

**ASSIGNMENT  
FOR THE BENEFIT OF CREDITORS**  
of

[NAME OF CORPORATION]

THIS ASSIGNMENT made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between [NAME OF CORPORATION], a Massachusetts corporation having its principal office at [ADDRESS], Massachusetts [ZIP CODE] (hereinafter referred to as the "Debtor") and [NAME OF ASSIGNEE] (hereinafter called the "Assignee"), party of the second part, and the others who may become parties to this instrument, in accordance with the terms hereof (hereinafter called the assenting creditors), parties of the third part.

WITNESSETH:

Definitions. The word "Assignee," wherever written or referred to, although expressed in singular number, will apply to two or more Assignees, and their respective heirs, executors, administrators, successors and assigns, and, in the event a corporation is Assignee, will apply to such corporation, its successors and assigns.

The word "Debtor," wherever written or referred to, will include an individual, individuals or a firm or a corporation or any other legal entity as the facts and context may require, although now in the singular number and referred to as impersonal. No individual officer, shareholder, director, member, partner of a Debtor shall be included in the term "Debtor."

The Assignment. The Debtor hereby grants, bargains, sells, conveys, assigns, transfers and sets over to the Assignee all and singular the property and estate of whatever nature, both real and personal, wherever situated, to which the Debtor is entitled, and not exempt from attachment by the law of its locus, including all land, buildings, machinery, merchandise, inventory, fixtures, office equipment and supplies, patents, trademarks, licenses, trade names, secret processes and formulae; stock, bills, notes, assets, judgments, suits at law or in equity, accounts receivable, or other choses in action, patents, trademarks, general intangibles and all deeds, books of account, evidence of title and papers relating to the business dealings and property of the Debtor (hereinafter called the "trust property"), and the Assignee, its successors, representatives and assigns, shall have and hold the trust property for its and their own use and behoof forever, in trust, nevertheless, for the purposes of and subject to the provisions hereinafter

set forth. The Assignee hereby accepts the trust created by this instrument, and hereby covenants for itself and its successors, representatives and assigns, with the other parties hereto, that it will faithfully perform said trust, and that, upon ceasing to act as such Assignee, it or its successors, assigns or representatives, will, if requested, execute at the expense of said trust estate any instruments that may be deemed expedient completely to vest their title in any newly appointed Assignee or Assignees.

Right to Refuse Property. The Assignee, by writing recorded where this Assignment is recorded; as an amendment hereto, may at any time refuse to accept any property or right hereunder which in its opinion is by law exempt from attachment or is onerous, unprofitable or burdensome, rather than beneficial, to the trust estate herein; thereupon all title thereto by it hereunder acquired will revert in the assignor as though never included herein, and as to that property or right the Assignee will have no right or obligation.

Debtor's Covenant. The Debtor hereby covenants with the Assignee that it will, whenever requested, give the Assignee all information in its power concerning the trust property hereby assigned, and will execute, acknowledge and deliver to the Assignee, at the cost of Assignee, whenever requested, any further instrument or instruments the Assignee may think necessary or proper to carry out the true intent and purpose of these presents.

Power of Attorney. Debtor does hereby constitute the Assignee, and its officers and successors under this trust, the attorney and attorneys irrevocable of Debtor, with power irrevocable and coupled with an interest and with power of substitution, in the name of the Debtor, but to the use and at the cost of the Assignee, to begin or carry on any suit, execute, seal, acknowledge and deliver any instrument, and do any other act or thing necessary or proper to obtain legal title to or possession of or to realize on, manage, pledge, mortgage and dispose of the trust property or any part thereof, or to carry out the true intent and purpose of the instrument.

Terms and Conditions. This assignment is made upon the trusts and subject to the further provisions following; to wit:

1. Possession and Control of Trust Property. The Assignee, primarily in the interest of creditors, will hold and manage the trust property, receive and collect the rents,

income and proceeds thereof, and convert the said trust property into money as rapidly as it may think expedient, and in such manner as it may think best.

