

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is dated this ____ day of July, 2019 ("Effective Date"), by and between **PRICEWATERHOUSECOOPERS INC., LIT**, ("PWC"), solely in its capacity as court-appointed receiver (the "Receiver") of the debtors (the "Debtors") in the eight Chapter 15 cases (the "Bankruptcy Cases") that are being jointly administered by the United States Bankruptcy Court for the Northern District of Oklahoma (the "Bankruptcy Court"), under its Case No. 19-10653-R, based upon the Receivership Order that the Court of Queen's Bench of Alberta in the Judicial Centre of Calgary, Canada (the "Canadian Court"), entered on April 1, 2019 in Court File No. 1901-04589, and as the Debtors' Chapter 15 recognized foreign representative ("Seller"), and **NXTNANO, LLC** ("Buyer" and, with Seller, the "Parties").

RECITALS

1.1 On May 16, 2019, the Receiver filed a motion (the "Sales Motion") in the jointly administered Bankruptcy Cases for sale of property that is essentially identical to the Assets (as hereafter defined) to Power Filters, Inc. ("Power Filters"). In connection with the Sales Motion, Power Filters tendered to the Receiver its cashier's check in the amount of \$55,059 (the "Power Filters Deposit").

1.2 The Sales Motion requested the Bankruptcy Court's approval of a sale to Power Filters, which would, in connection with its purchase of the property, enter into a two-year lease of the Premises (as hereafter defined) from the landlord of the Premises (the "Landlord") under which the monthly base rental obligation would have been \$6,453.00. The Premises represents a portion of the real property that Braden leases from the Landlord under the terms of a lease with an effective date of September 30, 2016 (the "Braden Lease"), which provides for a monthly base rental obligation of \$22,464. Had the sale proposed in the Sales Motion been completed, the Receiver estimates that the Landlord's potential monthly claims against Braden would have been reduced by \$6,453 / \$22,464 or 28.7%.

1.3 On May 24, 2019, Buyer filed an objection to the Sales Motion (the "Objection") and the Bankruptcy Court held a hearing (the "Hearing") on the Sales Motion, which was begun on May 29, 2019, was continued on May 30, 2019 and which has not concluded.

1.4 Buyer appeared at the Hearing and, consistent with directions from the Bankruptcy Court, deposited the sum of \$35,000 (the "Initial Deposit") into the trust account of counsel for the Seller before 1:00 p.m. on Friday, May 31, 2019, as security for those expenses that the Seller might incur as a result of not concluding the sale contemplated by the Sales Motion before June 1, 2019.

1.5 Seller intends to conduct a sales process (the "Sales Process") and, at the hearing on the motion that Seller will file pursuant to Section 6.4 of this Agreement, to request that the Bankruptcy Court approve the sale of the Assets to any party that proposes to purchase the Assets at a price higher than the Purchase Price (as hereafter defined) pursuant to the Sales

Process. The Sales Process will require any party that proposes a higher Purchase Price to execute an asset purchase agreement ("APA") that will contain the substance of the covenants that are in this Agreement that would be applicable to such a purchaser. (By way of example, provisions relating to the Initial Deposit would not apply.)

COVENANTS

In consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

2. SALE OF ASSETS.

2.1 **Sale of Assets.** Seller shall, subject to the terms and conditions of this Agreement, transfer and sell to Buyer (a) all of the tangible assets (including but not limited to all machinery, furniture, fixtures and equipment, and inventory) that are owned by Braden Manufacturing LLC ("Braden") and that are located on (within or outside any structures) the premises of the Braden Filter Manufacturing facility, at 5199 North Mingo, Tulsa, Oklahoma (the "Premises"), which Premises is further described in the attached **Exhibit A**, and (b), except as excluded in Section 2.2, all of the intangible assets that Braden owns (including but not limited to goodwill, and any interest that Braden owns in the tradenames "Braden Filtration" and "Bradenfilters," names similar thereto, technical data and part number data access) and that Braden used in Braden's business of designing, manufacturing and selling filters (the "Braden Filtration Business"). The tangible and intangible assets being sold, including but are not limited to the vehicles and equipment listed on **Exhibit B**, are referred to as the "Assets." Buyer is not assuming any of Seller's liabilities or obligations.

