

05-31-2002

IEET

To the Honorable Commissioner

102107266

d original documents or copy thereof

## 1. Name of conveying party(ies):

WESTAIM TECHNOLOGIES INC.

Additional name(s) of conveying party(ies) attached? ☐ Yes X No

## 2. Name and address of receiving party(ies):

Name: 749110 ALBERTA LTD.

Internal Address:

Street Address: 10102 - 114 Street  
Fort Saskatchewan, Alberta  
T8L 3W4 CANADAAdditional name(s) & address(es) attached? ☐ Yes X No

## 3. Nature of conveyance:

- X Assignment ☐ Merger  
☐ Security Agreement ☐ Change of Name  
☐ Other

Execution Date: January 1, 1998

## 4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

## A. Patent Application No(s)

09/577,597

## B. Patent No.(s)

(Our File: T8461852US2)

Additional numbers attached? ☐ Yes X No

## 5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Arne I. Fors  
Gowling Lafleur Henderson LLPStreet Address: Suite 4900  
Commerce Court West  
Toronto, Ontario  
M5L 1J3  
CANADA

## 6. Total number of applications and patents involved: 1

## 7. Total fee (37 CFR 3:41) ..... \$ 40.00

☐ Enclosed

X Authorized to be charged to deposit account

## 8. Deposit account number:

07/1750

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

## 9. Statement and Signature.

*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*

Arne I. FORS, Registration No. 20,775

Name of Person Signing

Signature

May 30, 2002

Date

Total number of pages comprising cover sheet:

16

# **ASSET PURCHASE AGREEMENT**

This Agreement is made as of January 1, 1998.

**BETWEEN:**

**WESTAIM TECHNOLOGIES INC.,**  
an Alberta corporation  
(herein called the "Vendor")

**OF THE FIRST PART,**

- and -

**749110 ALBERTA LTD.,**  
an Alberta corporation  
(herein called the "Purchaser")

**OF THE SECOND PART.**

## **Recitals**

**WHEREAS:**

- A. The Vendor is the owner of the Assets immediately before the Effective Time; and
- B. The Vendor has agreed to sell the Assets to the Purchaser and the Purchaser has agreed to purchase the Assets from the Vendor on the terms and conditions set out below;

NOW THEREFORE, in consideration of the terms and conditions set out in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties covenant and agree as follows:

### **1. Definitions**

In this Agreement, unless the context otherwise requires, the following terms have the meanings respectively ascribed thereto:

- 1.1 "Agreement" means this asset purchase agreement together with the Schedules hereto and any amendments hereof.
- 1.2 "Assets" means the Depreciable Property, the Intangibles, all of the Vendor's contractual rights relating to items included in the Assets to the full extent such

rights are transferable including without limitation under manufacturers' and vendors' warranties, and all goodwill of the Vendor in respect of the items included in the Assets.

- 1.3 "Business" means the business of the Vendor involving technologies of the Vendor and The Westaim Corporation for coating processes and anti-coking (using metals, ceramics and composites to provide superior resistance to coking and carburization) and other coatings for application on the internal surfaces of tubes, fittings and parts of virtually any size and geometry, as carried on immediately before the Effective Time.
- 1.4 "Competent Authority" means, collectively and individually, any or all of:
- 1.4.1 the Minister of National Revenue,
  - 1.4.2 the Provincial Treasurer of Alberta or the corresponding tax or fiscal authority of any other province in Canada, or
  - 1.4.3 a court or tribunal of competent jurisdiction.
- 1.5 "Depreciable Property" means the Equipment and all of the right, title and interest of the Vendor in the Intellectual Property (to the extent it is depreciable property).
- 1.6 "Effective Time" means 12:01 a.m. on January 1, 1998, being the time when the sale and purchase of the Assets are to take effect.
- 1.7 "Election Amount" means:
- 1.7.1 with respect to any Asset that is inventory or capital property (other than depreciable property of a prescribed class), the lesser of the amounts described in subparagraphs 85(1)(c.1)(i) and (ii) of the ITA (unless the lesser of these amounts is zero (0), in which case the Election Amount shall be \$1);
  - 1.7.2 with respect to the Intangibles, the least of the amounts described in subparagraphs 85(1)(d)(i), (ii) and (iii) of the ITA (unless one of these amounts is zero (0), in which case the Election Amount shall be \$1); and
  - 1.7.3 with respect to each class of Depreciable Property, the least of the amounts described in subparagraphs 85(1)(e)(i), (ii) and (iii) of the ITA (unless one of these amounts is zero (0), in which case the Election Amount shall be \$1);