2. Lease, Sale or Pledge of Trust Property; Borrow Monies. The Assignee will have the power, in the execution of its trust, from time to time, to borrow funds for purposes of the trust hereunder and to sell, lease, mortgage or pledge all or any part or parts of the trust property and/or to grant licenses thereunder at public or private sale, for cash or on credit or for any other good consideration, on such terms as it may think fit, and to convey and transfer the same by good and sufficient deeds or other instruments to the purchaser or purchasers, free from any trust, and no such purchaser will in any event be responsible for the application of the purchase money or other consideration; and the Assignee may buy in, rescind or vary any such contract of sale, and resell any such property, without being answerable for any loss occasioned thereby.

3. Continuation of Debtor's Business. Assignee may, if and so far as it may deem it advisable for the orderly liquidation of the trust estate as a going business, as well as to ensure reasonable liquidation value thereof, continue and carry on the business of the Debtor or any part thereof, and for that purpose only use any part of the trust property, and make any payments therefrom or from the proceeds thereof, and purchase any goods or materials and pay therefor with any money in its hands as such Assignee, or purchase the same on credit, and render said trust property liable for the price thereof.

4. Payments for Preservation and Protection of Trust Property. Assignee may pay from said trust property from time to time any sums that it may deem expedient to protect and preserve said trust property, including payment for repairs, balances due for property purchased by the Debtor under conditional sales, premiums for fire and other insurance, interest or encumbrances, wages of watchmen and caretakers, charges for storage, and other expenses which it may deem for the benefit of said trust property, and including any wages due to employees entitled to a priority under the provisions of the Bankruptcy Code at the time of the making of this assignment so far as Assignee may, in its discretion, deem said payments reasonable to protect and preserve said business, or any part of the trust estate.

5. Suits by the Assignee. Assignee may institute and prosecute all suits or legal proceedings which it may think proper for the recovery of any property belonging or supposed

to belong to or any debt or debts due or supposed to be due to the Debtor and may defend all suits or legal proceedings brought to recover any property hereby transferred to him, and may compromise, compound or refer to arbitration any such suit or legal proceeding or claim or demand by or against him or arising out of the execution of this trust, on such terms as it may think fit, and may pay all costs, charges, expenses and liabilities so incurred from said trust property.

6. Payment of Taxes. Assignee may in its discretion, from time to time, from said trust property or the proceeds thereof pay and discharge any claim for taxes, whether Municipal, State or Federal, existing, and may pay to any person having a mortgage, lien, attachment or other security upon said trust property, or any part thereof, any sum it may deem expedient in order to secure the relinquishment thereof, and may cause such mortgage lien, attachment or other security to be discharged, or to be assigned to or otherwise kept in force for him, and for the benefit of said trust property, and may satisfy and discharge any other debt or debts due by said Debtor which it may deem expedient for the benefit of its trust.

7. No Liability of Assignee. Assignee may make payment or do or omit any other act upon such evidence of the existence of any fact necessary to authorize such act or omission as it may deem satisfactory, and will incur no liability thereby. Any receipt or acquittance given by Assignee will be a sufficient discharge in favor of the person to whom it is given, and no person dealing with Assignee will under any circumstances be bound to ascertain or inquire as to any fact or event or purpose justifying the exercise of any power herein conferred upon Assignee, or the propriety or regularity of any exercise of or act purporting to be an exercise of any such power. No Assignee under this instrument, whether named herein or afterwards appointed as herein after provided, will be liable for more money or property than it will actually receive, or for any act or omission of a co-Assignee, if any, or of any agent or servant employed by Assignee, or in any event be liable except for its own personal and wilful acts and omissions, nor will any Assignee be bound to give any bond or security for the performance of this trust.

8. Filing of Claims. Any person having any debt or claim that would be allowable in bankruptcy against the estate of said Debtor, under the bankruptcy laws of the United States, may become a party to this instrument to the extent of such debt or claim as an assenting creditor, by executing the same or any copy thereof, or by specifically

assenting to the same in writing in form satisfactory to the Assignee within one hundred twenty (120) days after the date hereof, or within such further time as Assignee may fix; and Assignee may from time to time as often as it may think fit extend such time by notice in writing, and may at any time in its discretion permit any creditor to become a party hereto though no such extension of time has been made by him. No creditor not so executing or accepting this instrument will be entitled to any benefit herefrom.