For the avoidance of doubt, the interest of Braden in any intangible assets, including websites, password information, patents, tradenames, trademarks or service marks that Seller is selling, is limited to those intangibles assets, including websites, password information, patents, tradenames, trademarks or service marks, if any, that Braden used exclusively in the Braden Filtration Business. The Seller is not selling any websites, password information, patents, tradenames, trademarks, service marks or other intangible assets that (1) Braden used, in whole or part, for any line of business that Braden conducted other than the Braden Filtration Business; (2) Braden used relative to all of its lines of business, including the Braden Filtration Business; (3) referred to Braden, generally; (4) referred to any line of business that Braden conducted other than the Braden Filtration Business; or (5) that referred to all of its lines of business, including the Braden Filtration Business.

2.2 **Excluded Assets.** Seller shall retain and shall not sell or transfer to Buyer:

a. cash, bank accounts, negotiable instruments, accounts receivable, prepaid expenses, insurance payments and deposits and credits, business records and documents related to the corporate organization of Braden Manufacturing, LLC.; and

b. the following Canon copiers and associated accessories:

iRC5255 s/n JME01779
iRD5035 s/n GNW56362
iRC5045 s/n GPQ55713
iRC5051 s/n GQM14234.

Seller is not selling or attempting to sell any specifications, drawings or other documents that may be in the possession of Braden or the Seller that belong to (i) customers of Braden, (ii) the owners of facilities for which Braden had contracted to perform services and (iii) subcontractors or other contract parties working on projects at such facilities (the "Projects").

2.3 **Confidentiality.** To the extent that Braden had obligations to hold confidential any information, specifications, drawings or other documents relating to any of the Projects, Buyer agrees to honor all such confidentiality obligations, to the extent (a) made known to Buyer, at any time, whether before or after the closing on this Agreement and (b) to the extent, if any, that Buyer obtains access to such information, specifications, drawings or documents.

2.4 **Use of Name:** After Closing (as hereafter defined), Buyer shall have the right, but not the obligation, to represent that it is carrying on a business in succession to Braden Manufacturing LLC's filter business.

2.5 **Purchase Price.** As consideration for the sale and transfer of the Assets, Buyer will pay to Seller, at Closing, the sum of three hundred thousand US dollars (\$300,000) (the "Purchase Price").

2.6 **Deposits and Method of Payment of Purchase Price.**

a. As security for payment of the Purchase Price or liquidated damages, as provided in Section 9, Buyer shall deposit with Seller the sum of ninety thousand US dollars (\$90,000) (the "Second Deposit") within forty-eight (48) hours of execution of this Agreement by both of the Parties.

b. At Closing, Seller shall apply all of the deposited funds to the Purchase Price, with Buyer paying any balance in cash or cash equivalent. Payment of the Purchase Price shall be made against delivery of Seller's bill of sale and such documents as are reasonably requested by Buyer to evidence the transfer of title to the Assets.

3. **CONDITION OF ASSETS.**

The Seller agrees to sell and convey the Assets to the Buyer, and the Buyer agrees to purchase the Assets from the Seller in their condition on the date of Closing. The Assets are sold to Buyer "AS IS, WHERE IS," and with all faults. The Seller specifically disclaims any and all warranties concerning the Assets, including, but not limited to, the implied warranties of merchantability or fitness for a particular purpose. The Buyer has inspected the Assets and accepts the Assets in their condition at Closing for all purposes.

4. **CLOSING.**

Except as provided in Section 11 of this Agreement, and unless waived by Seller, the closing of the transaction provided for in this Agreement (the "Closing") shall take place at a mutually agreeable location on a mutually agreeable date (the "Closing Date") not later than two (2) business days after the later of (a) the entry of the Bankruptcy Court's order approving the sale and (b) approval of the Canadian Court. At Closing, Seller shall execute and deliver to Buyer a special warranty bill of sale conveying the Assets to the Buyer free and clear of all right, title or interest of third parties claiming an interest created by PwC, as Receiver, but not otherwise.

5. **CONDITION TO CLOSING.**

The obligation of Buyer and Seller to close the purchase and sale of the Assets is expressly conditioned upon approval of the Canadian Court and on the Bankruptcy Court's entry of an order in the Bankruptcy Cases that authorizes such sale, free and clear of liens or other interests, except any liens on or interests of the Landlord in any of the Assets.

