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Case 1:08-bk-13702 Doc 76 Filed 12/23/08 Entered 12/23/08 16:37:48 Desc 341  
Chapter 7 No Asset Corpora Page 1 of 2

FORM B9B (Chapter 7 Corporation/Partnership No Asset Case) (12/08)

Case Number 1:08-bk-13702

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>United States Bankruptcy Court</b><br><b>District of Rhode Island</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                         |
| <b><i>Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, &amp; Deadlines</i></b>                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                         |
| <p>A bankruptcy case concerning the debtor(s) Corporation listed below was originally filed under chapter 11 on 11/21/08 and was converted to a case under chapter 7 on 12/23/08.</p> <p>YOU may be a creditor of the debtor. This notice lists important deadlines. You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The clerk or the bankruptcy clerk's office cannot give legal advice.</p> |                                                                                                                                                                                                         |
| <b>See Reverse Side For Important Explanations</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                         |
| <p>Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):</p> <p>Scott Brass, Inc.<br/>1637 Elmwood Avenue<br/>Cranston, RI 02910</p>                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                         |
| <p>Case Number:<br/>1:08-bk-13702</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <p>Last four digits of Social Security or Individual Taxpayer-ID (ITIN)<br/>No(s). Complete EIN:<br/>05-0279160</p>                                                                                     |
| <p>Attorney for Debtor(s) (name and address):<br/>Diane Finkle<br/>Vinograd Shine &amp; Zacks<br/>123 Dyer Street<br/>Providence, RI 02903<br/>Telephone number: (401) 273-8300</p>                                                                                                                                                                                                                                                                                                                                            | <p>Bankruptcy Trustee (name and address):<br/>Joseph M. DiOrio<br/>Law Office of Joseph M. DiOrio<br/>10 Doltance Street<br/>Suite 1200<br/>Providence, RI 02903<br/>Telephone number: 401-632-0911</p> |
| <b>Meeting of Creditors</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                         |
| <p>Date: January 21, 2009 Time: 02:00 PM</p> <p>Location: The Federal Center, 380 Westminster Street, 6th Floor Room 620, Providence, RI 02903</p>                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                         |
| <b>Creditors May Not Take Certain Actions:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                         |
| <p>In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.</p>                         |                                                                                                                                                                                                         |
| <b>Please Do Not File a Proof of Claim Unless You Receive a Notice To Do So.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                         |
| <b>Creditors with a Foreign Address</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                         |
| <p>A creditor to whom this notice is sent at a foreign address should read the information under "Do Not File a Proof of Claim at This Time" on the reverse side.</p>                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                         |
| <p>Address of the Bankruptcy Clerk's Office:<br/>The Federal Center<br/>380 Westminster Street<br/>6th Floor<br/>Providence, RI 02903<br/>Telephone number: (401) 626-3100<br/><a href="http://www.rib.uscourts.gov">http://www.rib.uscourts.gov</a></p>                                                                                                                                                                                                                                                                       | <p>For the Court:<br/>Clerk of the Bankruptcy Court:<br/><br/>Susan M. Thurston</p>                                 |
| <p>Hours a Den: Monday - Friday 9:00 AM - 4:00 PM</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <p>Date: 12/23/08</p>                                                                                                                                                                                   |

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EXPLANATIONS

FORM 898 (10/05)

|                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Filing of Chapter 7 Bankruptcy Case                             | A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.                                                                                                                                                                                                                                                                                           |
| Legal Advice                                                    | The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.                                                                                                                                                                                                                                                                                                                                                                                   |
| Creditors Generally May Not Take Certain Actions                | Prohibited collection actions are listed in Bankruptcy Code §362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment, taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. |
| Meeting of Creditors                                            | A meeting of creditors is scheduled for the date, time and location listed on the front side. The <i>debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors</i> . Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.                                                                                                                               |
| Do Not File a Proof of Claim at This Time                       | There does not appear to be any property available to the trustee to pay creditors. <i>You therefore should not file a proof of claim at this time</i> . If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim. If this notice is mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. |
| Bankruptcy Clerk's Office                                       | Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.                                                                                                                                                                                            |
| Creditors with a Foreign Address                                | Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.                                                                                                                                                                                                                                                                                                                                                                                      |
| --- Refer to Other Side for Important Deadlines and Notices --- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |



**Cleveland Office:**  
200 Public Square, Suite 2300  
Cleveland, OH 44114  
(216) 363-4500 (Main)  
(216) 363-4588 (Telecopy)

**Ryan Kray, Paralegal**  
**Writer's Direct Dial (216) 363-4166**  
**Email: rkray@bfca.com**

March 19, 2009

Rhode Island Secretary of State  
Corporate Department  
Attn: Cathy Albanese  
148 W. River Street  
Providence, RI 02904

**Re: Notification of Bankruptcy**

Dear Cathy:

Enclosed please find evidence that Scott Brass, Inc., a Rhode Island Corporation, ("Debtor") has entered into an order for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code by The United States Bankruptcy Court for The District of Rhode Island.

The enclosed is also related to a Court approved Asset Purchase Agreement between Andrew Richardson, the duly appointed receiver of Debtor and House of Stainless, Inc., a Texas Corporation, ("Purchaser").

I was instructed by your office to supply you with the enclosed documents to start the process of changing the name of Scott Brass, Inc., so that the Purchaser can be qualified in Rhode Island under Scott Brass, Inc.

Should you have any comments and/or questions, please do not hesitate to contact me.

Very truly yours,

**BENESCH FRIEDLANDER  
COPLAN & ARONOFF LLP**

A handwritten signature in black ink, appearing to be 'RK' followed by a long horizontal stroke.

Ryan Kray  
Paralegal

RK/mbf  
Encl.

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## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "**Agreement**") is entered into as of March \_\_, 2009, by and among Andrew Richardson (the "**Receiver**"), as Court-appointed Receiver of Scott Brass, Inc. ("**Debtor**"), and House of Stainless, Inc., a Texas corporation, and/or its designee for all purposes of this transaction as provided hereunder (collectively, "**Purchaser**"). Receiver and Purchaser may be referred to herein individually as a "**Party**" or collectively as the "**Parties**."

