have not been approved by order of the Bankruptcy Court; or

(f) by Purchaser or the Seller, if the Closing shall not have been consummated on or prior to March 30, 2007 (or by such later date as shall be mutually agreed to by Purchaser and the Seller in writing), unless the failure of such occurrence shall be due to the failure of Purchaser (if Purchaser is terminating) or the Seller (if the Seller is terminating) to perform or observe their respective agreements as set forth in this Agreement required to be performed or observed by such party on or before the Closing Date.

12.2 Damage or Destruction. If (a) all or any substantial portion of the Acquired Assets shall have suffered any material damage or destruction by reason of fire or other casualty prior to the Closing, and (b) such damage or destruction is covered or substantially covered by the Seller's insurance, Purchaser may, at its option, waive the condition to its obligation to close set forth in Section 9.3 and complete its acquisition of the Acquired Assets, in which case Purchaser shall be entitled to all proceeds of the Seller's insurance in respect of such damage or destruction. The Seller shall diligently assert and prosecute all claims in respect of such insurance and cooperate with Purchaser in obtaining such proceeds.

12.3 Break-Up Fee. Subject to the entry of the Bid Protections Order by the Bankruptcy Court, if this Agreement is terminated pursuant to Section 12.1(d), the Seller shall pay to Purchaser \$125,000 (the "Break-Up Fee") and return the Deposit to the Purchaser. In the event the Seller is obligated to pay the Break-Up Fee to Purchaser, the Break-Up Fee shall be paid as an administrative expense of the Seller pursuant to Section 503(b) of the Bankruptcy Code. The Seller shall (a) pay the Break-Up Fee within five (5) business days following the occurrence of the event giving rise to the Purchaser's right to receive the Break-Up Fee and (b) return the Deposit within five (5) business days following the occurrence of the event giving rise to the Purchaser's right to receive the Break-Up Fee but in no event later than the date set forth in the Sale Procedures Order.

12.4 Seller's Liquidated Damages. If this Agreement is terminated by the Seller on account of a material breach by Purchaser, as determined by final determination of the Bankruptcy Court, the Seller shall be entitled to \$125,000, which amount shall be satisfied as follows: (a) Seller shall retain the Deposit and (b) Seller shall return \$20,000 (the difference between the Deposit and \$125,000) to the Purchaser, which return shall be made within 30 days following the Bankruptcy Court's final determination that the Seller has the right to receive such payment. The payment described in this Section 12.4 shall be deemed to be the Seller's liquidated damages for any and all breaches or defaults by Purchaser of any of the Purchaser's representations, warranties or covenants under this Agreement, and shall be the Seller's sole and exclusive remedy for any such breach, breaches, default or defaults. The Seller's liquidated damages set forth in this Section 12.4 is not and shall not be deemed a penalty.

12.5 Purchaser's Liquidated Damages. If this Agreement is terminated by the Purchaser on account of a material breach by the Seller, as determined by final determination of the Bankruptcy Court, the Seller shall pay to the Purchaser \$125,000, which payment shall be made within 30 days following the Bankruptcy Court's final determination that the Purchaser has the right to receive such payment. The payment described in this Section 12.5 shall be deemed to be the Purchaser's liquidated damages for any and all breaches or defaults by the Seller of any of the Seller's representations, warranties or covenants under this Agreement, and shall be the Purchaser's sole and exclusive remedy for any such breach, breaches, default or defaults. The

Purchaser's liquidated damages set forth in this Section 12.5 is not and shall not be deemed a penalty. In addition, the Seller shall return the Deposit to the Purchaser.

12.6 Effects of Termination. If this Agreement is terminated in accordance with Section 12.1 hereof and the transactions contemplated hereby are not consummated, this Agreement shall become null and void and of no further force and effect, except that (a) the provisions of Section 7.1 and Section 8.2 regarding confidentiality, and (b) the provisions of Section 12.3, Section 12.4, Section 12.5 and Section 12.6 shall survive such termination.