and for this purpose the phrases "the time of the disposition" and "immediately before the disposition" in paragraphs 85(1)(c.1), (d) and (e) of the ITA shall be

read as "the Effective Time" and "immediately before the Effective Time," respectively.

- 1.8 "Equipment" means the equipment relating to the Business listed in Schedule A.
- 1.9 "ETA." means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended by S.C. 1990, c. 45, and as further amended from time to time.
- 1.10 "Intangibles" means all permits, licenses, operating authorities, approvals and the like (including without limitation the Intellectual Property to the extent it is intangibles) of the Vendor relating exclusively to the Business.
- 1.11 "Intellectual Property" means the trademarks and trademark applications, tradenames, certification marks, patents and patent applications, copyrights, inventions, industrial designs and other similar property, including licenses thereof, and all registrations and applications for registration thereof, which are used or held in connection with the operation of the Business, and also includes the Technology Assets and all technical information and knowledge relating to the Technology Assets including, without limitation, all records of invention, original letters patent and copies of patent applications currently in the Vendor's possession relating to the Technology Assets, and the originals and all copies of such information and knowledge including, without limitation, all engineering, technical and cost data, software, manuals, plans, drawings, specifications, files and records, and other papers currently in the Vendor's possession relating to the Technology Assets, and includes the Intellectual Property set forth and identified in Schedule B to this Agreement.
- 1.12 "ITA" means the *Income Tax Act*, R.S.C. 1985, Fifth Supplement, c. 1, as amended from time to time.
- 1.13 "Parties" means the Vendor and the Purchaser.
- 1.14 "Purchase Price" means the purchase price for the Assets, as set out in Subsection 5.1 and as itemized in Schedule C.
- 1.15 "Shares" means the 100 Class C Preferred shares of the Purchaser to be issued to the Vendor pursuant to Subsection 5.2.
- 1.16 "Technology Assets" includes the methods, processes, techniques, formulae, technical expertise, research data, trade secrets and know-how and other similar property which are or have been used in the Business up to the Effective Time, including without limiting the generality of the foregoing, to develop, produce, manufacture, test and/or market products of the kind and/or nature that are or have

been developed, produced, manufactured, tested and/or marketed by the Business before the Effective Time.

## 2. Statutory Terms

In this Agreement, unless otherwise required by the context:

- 2.1 "capital property" has the meaning assigned by section 54 of the ITA;
- 2.2 "cost amount" has the meaning assigned by subsection 248(1) of the ITA;
- 2.3 "cumulative eligible capital" has the meaning assigned by subsection 14(5) of the ITA;
- 2.4 "depreciable property" has the meaning assigned by subsection 13(21) of the ITA;
- 2.5 "disposition" has the meaning assigned by section 54 of the ITA;
- 2.6 "eligible capital property" has the meaning assigned by section 54 of the ITA;
- 2.7 "prescribed" has the meaning assigned by subsection 248(1) of the ITA or subsection 123(1) of the ETA, as the context may require;
- 2.8 "proceeds of disposition" has the meaning contemplated by section 54 of the ITA;
- 2.9 "supply" has the meaning assigned by subsection 123(1) of the ETA; and
- 2.10 "undepreciated capital cost" has the meaning assigned by subsection 13(21) of the ITA.