6. **REPRESENTATIONS AND WARRANTIES OF SELLER.**

Seller makes the following representations and warranties:

6.1 Seller is the receiver and foreign representative for Braden Manufacturing, LLC in the pending Chapter 15 Bankruptcy Cases, and has the authority to enter into this Agreement subject to subsequent approval of the Bankruptcy Court and the Canadian Court.

6.2 This Agreement is legally binding and enforceable against Seller in accordance with its terms. This Agreement and all actions contemplated by this Agreement do not violate the provisions of any agreement, judgment, order, ruling or regulation by which Seller is bound or which affects Seller.

6.3 Seller has not sold or transferred any inventory other than inventory that Seller had identified as packed and ready for shipment related to purchaser orders received prior to May 29, 2019.

6.4 Seller's counsel will file a motion for approval of the sale specified in this Agreement (including any sale for a higher price as developed through the Sales Process) within forty-eight (48) hours of execution of this Agreement by both of the Parties.

6.5 Sales Process. Unless modified by or as the result of an order of the Bankruptcy Court or the Canadian Court, the Sales Process will include the following features:

a. All bids must be received by Seller no later than **noon**, Central Daylight Savings Time ("Tulsa Time"), on the third business day prior to the first date set for the Bankruptcy Court's hearing on the motion for approval of the sale specified in this Sales Agreement (the "Bid Deadline").

b. All bids must be accompanied by (i) the bidder's signed APA, (ii) a cashier's check, wire transfer or equivalent reasonably acceptable to Seller in the amount of thirty-five thousand US dollars (\$35,000.00), which Seller will hold for application to the purchase price at Closing or refund pursuant to that APA's equivalent of Section 9 of this Agreement; and (iii) specification of an email address for the notification contemplated by that APA's equivalent of Section 6.5 (c) of this Agreement. Unless a bid meets all of these requirements, is for a purchase price of not less than three hundred thirty-five thousand US dollars (\$335,000) and is received by the Bid Deadline, it will not be a "Qualified Bid."

c. If the Seller receives a Qualified Bid, Seller shall, by 2:00 p.m., Tulsa Time, on the date of the Bid Deadline, notify (i) NXTNano via email at kacord@bbtaxlaw.com (email address) and (ii) each party that has submitted a Qualified Bid (at the email address such party has provided for that purpose) of the amount of the Purchase Price under the highest Qualified Bid. NXTNano and each party that has submitted a Qualified Bid may increase the amount of the purchase price under its APA by submitting a final bid ("Final Bid") via email submitted to the Seller by **noon**, Tulsa Time, on the date following the date of the Bid Deadline (the "Final Bid Deadline"). Prior to the Final Bid Deadline, Seller shall not communicate any information concerning any of such final bids to anyone other than the Receiver's employees who are directly involved in the Sale Process and to the Receiver's attorneys.

d. Seller, with any necessary approval of the Bankruptcy Court and the Canadian Court, shall proceed to sell the Assets to the highest bidder under his process or, in the event of that party's failure to close, to the next highest bidder, seriatim, as contemplated by Section 11 of this Agreement.

7. REPRESENTATIONS AND WARRANTIES OF BUYER.

Buyer makes the following representations and warranties:

7.1 **Buyer's Organization and Good Standing:** Buyer is a limited liability company duly organized and validly existing under the laws of the State of Missouri.

7.2 **Buyer's Authority**: The execution and delivery of this Agreement by Buyer, and the performance by it of its obligations hereunder and with respect to the transactions contemplated, have been duly and validly authorized. This Agreement is legally binding and enforceable against Buyer in accordance with its terms.

8. **COSTS ASSOCIATED WITH THE PREMISES.**

8.1 In the event that the Seller or any of the Debtors become obligated, whether as the result of a determination by a court, arbitrator(s) or other tribunal, or as the result of a good faith settlement, for payment to the Landlord for obligations under the Braden Lease, the Buyer shall, within 10 days of receipt of a notice and request for payment, pay to the Seller an amount equal to 28.7% of such amount.¹ This Section 8.1 shall not apply in the event that Buyer (a) has entered into a lease of the Premises with the Landlord under terms that, absent termination of the lease pursuant to its terms, provide the Landlord with at least \$154,872 of payments net of all expenses within two years of the Closing Date or (b) has obtained an agreement from the Landlord, in form reasonably satisfactory to Seller, to release Seller and Braden from at least \$154,872 of the obligations that would otherwise accrue within two years of the Closing Date under the Braden Lease.