### **ARTICLE XIII ADDITIONAL COVENANTS**

13.1 Employees. The Seller shall terminate the employment of all Employees effective as of the Closing Date, and shall pay all outstanding amounts that are owed to such Employees to the extent permitted by the Bankruptcy Code. C&A shall provide distributions to the terminated Employees under C&A's pension and 401(k) plans in accordance with the terms of such plans. Purchaser may, in its sole and absolute discretion, offer (or, if prior to the Closing Date, conditionally offer) employment to current Employees (both salaried and hourly) working at the Williamston Facilities, on such terms and conditions as Purchaser may determine in its sole discretion. Seller will prepare and send WARN Act notices, reasonably satisfactory to Purchaser in form and substance, as soon as practicable to each of the Employees. Purchaser agrees to offer at-will employment to not less than 71 of the Employees identified on Schedule 5.7(a), at their current base salary or base hourly wage rate as heretofore disclosed in writing to Purchaser and otherwise on such terms and conditions of employment as may be determined by Purchaser in its sole discretion. Each Employee to whom such employment is offered by Purchaser shall be required to satisfy such drug testing and other reasonable minimum eligibility requirements established by Purchaser. For a period of twelve (12) months following the date hereof, the Seller shall not hire, employ or retain without the prior written consent of the Purchaser any Employee that either (a) is employed at the Williamston Facilities as of the date hereof, or (b) was employed at the Williamston Facilities at any time within two (2) months prior to the date hereof. The Seller will not, prior to Closing, transfer any such Employees, without the prior written consent of the Purchaser. Purchaser and its respective officers, directors, agents, affiliates, subsidiaries, successors and assigns, shall not assume or otherwise become liable for any obligation or liability of the Seller, or any subsidiary or Affiliate of the Seller, for any employment-related obligations or liabilities of any kind or nature relating to or arising from any Employee's employment by Seller or any of its Affiliates, including, without limitation, pension obligations, retiree health benefits, any accrued vacation or severance, employee expense reimbursements or unpaid wages.

13.2 Joint Post-Closing Covenant of Purchaser and the Seller. Purchaser and the Seller jointly covenant and agree that, from and after the Closing Date, Purchaser and the Seller will each use commercially reasonable efforts to cooperate with each other in connection with any action, suit, proceeding, investigation or audit of the other relating to (a) the preparation of an audit of any of the Seller's or Purchaser's Tax Returns for all periods prior to or including the Closing Date and (b) any audit of Purchaser and/or any audit of the Seller with respect to the sales, transfer and similar taxes imposed by the laws of any state or political subdivision thereof, relating to the transactions contemplated by this Agreement. In furtherance hereof, Purchaser and

the Seller further covenants and agrees to promptly respond to all reasonable inquiries related to such matters and to provide, to the extent reasonably possible, substantiation of transactions and to make available and furnish appropriate documents and personnel in connection therewith. All costs and expenses incurred in connection with this Section 13.2 referred to herein shall be borne by the party who is subject to such action.

13.3 Books and Records. For a period of seven (7) years after the Closing Date (or such longer period as may be required by any Governmental Entity):

(a) Purchaser shall not dispose of or destroy any of the business records and files of the Business held by Purchaser and relating to the period preceding the Closing Date. If Purchaser wishes to dispose of or destroy such records and files after that time, or if the Seller wishes at any time to destroy any business records and files of the Business held by it, the party proposing such disposition or destruction shall first give 30 days' prior written notice to the other party, and such other party shall have the right, at its option and expense, upon prior written notice to the notifying party within such 30-day period, to take possession of the records and files within 15 days after the date of such notice.

(b) Each party (the "requested party") shall allow the other party including any Debtor and any successor or any litigation or post-consummation trust (the "requesting party") and any of its directors, officers, employees, counsel, representatives, accountants and auditors reasonable access to the files of the requested party relating to the Business for the period preceding the Closing Date which are reasonably required by the requesting party in anticipation of, or preparation for, any existing or future Legal Proceeding involving the requesting party or any of its Affiliates or tax return preparation. Such access shall be at a mutually agreed upon time and place, and shall be upon reasonable notice given by the requesting party. The requesting party shall have the right, at its own expense, to make copies of any such records and files; provided that any such access or copying shall be had or done in such a manner so as not to interfere with the normal conduct of the requested party's business or operations.

(c) Purchaser shall allow the Seller and any of its representatives reasonable access, during regular business hours and upon reasonable notice, to all Excluded Records for the purpose of copying or removing such Excluded Records.

## **ARTICLE XIV MISCELLANEOUS**

14.1 Expense. Except as provided in Section 12.3, Section 12.4 and Section 12.5 hereof, each party hereto shall bear its own costs and expenses, including attorneys' fees, with respect to the transactions

14.2 Amendment. This Agreement may not be amended, modified or supplemented except by a written instrument signed by all of the parties to this Agreement.