## 3. Interpretation

- 3.1 The recitals and schedules to this Agreement form part of this Agreement, and, where required by the context, any reference to this Agreement includes a reference to the recitals and schedules.
- 3.2 In this Agreement a reference to a "Schedule," "Section," "Subsection" or "Paragraph" followed by a letter or number means or refers to the specified schedule, section, subsection or paragraph of this Agreement.
- 3.3 In this Agreement:
  - 3.3.1 words importing the singular number include the plural and vice versa;

3.3.2 words importing gender include masculine, feminine and neuter genders;  
and

3.3.3 where a term or expression is defined herein, derivatives of that term or expression have corresponding meanings.

3.4 This Agreement shall be governed by and construed in accordance with the laws in force in the Province of Alberta.

3.5 All express or implied references in this Agreement to dollars or monetary amounts are references to Canadian currency.

#### 4. Sale and Purchase of the Assets

The Vendor hereby sells and the Purchaser hereby purchases the Assets as of the Effective Time, free and clear of any and all liens, charges and encumbrances of any nature, other than those specified in Schedule D.

#### 5. Purchase Price

5.1 The Purchase Price for the Assets is the amount that is equal to the fair market value of the Assets at the Effective Time, which is understood to be Cdn. \$7,217,865.

5.2 The Purchase Price shall be paid by the Purchaser issuing to the Vendor, as fully paid and non-assessable, 100 Class C Preferred shares (defined in Subsection 1.15. as the "Shares").

5.3 It is intended that the rights, privileges, restrictions and conditions of the Shares be such that the fair market value of the Shares will be equal to the fair market value of the Assets at the Effective Time.

5.4 The Purchase Price shall be allocated among the Assets in the manner set out in Schedule C.

#### 6. Intention

6.1 It is the intention of the Vendor to dispose of the Assets to the Purchaser on a tax-deferred (or rollover) basis pursuant to subsection 85(1) of the ITA.

6.2 It is the intention of the Parties to effect the dispositions for consideration equal to the fair market value of the Assets at the Effective Time, and to elect, on an Asset-by-Asset basis, that the proceeds of disposition for income tax purposes be equal to the aggregate of the Election Amounts.

## 7. **Election**

The Vendor and the Purchaser agree that they will:

- 7.1 jointly elect under subsection 85(1) of the ITA, in prescribed form and in accordance with subsection 85(6) of the ITA, that the amounts agreed upon for the purposes of paragraph 85(1)(a) of the ITA in respect of the Assets shall be equal to the respective Election Amounts;
- 7.2 execute and file all documents required to give effect to the election referred to in Subsection 7.1; and
- 7.3 allow the Vendor to designate, for the purposes of paragraph 85(1)(e.1) of the ITA, the order of disposition in respect of the various Assets.

## 8. **Purchase Price and Election Amount Adjustment Clause**

If:

- 8.1 an accountant appointed by the Parties certifies,
- 8.2 the Parties acknowledge in writing, or
- 8.3 a Competent Authority determines (and the Parties have not objected to or appealed from the determination),

that:

- 8.4 the actual fair market value of the Assets at the Effective Time (herein called the "Redetermined FMV") is greater than or less than the amount which is currently understood to be the fair market value of the Assets at the Effective Time (herein called the "Understood FMV"),
- 8.5 the actual cost amount to the Vendor of any Asset that is inventory or capital property at the Effective Time (herein called the "Redetermined CA") is greater than or less than the amount which is currently understood to be the cost amount to the Vendor of that Asset at the Effective Time (herein called the "Understood CA"),
- 8.6 the actual undepreciated capital cost to the Vendor in respect of any class of the Depreciable Property immediately before the Effective Time (herein called the "Redetermined UCC") is greater than or less than the amount which is currently understood to be the undepreciated capital cost to the Vendor in respect of that

class of the Depreciable Property immediately before the Effective Time (herein called the "Understood UCC"), or

- 8.7 the actual cumulative eligible capital of the Vendor in respect of the Business immediately before the Effective Time (herein called the "Redetermined CEC") is greater than or less than the amount which is currently understood to be the cumulative eligible capital of the Vendor in respect of the Business immediately before the Effective Time (herein called the "Understood CEC"),

this Agreement shall be deemed always to have been amended as necessary:

- 8.8 to substitute the Redetermined FMV for the Purchase Price,
- 8.9 to substitute the Redetermined FMV for the Understood FMV, particularly for the purpose of calculating the aggregate redemption price of the Shares and calculating the Election Amount,
- 8.10 to substitute the Redetermined CA for the Understood CA, the Redetermined UCC for the Understood UCC or the Redetermined CEC for the Understood CEC, as the case may be, particularly for the purpose of calculating the respective Election Amounts,
- 8.11 to make any other related or corresponding adjustments to any provision of this Agreement which may be necessary to carry out the intention of the Parties,

and these amendments shall be deemed always to have been included in this Agreement, and the Parties agree:

- 8.12 if necessary, jointly to make an amended election under subsection 85(7.1) of the ITA, in prescribed form, in which the respective Election Amounts shall be calculated by reference to the Redetermined FMV, the Redetermined CA, the Redetermined UCC or the Redetermined CEC, as the case may be,
- 8.13 to execute and file all documents required to give effect to the amended election referred to in Subsection 8.12 and, if necessary, to pay the penalty stipulated in subsection 85(8) of the ITA, and
- 8.14 to implement all necessary financial adjustments, if any,

so as to place the Parties in the position in which they would have been if the Redetermined FMV had always been used as the Purchase Price, and if the Redetermined FMV, the Redetermined CA, the Redetermined UCC and the Redetermined CEC had always been used in calculating the respective Election Amounts.



## 9. Allocation Adjustment Clause

If:

- 9.1 an accountant appointed by the Parties certifies,
- 9.2 the Parties acknowledge in writing, or
- 9.3 a Competent Authority determines (and the Parties have not objected to or appealed from the determination),

that the method of allocating the Purchase Price among the Assets and among the consideration payable by the Purchaser, as set out in Schedule C, is unacceptable for purposes of the ITA, the *Alberta Corporate Tax Act* or the income tax legislation of any other province having jurisdiction, the provisions of this Agreement shall be deemed always to have been amended as necessary to substitute an acceptable method of allocation for the method of allocation set out in Schedule C and this amendment shall be deemed always to have been included in this Agreement.

## 10. GST Considerations

- 10.1 It is the intention of the Parties that the Assets be supplied by the Vendor to the Purchaser on a basis such that no goods and services tax will be payable in respect of the supply of the Assets.
- 10.2 The Parties agree that they will make in a timely manner all such elections and filings under the ETA and otherwise so as to ensure that no goods and services tax will be payable in respect of the supply of the Assets by the Vendor to the Purchaser.

## 11. Delivery of Shares and Assumption of Liabilities

Upon the Vendor having transferred the Assets to the Purchaser, the Purchaser shall deliver to the Vendor a share certificate representing the Shares. Further, the Purchaser covenants and agrees for the benefit of the Vendor to assume and perform all of the liabilities and obligations of the Vendor in relation to the Assets and the Purchaser further agrees to execute any and all documents which may be required to effect the same. To the extent that the Purchaser fails to assume and/or perform any of such liabilities and obligations, the Purchaser agrees to indemnify and hold harmless the Vendor, its officers, directors, employees and agents, from and against any and all actions, claims, demands and proceedings of every nature and kind and from and against any and all loss, damage, cost or expense suffered or incurred by the Vendor, its officers, directors, employees or agents, which are based upon, arise out of or are connected with such failure to assume and/or perform any of such liabilities and obligations.

**12. Possession, Adjustments and Insurance**

- 12.1 Physical possession of the Assets (where applicable) shall be delivered by the Vendor to the Purchaser as of the Effective Time, together with all required consents, evidences of title (duly endorsed for transfer) and the like.
- 12.2 If applicable, rents, revenue, property taxes, insurance premiums, utilities, and other similar matters shall be apportioned and adjusted as of the Effective Time.
- 12.3 The Vendor shall, at its option, either assign to the Purchaser the insurance policies and coverage (if any) in respect of the Assets or ensure that, until such time as the Vendor notifies the Purchaser in writing to the contrary, insurance coverage in respect of the Assets will be maintained by the Vendor at least at current levels under the Vendor's insurance policies with the Purchaser as a named insured with respect to the Assets. The Purchaser shall reimburse the Vendor in a timely manner upon invoice by the Vendor for all costs incurred by the Vendor reasonably attributable to the maintenance by the Vendor of such insurance coverage in relation to the Assets or otherwise at least the current insurance coverage.