WHEREAS, on December 9, 2008, an order for relief under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**") respecting Debtor was entered by the United States Bankruptcy Court for the District of Rhode Island (the "**Bankruptcy Court**"), in Case No. 08-13701 (the "**Bankruptcy Case**"), and on December 21, 2008, Joseph M. DiOrio (the "**Trustee**") was appointed Chapter 7 Trustee of Debtor and its estate;

WHEREAS, pursuant to the Order entered by the Bankruptcy Court in the Bankruptcy Case on January 29, 2009 (the "**Relief From Stay Order**"), Wachovia Capital Finance Corporation (New England) ("**Secured Party**") was granted relief from the automatic stay under Bankruptcy Code Section 362, permitting Secured Party to foreclose on and liquidate the Relieved Assets (as defined in the Relief From Stay Order), whether by public or private sale, through a state court receivership proceeding with respect to sale or disposition of the Relieved Assets, or in accordance with any means permitted by law, and otherwise exercise all of its rights and remedies against the Relieved Assets;

WHEREAS, upon a Petition for Appointment of a Receiver filed by Secured Party with the Superior Court for the Counties of Providence and Bristol in Providence, Rhode Island (the "**Superior Court**"), in Case No. P.B. No. 09-0896 on the docket of the Superior Court, on February 13, 2009, the Superior Court entered its Order Appointing Temporary Receiver ("**Appointment Order**") whereby Receiver was appointed Temporary Receiver of Debtor, authorized to take possession and charge of all the Assets (as defined in Section 2.1 herein) and effect the sale or liquidation thereof upon and subject to the terms of the Appointment Order and order of the Superior Court; and

WHEREAS, Purchaser desires to purchase from Receiver and Receiver desires to sell to Purchaser all of Debtor's right, title and interest in and to the Assets, pursuant to the terms and upon the conditions of this Agreement (the "**Transaction**").

NOW, THEREFORE, based on the foregoing recitals, which are incorporated as representations and warranties of the Parties, and in consideration of the mutual promises, representations, warranties, and covenants herein contained, the Parties agree as follows:

### 1. DEFINITIONS AND USAGE OF CERTAIN TERMS

1.1 **Definitions.** For purposes of this Agreement, the following terms have the meanings specified or referred to in this Section 1.1:

"**Accounts Receivable**" means (i) all Accounts (as defined in the UCC) of Debtor and (ii) any claim, remedy or other right related to any of the foregoing.

***“Acquired Inventory”*** means collectively all of Debtor’s Inventory at or identified to the Cranston Facility as determined in accordance with Section 2.3(a) herein and Schedule 1.1 annexed hereto.

***“Base Inventory”*** means all Inventory owned by Debtor and classified as intermediate conversion material held prior to finish and final pass rolling or coating or final annealing.

***“Breach”*** means any material breach of, or any material inaccuracy in, any representation or warranty or any breach of, or failure to perform or comply with, any covenant or obligation, in or of this Agreement or any other Contract, or any event which with the passing of time or the giving of notice, or both, would constitute such a breach, inaccuracy or failure.

***“Business”*** means the sale and manufacture of copper and copper alloy coiled stripped, sheet, coated stripped and plate as formerly operated at the Cranston Facility.

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

***“Contract”*** means, with respect to any Person, any written agreement, contract, subcontract, Lease, license, sublicense, understanding, arrangement, instrument, note, guaranty, indemnity, representation, warranty, deed, assignment, power of attorney, purchase order, work order, commitment, covenant, obligation, promise or undertaking of any nature to which such Person is a party or by which its properties or assets may be bound.

***“Cranston Facility”*** means Debtor’s former operating facilities located at and on the Cranston Real Property.

***“Cranston Real Property”*** means the parcels and tracts of land in which Debtor has an ownership interest, and all improvements and all appurtenances thereto, located at 1637 Elmwood Avenue, Cranston, Rhode Island 02910.

***“Debtor Employee Plans”*** means, collectively, (i) each “employee benefit plan”, as defined in Section 3(3) of ERISA; (ii) all other written or formal plans, enforceable policies or practices or Contracts involving direct or indirect compensation or benefits (including any employment Contracts entered into between Debtor and any former employee of Debtor) currently or previously maintained, contributed to or entered into by Debtor under which Debtor or any ERISA Affiliate has any present or future Liability and (iii) the Pension Fund.

***“Encumbrance”*** means any charge, claim, community property interest, condition, equitable interest, lien, option, pledge, security interest, mortgage, right of first option, or right of first refusal, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income, or exercise of any other attribute of ownership.

***“ERISA”*** means the Employee Retirement Income Security Act of 1974, as amended.

***“ERISA Affiliate”*** means any entity which is a member of: (i) a “controlled group of corporations”, as defined in Section 414(b) of the Code; (ii) a group of entities under “common control”, as defined in Section 414(c) of the Code; or (iii) an “affiliated service group”, as

defined in Section 414(m) of the Code, or treasury regulations promulgated under Section 414(o) of the Code, any of which includes Debtor.

***“Finished Goods”*** means all Inventory owned by Debtor and classified as material suitable for sale in its current condition.

***“Governmental Authorization”*** means any approval, consent, ratification, waiver, license, permit or authorization issued, granted, given, or otherwise made available by or under the authority of any governmental authority or pursuant to any Legal Requirement.

***“Intellectual Property Rights”*** shall mean all worldwide industrial and intellectual property rights, including, patents, patent applications, patent rights, trademarks (registered and/or at common law), trademark applications, trade names, service marks, service mark applications, URLs, works of authorship, unregistered copyrights, , mask work rights, moral rights, franchises, licenses, inventories, know-how, trade secrets, customer lists, proprietary information, proprietary processes and formulae, databases and data collections, software, all source and object code, algorithms, architecture, structure, display screens, layouts, inventions, development tools and all documentation and media constituting, describing or relating to the above, including, manuals, memoranda and Records.

***“Inventory”*** has the meaning set forth in the UCC.

***“Legal Requirement”*** means any federal, state, local, municipal, foreign, international, multinational, or other constitution, law, ordinance, by-law, principle of common law, regulation, statute, or treaty.

***“Liability”*** means, with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise and whether or not the same is required to be accrued on the financial statements of such Person.

***“Material Adverse Effect”*** means any damage to or physical loss of any of the Assets occurring after the date of this Agreement in an aggregate amount in excess of \$100,000.

***“Mishawaka Facility”*** means Debtor’s former operating facilities located in Mishawaka, Indiana.

***“Pension Fund”*** means the Eastern States Pension Fund and/or that multi-employer pension fund in which Debtor is or was a participant.

***“Person”*** means any individual, corporation, partnership, limited liability company, joint venture, trust or unincorporated organization or any government or any agency or political subdivision thereof.

***“Proceeding”*** means any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private).

***“Record”*** means any information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

***“Scrap”*** means all Inventory owned by Debtor classified as Finished Goods, Work In Process and Base that can not be sold by Debtor in its current form because of (i) quality deviations from commercial specifications, (ii) insufficient documentation related to its manufacture, (iii) damage, (iv) customer returns or (v) insufficient economic value due to reduced utility of partial sales from coils in Finished Goods. In addition to any other items identified by Purchaser, the following items shall constitute Scrap: (a) all Inventory with a tag number of 500 pounds or less, (b) all inventory with a tag number of 1,500 pounds or that is six months old as of January 20, 2009, (c) all Inventory with a tag number indicating a heat older than calendar year 2008, (d) all Inventory with a tag number on QC hold, (e) all Inventory with a tag number indicating QC too soft or any other defect, (f) all Inventory with a tag number indicating Gauge over 0.1250 inches, and (g) all Inventory with a tag number indicating designation as scrap. All of the foregoing shall be determined in accordance with Schedule 1.1.

***“Tangible Personal Property”*** means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles and other items of tangible personal property (other than Inventories) of every kind owned by a Person (wherever located and whether or not carried on such Person’s books), together with any express or implied warranty by the manufacturers or seller or lessors of any item or component part thereof, and all maintenance records and other documents relating thereto.

***“Tax”*** or ***“Taxes”*** refers to (i) any and all federal, state, local and foreign taxes, assessments and other governmental charges, duties, impositions and Liabilities relating to taxes, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes, together with all interest, penalties and additions imposed with respect to such amounts, (ii) any Liability for payment of any amounts of the type described in clause (i) as a result of being a member of an affiliated, consolidated, combined or unitary group, and (iii) any Liability for amounts of the type described in clauses (i) and (ii) as a result of any express or implied obligation to indemnify another Person or as a result of any obligations under any agreements or arrangements with any other person with respect to such amounts and including any Liability for taxes of a predecessor entity.

***“Tooling”*** means all tooling, test fixtures, gauges, jigs, patterns, casting patterns, cavities, dies, spools, liners, rolls, traverse wound reels, steel cores, molds and documentation (including engineering specifications and test reports), together with appurtenances, accessions and accessories thereto and similar items used to support or in connection with the Inventory, in each case owned by Debtor and pertaining to the Business.

***“UCC”*** means the Uniform Commercial Code as enacted and in effect in the Commonwealth of Massachusetts.

**"Work In Process"** means all Inventory owned by Debtor and classified as material suitable for and in the process of final finishing either by secondary rolling, slitting, cutting, binding, annealing, coating, sheeting or final inspection.

## **2. SALE AND TRANSFER OF ASSETS; CLOSING**

**2.1 Assets to be Sold.** Upon the terms and subject to the conditions set forth in this Agreement, effective as of 12:01 a.m. on the Closing Date (the **"Effective Time"**), Purchaser shall purchase from Receiver and Receiver shall sell to Purchaser, all of Debtor's right, title and interest in and to the following property and assets of Debtor (but excluding the Excluded Assets (as defined below)), all without representation or warranty of any kind or nature by Receiver, "where is" and "as is," except as expressly set forth herein:

(a) the Cranston Real Property, including therein the Cranston Facility, title to which Cranston Real Property may be transferred and conveyed by Receiver to Purchaser's designee at Purchaser's direction;

(b) all Tangible Personal Property at the Cranston Facility;

(c) all Acquired Inventory;

(d) all Debtor's rights in the Contracts listed on Schedule 2.1(d) hereto, which Schedule 2.1(d) Purchaser may, with the reasonable consent of the Receiver and Secured Party, amend at any time up to the Closing, in each case to the extent any such Contract is transferable to Purchaser under the Sale Order (defined in Section 2.3(c) below);

(e) all Governmental Authorizations relating to the Cranston Facility respecting the Assets and all pending applications therefor or renewals thereof, in each case to the extent they are transferable to Purchaser under the Sale Order;

(f) subject to the provisions set forth in Section 5.7 herein, all data and Records related to the operations of Debtor at the Cranston Facility, including client and customer lists and Records from such operations, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals related to the operations of Debtor at the Cranston Facility, metallurgical and quality assurance certificates and Records relating to the Acquired Inventory and all prior sales of the Business, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, correspondence and other similar documents and Records (all in the state in which such records and information presently exists) and, subject to Legal Requirements, copies of Debtor's former and current employee and personnel Records relating to the Cranston Facility;

(g) all of the intangible rights and property of Debtor relating to the operation of the Cranston Facility, good-will, telephone and telecopy numbers, and e-mail addresses and websites directly or indirectly pertaining to the Assets at the Cranston Facility and/or the operations of Debtor at the Cranston Facility, to the extent they are transferable to Purchaser under the Sale Order;

(h) all Intellectual Property Rights of Debtor directly or indirectly pertaining to the Cranston Facility, including, without limitation, (i) all rights in and to the name "Scott Brass" and any related tradenames, trademarks, service marks, trade dress and other names and brand identifiers held or used by Debtor in connection with the operation of the Cranston Facility and the applications and registrations therefor, including all filings associated therewith and all specimens, samples, illustrations and files, correspondence, records or other documentation arising from or relating to such registrations, applications, and filings and (ii) all rights in and to Debtor's current and legacy systems for enterprise resource planning and control in respect only of the Business as conducted at the Cranston Facility, and further including Debtor's right title and interest in patents, unregistered copyrights and trademarks, if any, to the extent as provided in the Amended Relief From Stay Order (defined in Section 5.5 herein); and

(i) all Debtor's rights in the Tooling pertaining to any of the Assets at the Cranston Facility and/or former operations of Debtor at the Cranston Facility.

All of the foregoing property and assets are herein referred to collectively as the "**Assets**".

**2.2 Excluded Assets.** Notwithstanding anything to the contrary contained in Section 2.1 or elsewhere in this Agreement, the following assets of Debtor (collectively, the "**Excluded Assets**") are not part of the Transaction contemplated hereunder, are excluded from the Assets, and shall remain the property of Debtor after the Closing:

- (a) all cash and cash equivalents of Debtor;
- (b) all Accounts Receivable of Debtor;
- (c) all Inventory that is not Acquired Inventory;
- (d) all Contracts that are not listed on Schedule 2.1(d) hereto;
- (e) all current claims for refund of Taxes and other governmental charges of whatever nature;
- (f) all rights in connection with and assets of the Debtor Employee Plans;
- (g) claims against third parties that do not relate to specific Assets; any commercial tort claims; claims against insiders, including, without limitation, claims for failing to hedge copper prices; so-called bankruptcy causes of action; titled motor vehicles; utility and other security deposits; and retainers;
- (h) Debtor's corporate seals, stock record books, corporate record books containing minutes of meetings of directors and stockholders; Tax returns and Records, books of account and ledgers and such other Records having to do solely with the Debtor's organization or stock capitalization or Excluded Assets;
- (i) all personnel Records and other Records that Debtor is required by law to retain in its possession; and

- (j) all assets of Debtor not otherwise defined as Assets under this Agreement.

### 2.3 Consideration; Conveyance of Assets.

(a) In consideration for the Assets, Purchaser shall pay, on the Closing Date in accordance with Section 2.3(e) of this Agreement, an amount equal to (i) \$3,441,608.00, plus (ii) in the event the Adjustment (as defined below) exceeds \$2,191,608.00 (the "**Base Amount**"), the amount of such excess, minus (ii) in the event the Adjustment is less than the Base Amount, the amount of such deficiency (the "**Purchase Price**"). For purposes of this Agreement, the term "**Adjustment**" shall mean:

(i) the amount resulting from (A) the number of pounds of each elemental metal in the Acquired Inventory that is Finished Goods, as is, where is, multiplied by (B) the average price per pound for the last Official Bid price on the London Metal Exchange for such elemental metals on each of the five business days immediately prior to the Closing Date; plus

(ii) the amount resulting from (A) the number of pounds of each elemental metal in the Acquired Inventory that is Work In Process, as is, where is, multiplied by (B) the average price per pound for the last Official Bid price on the London Metal Exchange for such elemental metals on each of the five business days immediately prior to the Closing Date minus ten cents (\$0.10) per pound for the pounds of elemental copper in such Inventory; plus

(iii) the amount resulting from (A) the number of pounds of each elemental metal in the Acquired Inventory that is Base Inventory and that is capable of being processed at the Cranston Facility without further width or thickness reduction, multiplied by (B) the average price per pound for the last Official Bid price on the London Metal Exchange for such elemental metals on each of the five business days immediately prior to the Closing Date, less (C) twenty two cents (\$0.22) per pound for the pounds of elemental copper in such Inventory, and less (D) seven cents (\$0.07) per pound for the pounds of all other alloys in such Inventory; plus

(iv) the amount resulting from (A) the number of pounds of each elemental metal in the portion of the Acquired Inventory Scrap, multiplied by (B) the average price per pound for the last Official Bid price on the London Metal Exchange for such elemental metals on each of the five business days immediately prior to the Closing Date, less (C) thirty cents (\$0.30) per pound for the pounds of elemental copper in such Inventory, and less (D) ten cents (\$0.10) per pound for the pounds of all other alloys in such Inventory.

(b) Secured Party on the one hand, and Purchaser on the other, shall jointly conduct and/or agree upon the results of a physical count of Inventory no later than March 12, 2009 (the "**Inventory Count**"). On the Closing Date, Secured Party on the one hand, and Purchaser on the other, shall, after confirming the same through the Receiver, mutually apply the Inventory Count information to the calculations set forth in Section 2.3(a) above to determine the final amount of the Purchase Price.

(c) To consummate the Transaction and this Agreement, promptly after the Parties' execution of this Agreement, Receiver shall file his motion with the Superior Court (the "**Sale Motion**"), seeking approval of this Agreement and the Superior Court's entry of an order, in form and substance reasonably satisfactory to Purchaser, that (i) approves this Agreement and the Transaction contemplated herein, (ii) approves Receiver's sale of Debtor's right, title and interest in the Assets to Purchaser, free and clear of all Encumbrances (except as may be provided in this Agreement or in such Order), and (iii) approves Receiver's execution and delivery of the Sale Documents (defined below) as necessary to evidence conveyance of the Assets to Purchaser (the "**Sale Order**"), and further shall serve and/or publish notice of hearing on the Sale Motion and of related competitive bidding and other applicable procedures, if any, as required and approved by the Superior Court (the "**Sale Motion Procedures**").

(d) The sale, transfer, conveyance, assignment and delivery of the Assets shall be made pursuant to the Sale Order and those respective forms of bill(s) of sale, deed and related documentation described on Schedule 2.3(d) annexed hereto, in form and substance reasonably acceptable to Purchaser, to vest in Purchaser as of the Closing Date all of Debtor's right, title and interest in the Assets sold hereunder (collectively the "**Sale Documents**").

(e) Subject to satisfaction of the conditions in Articles 6 and 7 of this Agreement, on the Closing Date Purchaser shall pay to Receiver an amount equal to the Purchase Price less the Deposit, in immediately available funds by wire transfer to an account or accounts specified by Receiver. Within two (2) business days of its receipt of the Purchase Price, Receiver shall pay Secured Party, in immediately available funds by wire transfer to an account specified in writing by Secured Party, the Purchase Price, including the Deposit, less any Closing Taxes (defined in Section 2.3(g) below) and less a holdback of \$25,000 (the "**Holdback**"). On the Closing Date Receiver shall pay the respective Closing Taxes and shall, upon request of either Purchaser or Secured Party, provide evidence of the payment of such Closing Taxes. Upon confirmed receipt by Secured Party of the Purchase Price and the Deposit, less the amount of the Closing Taxes and less the amount of the Holdback, Receiver shall deliver and release to Purchaser the fully executed Sale Documents. As soon as practical after the Closing Date, and in any event not later than sixty (60) days after the Closing Date, the Receiver shall pay to Secured Party the Holdback, less any amount of the Holdback applied by the Receiver in payment of any accrued and unpaid reasonable fees or expenses incurred by the Receiver in connection with his appointment as receiver for Debtor; provided, that, prior to any application of the Holdback (or any portion thereof) to any such fees or expenses, the Receiver shall provide Secured Party with an invoice and accompanying detailed statement of services, which shall include a reasonable description of the services giving rise to such fees or expenses, and, subject to any rules or procedures of the Superior Court governing the same, Secured Party shall have five (5) business days from its receipt of such invoice and statement of services to review for reasonableness the fees and expenses for which the Receiver seeks payment pursuant to such invoice. Purchaser shall have no obligation whatsoever for or with respect to any fees or expenses of the Receiver.

(f) Receiver makes no warranties, whether expressed or implied, with respect to the Transaction or the Assets, other than as expressly set forth in this Agreement and the Sale Documents. Receiver expressly disclaims any warranty of merchantability or fitness for any particular purpose with respect to the Assets.

(g) All transfer or other similar Taxes in connection with the transfer of the Cranston Real Property and/or the Tangible Personal Property to Purchaser, including real estate Taxes pro-rated to the Closing Date in connection with transfer of the Cranston Real Property, and all recording and filing fees that are not exempt under applicable law (the "**Closing Taxes**"), shall be paid by Receiver on or as of the Closing Date from the Purchase Price as specified above in Section 2.3(e) above. Not later than three (3) days before the Closing Date, Receiver shall deliver to Secured Party a statement, based on information provided by the applicable local taxing authorities, of the respective amounts of all Closing Taxes to be paid by Receiver on or as of the Closing Date.

**2.4 Deposit.** Upon the Parties' execution of this Agreement, the Superior Court's approval of the Sale Motion Procedures, the Receiver's filing of the Sale Motion, and his service of the requisite notice of hearing and commencement of the period for notice of hearing on approval of the Sale Motion, Purchaser shall thereupon pay to Receiver an earnest money deposit (the "**Deposit**") in the amount of One Million Dollars (\$1,000,000). The Deposit shall be held in escrow by Receiver in a federally insured account(s) (providing insurance for the full amount of the Deposit) at Chase Bank in Receiver's name, and in such capacity as escrow agent for such purposes under the terms and upon the conditions of this Agreement. In the event the Closing occurs in accordance with this Agreement, the Deposit shall be applied to the Purchase Price at Closing and disbursed by Receiver on or after the Closing Date in accordance with Section 2.3(e) of this Agreement. In the event this Agreement is terminated prior to the Closing, the Deposit shall be returned to Purchaser or retained by Receiver, as the case may be, in accordance with Section 8 hereof.

**2.5 Closing.** Subject to satisfaction or waiver of all conditions to the obligations of the Parties to consummate the transactions contained herein (other than conditions with respect to actions the respective Parties will take at the Closing itself), the closing of the transactions contemplated by this Agreement (the "**Closing**") shall take place commencing at 9:00 a.m. local time on the first business day after the entry of the Sale Order (the "**Closing Date**").

### **3. REPRESENTATIONS AND WARRANTIES OF RECEIVER**

Except as set forth herein, Receiver represents and warrants to Purchaser as follows:

#### **3.1 Power and Authorization.**

Upon the Parties' execution of this Agreement and entry of the Sale Order, Receiver shall have full power and authority to consummate the Transaction contemplated by this Agreement and to execute and deliver the Sale Documents. Further, upon entry of the Sale Order this Agreement, when executed by the Parties, will be a valid and binding obligation of Receiver, and enforceable against Receiver in accordance with and subject to its terms.

#### **3.2 No Broker.**

Receiver has not retained any broker or finder in connection with the Transaction contemplated by this Agreement, and is not obligated and has not agreed to pay any brokerage commission or fee.

#### 4. REPRESENTATIONS AND WARRANTIES OF PURCHASER

Except as set forth herein, Purchaser represents and warrants to Receiver as follows:

##### 4.1 Power and Authorization.

Upon the Parties' execution of this Agreement and entry of the Sale Order, Purchaser shall have full power and authority to consummate the Transaction contemplated by this Agreement, upon the terms and subject to the conditions of this Agreement. Further, this Agreement, when executed by the Parties, will be a valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with and subject to its terms.

4.2 Purchase of Assets. Purchaser has agreed to purchase the Assets on the basis of its own independent investigation and has not sought or relied upon any representation or warranty from Receiver, except as expressly set forth in this Agreement and in the Sale Documents. Purchaser acknowledges that, except as otherwise set forth herein, Purchaser is acquiring the Assets on an "as is, where is" basis as of the Closing Date, and that Purchaser shall accept the Assets in their present state, condition and location as provided in this Agreement.

#### 5. COVENANTS OF PARTIES; OTHER AGREEMENTS

##### 5.1 Sale Motion.

Promptly after the parties' execution of this Agreement, Receiver shall seek to obtain the Sale Motion Procedures and shall file and thereafter prosecute the Sale Motion for approval of the Transaction contemplated by this Agreement and entry of the Sale Order.

5.2 Access to Information. During the period from the date of this Agreement until the earlier to occur of the Effective Time or the termination of this Agreement in accordance with the provisions of Article 8 hereof, Receiver will cooperate with Purchaser and, to the extent reasonably necessary, reasonably assist Purchaser's reasonable access, during regular business hours, to the Assets, including to files, books and Records.

5.3 Conveyance of Cranston Real Property to Designee. The Parties agree that prior to Closing Purchaser may identify a designee of Purchaser to acquire Debtor's right, title and interest in and to the Cranston Real Property included in the Assets, under the terms and upon the conditions of this Agreement (such designee, the "*Cranston Real Property Purchaser*").

##### 5.4 Mishawaka Inventory.

(a) The Parties recognize that the Mishawaka Facility and the Inventory at the Mishawaka Facility (such Inventory, the "*Mishawaka Inventory*") are not included in the Assets contemplated to be sold to Purchaser pursuant to this Agreement and the Sale Order.

(b) Receiver will request the Superior Court authorize Receiver to permit Secured Party to conduct a private sale of the Mishawaka Inventory to Purchaser under Article 9 of the UCC as enacted in the Commonwealth of Massachusetts (the "*UCC Sale*"), to permit Purchaser

to acquire the Mishawaka Inventory and certain spools, cores, liners and pallets related thereto under the UCC Sale on the Closing Date.

(c) Purchaser agrees to purchase the Mishawaka Inventory, in accordance with Schedule 5.4(c) annexed hereto, from Secured Party pursuant to and under the UCC Sale on terms and conditions acceptable to Purchaser and Secured Party, which shall include a purchase price calculated in substantially the same manner as the Purchase Price for the Inventory hereunder; provided, however, that as a condition to Purchaser's obligation to purchase the Mishawaka Inventory, Purchaser shall have received evidence, satisfactory to Purchaser, that Purchaser shall be granted access to the Mishawaka Facility, during normal business hours and upon prior notice to Secured Party, for 21 days subsequent to the closing of such UCC Sale, for the purpose of enabling Purchaser to remove all of the Mishawaka Inventory from the Mishawaka Facility, without any obligation to pay any storage, rental or other charge therefor (the "*Mishawaka Access*"). Subject to satisfaction of the conditions to Purchaser's obligation to close and perform under the agreement between Secured Party and Purchaser respecting the UCC Sale and as described in Section 6.4 herein, Purchaser agrees to close its purchase of the Mishawaka Inventory under the UCC Sale on the Closing Date of this Agreement.

**5.5 Amended Relief From Stay Order.** The Parties acknowledge that Secured Party has agreed to seek the Bankruptcy Court's entry of an order amending the Relief From Stay Order to (i) include Debtor's right, title and interest in patents, unregistered copyrights and trademarks, if any, within the Relieved Assets and (ii) consistent with the Relief From Stay Order, order that the Relieved Assets are or are deemed to be formally abandoned in accordance with Section 554 of the Bankruptcy Code (as such, the "*Amended Relief From Stay Order*").

**5.6 License.** Purchaser hereby grants to Secured Party (and its agents and designees) a non-exclusive, irrevocable, royalty free license to use the names "Scott Brass", Scott Brass, Inc." and trade names of the Inventory or under which the Inventory was sold by Debtor that are included in the acquired Intellectual Property Rights and/or Acquired Inventory, solely in connection with the liquidation, sale or other disposition by Secured Party (or its designee) of any Excluded Assets or other assets of Debtor in which Secured Party has a lien or security interest and which are not included in the Assets sold under this Agreement; provided, that, Secured Party shall have no right to assign, sell or convey the license granted to it pursuant to this Section 5.6.

**5.7 Records.** The Purchaser acknowledges and understands that (i), pursuant to the Relief from Stay Order, the Trustee and Secured Party are entitled to reasonable mutual access to any Records in the possession, custody or control of either of them and (ii) except as set forth in clause (z) below with respect to copies of any Ongoing Records (as defined below), neither Secured Party nor Receiver shall be required or have any obligation to deliver to Purchaser any Ongoing Records; provided, that, Secured Party shall (x) prior to the Closing Date, meet with the Trustee or his agents to determine the Records, if any, that the Trustee reasonably believes he will need to retain on or after the Closing Date (the "*Ongoing Records*"), (y) prior to Closing Date, provide to Purchaser a list of all Ongoing Records that will not be delivered to Purchaser and (z) provide to Purchaser at Secured Party's expense or, at the option of Secured Party, obtain an Order of the Bankruptcy Court directing the Trustee to provide to

Purchaser at the Trustee's expense, copies of any Ongoing Records that will not be delivered to Purchaser and for which Purchaser requests a copy. Purchaser agrees to provide the Trustee reasonable access for one (1) year following the Closing Date to Records acquired by Purchaser as Trustee may reasonably require in connection with Trustee's administration of Debtor's estate.

## **6. CONDITIONS TO OBLIGATIONS OF RECEIVER**

Receiver's obligations hereunder are subject to the fulfillment or satisfaction, on and as of the Closing, of each of the following conditions (any one or more of which may be waived by Receiver):

**6.1 Compliance with Law.** There shall be no Order by or Proceeding pending with any Court or governmental authority which would enjoin, prohibit or render illegal the Transaction contemplated by this Agreement.

**6.2 Entry of Sale Order.** The Sale Order shall have been entered by the Superior Court approving Receiver's sale of the Assets to Purchaser upon the terms and conditions of this Agreement and shall not then be subject to stay or appeal.

**6.3 Purchase Price.** On the Closing Date, Purchaser shall deliver and pay the Purchase Price to Receiver, in immediately available funds, in accordance with this Agreement.

**6.4 Mishawaka Inventory.** Secured Party and Purchaser shall have entered into an agreement, in form and substance satisfactory to Secured Party and Purchaser, providing for (i) Purchaser's purchase from Secured Party of the Mishawaka Inventory under and pursuant to the UCC Sale on the Closing Date and (ii) the Mishawaka Access, in each instance, as provided in Section 5.4 herein.

## **7. CONDITIONS TO OBLIGATIONS OF PURCHASER**

The obligations of Purchaser hereunder are subject to the fulfillment or satisfaction on, and as of the Closing, of each of the following conditions (any one or more of which may be waived by Purchaser):

**7.1 Covenants.** Receiver shall have complied in all material respects with all of his covenants contained in Article 5 on or before the Closing Date.

**7.2 Absence of Material Adverse Effect.** No Material Adverse Effect shall have occurred since the date of this Agreement.

**7.3 Compliance with Law.** There shall be no Order by or Proceeding pending with any Court or governmental authority which would enjoin, prohibit or render illegal the Transaction contemplated by this Agreement.

**7.4 Mishawaka Inventory.** Secured Party and Purchaser shall have entered into an agreement, in form and substance satisfactory to Secured Party and Purchaser, providing for (i) Purchaser's purchase from Secured Party of the Mishawaka Inventory under and pursuant

to the UCC Sale on the Closing Date and (ii) the Mishawaka Access, in each instance, as provided in Section 5.4 herein.

**7.5 Amended Relief From Stay Order.** The Bankruptcy Court shall have entered the Amended Relief From Stay Order.

**7.6 Entry of Sale Order.** The Sale Order shall have been entered by the Superior Court, approving and authorizing Receiver's sale of the Assets to Purchaser upon the terms and conditions of this Agreement, and shall not then be subject to stay or appeal.

**7.7 Other Deliveries.** Receiver shall have executed and delivered the Sale Documents and done the acts required of Receiver in connection with the Closing as described in this Agreement. In furtherance thereof, the Parties each agree that, in furtherance of the transactions contemplated by this Agreement to convey to Purchaser all Debtor's right, title and interest in the Assets, from time to time after the Closing Date, at the Parties' equal shared expense, each of them will use their reasonable best efforts to take all actions and to do all things necessary, proper or advisable in order to carry out the Transaction contemplated herein, including executing and delivering such further instruments of conveyance and transfer and taking such other action as may be reasonably requested by the other Party to carry out the purposes and intents of this Agreement and the Transaction contemplated hereby.

## **8. TERMINATION**

**8.1 Termination of Agreement.** The Parties may terminate this Agreement as provided below:

(a) Purchaser and Receiver may terminate this Agreement by mutual written consent at any time prior to the Closing;

(b) Purchaser may terminate this Agreement by giving written notice to Receiver at any time prior to the Closing Date if:

(i) Receiver has Breached any representation, warranty, or covenant contained in this Agreement in any material respect, Purchaser has notified Receiver of the Breach, and the Breach has continued without cure reasonably satisfactory to Purchaser for a period of ten (10) days after the notice of Breach, or Receiver fails to consummate the transactions contemplated by this Agreement, notwithstanding the satisfaction or waiver of all of the conditions set forth in Sections 6 and 7 hereof;

(ii) Any condition under Section 7 herein is not fulfilled or satisfied as of the Closing, unless waived by Purchaser in its sole discretion;

(iii) Receiver withdraws or ceases to prosecute the Sale Motion Procedures or the Sale Motion;

(iv) Any or all of the Assets are sold to a Person other than Purchaser or its designee; or

(v) The Sale Order is not entered on or before March 16, 2009.

(c) Receiver may terminate this Agreement by giving written notice to Purchaser at any time prior to the Closing if Purchaser has Breached any representation, warranty, or covenant contained in this Agreement in any material respect, Receiver has notified Purchaser of the Breach, and the Breach has continued without cure reasonably satisfactory to Receiver for a period of two (2) days after the notice of Breach, or Purchaser Breaches and thereby fails to consummate the transactions contemplated by this Agreement, notwithstanding the satisfaction or waiver of all of the conditions set forth in Section 7 hereof.

**8.2 Treatment of Deposit Upon Termination.** In the event of a termination of this Agreement pursuant to Sections 8.1(a) or (b)(i) through (b)(v), the Deposit shall be returned to Purchaser by Receiver, as escrow agent, within two business days of such notice of termination. In the event of a termination of this Agreement pursuant to Section 8.1(c), the Deposit shall be (i) deemed retained by Receiver as liquidated damages, which Receiver and Purchaser agree will be difficult to calculate and (ii) paid by Receiver to Secured Party. If Receiver is entitled to retain the Deposit in accordance with this Agreement, it shall be deemed to be liquidated damages and Receiver's and Secured Party's only remedy for Purchaser's Breach.

## **9. MISCELLANEOUS**

**9.1 Entire Agreement.** This Agreement, the Schedules and the Exhibits hereto constitute the entire understanding and agreement of the Parties hereto with respect to the subject matter hereof and supersede all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the Parties with respect to the subject matter hereof.

**9.2 Assignment; Binding Upon Successors and Assigns.** Neither Party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other Party hereto; *provided, however*, that Purchaser may assign its rights to acquire the Assets in whole or in part to one or more affiliates, but such assignment will not relieve Purchaser of its obligations under this Agreement. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**9.3 No Third Party Beneficiaries.** No provisions of this Agreement are intended, nor will be interpreted, to provide or create any third party beneficiary rights or any other rights of any kind in any client, customer, affiliate, stockholder, partner, employee of any Party hereto or any other Person unless specifically provided otherwise herein, and, except as so provided, all provisions hereof will be personal solely between the Parties to this Agreement; provided, however, that notwithstanding the foregoing, Secured Party shall be deemed a third party beneficiary for purposes of Sections 2.1(d), 2.1(f), 2.3(e), 2.3(g), 5.4, 5.6, 5.7, 8.2 and 9.3 of this Agreement.

**9.4 No Joint Venture.** Nothing contained in this Agreement will be deemed or construed as creating a joint venture or partnership between the Parties hereto. No Party is by virtue of this Agreement authorized as an agent, employee or legal representative of any other

Party. No Party will have the power to control the activities and operations of any other. No Party will have any power or authority to bind or commit any other. No Party will hold itself out as having any authority or relationship in contravention of this Section.

