

"D. J. Miller"
<DJMiller@tgf.ca>

09/20/2010 08:05
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To "Aimee Yee" <aimee.yee@blakes.com>, "Alena Thouin" <alena.thouin@fsco.gov.on.ca>, "Alissa Mitchell" <amitchell@millertomson.com>, "Annie Cordo" <acordo@mnat.com>, "Charles Sinclair" <csinclair@sgmlaw.com>, "Chris Burr" <chris.burr@blakes.com>, "Clifton Prophet" <clifton.prophet@gowlings.com>, "D. J. Miller" <DJMiller@tgf.ca>, "David Chernos" <dchernos@torys.com>, "David Kerr" <david.m.kerr@bnymellon.com>, "Deborah McPhail" <deborah.mcphail@fsco.gov.on.ca>, "Derek Bulas" <dbulas@goodmans.ca>, "Donald Rogers" <donald.rogers@cit.com>, "Eric Field" <field.eric@pbgc.gov>, "Gary Jacobson" <gjacobson@heroldlaw.com>, "Guillaume Boudreau-Simard" <gboudreausimard@stikeman.com>, "Harold Caley" <caleyh@caleyway.com>, "Harvey Chaiton" <harvey@chaitons.com>, "Honor Heath" <heathhs@nu.com>, "Jay Swartz" <jswartz@dwvp.com>, "Jesse Kugler" <kuglerj@caleyway.com>, "Joel Michaud" <jmichaud@labour-law.com>, "John Adair" <jadair@adairmorse.com>, "John Contini" <jcontini@langmichener.ca>, John McKenna/CA/FAS/PwC@Americas-CA, Jonathan D. Zidel/CA/FAS/PwC@Americas-CA, "Julie Mortreux" <jmortreux@deloitte.ca>, "Karine Dionne" <karine.dionne@steinmonast.ca>, "Kathy Mah" <kmah@stikeman.com>, "Ken Stuebing" <stuebingk@caleyway.com>, "Larry Ellis" <LEllis@tgf.ca>, "Lawrence Theall" <ltheall@theallgroup.com>, "Lisa Daley" <lisa.daley@cit.com>, "Louis Robillard" <louis.robillard@rrq.gouv.qc.ca>, "Marc-Antoine Chiasson" <marc.chiasson@mcinnescooper.com>, "Margaret Anderson" <panderson@fhslc.com>, "Marie-Pier Charbonneau" <mpcharbonneau.ctavocats@gmail.com>, "Mario Faieta" <mario.faieta@ontario.ca>, "Matthew Gottlieb" <mgottlieb@dwvp.com>, "Maxine Mongeon" <mmongeon@theallgroup.com>, "Michael Barrack" <mbarrack@tgf.ca>, Michelle Pickett/CA/FAS/PwC@Americas-CA, "Mike Harquail" <mike.harquail@blakes.com>, "Naomi Loewith" <nloewith@litigate.com>, "Natalie LeBlanc" <Natalie.leblanc@gnb.ca>, "Natasha De Cicco" <ndecicco@torys.com>, "Natasha vandenHoven" <nvandenhoven@dwvp.com>, Nicole O'Sullivan <nosullivan@reedsmith.com>, "Pamela Huff" <pamela.huff@blakes.com>, "Paula Turtle" <pturtle@usw.ca>, "Peter Griffin" <pgriffin@litigate.com>, "Peter MacPhail" <peter.macphail@GormanNason.com>, "Peter Osborne" <posborne@litigate.com>, "Robert Chadwick" <rchadwick@goodmans.ca>, "Robert Thornton" <RThornton@tgf.ca>, "Robin Schwill" <rschwill@dwvp.com>, "Robin Walker" <robin.walker@gowlings.com>, "Roger Clement" <rclement@verrilldana.com>, "Sharon Polan" <spolan@stikeman.com>, "Sherri Lazear" <slazear@bakerlaw.com>, "Sheryl Seigel" <sseigel@langmichener.ca>, "Soleil Tremblay" <stremblay.ctavocats@gmail.com>, "Stuart Brotman" <sbrotman@fasken.com>, "Susan Grundy" <susan.grundy@blakes.com>, "Thomas McRae" <thomas.mcrae@shibleywrighton.com>, "Timothy Hopkins" <tth@GormanNason.com>, "Tony DeMarinis" <tdemarinis@torys.com>, Tracey Weaver/CA/FAS/PwC@Americas-CA

cc "The Honourable Justice Sarah Pepsall" <Sarah.Pepsall@scj-csj.ca>

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All Counsel and Your Honour:

We are counsel to the Applicants in this matter. On July 7, 2010 an Approval and Vesting Order was granted by the Canadian Court approving a transaction involving a sale of the Applicants' Gorham, New Hampshire facility, subject to satisfaction or waiver of certain outstanding conditions. A similar Order was issued by the US Bankruptcy Court on July 14, 2010.

The sale transaction was originally scheduled to close on August 31, 2010 but as the condition for financing had not been satisfied by that date, the parties agreed to extend the closing date to September 30, 2010 pursuant to terms set out in a Fourth Amendment to the Asset Purchase Agreement (“APA”). The Service List and Madam Justice Pepall were advised of the extension, and a copy of the Fourth Amendment to the APA was circulated and filed with the Court. Pursuant to the Fourth Amendment, the condition for financing was to have been satisfied by the purchaser by Friday, September 17, 2010.

We wish to advise all stakeholders that the purchaser did not satisfy the condition for financing by September 17, 2010. If the Applicants are not able to conclude a sale of the Gorham facility on a going concern basis, it will be necessary to effect a wind-down of operations and a liquidation of all assets. The Applicants and the Monitor are of the view that such a step would likely result in a lower recovery for the stakeholders than concluding a going concern sale. In order to preserve the possibility of a going concern sale, the Applicants and the purchaser have negotiated a Fifth Amendment to the APA, a copy of which is attached. The effect of the Fifth Amendment is to preserve a going concern sale under the APA, but to permit the Applicants to minimize the impact of any potential shutdown of operations, by managing inventory levels and ordering only those goods that are required to fill confirmed orders for any transition period. All covenants on the part of the Applicants under the APA that relate to operating the business in the ordinary course are waived by the purchaser.

We will keep you advised of any significant developments. Please feel free to contact our office or the Monitor if you have any concerns with the above.

Regards,

D.J.

c.c. The Honourable Madam Justice Sarah Pepall



D.J. Miller | djmiller@tgf.ca | **Direct Line: 416-304-0559** | **Thornton Grout Finnigan LLP** | Suite 3200, Canadian Pacific Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | Phone: 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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**Fifth Amendment
to
Asset Purchase Agreement
dated May 21, 2010**

This Fifth Amendment to Asset Purchase Agreement dated May 21, 2010, is made as of the 17th day of September, 2010.

Between:

MB Growth Partners II, LP, a limited partnership organized under the laws of Delaware having an office at 66 Hanover Street, Manchester, NH 03101 and a limited liability company to be formed for the purpose of acquiring the Purchased Assets (hereinafter defined) (jointly and severally, the "Purchaser")

AND:

FRASER N.H. LLC, a limited liability company organized under the laws of Delaware having an office at 72 Cascade Flats, Gorham, NH 03581 (the "Vendor")

Whereas:

- A. The Vendor and the Purchaser have executed an Asset Purchase Agreement dated May 21, 2010 (the "Agreement") regarding certain assets in Berlin and Gorham, Coös County, New Hampshire (the "Purchased Assets");
- B. The Vendor and the Purchaser entered into a First Amendment to the Agreement dated as of June 30, 2010 (the "First Amendment"); a Second Amendment to the Agreement also dated as of June 30, 2010 (the "Second Amendment"); a Third Amendment to the Agreement dated as of July 13, 2010 (the "Third Amendment"); and a Fourth Amendment to the Agreement dated as of August 23, 2010 (the "Fourth Amendment"); and
- C. The Vendor and the Purchaser agree to amend the Agreement, as amended by the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment.

Now, therefore, the Vendor and the Purchaser hereby agree to amend the Agreement, as amended by the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment, as follows:

1. Amendments to the Agreement.

1.1 Termination of Certain Vendor Covenants as of September 18, 2010

Section 5 of the Agreement as amended is further amended by inserting immediately after Section 5.10 the following new section:

5.11 Termination of Certain Vendor Covenants under Sections 5.2 and 5.3 effective as of September 18, 2010

Effective as of September 18, 2010, the affirmative and negative covenants of the Vendor under Sections 5.2 and 5.3 of the Agreement as amended, with the exception of Sections 5.2(g), 5.2(h), 5.3(e), 5.3(h) and 5.3(k), shall terminate, and the Vendor shall be released and discharged from any liability with respect to, or any obligation to perform or conform to, such covenants. Notwithstanding any provision of the Agreement as amended (including, without limitation, Sections 5.2, 5.3 and 5.6 thereof, and each other provision of this Agreement as amended whether referenced herein or not) which imposes any obligation on Vendor to operate the Gorham Mill as a going concern or otherwise in the Ordinary Course through the Closing, effective on and after September 18, 2010, the Vendor shall be free to, in its sole discretion: (i) cease operations of the Gorham Mill on a permanent, temporary or indefinite basis at any time; (ii) publicly announce cessation of operations and solicit orders from customers in anticipation of such cessation of operations; (iii) limit, change or alter its operations in any way it determines, without limitation and without notice to or consultation with the Purchaser, and (iv) otherwise conduct the Business and operate or cease to operate the Gorham Mill in any manner it determines reasonable in its sole and absolute discretion. Without limiting the generality of the foregoing, and for avoidance of doubt, the Purchaser acknowledges that the Vendor may, on or after September 18, 2010, operate or cease to operate the Gorham Mill and conduct the Business as the Vendor determines appropriate in its sole and absolute discretion without limitation and without regard to any other provision in the Agreement as amended. To the extent that any of the foregoing constitutes or gives rise to a Material Adverse Change or a Material Adverse Effect, this Fifth Amendment shall constitute notice thereof to the Purchaser, and the Purchaser hereby acknowledges receipt of such notice and confirms that no further notice thereof shall be required. The Vendor shall provide notice to the Purchaser of any agreement to pledge, lease or encumber any Purchased Assets or of any agreement or transaction which would result in the creation of any Encumbrance on any of the Purchased Assets other than Permitted Encumbrances.

1.2 Section 6.2(j) Financing

Section 6.2(j) of the Agreement, as amended, is amended by deleting section 6.2(j) in its entirety and replacing it with the following:

(j) Financing. The Purchaser shall have obtained, on or before September 22, 2010 at 11:00 p.m. EDT, commitment(s) for financing, sufficient to complete the purchase of the Purchased Assets pursuant to this Agreement on Closing.

1.3 Section 11.9 Notices

Section 11.9 of the Agreement, as amended, is amended as follows:

1.3.1 The first sentence of Section 11.9 is amended by deleting said sentence and replacing it with the following:

All notices hereunder shall be deemed given if in writing and delivered personally or sent by email, facsimile or by registered or certified mail (return receipt requested), to the Parties at the following email, facsimile and mailing addresses (or at such other addresses as shall be specified by like notice):

1.3.2 The last paragraph of Section 11.9 is amended by deleting said paragraph and replacing it with the following:

Any notice given by mail shall be effective, if mailed at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, on the fourth Business Day after the post-marked date thereof. Any notice given by email or facsimile shall be effective on the same Business Day on which it is sent, or if not sent on a Business Day, on the first Business Day following its sending. Any notice delivered personally shall be effective at the time it is delivered to the applicable address noted above either to the individual designated above or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices and communications shall be delivered personally by facsimile or electronic transmission only.

2. Effect of Amendment: Rescission of Purchaser's Notice of Termination.

2.1.1 This Fifth Amendment is effective upon execution by the Parties. The Notice of Termination delivered to Vendor by Purchaser on September 16, 2010 (the "Termination Notice") shall be deemed retroactively rescinded, null and void, and of no force and effect.

2.1.2 In all other respects the Agreement, as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, and this Fifth Amendment shall remain in full force and effect. Time remains of the essence.

3. Vendor's Representations and Warranties at Closing.

Nothing in this Fifth Amendment shall amend the representations and warranties of the Vendor made in Section 4.1 of the Agreement as amended or affect the condition in Section 6.2(a) for the benefit of the Purchaser that the representations and warranties made by the Vendor in Section 4.1 shall be true and correct in all material respects as of the Closing.

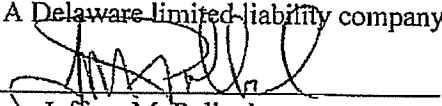
Dated as of the 17th day of September, 2010.

[Signature page follows]

MB Growth Partners II, LP
A Delaware limited partnership

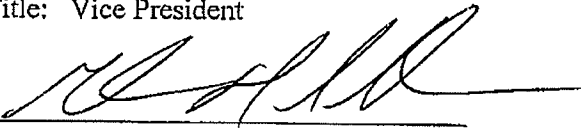
By: Its sole general partner,

MB Venture Management II, LLC,
A Delaware limited liability company

Per: 
Name: Jeffrey M. Pollock
Title: Its General Manager

FRASER N.H. LLC

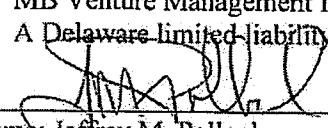
Per: _____
Name: William R. Manzer
Title: Vice President

Per: 
Name: Glen McMillan
Title: Secretary

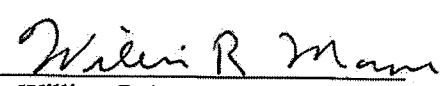
MB Growth Partners II, LP
A Delaware limited partnership

By: Its sole general partner,

MB Venture Management II, LLC,
A Delaware limited liability company

Per: 
Name: Jeffrey M. Pollock
Title: Its General Manager

FRASER N.H. LLC

Per: 
Name: William R. Manzer
Title: Vice President

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Title: Secretary