**13. Agency and Bare Trust**

- 13.1 From the Effective Time until the time at which the conveyancing documents in respect of the transfer of the Assets are prepared and executed, the Vendor shall hold the Assets as agent and bare trustee for, and on behalf of, the Purchaser. To the extent that any Assets are not assignable (or not assignable until third party consent has been obtained), the Vendor shall also hold such Assets as agent and bare trustee for, and on behalf of, the Purchaser.
- 13.2 Any revenue from the Assets accruing after the Effective Time and collected by the Vendor shall belong to, and shall be paid to, the Purchaser.
- 13.3 Any expenses in respect of the Assets incurred by the Vendor after the Effective Time shall be for the account of, and shall be reimbursed by, the Purchaser.

**14. Representations and Warranties**

- 14.1 The Vendor represents and warrants to the Purchaser as follows:
  - 14.1.1 the Vendor is the legal and beneficial owner of the Assets and the Vendor has good and marketable title thereto;
  - 14.1.2 no person or other entity, other than the Purchaser, has any agreement or option or any right capable of becoming an agreement for the purchase from the Vendor of the Assets;

14.1.3 the Vendor is a resident of Canada for all purposes of the ITA;

14.1.4 the Vendor is, or if not will become if required for purposes of Section 10 of this Agreement, registered under Subdivision d of Division V of Part IX of the ETA;

14.1.5 the Vendor is duly incorporated and validly existing under the laws of the Province of Alberta with full right, power and authority to enter into and perform all its obligations under this Agreement; and

14.1.6 all corporate and other proceedings required to be taken by the Vendor to authorize this Agreement and the transactions provided for herein have been or will be validly taken.

14.2 The Purchaser represents and warrants to the Vendor as follows:

14.2.1 the Purchaser is, or if not will become if required for purposes of Section 10 of this Agreement, registered under Subdivision d of Division V of Part IX of the ETA;

14.2.2 the Purchaser is duly incorporated and validly existing under the laws of Alberta with full right, power and authority to enter into and perform all its obligations under this Agreement;

14.2.3 all corporate and other proceedings required to be taken by the Purchaser to authorize this Agreement and the transactions provided for herein have been or will be validly taken; and

14.2.4 the Shares have been duly issued as fully paid and non-assessable shares of the Purchaser.

14.3 The representations and warranties set out in Subsections 14.1 and 14.2 shall survive the completion of this Agreement and continue in full force and effect for a period of two years from the date of this Agreement.

## 15. Westaim Initiative Restriction

Notwithstanding any other provision to the contrary in this Agreement, the Purchaser acknowledges and agrees that, prior to June 28, 2001, the right to use or otherwise exploit those Assets which result from the initiative described in that certain agreement dated February 15, 1990 among Her Majesty the Queen in Right of Canada, Her Majesty the Queen in Right of the Province of Alberta, The National Research Council, Sherritt Gordon Limited and the Vendor, are restricted and, without the prior written consent of the Vendor, the Purchaser covenants and agrees for the benefit of the Vendor that the Purchaser will not:

15.1 use or transfer title or license any part of the technical data or any invention, patent, or patent application resulting from such initiative, or

15.2 use or grant any right to use any part of the technical data, or any invention, method or process resulting from such initiative,

for the purpose of commercializing or producing or manufacturing in its entirety outside Canada any of the resulting products or any product that is substantially the same as any of the resulting products.

**16. Further Acts and Assurances**

The Parties shall do all acts and shall execute all documents that may be reasonably necessary to implement this Agreement.

**17. Benefit and Binding Nature**

This Agreement shall enure to the benefit of and be binding upon the Parties, together with their respective successors and assigns.