**9.5 Severability.** If any provision of this Agreement, or the application thereof, is for any reason held to any extent to be invalid or unenforceable, the remainder of this Agreement and application of such provision to other persons or circumstances will be interpreted so as reasonably to affect the intent of the parties hereto. The parties further agree to replace such unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of the void or unenforceable provision.

**9.6 Section Headings.** A reference to an Article, Section or Exhibit will mean an Article or Section in, or an Exhibit to, this Agreement, unless otherwise explicitly set forth. The titles and headings in this Agreement are for reference purposes only and will not in any manner limit the construction of this Agreement. For the purposes of such construction, this Agreement will be considered as a whole.

**9.7 Amendment, Extension and Waivers.** At any time prior to the Effective Time, Purchaser and Receiver may, to the extent legally allowed: (a) extend the time for performance of any of the obligations of the other Party; (b) waive any inaccuracies in the representations and warranties made to such Party contained herein or in any document delivered pursuant thereto; and (c) waive compliance with any of the agreements, covenants or conditions for the benefit of such Party contained herein. Any term or provision of this Agreement may be amended at any time. Any agreement to any amendment, extension or waiver will be valid only if set forth in writing and signed by all of Parties. The waiver by a Party of any Breach hereof or default in the performance hereof will not be deemed to constitute a waiver of any other default or any succeeding Breach or default. The failure of any Party to enforce any of the provisions hereof will not be construed to be a waiver of the right of such Party thereafter to enforce such provisions.

**9.8 Public Announcement.** Except to the extent required to obtain the Amended Relief From Stay Order or any provisions of the Sale Motion Procedures, the Sale Motion, and/or the UCC Sale, no Party hereto shall issue any press release with respect to this Agreement or the transactions contemplated hereby other than with the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Prior to the issuance of any announcement of this Agreement and the transactions contemplated hereby by any Party, such Party will consult with the other Party regarding the content of such announcement and obtain such other Party's reasonable approval of such press release. Notwithstanding the foregoing, either Party may issue such announcements, and make such other disclosures regarding this Agreement or the transactions contemplated hereby, as it determines are required under applicable Legal Requirements.

**9.9 Governing Law.** The validity of this Agreement, the construction of its terms, and the interpretation and enforcement of the rights and duties of the Parties of this Agreement will be exclusively governed by and construed in accordance with the internal laws of the State of Rhode Island as applied to agreements entered into solely between residents of

and to be performed entirely in the State of Rhode Island, without reference to that body of law relating to conflicts of law or choice of law.

**9.10 Jurisdiction; Venue; Waiver of Jury Trial.**

(a) Except to the extent that the Bankruptcy Court in the Bankruptcy Case shall have jurisdiction to hear and determine any claims or disputes between the Parties under this Agreement, each of the Parties to this Agreement hereby agrees that the Superior Court shall have non-exclusive jurisdiction to hear and determine any claims or disputes between the Parties pertaining directly or indirectly to this Agreement or to any matter arising herefrom (unless otherwise expressly provided for herein or therein). To the extent permitted by law, each Party hereby expressly submits and consents in advance to such jurisdiction in any action or proceeding commenced by the other Party hereto in any of such courts, and agrees that service of such summons and complaint or other process or papers may be made by registered or certified mail addressed to such Party at the address to which notices are to be sent pursuant to this Agreement. Each of the Parties waives any claim that the Bankruptcy Court in the Bankruptcy Case or the Superior Court, as the case may be, is an inconvenient forum or an improper forum based on lack of venue. The choice of forum set forth in this Section shall not be deemed to preclude the enforcement of any judgment obtained in such forum or the taking of any action to enforce the same in any other appropriate jurisdiction.

(b) Each Party hereto hereby waives, to the fullest extent permitted by applicable Legal Requirement, any right it may have to a trial by jury in respect of any litigation directly or indirectly arising out of, under or in connection with this Agreement. Each Party hereto (a) certifies that no representative, agent or attorney of the other Party has represented, expressly or otherwise, that the other Party would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other Party hereto have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section.

**9.11 Notices.** Any notice or other communication required or permitted to be given under this Agreement will be in writing, will be delivered via electronic mail, facsimile, personally or by mail or express delivery, postage prepaid, and will be deemed effectively given upon transmission of electronic mail or facsimile or upon actual delivery or, if mailed by registered or certified mail, on the third business day following deposit in the mails, transmitted and/or addressed as follows:

If to Purchaser, to: House of Stainless, Inc.  
7160 Chagrin Rd., Suite 200  
Chagrin Falls, Ohio 44023  
Attention: Richard R. Burkhart  
Facsimile No.: (440) 893-5503

with a copy (which shall not constitute notice) to:

Benesch, Friedlander, Coplan & Aronoff LLP  
200 Public Square  
Suite 2300  
Cleveland, OH 44114-2378  
Attention: William E. Schonberg, Esq. and  
John S. Gambaccini, Esq.  
Facsimile No.: (216) 363-4588  
E-mail: wschonberg@beneschlaw.com  
jgambaccini@beneschlaw.com

If to Receiver, to: Andrew Richardson, Esq.  
Boyajian Harrington & Richardson  
182 Waterman Street  
Providence, RI 02906  
Phone: (401) 273-9600  
Facsimile: (401) 273-9605 Fax

If to Secured Party, to: Wachovia Capital Finance Corporation (New England)  
One Post Office Square, Suite 3600  
Boston, MA 02109  
Facsimile: (518) 562-0267  
Attn: Portfolio Manager (Scott Brass)

with a copy (which shall not constitute notice) to:

Otterbourg, Steindler, Houston & Rosen, P.C.  
230 Park Avenue  
New York, NY 10169  
Attention: James Cretella, Esq.  
Facsimile: (917) 368-7156

or to such other address as the Party in question may have furnished to the other Party by written notice given in accordance with this Section.

**9.12 Time is of the Essence.** The Parties hereto acknowledge and agree that time is of the essence in connection with the execution, delivery and performance of this Agreement.