

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT ("Agreement") is made and entered into on July 8, 2011 between EWELL GIPPER ("Seller"), the owner of a sole-proprietorship located in Orland Park, IL known as FiBEAR (the "Business"), and WILD GRAINS, INC. ("Buyer"), an Illinois corporation.

1. PURCHASE PRICE

- a. The purchase price for the FiBEAR and its assets will be Two million dollars (\$2,000,000) ("Purchase Price").
- b. Prior to Closing, the parties agree to approve a reasonable allocation of the Purchase Price.

2. CLOSING

a. Procedure

- i. The sale and transfer of assets shall take place on October 1, 2011 ("Closing") at the Buyer's office.
- i. Seller shall sell and Buyer shall buy all right, title, and interest in all of Seller's Assets.
- ii. At Closing, Buyer shall deliver to Seller the Bill of Sale
- iii. Buyer agrees to pay Seller the Purchase Price in cash or through federal wire transfer of same-day funds on the date of Closing.
- iv. Seller shall deliver to Buyer original copies of all Intellectual Property transfer documents either prior to or at Closing.

b. Assets:

Seller's Assets include but are not limited to the following: all names, goodwill, licensed characters, machinery and equipment, existing contracts and inventory, data and records related to the operations of FiBEAR, including client and customer lists and records, service and warranty records, creative/advertising materials, personnel records, and all other similar documents and records ("Assets"). See Exhibit A for a more detailed description of all Assets.

c. Seller Liabilities:

- i. Seller shall disclose all liabilities, including but not limited to: ("Disclosed Liabilities")
 1. All obligations with respect to FiBEAR employees arising after the Closing Date;
 2. All obligations under customer purchase orders;
 3. All leases of personal property and equipment, and contracts or agreements with vendors providing services to the Business after the Closing Date;
- i. Buyer shall assume all Disclosed Liabilities.

3. CONDITIONS PRECEDENT TO BUYER'S OBLIGATION

a. Financing.

- i. If buyer is unable to obtain financing for an amount equal to 90% of the purchase price at 3% interest for 20 years within 30 days of the signing of this Agreement, the Buyer may declare this contract null and void.
- ii. Buyer will use its best efforts to obtain financing and Seller shall provide any information requested by the Buyer's lender.

b. Due Diligence.

- i. Seller shall give Buyer the ability to access to Seller's property so that Buyer may inspect Seller's Assets, including any files, properties, records and any other documents required to confirm the veracity of Seller's representations related to its Assets. Buyer must be reasonably satisfied with the results of its due diligence review.
- ii. Obligation: during dd period, if buyer is dissatisfied w/ anything, he shall notify the seller. If there is a possibility to cure, seller shall have x days.
- iii. lawsuit morning of closing - put in above
- iv. During reasonable office hours, seller shall make their office available....
- v. *Typically seller not obligated to fix defects. then bc buyer not satisfied, buyer can walk away. or, bc buyer has legal right to walk away, so they could come to some financial arrangement. once buyer has right to walk away, you're re-negotiating*

c. Representations.

All representations of the Seller are true. If (within X days, prior to closing?) Buyer becomes aware of a material variation from any of Seller's representations, Buyer may terminate this agreement.

d. Licenses:

- i. 2 different kinds of licenses: IP - trademarked characters that may be owned by Fibear (an asset)
- ii. any licenses transferred need to be CP to buyer's obligation
- iii. If 3pC will not transfer licenses to buyer, buyer may declare K null and void.

4. **SELLER'S OBLIGATIONS**

- a. Prior to Closing, Seller shall run and keep FiBEAR in the normal course of business. This shall include, but is not limited to, paying all bills, fulfilling all orders, maintaining regular communication with clients, managing all employees and production operations.
- b. Prior to Closing, Seller shall notify Buyer of any material changes relating to FiBEAR's operations.
- c. Prior to Closing, Seller shall not sell any Assets other than in the ordinary course of Seller's business.
- d. Prior to Closing, Seller shall have a continuing duty to disclose any new Liabilities

5. **REPRESENTATIONS**

Buyer has received and read Seller's Disclosure Statement which provided details about the history of the FiBEAR business ("Seller's representations"). Seller's Disclosure Statement is attached hereto as Exhibit B.

6. **RISK OF LOSS**

- a. At all times prior to closing, the risk of any loss or damage to any Assets, regardless of the cause of the loss, shall be borne by Seller.
- b. Once this Agreement is signed, the risk of loss is transferred to Buyer.
- c. If a loss results in any material damage, Buyer may terminate this Agreement.
- d. If a loss results in damage estimated to be less than \$5,000.00, Buyer can close,

but Seller shall assign all related insurance proceeds to Buyer.

7. **PRORATIONS**

Utilities, personal property taxes, other taxes, insurance, rent, vacation pay and other expenses of the Business not otherwise provided for in this Agreement shall be prorated from the closing date.