9. No Bankruptcy. Any creditor assenting hereto, filing a claim hereunder, or participating herein in any manner, and notwithstanding that such creditor may be a member of a creditor's committee or have a representative thereon, may not be a petitioning creditor in any proceedings in bankruptcy which may be filed against the Debtor.

10. Guarantors, Sureties. Any person secondarily liable as endorser or otherwise on any note, draft, acceptance or other obligation in which any assignor is primarily liable may become a party to this instrument as an assenting creditor, according to the terms hereof, provided such person has taken up and become the legal holder and owner of such note, draft, acceptance or obligation, not less than thirty days before any dividend will be declared hereunder, and provided that no prior holder or owner of such note, draft, acceptance or other obligation has, in respect thereto, become a party to this instrument as an assenting creditor.

11. Claims Procedure and Objections. Assignee will determine the amounts of the debts or claims of each of the several assenting creditors, respectively due from the Debtor, that would have been provable in bankruptcy against the said Debtor. Such amounts will be computed as if payable on the day of the date hereof, adding or deducting interest, as the legal requirements of the case may be. Assignee may for this purpose require the several assenting creditors to verify their respective claims by affidavit or other evidence satisfactory to the Assignee, and may refer any disputed claim to arbitration in such manner as it may think fit, and may any compromise or agreement as to the amount thereof as it may think expedient. The Assignee will determine the amounts of the debts or claims of each of the several assenting creditors, respectively due from the Debtor; that would have been allowable in a proceeding under Chapter 7 of Title 11 of the United States Code as limited in accordance with Section 502 of Title 11 against the Debtor. Such amounts will be computed as if the date of execution hereof were the date of the filing of a Petition under Title 11 of the United States Code, adding or deducting interest as the legal

requirements of the case may be. The Assignee may for this purpose require the several assenting creditors to verify their respective claims by affidavit or other evidence satisfactory to the Assignee, will deal with disputed claims or portions of claims pursuant to the following section hereof, and may make any compromise or agreement as to the amount thereof as it may think expedient.

The claims resolution process will be as follows:

- A. The Assignee will have the sole and exclusive authority to review assents and/or claims submitted by assenting creditors and to determine which such claims will be allowed as filed and which will be disputed; provided, however, that as to any assenting creditor submitting a claim as to which the Assignee believes that it has a conflict of interest in conducting such review, the Assignee will designate a special successor Assignee in writing who will have all of the rights of the Assignee hereunder but limited solely to reviewing and resolving the allowance or rejection of such assenting creditor's claim.
- B. The Assignee may negotiate with any individual assenting creditor in an attempt to resolve any dispute regarding an assenting creditor's claim, it being the intent of all parties to resolve any disputed claims without the necessity of litigation, arbitration or other formal claims resolution processes, if possible.
- C. Any disputed claim of an assenting creditor may be resolved or compromised by the Assignee and the individual assenting creditor at any time, and upon such resolution will become an allowed claim in the compromised amount.
- D. In the event an assenting creditor's claim is disputed and cannot be resolved, the creditor must commence litigation in a court of competent jurisdiction and venue in Massachusetts within ninety (90) days of the date the Assignee notifies the assenting creditor that its claim will not be approved by the Assignee. Failure to commence this litigation in a timely fashion, unless extended by the Assignee, will result in disallowance, in whole or in part, as the case may be, of the claim of the assenting creditor.
- E. In lieu of commencing litigation under section D above, an assenting creditor may, within the same ninety (90) day period, or the Assignee may, within thirty (30)

days following service upon him of process relating to the litigation described in section D above, submit the disputed claim to arbitration by the American Arbitration Association in Massachusetts, in accordance with the rules of that association; provided, however, that in doing so the assenting creditor or Assignee will be deemed expressly to have agreed that (1) the decision of the arbitrator will be final and binding upon the assenting creditor, the debtor and the Assignee, and (2) the party so submitting the matter to arbitration will pay the costs of arbitration, except that each party will be responsible for payment of its own attorneys' fees, if any. If, however, the arbitrator determines that the assenting creditor's claim is frivolous and without merit, then the assenting creditor will pay the Assignee's attorneys' fees as well.