8.2 In the event that any of the Assets that Buyer acquires pursuant to this Agreement remain in, on or attached to the Premises after the Closing Date, Buyer shall also be solely liable for all rent or other obligations owed to Landlord as a result and shall indemnify and hold the Seller and the Debtors harmless from and against any and all demands, claims, actions, causes of action, liabilities, costs and expenses, including but not limited to interest, penalties and attorneys' fees, related thereto.

8.3 Effective as of the Closing Date, and expressly for the benefit of the Landlord, the Seller releases, abandons and surrenders (a) all of its rights as Receiver for Braden to occupy the Premises, (b) all of Braden's rights to occupancy of the Premises, (c) all other rights of Receiver and Braden relative to the Premises that are created under any lease of the Premises and (d) all rights to any property in or on the Premises.

9. **DISPOSITION OF DEPOSITS.**

9.1 **Disposition of Deposits if Buyer Fails to Close.** If, through no fault of Seller, Buyer has not closed the transaction provided for in this Agreement on the Closing Date, the Alternative Closing Date (as herein defined), if applicable, or such later date on which the Parties may mutually agree, Seller shall retain the Initial Deposit and the Second Deposit, in the cumulative sum of one hundred twenty-five thousand US dollars (\$125,000), as liquidated damages, the Parties recognizing that it would be impractical or extremely difficult to fix the actual damages that Seller would sustain.

¹ See Section 1.2 for an explanation of this percentage.

9.2 **Disposition of Funds On Closing of Sale to Another Purchaser.** In the event that Seller closes on a sale of the Assets to a party other than Buyer as a result of the Sales Process, Seller shall, within two (2) business days of that Closing, refund the Initial Deposit and all other amounts that Buyer has deposited with Seller.

10. **SELLER'S RIGHT TO WITHDRAW SALE.**

The Parties recognize and agree that at any time before entry of an order of the Bankruptcy Court approving a sale of the Assets, pursuant to this Agreement, the Seller may, and shall have the right to, withdraw its request for the Bankruptcy Court's approval of any sale that this Agreement or the Sales Process contemplates for any reason, including but not limited to the Seller's intent to sell the Assets, or any part of the Assets, as part of a sale that includes other assets of the Debtors or of entities affiliated with the Debtors. If Seller exercises this right, it will immediately notify Buyer and return to Buyer all funds deposited within forty-eight (48) hours of providing that notice.

11. **FAILURE OF HIGHER BIDDER TO CLOSE.**

In the event that Buyer is outbid by one or more other parties in the Sales Process, Buyer shall remain obligated under this Agreement until a closing on the Seller's sale of the Assets to one or another of the parties that have submitted a higher bid under the Sales Process. In the event that each higher bidder has failed to close, Buyer shall close with Seller under the terms of this Agreement (or of any Final Bid for a higher purchase price that Buyer has submitted pursuant to the procedure described in Section 6.5(c) of this Agreement) upon Seller providing Buyer with at least forty-eight (48) hours' notice of the date (the "Alternative Closing Date") and the location, in Tulsa, Oklahoma, of a closing.

12. **NOTICES.**

All notices, requests, demands and other communications shall be in writing and shall be deemed to have been duly given if delivered by FedEx or other courier:

If to Seller, to:	PricewaterhouseCoopers Inc., LIT
	111 5 th Avenue SW, Suite 3100
	Calgary AB T2P 5L3
	ATTN: Rick F. Osuna

With a copy, via email, to:

John E. Howland
ROSENSTEIN, FIST & RINGOLD
525 S. Main, Suite 700
Tulsa, OK 74103
johnh@rflaw.com

If to Buyer, to: NXTNano, LLC
c/o Shannon Davis
JAMES, POTTS & WULFERS, INC.
401 South Boston Avenue, Suite 2600
Tulsa, OK 74103

13. **COOPERATION OF PARTIES.**

From time to time, including after the Closing Date, the Parties shall take such actions as may be reasonably necessary or appropriate and requested by the other Party to fully realize the intent of this Agreement, including the execution and delivery of documents. Further, Buyer shall cooperate with reasonable requests of Seller for inspection of the Assets by Seller or parties retained by the Seller, including inspections that the Seller reasonably deems necessary or appropriate in connection with valuation of any of the Assets. Seller's obligations under this Section 13 shall not extend beyond the earlier of the date of Seller's release as foreign representative of the Debtors in the Bankruptcy Cases or the closing of the Chapter 15 Bankruptcy Cases.

14. **MISCELLANEOUS.**

14.1 **Expenses:** Each party to this Agreement shall bear and pay its own respective costs and expenses in connection with the preparation, execution and delivery of this Agreement and the transactions contemplated herein.

14.2 **Entire Agreement, Modifications and Waiver.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, representations and understanding of the parties. No amendment to this Agreement shall be binding unless executed in writing by the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a continuing waiver or a waiver of any other provisions, whether or not similar. No waiver shall be binding unless executed in writing by the Party making the waiver.

14.3 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma.

14.4 **Time of the Essence.** The Parties agree that time is of the essence of this Agreement and that they will each take reasonable and necessary actions to have the Closing on or before July 31, 2019.

14.5 **No Interest on Deposits.** No interest will accrue or be due on deposits under this Agreement during the time period that Seller is entitled to hold such deposits without return or application to the Purchase Price.

14.6 **Actions of Seller After Closing.** Seller shall take the following actions after the Closing:

- a. Seller shall cause all references to air filtration services to be removed from the Braden.com website within 48 hours after the Closing Date or, at its option, close the Braden.com website;
- b. If Seller decides to sell the Braden.com domain as a separate asset, it will provide NXTNano with timely notice of its intent to sell the domain and allow NXTNano a reasonable opportunity to purchase that domain; and
- c. If Seller enters into an agreement to sell the Braden.com domain as a separate asset, or as part of a larger asset sale, Seller shall require that the agreement governing that sale exclude, from the assets that are sold, all interests that Braden owned as of the Closing Date in the tradenames "Braden Filtration" and "Bradenfilters" and in any other intangible assets included in this Agreement's definition of the "Assets."

**PRICEWATERHOUSECOOPERS INC., LIT, as
Receiver and Foreign Representative for Braden
Manufacturing LLC**

By 

Name: _____

Title: _____

PAUL DARBY

Senior Vice President

"SELLER"

NXTNano, LLC

By _____

Name: _____

Title: _____

"BUYER"

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**PRICEWATERHOUSECOOPERS INC., LIT, as
Receiver and Foreign Representative for Braden
Manufacturing LLC**

By _____
Name: _____
Title: _____

"SELLER"

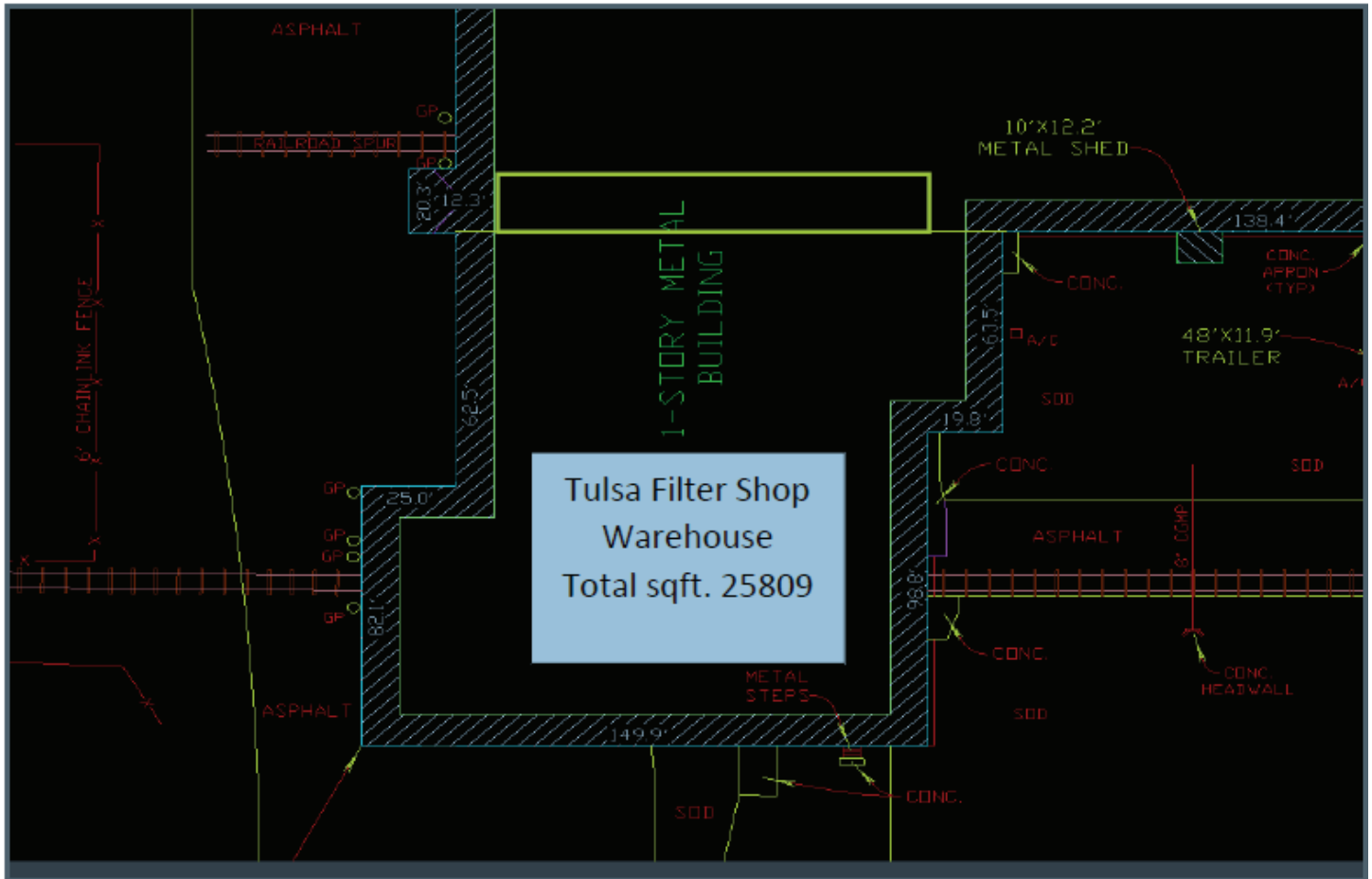
NXTNano, LLC

By  _____
Name: KEVIN D. ACORD
Title: Manager

"BUYER"

COMMERCIAL/INDUSTRIAL LEASE (NET) (Continued)

EXHIBIT A
Leased Premises



COMMERCIAL/INDUSTRIAL LEASE (NET) (Continued)

**EXHIBIT A (cont.)
Leased Premises**



EXHIBIT B

Assets

- 2000 Dodge 150 Truck – VIN # 1B7HC16YXYS556409
- Toyota Propane Model Fork Lift – 42-6FGCU15 Serial Number 68198
- Toyota Propane Model Fork Lift – 8FGU30 Serial Number 12821
- Crown Stand Up Lift Model MX3 18-775 Type E with battery charger Serial Number 2G53080
- Hyster Model H300 – 087065 30,000 Lb Serial Number 91060053
- Time clock system
- 26 fire extinguishers
- Dock leveler
- Amrstron automatic drainer-coalescer
- Shelving for material storage
- 2 stage horizontal coalesce separator
- Power sweeper
- Aero flow test station for filters
- Heat measuring thermostat
- Stencil cutting machine
- Infra-pak sidewinder 3 stretch wrapper low angle
- Air compressor model EP25
- Tooling for filters PFS-4 & coalescing frames
- Ingersoll-rand DXR 150 refrigerated air dryer
- Tenant 5700 XP-700D floor scrubber
- Ultra sonic seal model HVS-501 hand held ultrasonic plastics
- Fleetwood conveyers
- Two part dispense system w/jib & tool balancer
- Pluraform dispensing system
- Pleater for tri-cell 95 w/stop glue option
- Sts mold for filler plastic parts
- Pot Devin 36inch glue type NTZ machine 1/3 HP 115 Volt
- Modification controls polyurethane dispensing equipment
- Narrow aisle reach truck crown model RD 5020-30
- Ext “new” air filter housing design & tools
- 2 - Spot weld rocker rite, rapid fire 36 inch throat w/intertron
- Bulk container mixer, 2HP motor, single 6 inch dia propeller, 33 inch shaft
- Pulseline manufacturing equipment from genuine machine design
- 4 inch please filter stabilizer – tooling
- Digital stiffness tester – Gurley Precision
- Ultra sonic seal welder from MFG HEPA filters w/titanium horn
- Progressive tooling trichel clip