8. **INDEMNIFICATION**

- The Buyer agrees to indemnify the Seller and hold it harmless against any Disclosed Liabilities. The Buyer also agrees to indemnify the Seller and hold it harmless against any **losses, liabilities, damages, costs, or obligations** resulting from the ownership or operation of FiBEAR on or after the closing which relate to events occurring subsequent to Closing.
- The Seller agrees to indemnify the Buyer and hold it harmless against any undisclosed liabilities. The Seller also agrees to indemnify the Buyer and hold it harmless against any misrepresentations.

options if liabilities not disclosed:

- seller pays
- buyer can walk away
- if buyer still closes after seller discloses liabilities, no indem
 - **seller shall indemnify Buyer for all nonassumed liabilities and misrepresentations**
- if buyer closes but seller didn't disclose

9. **CONFIDENTIALITY AGREEMENT**

- a. Buyer acknowledges that under section x, he has been granted access, and therefore he promises to keep that information confidential if no closing occurs.
- b. If Buyer does not close for any reason, the Buyer agrees to keep all of information acquired in relation to this Agreement confidential.

10. **CHOICE OF LAW**

This Agreement shall be governed by and construed in accordance with the domestic laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of California.

11. **SEVERABILITY**

- a. if judge decrees that 1 provisions is invalid, the rest of the contract and survive free and clear of__
- b. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.
- c. "If anything in this K is declared unenforceable,..."
- d. This Agreement shall apply to and bind Purchaser and the Company and their respective permitted assignees and transferees, heirs, legatees, executors, administrators and legal successors.

12. **SURVIVABILITY**

All indemnification and confidentiality provisions contained within this Agreement will

- survive the termination of this Agreement. (Survive this Agreement and the closing.)
- Should any provision of this Agreement be determined by a court of law to be illegal or unenforceable, the other provisions shall nevertheless remain effective and shall remain enforceable.
 - **All representations, warranties, covenants, and obligations in this Agreement, the Schedules, any supplements to the Schedules, and any certificates or other documents delivered pursuant to this Agreement will survive the Closing, subject to the time limit for indemnification claims under Section 13.5 below.**
 - Survival of Representations and Warranties. All of the representations, warranties and covenants of the Sellers shall survive the Closing (even if the Buyer knew or had reason to know of any misrepresentation or breach of warranty which effect the ability to provide clear title to the Acquired Assets or which would encumber or restrict the ability to use the Acquired Assets at the time of Closing) and continue in full force and effect up and until January 2, 2004. Provided, however, should any claims be made prior to January 3, 2004, the representation and warranties shall continue in full force and effect as to that claim until resolve

13. **WRITTEN MODIFICATIONS**

No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Buyer and the Sellers. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

"If we want to change this agreement, it should be in writing"

14. **ENTIRE AGREEMENT**

- a. **PRIOR AGREEMENTS:** if anything is not in this written agreement, we did not agree on it
- b. This Agreement (including the documents referred to herein) constitutes the entire agreement between the Parties and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they related in any way to the subject matter hereof.

15. **TIME OF THE ESSENCE:**

16. **WAIVER**

Any waiver given by a Party shall be narrowly construed to specifically waive in time and subject only the express matter contained in such waiver. A waiver of a condition once does not mean the condition must always be waived

17. **NOTICE**

all notices shall be in writing. (new liabilities, whether we are waiving)

- A. All notices, requests, demands, claims, and other communications permitted or required hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given if (and then two business days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

if no closing bc of default, K terminates

MISC?? WHAT SECTION

- seller gives all ownership documents - deed, title warranty. Seller promising to deliver merchantable title
- if book store fire 2 days before closing, options:
 - 1. walk away from K
 - 2. repairs - but post closing obligation
- buyer's recourse if seller defaults on real property: specific performance
- what are you going to get your client who can't move in on time
 - measure of damages for breach of K - expectation damages / benefit of the bargain - usually more than just money
- representations we need:
 - gipper's revenues were 500k a year. (effect if it's not true - walk right)
- if buyer lies but we close anyways, we still get indemnification for misrepresentation.

CLASS NOTES FOR JULY 6TH

- conditions precedent can only benefit one party - can walk away from K, as if one was never made
- Expectation damages - not enough to get put back in position you were in before. you are due what you expected from the K.
- **If Buyer does not receive a settlement from her Divorce Decree by August 6th, Buyer may terminate this Agreement. It shall be the obligation of the Buyer**

termination - buyer can terminate agreement if

BLL -- subsequent agreements/modification - can be modified at anytime if additional consideration.

3 different kinds of agency:

- actual - express implied
- aparent - if principle shows in front of 3dp that they have authority.
- ratification

just say modifications must be in writing

don't need termination section - only used when inserting special remedy. if not changing law, don't need termination section