F. The Assignee will conduct the claims review process in good faith and without delay so that the amount of accepted claims will be determined as expeditiously as possible.

12. Preferential Transfers. In case any assenting creditor has any security for its debt by lien or incumbrance, except by attachment upon any part of the trust property made less than three months before the date of this instrument Assignee will deduct the value of such security, determined by sale or otherwise, from such Debtor claim, and the balance will be deemed for the purposes of this instrument the amount due such creditor; or Assignee may accept a surrender of such security, and ascertain the amount due without any such deduction. In case of security by attachment made less than three months before the date of this instrument upon any part of said trust property, such assenting creditor will relinquish said attachment, or continue the same for the benefit of Assignee, and permit him to enforce the same for the benefit of the trust estate; otherwise no part of the claim secured by said attachment will be allowed by Assignee, and such creditor will not be entitled to any rights hereunder in respect thereof; but Assignee may pay any sum, for costs or otherwise, necessary to secure the relinquishment of such attachment.

13. Dividends, Payment of Claims. After paying from said trust property, or the proceeds thereof, all the costs, charges and expenses incurred in the execution of this trust, including counsel fees and a reasonable compensation for its own services, Assignee will pay therefrom (1) all claims entitled to priority under any federal, state or local law or regulation, including, but not limited to, those claims

afforded priority under 31 U.S.C. §3713, (2) all wages, taxes, debts and claims entitled to priority under the bankruptcy laws of the United States, in order of such priority, in full, or, if the property is insufficient to pay any class in full, then pro rata among that class; (3) after such preferred payments the amounts ascertained to be due to the assenting creditors not entitled to priority pro rata, or, if the property is sufficient, in full, and if any surplus remains, interest on said amounts pro rata or in full to the time of payment; (4) any balance remaining to the Debtor. As among assenting creditors of different classes, priority of payment will be made according to said bankruptcy laws.

14. Partial Payments. Assignee may make the payments provided for by either dividends from time to time as it will think fit or by making a single distribution when all of the trust property has been converted into money, and will so far as practicable, assist the Debtor, and also the assenting creditors hereunder, to arrive at a satisfactory compromise or settlement of the debts owing by said Debtor, and is authorized to make payments in such manner and at such times as may hereafter be mutually agreed upon in such compromise agreement between the Debtor and the said assenting creditors, if any will be made.

15. Bankruptcy. In case a petition in bankruptcy is filed by or against said Debtor within four months after the date of this instrument, and an adjudication is had in the proceedings therein, or in case a trustee is appointed therein by the Bankruptcy Court prior to adjudication, or if proceedings for relief under the bankruptcy laws of the United States are filed by the Debtor by way of petition or answer within four months after the date hereof, and the court accepts and retains control of said proceedings, the Assignee hereunder will deliver and transfer to any such trustee or other person entitled thereto so much of the trust property in its hands as such trustee or such other person may by law be entitled to recover, except any property that Assignee hereunder could not effectually transfer, reserving, however, such sums as are necessary to all reasonable expenses then already incurred in the execution of this trust, including a compensation for Assignee, and to indemnify Assignee against all liabilities then outstanding arising from this trust and thereupon the trust hereby created will cease except as to the property, if any, not so transferred.