14.3 Notices. Any notice request, instruction or other document to be given hereunder by a party hereto shall be in writing and shall be deemed to have been given, (a) when received if given in person, (b) on the date of transmission if sent by e-mail transmission, telex, telecopy or

other wire transmission (with answer back confirmation of such transmission), (c) upon delivery, if delivered by a nationally known commercial courier service providing next day delivery service (such as Federal Express), or (d) upon delivery, or refusal of delivery, if deposited in the U.S. mail, certified or registered mail, return receipt requested, postage prepaid:

If to the Seller, addressed as follows:

Collins & Aikman Corporation  
26533 Evergreen Road, Suite 900  
Southfield, Michigan 48076  
Attn: General Counsel  
Telephone: (248) 728-4894  
Facsimile: (248) 728-2114

with copies to:

Kirkland & Ellis LLP  
200 East Randolph Drive  
Chicago, IL 60601  
Attn: Ray C. Schrock  
Telephone: (312) 861-2000  
Facsimile: (312) 861-2200

Akin Gump Strauss Hauer & Feld LLP  
590 Madison Avenue  
New York, New York 10022  
Attn: Michael S. Stamer  
Telephone: (212) 872-1000  
Facsimile: (212) 872-1002

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, New York 10019  
Attn: Harold S. Novikoff  
Telephone: (212) 403-1249  
Facsimile: (212) 403-2249

If to Purchaser, addressed as follows:

Williamston Products, Inc.  
Attn: Frank Remesch  
2559 Songbird Drive  
Troy, Michigan 48085  
Telephone: (313) 590-7454

with a copy to:

Baker & Hostetler LLP  
Attn: Matthew R. Goldman  
3200 National City Center  
1900 East Ninth Street  
Cleveland, Ohio 44114-3485  
Telephone: (216) 621-0200  
Facsimile: (216) 696-0740

or to such other individual or address as a party hereto may designate for itself by notice given as herein provided.

14.4 Waivers. The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in other instances or a waiver of any other condition or breach of any other covenant, representation or warranty.

14.5 Counterparts and Execution. This Agreement may be simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any counterpart may be executed by facsimile signature and such facsimile signature shall be deemed an original.

14.6 Headings. The heading preceding the text of the Articles and Sections of the Agreement and the Schedule hereto are for convenience only and shall not be deemed part of this Agreement.

14.7 APPLICABLE LAW AND JURISDICTION. THIS AGREEMENT (AND ALL DOCUMENTS, INSTRUMENTS, AND AGREEMENTS EXECUTED AND DELIVERED PURSUANT TO THE TERMS AND PROVISIONS HEREOF (COLLECTIVELY, THE “ANCILLARY DOCUMENTS”)) SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE BANKRUPTCY CODE AND TO THE EXTENT NOT INCONSISTENT WITH THE BANKRUPTCY CODE, THE LAWS OF THE STATE OF MICHIGAN APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED WHOLLY WITHIN SUCH JURISDICTION. PURCHASER AND THE SELLER FURTHER AGREES THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ALL DISPUTES AND OTHER MATTERS RELATING TO (A) THE INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT OR ANY ANCILLARY DOCUMENT; AND/OR (B) THE ACQUIRED ASSETS AND/OR ASSUMED OBLIGATIONS AND PURCHASER EXPRESSLY CONSENTS TO AND AGREES NOT TO CONTEST SUCH EXCLUSIVE JURISDICTION; PROVIDED THAT IF THE BANKRUPTCY COURT REFUSES TO ACCEPT JURISDICTION OVER ANY SUCH DISPUTE, THEN ANY STATE OR FEDERAL COURT LOCATED IN MICHIGAN SHALL



HAVE JURISDICTION OVER SUCH DISPUTE AND PURCHASER AND THE SELLER HEREBY CONSENT TO THE JURISDICTION OF SUCH COURT IN ANY SUCH CASE.

14.8 Binding Nature; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without prior written consent of the other parties (which shall not be unreasonably withheld or delayed); except (a) that Purchaser may assign any of its rights (but not its obligations) hereunder to any Affiliate or wholly-owned subsidiary, (b) Purchaser may grant a security interest in its rights and interests hereunder to its lenders, (c) the rights and interests hereunder may be assigned to a trustee appointed under chapter 11 or chapter 7 of the Bankruptcy Code, (d) this Agreement may be assigned to any entity appointed as successor to the Seller pursuant to a confirmed chapter 11 plan and (e) as otherwise provided in this Agreement. Nothing contained herein, express or implied, is intended to confer on any Person other than the parties hereto or their successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement. Notwithstanding the foregoing, upon written instructions from Purchaser a reasonable time before Closing, the Seller will, at Closing, convey the Acquired Assets in whole or in part to one or more nominees as so instructed by Purchaser.

14.9 No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and no provision of this Agreement shall be deemed to confer upon Third Parties any rights, remedies, claims, or causes of action.

14.10 Tax Matters.

(a) Seller shall be responsible for the timely payment of all sales, use, transfer (including, without limitation, documentary transfer, stamp and like taxes) and similar taxes payable in connection with the consummation of the transactions contemplated by this Agreement and the sale and transfer of the Acquired Assets to Purchaser or its designee.

(b) Not later than 30 days after the Closing Date, Purchaser and the Seller shall negotiate and determine in good faith an allocation of the Purchase Price among the Acquired Assets (the “Allocation”) which shall be conclusive and final for all purposes of this Agreement. Purchaser and the Seller shall report the federal, state and local income and other tax consequences of the transactions contemplated by this Agreement in a manner consistent with the Allocation including, but not limited to, the preparation and filing of Form 8594 under section 1060 of the Code (or any comparable provisions of state or local tax law) with their respective federal, state and local income Tax Returns for the taxable year that includes the Closing Date.

14.11 Termination of Representations, Warranties and Covenants. All representations and warranties made by the Seller and Purchaser in this Agreement shall terminate on the Closing Date upon the purchase and sale of the Acquired Assets and neither party shall thereafter have any liability under this Agreement to the other for any breach of any such representation or warranty. Except for Seller’s covenants set forth in Section 2.2, Section 3.2, Article IV, Article XIII, Section 14.10, Section 14.11 and Section 14.12, all of which shall survive the Closing, all covenants of the Seller in this Agreement shall lapse at, and be of no further force

and effect following, the Closing. Except for Purchaser's covenants set forth in Section 3.1(c), Section 3.2, Article IV, Section 8.1, Section 8.2, Section 8.4, Article XIII, Section 14.10, Section 14.11 and Section 14.12, all of which shall survive the Closing, all covenants of the Purchaser in this Agreement shall lapse at, and be of no further force and effect following, the Closing. C&A's covenants set forth in Article IV and Section 13.1 shall survive the Closing.

14.12 Public Announcements. Except as required by law or in connection with the Chapter 11 Cases, neither the Seller nor Purchaser shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior approval of the other party hereto relating to the contents and manner of presentation and publication thereof, which approval will not be unreasonably withheld or delayed. Prior to making any public disclosure required by applicable law, the disclosing parties shall give the other party a copy of the proposed disclosure and reasonable opportunity to comment on the same.

14.13 Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to this Agreement to express their mutual intent, and no rule of strict construction shall be applied against any party. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

14.14 Proration. Real property taxes on the Noble Road Facility and personal property taxes on the tangible personal property constituting part of the Acquired Assets for any tax period that includes the Closing Date and ends after the Closing Date shall be prorated between the parties as of the Closing Date based upon the latest available tax bill or similar tax list.

14.15 Entire Understanding. This Agreement, the Exhibits and Schedules hereto and the Ancillary Documents set forth the entire agreement and understanding of the parties hereto in respect to the transactions contemplated hereby and the Agreement, the Exhibits and Schedules hereto and the Ancillary Documents supersede all prior agreements, arrangements and understandings relating to the subject matter hereof and are not intended to confer upon any other person any rights or remedies hereunder. There have been no representations or statements, oral or written, that have been relied on by any party hereto, except those expressly set forth in this Agreement, the Exhibits and the Schedules.

14.16 Bankruptcy Court Approval. This Agreement is subject to approval by the Bankruptcy Court.

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

**PURCHASER:**

**WILLIAMSTON PRODUCTS, INC.**

By: Frank J. Remesch

Name: FRANK J. REMESCH

Title: CEO

**THE SELLER:**

**COLLINS & AIKMAN PLASTICS, INC.**

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

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

Title: \_\_\_\_\_

As to Article IV and Section 13.1 only:

**COLLINS & AIKMAN CORPORATION**

(on behalf of itself and its Affiliates)

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

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

Title: \_\_\_\_\_

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

PURCHASER:

WILLIAMSTON PRODUCTS, INC.


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

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

Title: \_\_\_\_\_

THE SELLER:

COLLINS & AIKMAN PLASTICS, INC.

By: 


Name: JOHN BOKEN

Title: CHIEF RESTRUCTURING OFFICER

As to Article IV and Section 13.1 only:

COLLINS & AIKMAN CORPORATION

(on behalf of itself and its Affiliates)

By: 

Name: JOHN BOKEN

Title: CHIEF RESTRUCTURING OFFICER