**18. Counterparts**

18.1 This Agreement may be executed in several counterparts, no one of which needs to be executed by both Parties. Each counterpart, including a facsimile transmission of this Agreement, shall be deemed to be an original and shall have the same force and effect as an original. All counterparts together shall constitute but one and the same instrument.

18.2 In the event that a facsimile transmission of this Agreement is signed, the hard copy thereof may be signed subsequently, but it shall be dated concurrently with the facsimile transmission.

19. **Execution**

IN WITNESS WHEREOF this Agreement has been executed by the parties as of January 1, 1998.

**WESTAIM TECHNOLOGIES INC.**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

**749110 ALBERTA LTD.**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

wti-sep asset .doc

# Summary of Trademarks for Surface Engineered Products

Schedule "B"

MARK	DESCRIPTION OF MARK	DESCRIPTION OF WARES	COUNTRY	APPLICATION NUMBER	APPLICATION DATE	REGISTRATION NUMBER	REGISTRATION DATE
COATALLOY	Word	WARES: metal, ceramic and composite coatings applied to the internal and external surfaces of industrial parts to provide corrosion protection, oxidation protection, carburization protection, wear/abrasion/erosion protection, enhanced heat resistive properties, and pre-engineered chemical and mechanical surface properties at high temperatures SERVICES: surface finishing and coating application services for enhancement of the materials performance of simple and complex shaped industrial parts; and welding, fabrication and inspection services of coated and uncoated products for industrial use	ARGENTINA	2166229	7/30/98		
			BRAZIL	820799025	7/24/98		
			CANADA	867396	1/26/98		
			U.S.A.	75/426,955	2/2/98		
COATALLOY & DESIGN	Word and Design	WARES: metal, ceramic and composite coatings applied to the internal and external surfaces of industrial parts to provide corrosion protection, oxidation protection, carburization protection, wear/abrasion/erosion protection, enhanced heat resistive properties, and pre-engineered chemical and mechanical surface properties at high temperatures	EUROPE	887596	7/24/98		
			KOREA	1998-18586	7/22/98		

# Surface Engineered Products Invention Report - The Westaim Corporation

## CASE NUMBER

SG 447

## TITLE

METHOD FOR  
COATING THE INNER  
SURFACES OF  
COMPLEX SHAPED  
PARTS

## COUNTRY

## APPLICATION NUMBER

## PATENT NUMBER

## EXPIRY DATE

SG 474

NO APPLICATION TO  
DATE  
SURFACE ALLOYED  
HIGH  
TEMPERATURE  
ALLOYS

## COUNTRY

## APPLICATION NUMBER

## PATENT NUMBER

## EXPIRY DATE

CANADA

2,175,439

PCT

PCT/CA97/00261

USA

08/839,831

SG 475

COATED TUBES FOR  
SUPERIOR  
CARBURIZATION  
RESISTANCE

## COUNTRY

## APPLICATION NUMBER

## PATENT NUMBER

## EXPIRY DATE

NO APPLICATION TO  
DATE

SG 476

COATED TUBES FOR  
NONADHERENCE OF  
AMORPHOUS COKE

## COUNTRY

## APPLICATION NUMBER

## PATENT NUMBER

## EXPIRY DATE

NO APPLICATION TO  
DATE

SG 477

COATED TUBES FOR  
IMPROVED  
CONVERSION RATE  
IN OLEFIN  
MANUFACTURE

## COUNTRY

## APPLICATION NUMBER

## PATENT NUMBER

## EXPIRY DATE

NO APPLICATION TO  
DATE

SG 478

COATED TUBES FOR  
HIGHER OPERATING  
TEMPERATURES IN  
HYDROCARBON  
PROCESSING

## COUNTRY

## APPLICATION NUMBER

## PATENT NUMBER

## EXPIRY DATE

NO APPLICATION TO  
DATE

SG 479

COATED TUBES FOR  
HIGHER  
HYDROCARBON TO  
STEAM RATIO IN  
OLEFIN  
MANUFACTURE

## COUNTRY

## APPLICATION NUMBER

## PATENT NUMBER

## EXPIRY DATE