16. Resignation, Appointment of Other Assignees. Any Assignee under this instrument may at any time, by instrument

in writing and under seal, resign its trust and, upon such resignation taking effect, as hereinafter provided, will be relieved of all further duties, and cease to have any further powers as Assignee hereunder. Any sole Assignee hereunder will, before resigning its trust, appoint a co-Assignee as hereafter provided. In case of such resignation, or of a vacancy arising by death or inability to act, the remaining Assignee or Assignees, and, if none, then a majority in value of the assenting creditors, may, by instrument in writing under seal, appoint a successor to fill such vacancy. The Assignee hereunder may at any time, in its discretion, in like manner appoint one or more co-Assignees to act with him. Every resignation of an Assignee and appointment of a new Assignee will be recorded wherever this instrument is recorded, and will not take effect until so recorded. Upon the appointment of any person as an Assignee as above provided, such person will forthwith upon written acceptance of this trust become entitled to all the estates, interests, rights, privileges and powers, and subject to all the liabilities and duties, herein provided, solely or jointly with any other person or persons then entitled as Assignee or Assignees hereunder, as the case may be, without any further conveyance or deed; but any Assignee ceasing to act, and the heirs, executors and administrators of any deceases Assignee, will upon written request execute any further instrument that may be deemed expedient completely to vest title in any newly appoint Assignee.

17. Acceptance and Satisfaction. Each of the assenting creditors, by becoming a party hereto, and in consideration of the terms hereof, covenants to accept and take, and does accept and take, in full satisfaction and discharge of all debts and claims provable or allowable under the terms of this instrument, the sum or sums that may become payable to him hereunder, and releases said Debtor from every such debt or claim and these presents may be pleaded in bar of any proceeding to enforce any such debt or claim; and covenants, upon request from Assignee, to discontinue any suit or proceeding pending against said Debtor, or to permit the Assignee to prosecute the same for the benefit of its trust if it will so elect; provided, however, that this covenant and release will in no wise affect the liability to such creditor of any person other than the Debtor liable for any such debt or claim contingently or absolutely or jointly with said Debtor, or the right of said creditor to proceed or continue proceedings against such other person, but, in case the Debtor is a necessary party to such proceeding, satisfaction therein will be taken only against such other person; and provided, further, that in case of proceedings in bankruptcy, this release and these covenants will be void

except as to the amount of any sum actually received hereunder. And each of the assenting creditors further covenants as aforesaid not to transfer, after accepting this assignment, any negotiable instrument on which the Debtor is liable, without endorsing thereon a memorandum that the same is subject to this assignment.

18. Assignment of Claims. Each of the assenting creditors, by becoming a party hereto, and in consideration of the terms hereof hereby grants, conveys, assigns, transfers, and sets over to the Assignee all claims which the creditor may have against the Assignor and/or its principals, officers, directors or stockholders including, but not limited to, fraudulent conveyances, fraudulent transfers, alter ego claims and any other claims of any nature, suits at law or in equity, or other chooses in action which such creditor may have or hold against the Assignor and/or its principals, officers, directors or stockholders. At its sole discretion, the Assignee may pursue such claims in its name on behalf of all assenting creditors or it may further assign such claims upon such terms and conditions as it deems in the best interests of the herein estate of assignment.

19. Mail. All mail of all classes, all parcel post and express material, all telegrams, radiograms and other communications otherwise deliverable to the Debtor will be delivered to the Assignee or as it may in writing direct.

20. Addenda. Addenda, if any, to this indenture, signed by the Debtor and Assignee are incorporated herein by reference and made part hereof. All the provisions of this instrument will be binding on and in favor of the several heirs, administrators, successors and assigns of the several persons, partnerships, corporations, or other entities, parties hereto. In the construction of this instrument the words "Debtor," "Assignee" and "assenting creditors," and the pronouns referring thereto, will be read in the singular or plural number, and in the masculine or feminine gender, or as referring to a corporation, as the facts and context may require or admit.

IN WITNESS WHEREOF [**NAME OF CORPORATION**] AS ASSIGNOR and [**NAME OF ASSIGNEE**] AS ASSIGNEE and the assenting creditors executing this instrument have, except such as are corporations, hereunto set their hands and common seal as their own, and each of the parties that is a corporation has caused these presents to be signed in its name and behalf, and its corporate seal to be hereto affixed by the officer of said corporation named as executing the same for it, such officer being hereunto duly authorized, this instrument being

one of three original instruments, all of line tenor, and together, constituting one indenture.

ASSIGNOR:  
[NAME OF CORPORATION]  
By its

ASSIGNEE:

\_\_\_\_\_  
President

\_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss. \_\_\_\_\_, 20\_\_

Then personally appeared \_\_\_\_\_,  
President of [NAME OF CORPORATION] who identified himself to  
me by means of a drivers license and acknowledged this  
instrument to be the authorized free act and deed of the  
corporation.

Before me,

\_\_\_\_\_  
Notary Public  
My Commission expires:

ASSENT TO THE ASSIGNMENT FOR THE BENEFIT  
OF CREDITORS OF [NAME OF CORPORATION]

The undersigned, being either the creditor or the duly authorized representative of the creditor of [NAME OF CORPORATION], hereby assents to the terms of the Assignment for the Benefit of Creditors dated \_\_\_\_\_, 20\_\_, wherein [NAME OF ASSIGNEE], is named as Assignee; and, further, the undersigned hereby becomes party to the provisions of said assignment and agrees to accept in full payment of its debt, claim and demand, the dividends which may be payable under said Assignment and release, acquit and discharge the debtor from such debt, claim and demand as therein provided.

(Amount of claim): \$

\_\_\_\_\_  
Company, Person or Entity:

\_\_\_\_\_  
Address:

\_\_\_\_\_  
2<sup>nd</sup> Address:

\_\_\_\_\_  
City:

\_\_\_\_\_  
State:

\_\_\_\_\_  
Zip:

\_\_\_\_\_  
Signature (under pain and penalty of perjury) Title:

WITNESS my hand and seal this\_\_ day of\_\_\_\_\_, 20\_\_.

Supporting Documents: *Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.*

Return this form to:

[ASSIGNEE]

[NAME OF CORPORATION]

Unanimous Consent of Director

We, the undersigned, being all the directors of the corporation hereby adopt pursuant to Massachusetts General Laws c. 156D, the following resolutions and hereby direct that the same be filed with the minutes of the meetings of directors of the corporation as though voted and resolved at a regularly scheduled and noticed meeting of said directors, to wit:

VOTED: That in the judgment of the Directors of this corporation it is desirable and for the best interests of the corporation, its creditors, stockholders and other interested parties, that the corporation be liquidated pursuant to a an assignment for the benefit of creditors.

VOTED: That the President or Treasurer, or both, of this corporation, be and each hereby is, authorized and empowered, for and on behalf of this corporation and in its corporate name and behalf, to execute, acknowledge, verify and deliver an assignment for the benefit of creditors substantially in the form annexed hereto to [NAME OF ASSIGNEE] to be the assignee thereunder and to execute such other instruments, schedules and other papers and to take any and all other action which either or both, so acting, may deem necessary or proper in connection with said assignment.

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

Dated:

[NAME OF CORPORATION]

Unanimous Consent of Stockholders

We, the undersigned, being all the stockholders of the corporation hereby adopt pursuant to Massachusetts General Laws c. 156D, the following resolutions and hereby direct that the same be filed with the minutes of the meetings of stockholders of the corporation as though voted and resolved at a regularly scheduled and noticed meeting of said stockholders, to wit:

VOTED: That in the judgment of the stockholders of this corporation it is desirable and for the best interests of the corporation, its creditors, stockholders and other interested parties, that the corporation be liquidated pursuant to a an assignment for the benefit of creditors.

VOTED: That the director(s) of this corporation, be and they hereby are, authorized and empowered, for and on behalf of this corporation and in its corporate name and behalf, to authorize the execution, acknowledgment, verification and delivery of an assignment for the benefit of creditors substantially in the form annexed hereto to [NAME OF ASSIGNEE] to be the assignee thereunder and to authorize the execution and delivery of such other instruments, schedules and other papers in connection therewith and to authorize any and all other action they may deem necessary or proper in connection with said assignment.

\_\_\_\_\_  
Stockholder

\_\_\_\_\_  
Stockholder

Dated: