

Form PTO-1595  
(Rev. 03/01)

RECORDATION FORM COVER SHEET  
PATENTS ONLY

U.S. DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office

OMB No. 0651-0027 (exp. 5/31/2002)

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To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

UV Coatings, Ltd.

2. Name and address of receiving party(ies)

Name: Scott Fishel

Internal Address: \_\_\_\_\_

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

3. Nature of conveyance:

- Assignment  Merger
- Security Agreement  Change of Name
- Other Exclusive and Sole Distribution Agreement

Street Address: 36580 Biltmore Place

City: Willoughby State: Ohio Zip: 44094

Execution Date: January 15, 2000

Additional name(s) & address(es) attached?  Yes  No

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)

B. Patent No.(s)

5,773,487

Additional numbers attached?  Yes  No

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

Name: Stephen A. Hill

Internal Address: Rankin, Hill, Porter & Clark LLP

Street Address: 925 Euclid Avenue, Suite 700

City: Cleveland State: Ohio Zip: 44115

6. Total number of applications and patents involved:  1

7. Total fee (37 CFR 3.41).....\$ 40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

18-0160

(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.

Stephen A. Hill

Name of Person Signing

  
Signature

August 23, 2002

Date

Total number of pages including cover sheet, attachments, and documents:  42

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patents & Trademarks, Box Assignments  
Washington, D.C. 20231

**EXCLUSIVE AND SOLE DISTRIBUTION AGREEMENT**

**THIS EXCLUSIVE AND SOLE DISTRIBUTION AGREEMENT** ("Agreement"), is made this 15th day of January, 2000 by and between Scott Fishel, an individual resident of the State of Ohio ("Fishel"), and UV Coatings, Ltd., an Ohio limited liability company ("Company"). Fishel may establish either a corporation or limited liability company (hereinafter such corporation and limited liability company shall be collectively referred to as the Assignee"), and pursuant to Section 16 of this Agreement, Fishel may, in his sole discretion, assign (the "Assignment") all of his rights, interest, duties, responsibilities, liabilities and obligations to and under this Agreement to such Assignee. Hereinafter, for all purposes of this Agreement, the term "Distributor" shall initially mean Fishel, but upon the occurrence of the Assignment, "Distributor" shall mean the Assignee.

**WITNESSETH:**

**WHEREAS**, Company is in the business of developing, manufacturing and distributing certain ultraviolet (UV) cured paints and coatings; and

**WHEREAS**, hereinafter, all (each and every) exterior wood sealers or treatments of the sun-cured, naturally occurring ultraviolet (UV) light cured, items and/or goods produced, manufactured, distributed, sold and/or made available for sale by the Company (including but not limited to the ZVOC™ 1200 sun-cured decksealer series of products) shall collectively be referred to as the "Products" and individually as a "Product"; and

**WHEREAS**, future product variations or new products which may, upon mutual agreement, be developed for the Distributor by the Company, and upon such development, the definition of the term "Products" shall be amended for such product variations and new products by the mutual agreement of the parties; and

**WHEREAS**, Company desires to appoint Distributor as its exclusive world-wide distributor for the Products; and

**WHEREAS**, Distributor desires to accept such appointment.

**NOW, THEREFORE**, in consideration of the premises, the mutual promises and the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties hereto, and intending to be legally bound, agree as follows:

1. **Distributorship Appointment** Company hereby designates and appoints Distributor as the exclusive world-wide authorized distributor of the Products. Distributor hereby accepts such designation and appointment and shall carry out and perform the duties, obligations and responsibilities of such a distributor as herein provided.

2. **Exclusivity of Distributorship and Right of First Refusal.** (a) Pursuant to the terms and provisions of Subsections 2(b) and 2(c) of this Agreement, the Distributor shall have the right of first refusal on a country-by-country basis for the exclusive right to sell, distribute, support and service the Products in the territory consisting of each and every country and place on the planet Earth, including but not limited to the countries and places in the continents of North America, South America (including therein the countries and places in the Caribbean and Latin America), Europe, Africa, the Middle East, the countries of the former USSR, Australia and Asia (collectively, the "Territory"). During the term of this Agreement and for a period of one (1) year after the termination of this Agreement, the Company shall not sell or license the Products, directly or indirectly, to any person, organization or entity other than Distributor in or for the Territory; to that end, the Company shall not sell, distribute or license any of the Products to customers or others in the Territory, whether by direct sales (so called "house accounts"), through manufacturer's representatives or through another distributor. The Distributor shall have the right to establish sub-distributors of the Products within the Territory, as the Distributor deems appropriate in its sole discretion.

(b) For so long as the Distributor has materially performed the Distributor's duties as set forth in this Agreement, then the Distributor shall have the sole and exclusive worldwide right of first refusal, on a country-by-country basis for the distribution of the Products as provided in this Agreement. If the Distributor materially breaches the terms and provisions of this Agreement (after the exhaustion of all applicable opportunities to cure such breach), then the Distributor's right of first refusal as to countries for which the Distributor has not yet exercised his right of first refusal, shall be on a non-exclusive basis. The initial countries for which the Distributor shall be deemed to have exercised its first right of refusal for the Territory shall be as follows (collectively, the "Assigned Countries"): United States of America.

(c) If either the Distributor or the Company wish to sell or distribute, directly or indirectly, the Products in any country in the Territory other than the Assigned Countries, then such party shall send a notice (the "Country Assignment Notice") to the other party.

(d) If the party sending the Country Assignment Notice is the Distributor, then for the countries identified in the Country Assignment Notice, the Distributor shall be deemed to have exercised its first right of refusal pursuant to Section 2 of this Agreement, and such countries shall be added to the term Assigned Countries for all purposes of this Agreement.

(e) If the party sending the Country Assignment Notice is the Company, then the Distributor shall have a period of thirty (30) days from the date of its receipt of the Country Assignment Notice to exercise its right of first refusal under Section 2 of this Agreement as to any one or more of the countries identified in the Country Assignment. If the Distributor exercises its

right of first refusal with respect to one or more of such countries, then the countries for which the Distributor exercises its right of first refusal shall be added to the term "Assigned Countries" and the Company shall not sell or distribute the Products in such countries except through the Distributor. If the Distributor fails to exercise its right of first refusal with respect to a country identified in the Company's Country Assignment Notice, then the Company may sell or distribute the Products directly in such country.

(f) In order for the Distributor to exercise its right of first refusal under Section 2 of this Agreement with respect to a country, the Distributor must believe that the Distributor currently has or can obtain within a commercially reasonable time, the ability to sell and distribute the Products in such country.

3. **Distributor's Duties.** During the term of this Agreement, Distributor shall have the following duties and responsibilities:

(a) Distributor shall actively promote the sale of the Products, shall make sales calls on prospective customers and sales representatives for the Products and shall administer the accounts of customers in a prompt and business-like manner.

(b) While the Distributor shall be responsible for sales activities and technical support for the Products, the Company shall fully cooperate with the Distributor and shall provide to the Distributor interpretive technical data for or about the Products and the use and application of the Products. Pursuant thereto:

(i) The Distributor shall have the obligation to develop suitable marketing materials and use such information to support the Products. The Distributor shall have the exclusive and sole right and responsibility to support and direct all marketing and advertising efforts for the Products in the Territory. Accordingly, Distributor shall have exclusive and sole responsibility for the development, design, layout, production and dissemination of all marketing and advertisement material for the Products.

(ii) The Distributor shall be responsible to ensure that their marketing materials do not make any material representations or claims of features or performance of or for the Products beyond those approved and provided by the Company in writing. The Distributor shall and does hereby agree to indemnify and hold the Company, and its shareholders, directors, officers, employees and agents (collectively, the "Company-Indemnified Parties"), harmless from and against, and shall promptly pay for, any and all actions, claims, demands, losses, damages, expenses (including, without limitation, interest, penalties, attorney's fees, costs of investigation and related expenses) and/or liabilities (collectively, "Damages") which the Company-Indemnified Parties may sustain or incur by reason of or arising out of the Distributor making any material representations or claims of features or performance of or for the Products beyond those approved and

provided by the Company in writing, regardless of whether a claim or demand for such Damages is made on, before or after the date of the termination of this Agreement

(iii) The Distributor shall also develop suitable literature or other suitable materials, which provide reasonably understandable directions for use of the Products. During the term of this Agreement (as extended from time to time), the Distributor shall have the right to designate the names (selected in the Distributor's sole discretion) under which the Products are advertised, marketed and/or sold.

(c) Distributor shall pay the Company for Products sold and shipped, within sixty (60) days of the date of shipment, where the price to be paid by the Distributor for the Products shall be pursuant to the terms and provisions of Section 6 of this Agreement. On the date of shipment, the Company shall provide an invoice to the Distributor for each such shipment. For special situations, such sixty (60) day period may be extended upon written approval from the Company, which shall not withhold such approval unreasonably.

(d) Distributor shall have exclusive control of the pricing of the Products and all other terms at which the Products is sold to customers, sub-distributors and/or others, and the acceptance of any orders shall be at the sole discretion of Distributor. The Company shall not unreasonably refuse Distributor's purchase orders. Both parties agree to notify each other of any bona fide reasons to reject customer orders.

(e) All customer invoices shall be sent from Distributor, and all customer payments shall be made directly to Distributor and not to Company. The Distributor alone shall be responsible for the collection of such customer payments.

(f) Distributor shall, in a timely fashion, notify the Company of similar and/or competing products and of possible patent infringements with respect to the patents for the Products. Pursuant thereto:

- (i) The Company shall then investigate all potential patent infringements reported to them by the Distributor, at the Company's sole cost and expense, but the Company shall have no obligation to initiate legal proceedings as a result of such investigations.
- (ii) The Distributor shall cooperate with the Company in any and all legal actions resulting from such investigations, but such legal actions shall be at the Company's sole cost and expense.
- (iii) Notwithstanding the foregoing, if the Company elects not to defend, prosecute or pursue any legal action regarding the Products and/or the intangible property rights therefor (including but not limited to the prosecution or defense of a patent infringement claim with respect to the

patents for or related to the Products), then: (1) the Distributor shall have the right and election, exercised in the Distributor's sole discretion, to assume control of such legal actions (but not the Company's liabilities therefrom and/or therefor) at the Distributor's expense and through counsel of the Distributor's choice, and (2) the Company shall fully cooperate with the Distributor in such legal actions.

(iv) If a party to this Agreement initiates legal proceedings in prosecution or defense of a potential patent infringement, such party shall solely bear the costs and expenses (including but not limited to attorneys' fees) of such legal proceedings.

(g) Distributor shall include in all literature and packaging design for the Products, any and all information and indicia required to maintain the patent and trademark rights associated with the Products, as reasonably directed by the Company in writing.

(h) Distributor shall not publicize any material representations or claims of product features or performance beyond those approved and provided by the Company in writing to the Distributor.

(i) In the event the Distributor establishes sub-distributors, such sub-distributors shall be required to comply with duties and responsibilities similar to those of the Distributor.

(j) The Distributor shall comply with all laws, statutes, ordinances, rules, orders and regulations applicable to its performance under this Agreement, including but not limited to all environmental laws.

(k) The Distributor shall initially investigate (to the extent the Distributor reasonably deems appropriate) any and all customer questions, issues and claims (collectively "Customer Claims" and individually a "Customer Claim") arising from or related to the Products, and where appropriate in the reasonable discretion of the Distributor, the Distributor shall inform the Company of a Customer Claim if such Customer Claim could have a material adverse affect on the sales of the Products and/or could cause significant liability to the Company for such Customer Claim. The Distributor shall bear the cost and expense of such initial investigation of such Customer Claims by the Distributor.

4. **Duties of Company.** During the term of this Agreement, Company shall have the following duties and responsibilities:

(a) Company shall manufacture the Products according to the terms and provisions of the patents therefor and the purchase orders for the Products. Upon

Company's receipt from Distributor of a purchase order for the sale of the Products, Company shall ship the quantities of the Products according to the specifications contained in such purchase order. The Company shall accept orders for the Products for time periods beyond the then current calendar year.

(b) In the manufacture of all Products, Company shall purchase all of the materials necessary to timely produce and ship final saleable products.

(c) Regarding deliveries of the Products, Company shall ship the Products ordered by Distributor within fifteen (15) business days of the date of Distributor's purchase order therefor. All Products manufactured by Company pursuant to this Agreement shall be shipped as specified by Distributor. The cost of transporting the Products sold hereunder (including but not limited to taxes, special fees, insurance, handling charges and all other expenses associated with transporting the Products) and the risk of loss during shipment for such Products, shall be borne by Distributor. The Company shall first notify Distributor in the event of any "unusual" charges or fees.

(d) The Company shall ship the Product, FOB-shipping point (i.e., the Company's manufacturing facility for the Products), directly to Distributor's customers per Distributor's directions. Once the Product leaves the Company's manufacturing facility, the Company shall promptly issue an appropriate invoice to the Distributor indicating to the Distributor that shipment therefor has occurred. The invoice will reflect all product costs, charges and fees (including shipping charges for special orders only).

(e) The Company, in writing, shall provide Distributor with approved representations, warranties and claims of Product features or performance.

(f) While the Distributor shall bear the primary responsibility of supporting the Product in terms of sales and technical support, the Company shall provide the Distributor with assistance in interpreting the Company's technical data for the Products and the use and application of the Products.

(g) Company shall disclose to Distributor all technology and information regarding the Products. Without charge Company shall prepare and submit certain information regarding the Products that Distributor may require from time to time, and such information shall be submitted in a timely and accurate fashion to Distributor. Without charge, Company shall provide Distributor with all technical support, Product information (including but not limited to technical reports, product performance data and its interpretation) and other technical aid as necessary or reasonable to facilitate the Distributor's generation of accurate sales literature.

(h) Pursuant to Subsection 3(k) of this Agreement, the Distributor shall have the responsibility of initially investigating all Customer Claims. If as a result of such

investigation, the Distributor determines in good faith that a Customer Claim constitutes a Defective Product Claim (as defined below), then the Distributor shall transfer to the Company and the Company shall accept, the responsibility for further investigation and handling of such Customer Claim.

- (i) For the purposes of this Agreement, the terms "Defective Product Claim" and "Defective Product Claims" shall mean any all Customer Claims which arise from or are related to defective materials of or within the Products, workmanship related claims, product warranty claims, product liability claims and/or other similar product-based claims with respect to the Products; provided, however, the term "Defective Product Claims" shall not include misapplication of the Products by an applicator trained and certified in writing by the Distributor.
- (ii) The Company shall and does hereby agree to indemnify and hold the Distributor, and its members, shareholders, directors, officers, employees and agents (collectively, the "Distributor-Indemnified Parties"), harmless from and against, and shall promptly pay for, any and all Damages which the Distributor-Indemnified Parties may sustain or incur by reason of or arising out of Defective Product Claims, regardless of whether a claim or demand for such Damages is made on, before or after the date of the termination of this Agreement.
- (iii) The Company shall make timely payment to the Distributor for any warranty work of the Company performed by the Distributor.
- (i) The Company shall make available to Distributor all quantities of the Products necessary to meet Distributor's customer sales of the Products. Once orders for the Products achieve a volume greater than five thousand (5,000) gallons in one month, the Company shall keep an inventory of the Products which is not less than the greater of:  
(i) twenty percent (20%) of the aggregate gallons associated with the orders for the Product in the immediately prior three (3) months, or (ii) two thousand (2,000) gallons.
- (j) The Company shall comply with all laws, statutes, ordinances, rules, orders and regulations applicable to its performance under this Agreement, including but not limited to all environmental laws.
- (k) The Company shall prepare and maintain adequate and correct books and records as to the Company's cost for the raw materials necessary to produce the Products, and the Company shall retain such books and records for a period of not less than three (3) years after the end of the applicable calendar year.
- (l) The Company shall develop and maintain a contingency production plan which contemplates reasonably foreseeable events that would interrupt the Company's



ability to ship the Products within the timeframe specified herein. Such contingency production plan shall ensure that there shall not be any interruption of the Company's ability to ship the Products more than thirty (30) days from the date of the Distributor's purchase order therefor, and such contingency plan shall be attached hereto as Exhibit A, which may be updated from time to time as necessary (subject to the prior written approval of the Distributor).

(m) The Company has no intent to engage in the sale or marketing of the Products. Further, for as long as the Distributor materially performs the Distributor's duties (as set forth in Section 3 of this Agreement), the Company shall not entice, pursue, discuss, entertain, engage or contract with any third party on or regarding the subject matter and/or Products of this Agreement.

(n) The Company shall make appropriate product support personnel available to the Distributor, whereby such product support personnel shall provide to the Distributor any and all technical support and any related services regarding or related to the Products reasonably requested by the Distributor. There shall be no charge or fee by the Company to the Distributor for the availability or the rendering of product support services by such product support personnel to the Distributor.

5. Term. (a) Except as otherwise provided in this Agreement, the initial term (the "Initial Term") of this Agreement shall commence on the date first written above and shall continue in full force and effect for an initial period of five (5) years.

(i) Notwithstanding the five (5) year Initial Term stated above, if at the end of the three (3) year period commencing on the date of this Agreement, the Distributor and the Distributor's customers (on a combined basis) have not ordered a cumulative total of twenty thousand (20,000) gallons of the Products during such three (3) year period, then: (1) this Agreement and the exclusive distributorship granted by the Company to the Distributor, shall terminate as of the end of such three (3) year period; and (2) the Company shall deliver to the Company a copy of all marketing and product information and materials regarding the Products.

(ii) Upon the expiration of the Initial Term, this Agreement shall automatically renew for another five (5) year term (the "Second Term") without any further action or approval of the Company or the Distributor, unless the Distributor and/or the Distributor's customers (on a combined basis) fail to order a cumulative total of fifty thousand (50,000) gallons of the Products during the Initial Term.

(b) Except as otherwise provided in this Agreement, upon the expiration of the Second Term, this Agreement shall automatically and continuously renew for successive five (5) year periods thereafter without any further action or approval of the Company or the Distributor. However, if the aggregate gallons of the Products from the orders therefor to the Company from the Distributor or the Distributor's customers during the then current five year term, are less than

fifty percent of the gallons of the Products ordered by the Distributor or the Distributor's customers in the five (5) year term immediately preceding the then current five year term, then the nature of the distributorship between the Company and the Distributor pursuant to this Agreement shall be on a non-exclusive basis with respect to the Assigned Countries.

(c) Notwithstanding the foregoing or any termination of this Agreement, the Distributor shall at all times have the right to purchase the Products from the Company, and the Company shall at all times sell the Products to the Distributor and/or the Distributor's customers.

6. **Product Pricing, Container Size and Other Products.** (a) During the first twelve (12) months of the Initial Term, the purchase price for the Products ordered by the Distributor or the Distributor's customers from the Company (collectively, the "Product Prices" and individually the "Product Price") shall vary with the size of the containers and number of units purchased as follows:

- (i) For orders of the Products which total four thousand (4,000) or more gallons of the Products (a "Truck Load Order"), the Product Price to the Distributor shall be: (1) thirty-six dollars (\$36.00) per gallon for one (1) gallon containers, and (2) thirty-five dollars (\$35.00) per gallon for all the other container sizes set forth in Section 6(e) of this Agreement in a Truck Load Order.
- (ii) Notwithstanding the provisions of Subsection 6(a)(i)(1) of this Agreement, upon the Distributor and/or the Distributor's customers (on a combined basis) ordering a cumulative total of fifty thousand (50,000) gallons of the Products during any twelve (12) month period, the Product Price to the Distributor for one gallon containers in a Truck Load Order shall be reduced to thirty-five dollars (\$35.00) per gallon.
- (iii) For orders of the Products which total less than a Truck Load Order, the Product Price to the Distributor shall be thirty-nine dollars (\$39.00) per gallon.

(b) After the expiration of the twelve (12) month period described in Subsection 6(a) hereof, the Product Prices for all quantities of the Products shall be determined pursuant to the terms and provisions of Exhibit B, attached hereto and incorporated herein.

(c) The Product Prices for the sale of the Products by the Company pursuant to and for this Agreement (including but not limited to the terms and provisions of Subsections 6(a) and/or 6(b) hereof) shall and do hereby include therein (and thus there shall be no additional charge to the Distributor for) the containers, labels and labor to prepare the Products on pallets, wrapped and secured for shipping to customers.

(d) Upon five (5) days prior written notice, the Distributor shall have the right to audit and inspect the books and records of the Company two (2) times in each calendar year, to verify the amounts stated by the Company as its raw material costs. For any occasion in which the

Distributor identifies as an improper overcharge by the Company to the Distributor on the purchase of the Products as a result of such an audit or inspection of the books and records of the Company, then the Company shall promptly pay to the Distributor an amount equal to the sum of: (i) the cost and expense to the Distributor to conduct such audit or inspection, and (ii) the amount of such overcharge multiplied by three (3).

(e) The Company shall make the Products available for purchase in UV opaque containers (where the style and design for such containers shall be pre-approved by the Distributor) in the following sizes: one (1) gallon, two and one-half (2.5) gallons, five (5) gallons, and fifty (50) gallons.

(f) The Distributor shall have the right to periodically inspect the Company's manufacturing of the Product and facilities therefor.

7. **Product Quality and Quantity.** (a) All Products supplied by Company to Distributor shall be accompanied by a certificate of analysis or other appropriate quality assurance document on a lot or batch basis and shall: (i) be of merchantable quality and free from defects in material and workmanship, (ii) conform to the specifications of the patents and orders for the Products, and (iii) usable and saleable in the ordinary course of business.

(b) In the event that any of the Products supplied pursuant to this Agreement shall fail to conform to the foregoing warranties set forth in Subsection 7(a) of this Agreement, then Company shall, at Distributor's option, either: (i) replace the non-conforming Products; or (ii) credit Distributor for the purchase price thereof; or (iii) refund the purchase price thereof to Distributor. The Distributor's exercise of one or more of the foregoing options of this Subsection 7(b) shall not prejudice the Distributor's exercise of one or all of its options and remedies under this Agreement, or as provided by law or equity.

(c) Except where the Distributor has made material representations and warranties of the features or performance of or for the Products beyond those approved and provided by the Company in writing, in conjunction with its agreements, covenants and obligations in Subsection 4(i) above, Company shall and does hereby agree to indemnify and hold Distributor free and harmless with respect to any patent, copyright, product liability claims, losses, damages, claims for injuries or damages to any person or property, lawsuits or other liabilities asserted or brought against Distributor by virtue of Company having designed and/or manufactured the Product.

8. **Insurance.** Company shall maintain product liability insurance coverage with limits of at least five million dollars (\$5,000,000.00) for sales of the Products, and name Distributor as an additional insured on all such policies. Distributor shall maintain products liability insurance with limits of at least five million dollars (\$5,000,000.00) for sales of the Products, and name Company as an additional insured on such policies. Upon the request of a party to this Agreement, the other party to this Agreement shall provide to such party written confirmation of such insurance coverage.

9. **Relationship Between the Parties.** This Agreement is between two independent parties, and no agency, partnership or joint venture relationship is intended to be created hereby, and neither party has the right or authority to assume, create or incur any liability of any kind, express or implied, against or in the name of or on behalf of the other party.

10. **Option for License.** (a) In addition to any and all rights and/or remedies contained in this Agreement, at law and/or in equity, if the Company or its successor or assigns breach any of the terms or provisions of this Agreement or if for any reason the Company or its successors or assigns are unable or unwilling (or the Company indicates or threatens that the Company may be unable or unwilling) either to:

- (i) manufacture, produce and/or timely deliver sufficient quantities of the Products to timely meet all the orders of the Distributor and/or the Distributor's customers for the Products, and/or
- (ii) manufacture or produce all of the Products in the United States of America,

then the Distributor shall have the option (to be exercised in the Distributor's sole discretion) to require that the Company and its successors and assigns grant to the Distributor a license to manufacture, market and sell the Products. The option of this Subsection 10(a) shall be exercised by the Distributor furnishing written notice thereof to the Company. Simultaneously with the execution of this Agreement, the Company shall execute and deliver to an escrow agent (the "Escrow Agent") mutually agreeable to the Company and the Distributor a licensing agreement in the form of Exhibit C (the "License Agreement") for such license by the Company and its successors and assigns to the Distributor. The Escrow Agent shall hold such License Agreement in escrow pursuant to the terms and provisions of the escrow agreement attached hereto and incorporated herein as Exhibit D (the "Escrow Agreement").

(b) Upon the Distributor's exercise of the option described in Subsection 10(a) of this Agreement and upon the Distributor's receipt of the License Agreement from the Escrow Agent, commencing on the first day of the month following the date of the Distributor's receipt of the License Agreement (the "Royalty Period"), the Distributor shall pay a royalty (the "Royalty") to the Company based upon the Distributor's net cash collections (gross cash collections less returns, taxes and shipping costs) from sales of only the Products during the Royalty Period (the "Product Collections"). Such Royalty shall be paid by the Distributor to the Company on a quarterly basis within forty-five (45) days of the end of each quarter of the Royalty Period. For each quarter during the Royalty Period, the Distributor shall determine the Product Collections that occurred during such quarter, and the amount of the Royalty paid to the Company by the Distributor shall equal the Product Collections for such quarterly period multiplied by two percent (2%). With each such Royalty payment by the Distributor to the Company, the Distributor shall disclose to the Company the amount of the Product Collections upon which such payment is based. Notwithstanding the foregoing, if the Company or the Company's successors or assigns breach any of the terms or provisions of this Agreement, then the Distributor shall not owe or pay any of the Royalty to the Company or to the Company's successors or assigns, and the provisions

of this Subsection 10(b) regarding such Royalty and the payment thereof, shall be null, void and of no force or effect.

(c) After the Distributor's exercise of the option described in Subsection 10(a) of this Agreement and after the Distributor's receipt of the License Agreement from the Escrow Agent, upon five (5) days prior written notice, the Company shall have the right to audit and inspect the books and records of the Company two (2) times in each calendar year, to verify the amount of the Royalty paid to the Company. For any occasion in which the Company identifies where the Royalty paid to the Company is less than the amount provided for such Royalty in Subsection 10(b) of this Agreement, then the Distributor shall promptly pay to the Company an amount equal to the sum of:

- (i) the cost and expense to the Company to conduct such audit or inspection, and
- (ii) the amount of such Royalty underpayment multiplied by three (3).

(d) Andrew Sokol ("Sokol") is the prior owner of the patent(s) for the Products and a shareholder of the Company, and as a result of the foregoing, Sokol shall personally benefit from the sale of the Products made pursuant to this Agreement. In consideration of such personal benefit, Sokol does hereby consent and agree to the terms and provisions contained in this Agreement (including but not limited to those contained in this Section 10). If for any reason any rights, title or interest in one or more of the patent(s) and/or other property rights or interests to, for, related to or arising from the Products becomes owned by, possessed by or inures to Sokol (or Sokol's successors, permitted assigns, estate, heirs, and/or legal representatives), then without any further consideration, Sokol and/or Sokol's successors, permitted assigns, estate, heirs, and/or legal representatives shall execute and deliver to the Distributor any and all documents or instruments requested by the Distributor to perform or implement the terms of this Agreement (including but not limited to those contained in Section 10 hereof).

#### 11. Patents, Trademarks and Copyrights.

(a) Company hereby represents and warrants to Distributor that: (i) Company is the lawful owner of all of the patents (pending or issued), trademarks, copyrights and any other right or interest in, of or for the Products; (ii) Company has the full and exclusive right to grant both the exclusive distributorship granted under this Agreement and the License Agreement; and (iii) the Products do not infringe upon any other party's patents, trademarks or copyrights. Attached to this Agreement and incorporated herein as Exhibit E is a true, correct and complete copy of the patent assignment whereby the Company has acquired all right, title and interest in all patents to or for the Products.

(b) Distributor is hereby authorized, at his option, to use the existing artwork, marketing designs and brochures, trademarks and/or tradenames owned and/or claimed by Company with respect to the Products in connection with the promotion, sale and advertising of the Products, but except as otherwise provided herein, any use thereof by Distributor shall not

give Distributor any interest whatsoever in and to said trademarks or tradenames which would in any way imply or convey that Distributor is an agent or affiliate of Company.

12. **Confidentiality and Noncompetition.** (a) The Company hereby covenants to and agrees with the Distributor that throughout the entire term of this Agreement (as such term may be renewed from time to time) and for a period of one (1) year after the termination of this Agreement (regardless of the reason for the termination of this Agreement), the Company shall not directly or indirectly:

- (i) divulge, disclose and/or use for any purpose whatsoever any Confidential Information (as such term is defined below);
- (ii) manufacture, market, distribute or sell the Products or any other products which are the same as, similar to, competitive with and/or a substitute for the Products; or
- (iii) solicit, divert, contact, entice, interfere with, induce or sell Products, or attempt to do any of the foregoing, to any person, corporation or other entity which was a customer of the Distributor during the three (3) year period preceding the date of the termination of this Agreement.

(b) For the purposes of this Agreement, the term "Confidential Information" shall mean all information of or about the Distributor's customers and sales representatives, including but not limited to the names and address of such customers and/or sales representatives, lists of such customers and/or sales representatives, the products and quantities purchased by or for such customers and/or sales representatives, any special requirements of such customers, key contacts with such customers or sales representatives, pricing information relating to mark-ups and/or discounts to such customers, and any trade secrets related to any of the foregoing. The Company acknowledges and agrees that all of the Confidential Information is deemed for all purposes to be confidential and proprietary.

(c) The Company has carefully read and considered the provisions of this Section 12 of this Agreement and has consulted with its legal counsel, and the Company agrees that the restrictions set forth in this Section 12, including, but not limited to, the time period of restriction and nature and scope of restriction, are fair and reasonable and are reasonably required for the protection of the interests of the Distributor.

(d) In the event that, notwithstanding the foregoing, any of the provisions of this Agreement (including but not limited to Section 12 hereof) shall be held to be invalid or unenforceable, the remaining provisions or parts thereof shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable parts had not been included therein. In the event that any provision of this Agreement (including but not limited to this Section 12 hereof) relating to the time period and/or the nature and scope of restriction and/or related aspects shall be declared by a court of competent jurisdiction to exceed the maximum restrictiveness such court

deems reasonable and enforceable, the time period and/or areas of restrictions and/or related aspects contained in this Agreement shall be reformed and modified to become those deemed reasonable and enforceable by the court and thereafter be the maximum restrictions in such regard, and the restrictions shall remain enforceable to the fullest extent deemed reasonable by such court.

(e) The covenants and agreements contained in this Section 12 of this Agreement shall survive the termination of this Agreement until all such covenants and agreements have been performed or satisfied or until such covenants and agreements have terminated in accordance with their own terms. The covenants and agreements of this Section 12 of this Agreement shall be construed as independent of any other provision of this Agreement, and the existence of any other agreement, claim or cause of action of the Company (or its affiliates or related parties) against the Distributor, whether predicated upon this Agreement or otherwise, shall not constitute a defense to the enforcement of the covenants and agreements contained in this Section 12 of this Agreement against the Company.

(f) In the event of a breach or threatened breach of any of the covenants or agreements contained in this Section 12 of Agreement, the Distributor shall have the right to monetary damages from the Company for any past breach and the right to equitable relief, including specific performance by means of an injunction against the Company and its members, agents, representatives, servants, employers, employees, family members, and any and all persons acting directly or indirectly by or with them, to prevent or restrain any further breach.

13. **Termination.** (a) The occurrence of one or more of the following by a party to this Agreement shall constitute an "Event of Default": (i) materially breaching the terms or provisions of this Agreement if such breach is not corrected within ninety (90) days of the breaching party's receipt of written notification thereof from the non-breaching party; (ii) ceasing to do business as a going concern; (iii) making a general assignment for the benefit of creditors; or (iv) filing or having filed against it a petition seeking the reorganization, arrangement, composition, adjustment, liquidation or dissolution of such party or seeking similar relief under any other statute, law or regulation, or seeking the appointment of a trustee, receiver, assignee, liquidator or similar officer of the court for a substantial part of such party's property, if such petition or such appointment is not removed, released, terminated or vacated within ninety (90) days of the receipt of notification of such petition by the party which is the subject of such petition or appointment. Any disagreement or dispute as to whether an alleged breached has been cured within the ninety (90) provided therefor, shall be resolved by arbitration pursuant to the terms and provisions of Section 18 of this Agreement.

(b) Upon the occurrence of an Event of Default, the nonbreaching party shall have the right and option to terminate this Agreement, and except as otherwise provided in this Agreement, upon such termination, all of the nonbreaching party's duties and obligations hereunder are terminated. Such right and option to terminate this Agreement shall be without prejudice to the enforcement of any other right or remedy authorized by law, equity or this Agreement against the breaching party.

(c) Notwithstanding any term or provision in this Agreement to the contrary, no termination of this Agreement shall: (i) affect the post-termination rights and obligations of Company and Distributor with respect to the terms contained in Sections 10 and/ or 12 hereof, (ii) affect the rights and obligations of Company and Distributor with respect to customer sales of the Products made by Distributor prior to the effective date of the termination of this Agreement, or (iii) terminate any liabilities arising out of conduct prior to the actual date of termination. Otherwise, all rights and obligations of Company and Distributor shall cease to exist upon any termination of this Agreement; provided, however, that all warranties of Company set forth in this Agreement (including but not limited to Section 7 hereof) shall survive the termination of this Agreement, and Distributor shall continue to have the right to seek damages and equitable relief on account of such warranties.

14. **Notices.** All notices required or permitted to be given under or pursuant to this Agreement shall be in writing and shall be sent either by personal delivery or by U.S. registered or certified mail, postage prepaid, and shall be deemed to have been duly given upon receipt by said party of personal delivery of said notice or three (3) days after being sent by U.S. registered or certified mail, return receipt requested, postage pre-paid and shall be addressed as follows:

To Company:                    UV Coatings, Ltd.  
                                      140 Sheldon Road  
                                      Berea, Ohio 44017  
                                      Attn: Thomas W. Richardson

To Distributor:                Scott Fishel  
                                      36580 Biltmore Place  
                                      Willoughby, Ohio 44094

or such other address or addresses as either the Company or the Distributor may hereinafter designate in writing to the other.

15. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same Agreement, which shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

16. **Assignment.** (a) Except as otherwise provided herein, neither this Agreement nor any interest herein shall be assignable by any party without the prior written consent of the other party.

(b) Notwithstanding the foregoing provisions of Subsection 16(a) of this Agreement, the Distributor may assign or transfer all of the Distributor's rights, interest, liabilities and obligations to and under this Agreement to: (i) any entity in which Scott Fishel has an equity ownership interest, (ii) any entity which is a subsidiary of or affiliated with the Assignee or Fishel,



(iii) any entity in which Fishel or the owners of the Assignee is/are the majority owner(s), and/or  
(iv) a successor corporation or entity in the event of a merger, consolidation, or transfer or sale of all or substantially all of the assets or shares of stock of the Assignee. In the case of any such permitted assignment, this Agreement shall be binding upon and shall inure to the benefit of the respective successors, heirs and assigns of the parties hereto. Upon the occurrence of any Assignment by Fishel to an Assignee, Fishel shall then have no duties, liabilities or obligations to the Company for or pursuant to this Agreement or the matters discussed herein.

(c) Notwithstanding the foregoing provisions of Subsection 16(a) of this Agreement, the Company may assign or transfer all of the Company's rights, interest, liabilities and obligations to and under this Agreement to: (i) any entity which is a subsidiary of or affiliated with the Company, (ii) any entity in which the owners of the Company are the majority owners, and/or (iii) a successor corporation or entity in the event of a merger, consolidation, or transfer or sale of all or substantially all of the assets or shares of stock of the Company. In the case of any such permitted assignment, this Agreement shall be binding upon and shall inure to the benefit of the respective successors, heirs and assigns of the parties hereto.

17. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Ohio. For any claims, allegations, causes of action or legal procedures not subject to the arbitration provisions specified by Section 18 of this Agreement, the parties to this Agreement do each hereby agree that they shall submit themselves to the venue and jurisdiction of the competent courts of the Cuyahoga County, Ohio, or the United States District Court for the Northern District of Ohio, Eastern Division, in connection with all such claims, allegations, causes of action or legal proceedings related to or arising from this Agreement, expressly waiving their rights to any other jurisdiction or venue which might correspond to them due to their domiciles or legal residence.

18. **Disputes, Controversies, and Claims.** Any and all disputes, controversies or claims arising out of or relating to this Agreement or the breach or validity of any term or provision of this Agreement, shall be resolved by final and binding arbitration. The arbitration shall be held in Cleveland, Ohio in accordance with the Commercial Arbitration Rules of the American Arbitration Association and shall be conducted pursuant to the terms and provisions set forth in Exhibit F, attached hereto and incorporated herein.

19. **Exhibits, Attachments and Recitals.** Any and all exhibits, schedules and attachments to this Agreement are incorporated herein and made a part of this Agreement. The recitals hereinabove contained in the "WHEREAS" clauses are true, accurate and complete and are incorporated herein and made a part of this Agreement.

20. **Waiver.** The failure of a party to insist, in any one or more instances, upon performance of any of its terms or conditions of this Agreement, shall not be construed as a waiver or relinquishment of any rights granted hereunder or the future performance of any such term, covenant or condition.

21. **Severability.** In the event that any of the terms or provisions of this Agreement shall, to any extent, be found by a court of competent jurisdiction or a panel of arbitrators to be invalid or unenforceable, then the remaining terms and provisions of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall remain and be valid and shall be enforced to the fullest extent, or to the fullest lesser extent, as permitted by law or as permitted by such arbitrators.

22. **Manufacturer's Representation Agreement.** Prior to the date of this Agreement, the Company and Right-On-Roofing, Inc., an Ohio corporation ("Right-On-Roofing"), entered into a certain manufacturer's representation agreement (the "Manufacturer's Representation Agreement") related to certain of the Products. Simultaneously with the execution of this Agreement, the Company and Right-On-Roofing shall each deliver the Manufacturer's Representation Agreement to the Escrow Agent (as such term is defined above), and the Escrow Agent shall hold the Manufacturer's Representation Agreement on behalf of Right-On-Roofing and the Company in constructive trust pursuant to the terms and provisions of the Escrow Agreement (as such term is defined above). During the time the Manufacturer's Representation Agreement is held in escrow pursuant to the terms and provisions of this Agreement and the Escrow Agreement, the Manufacturer's Representation Agreement shall have no force or legal effect but shall not be terminated in any way. Upon the termination of this Agreement for any reason whatsoever (whether or not for cause), the Escrow Agent shall release the Manufacturer's Representation Agreement to Right-On-Roofing and the Company, pursuant to the terms and provisions of the Escrow Agreement. Upon the release of the Manufacturer's Representation Agreement from escrow by the Escrow Agent, the Manufacturer's Representation Agreement shall be enforceable by and binding upon the Company and Right-On-Roofing and shall have full legal force and effect according to the respective terms and provisions contained in such Manufacturer's Representation Agreement.

23. **Entire Agreement.** This Agreement and the Manufacturer's Representation Agreement, together with all exhibits and schedules attached hereto and/or documents and instruments executed in connection this Agreement and/or the Manufacturer's Representation Agreement, contains the entire understanding of the parties concerning the subject matter hereof, and there are no promises, agreements, conditions, understandings, warranties or representations (oral or written, express or implied) regarding the subject matter of this Agreement other than as set forth in this Agreement and/or the Manufacturer's Representation Agreement. Except as provided in the Manufacturer's Representation Agreement, any and all prior agreements with respect to the subject matter of this Agreement are hereby revoked and forever terminated, and this Agreement and the Manufacturer's Representation Agreement are, and are intended by the parties hereto to be, an integration of any and all prior agreements or understandings (oral or written) with respect to the subject matter of this Agreement and/or the Manufacturer's Representation Agreement. This Agreement shall not be amended or modified except upon the mutual written agreement of Company and Distributor. The provisions of this Agreement shall supersede any conflicting provision of the purchase orders, acknowledgment, invoices, and other transaction forms of or between Company and Distributor.

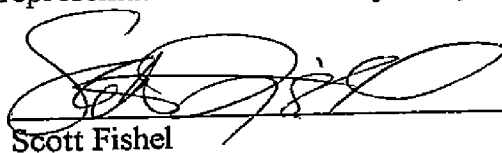
24. **Remedies and Survival.** Except as herein expressly provided, the rights and remedies provided herein shall be cumulative, and the exercise thereof by any party hereto shall be without prejudice to the enforcement of any other right or remedy authorized by law, equity or this Agreement against any other party hereto. The respective covenants and obligations of the parties to this Agreement shall survive the termination of this Agreement until all such covenants and obligations have been performed or satisfied or until such covenants or obligations have terminated in accordance with their own terms.

25. **Parties Bound and Gender.** This Agreement shall be binding on and inure to the benefit of the parties to this Agreement and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns. The use of any gender herein shall be deemed to be or include the other genders and the use of the singular shall be deemed to be or include the plural (and vice versa), whenever appropriate.

26. **Further Assurances.** From time to time, without any further consideration, each party shall execute and deliver to the other party such additional documents and/or instruments as may be reasonably necessary to consummate the transactions contemplated by this agreement.

27. **Captions.** The captions and section headings used in this Agreement are for convenience and reference only, and they are not a part of this Agreement and they shall not be used in the interpretation of the terms and conditions of this Agreement.


**IN WITNESS WHEREOF**, Company and Distributor have caused this Agreement to be executed by their respective duly authorized representatives as of the day and year first above written.

  
\_\_\_\_\_

Scott Fishel

“Distributor”

UV COATINGS, LTD.

By:   
\_\_\_\_\_

Thomas W. Richardson, Chief Operating Officer

“Company”

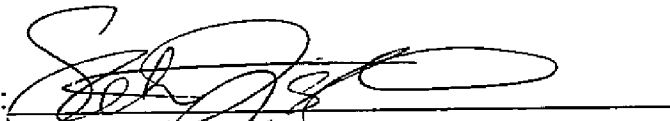
**CONSENTS AND AGREEMENTS**

**IN WITNESS WHEREOF**, Andrew Sokol does hereby consent and agree to the terms and provisions of this Agreement (including but not limited to Section 10 hereof) as of the day and year first above written.

  
Andrew Sokol

**IN WITNESS WHEREOF**, Right-On-Roofing, Inc. does hereby consent and agree to the terms and provisions of Section 22 of this Agreement as of the day and year first above written.

RIGHT-ON-ROOFING, INC.

By:   
Scott Fishel, President

**LIST OF EXHIBITS**

- Exhibit A - Company's Contingency Plan
- Exhibit B - Pricing Terms
- Exhibit C - License Agreement
- Exhibit D - Escrow Agreement
- Exhibit E - Patent Assignment
- Exhibit F - Arbitration Procedures

**EXHIBIT A**

**Company's Contingency Plan**

The Company shall contract with a toll manufacturer to be prepared to produce the Product(s) for the Distributor if the Company was, for whatever reason, unable to manufacture the Product(s).

## EXHIBIT B

### Pricing Terms

Pursuant to Subsection 6(b) of this Agreement, after the expiration of the first twelve (12) month period of the Initial Term, the Product Prices for the Products ordered by the Distributor or the Distributor's customers from the Company shall be determined as follows:

1. During the time period commencing with the beginning of the thirteenth (13<sup>th</sup>) month of the Initial Term and continuing through the end of the remainder of the Initial Term (inclusive), the Product Prices shall equal those set forth in Subsection 6(a) of this Agreement plus or minus (as appropriate) the Raw Materials Adjustment Amount (as such term is defined herein).
2. For the purposes of this Agreement, the term "Raw Materials Adjustment Amount" shall equal the sum of the following items:
  - (a) a positive amount equal to the increase in the cost of the Raw Materials (as determined pursuant to paragraphs 3, 4 and 5 of this Exhibit B) on a per gallon of the Product basis and on a Truck Load Order basis, for the Raw Materials purchased by the Company for use in the direct production of the Products for the orders from the Distributor or the Distributor's customers; and
  - (b) a negative amount equal to fifty percent (50%) of the decrease in the cost of the Raw Materials (determined pursuant to paragraphs 3, 4 and 5 of this Exhibit B) on a per gallon of the Product basis and on a Truck Load Order basis, for the Raw Materials purchased by the Company for use in the direct production of the Products for the orders from the Distributor or the Distributor's customers.
3. For the purposes of this Agreement and this Exhibit B, the terms "Raw Material" and "Raw Materials" shall mean the property items which are either (a) a part or component of or used in the manufacture of the Products, or (b) necessary for the shipment of the Products to the Distributor or the Distributor's customers. The items of property incorporated in the terms "Raw Material" and "Raw Materials" include but are not limited to chemicals, containers, labels, packing materials and pallets.
4. During the Raw Material Purchasing Period, the Product Prices shall be adjusted pursuant to paragraphs 1 and 2 of this Exhibit B on an annual basis, commencing on the first annual anniversary of the date of this Agreement and each annual anniversary date from the date of this Agreement thereafter.

5. For the twelve (12) month period beginning on the first day of the thirteenth (13th) month of the Initial Term (the "First Anniversary Date"), the change in the costs of Raw Materials for paragraph 2 of this Exhibit B shall equal the base Raw Material cost on a per gallon of Product basis of twenty-five dollars (\$25.00) as compared to the cost of such Raw Materials on such First Anniversary Date. On the first day of the twenty-fifth (25th) month of the Initial Term (i.e., the second anniversary date of this Agreement) and each such annual anniversary date of this Agreement thereafter, the change in the Raw Material cost for paragraph 2 of this Exhibit B shall equal the difference between the cost of the Raw Materials on the current anniversary date as compared to such cost on the immediately prior anniversary date.
6. After the expiration of Initial Term, the Product Prices shall equal those set forth in Subsection 6(a) of this Agreement plus or minus (as appropriate): (a) the Raw Materials Adjustment Amount (as such term is determined pursuant to paragraphs 3, 4, and 5 of this Exhibit B), and (b) the Labor Adjustment Amount (as such term is determined pursuant to paragraph 7 of this Exhibit B).
7. For the purposes of this Agreement, the term "Labor Adjustment Amount" shall mean the amount determined as follows:
  - (a) Commencing on the sixth (6<sup>th</sup>) anniversary of the date of this Agreement and every three (3) years thereafter, the Company and the Distributor shall examine whether the labor cost to produce one (1) gallon of the Product (on a Truck Load Order basis) on each such date is higher than such labor cost on the date of this Agreement.
  - (b) If pursuant to subparagraph 7(a) of this Exhibit B the Company proves (by written document and supporting information) to the Distributor's reasonable satisfaction that the labor cost to produce one (1) gallon of the Product (on a Truck Load Order basis) on the date in question is in fact higher than such labor cost on the date of this Agreement, then Company and the Distributor shall negotiate in good faith as to the amount of any price increase in the Products that is appropriate for such higher cost of labor.
  - (c) If as a result of the negotiations described in subparagraph 7(b) of this Exhibit B the Company and the Distributor cannot agree as to the appropriate amount of price increase in the Products for the higher cost of labor, then the Company and the Distributor shall submit such issue and dispute to binding arbitration pursuant to the terms and provisions of Section 18 and Exhibit F of this Agreement.

**EXHIBIT C****EXCLUSIVE LICENSE AGREEMENT**

**THIS EXCLUSIVE LICENSE AGREEMENT** ("Agreement"), made and entered into at Cleveland, Ohio as of the 15th day of January, 2000 (effective as provided herein), is by and among UV COATINGS, LTD., an Ohio limited liability company ("Licensor"), SCOTT FISHEL, an individual resident of the State of Ohio ("Fishel"), and ANDREW SOKOL, an individual resident of the State of Ohio ("Sokol"). Fishel may establish either a corporation or limited liability company (hereinafter such corporation and limited liability company shall be collectively referred to as the Assignee"), and pursuant to Section 20 of this Agreement, Fishel may, in his sole discretion, assign (the "Assignment") all of his rights, interest, duties, responsibilities, liabilities and obligations to and under this Agreement to such Assignee. Hereinafter, for all purposes of this Agreement, the term "Licensee" shall initially mean Fishel, but upon the occurrence of the Assignment, "Licensee" shall mean the Assignee.

**WITNESSETH:**

**WHEREAS**, Licensor desires to license the right to manufacture, produce, market and sell certain exterior wood sealers or treatments of sun-cured, naturally occurring ultraviolet (UV) light cured items and/or goods, including but not limited to the ZVOC™ 1200 sun-cured decksealer series of products (hereinafter collectively referred to as the "Products" and individually as a "Product"); and

**WHEREAS**, Licensee desires to acquire the license rights to the Products upon the terms set forth in this Agreement; and

**WHEREAS**, the granting of such license is pursuant to the terms and provisions of a certain Exclusive and Sole Distribution Agreement by and between the Licensor and the Licensee dated January 15, 2000 (the "Distribution Agreement"); and

**WHEREAS**, in this Agreement, the term "Intellectual Property Rights" shall collectively mean any and all property rights in, of, for, related to and/or arising from the Products and all improvements, modifications, reformulations and/or amendments to the Products, including but not limited to all patents (pending or issued), trade names, trade marks, copy rights and/or any other similar property rights.

**NOW, THEREFORE**, in consideration of the premises and the mutual promises set forth in this Agreement, and for other good and valuable consideration (the receipt and legal sufficiency whereof being hereby acknowledged), the Licensor, the Licensee and Sokol each agree as follows:

1. **Incorporation of Distribution Agreement.** The license granted pursuant to this Agreement is in conjunction with and pursuant to the terms and provisions of the Distribution



Agreement, and the terms and provisions of the Distribution Agreement are hereby incorporated into this Agreement as if such terms and provisions were reproduced herein in full. The terms used in this letter that are defined in the Distribution Agreement are used in this Agreement as so defined. If any of the terms and provisions of this Agreement (before incorporation of the terms and provisions of the Distribution Agreement) are inconsistent with or conflict with the terms and provisions of the Distribution Agreement, the terms and provisions of this Agreement (before the incorporation of the terms and provisions of the Distribution Agreement) shall control and govern.

2. **Representation and Warranty.** The Licensor hereby represents and warrants to Licensee that: (i) Licensor is the lawful owner of all of the Intellectual Property Rights; (ii) Licensor has the full and exclusive right to grant the exclusive and irrevocable license granted under this Agreement; and (iii) neither the Products nor the Intellectual Property Rights infringe upon any other party's patents, trademarks or copyrights.

3. **Grant of License.** (a) The Licensor hereby absolutely and unconditionally confers upon and grants to Licensee, and Licensee hereby accepts from the Licensor, upon the terms set forth in this Agreement, an exclusive and irrevocable license (the "License") to: (i) use, develop, produce, manufacture, distribute, apply, lease and/or sell the Products and/or make the Products available for sale; (ii) take and conduct all actions and activities necessary or reasonable to implement the terms and provisions of this Agreement (including but not limited to Subsection 3(a)(i) of this Agreement); and (iii) use the Intellectual Property Rights for any and all purposes necessary or reasonable to implement the terms and provisions of this Agreement (including but not limited to Subsection 3(a)(i) of this Agreement).

(b) In consideration for the granting of the License, the Licensee shall pay to the Licensor the royalty set forth in Section 4 of this Agreement, as provided therein.

4. **Royalty.** (a) There shall be no initial payment required or charged upon the execution of this Agreement. Instead, for the License granted by the Licensor to the Licensee pursuant to this Agreement, the Licensee shall pay to the Licensor a royalty (the "Royalty") based upon Licensee's Product Collections (as defined herein). For each quarter during the term of this Agreement, the Licensee shall determine the Product Collections that occurred during such quarter, and the amount of the Royalty to be paid by the Licensee to the Licensor shall equal the Product Collections for such quarterly period multiplied by two percent (2%).

(b) Licensee shall pay the Royalty to Licensor in quarterly installments within forty-five (45) days of the end of each quarterly period during the term of this Agreement, where each quarter shall end on March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup> and December 31<sup>st</sup> of each year. With each Royalty payment by the Licensee to the Licensor, the Licensee shall disclose to the Licensor the amount of Product Collections upon which such Royalty payment is based.

(c) Notwithstanding any provision of this Agreement to the contrary, pursuant to Subsection 10(b) of the Distribution Agreement, if the Licensor or the Licensor's successors and assigns breach any of the terms and provisions of the Distribution Agreement, then the Licensee shall not owe or pay any of the Royalty to the Licensor or to the Licensor's successors and

assigns, and the provisions of Subsections 3(b), 4(a) and 4(b) of this Agreement regarding such Royalty and the payment thereof, shall be null, void and of no further force and effect.

(d) For the purposes of this Agreement, the term "Product Collections" shall mean the Licensee's Net Cash Collections (as defined herein) from the sales of only the Products during the term of this Agreement. For the purposes of this Agreement, the term "Net Cash Collections" shall mean gross cash collections of the Licensee from only sales of the Products during the term of this Agreement minus returns, taxes and shipping costs from such sales.

5. **Term.** Pursuant to Section 10 of the Distribution Agreement, this Agreement and the granting of the License shall be effective upon the occurrence of:

- (a) the exercise by the Licensee (described in the Distribution Agreement as the Distributor) of the option described in Section 10 of the Distribution Agreement; and
- (b) the Licensee's receipt of this Agreement from the Escrow Agent.

Hereinafter, the date upon which the conditions described in Subsections 5(a) and 5(b) of this Agreement both have been satisfied shall be referred to in this Agreement as the "Effective Date." The term of this Agreement shall commence on the Effective Date and shall continue thereafter without interruption until this Agreement is terminated pursuant to the terms and provisions of Section 6 of this Agreement.

6. **Termination.** This Agreement shall terminate thirty (30) days after the date on which the Licensee provides written notice to the Licensor stating the Licensee's desire to terminate this Agreement.

7. **Confidentiality.** As a material inducement to the Licensee to enter into this Agreement and the Distribution Agreement, the Licensor agrees and covenants to the Licensee that during the term of this Agreement, the Licensor shall:

- (a) hold all information of or about the Products (collectively, the "Confidential Information") in confidence from all persons or entities other than the Licensee;
- (b) not use the Confidential Information for any purpose other than pursuant to the terms and provisions of this License Agreement; and
- (c) take all reasonable steps necessary to ensure that the Confidential Information is not disseminated or disclosed to any other person or entity except upon the prior written consent of the Licensee.

8. **Covenants Against Competition.** (a) As a material inducement to Licensee to enter into this Agreement and the Distribution Agreement, the Licensor agrees and covenants to the Licensee that at no time during the term of this Agreement shall the Licensor and/or any person related to or affiliated with the Licensor and/or the shareholders of the Licensor, directly

or indirectly engage or become interested in, in any way whatsoever, either alone or in association with others, in the operation of any business which: (i) competes (as defined herein) with the Licensee; (ii) uses, develops, produces, manufactures, distributes, applies, leases and/or sells the Products and/or substitutes for the Products; and/or (iii) makes the Products and/or substitutes for the Products available for sale.

(b) As used in this Section 8 and throughout this Agreement, the term "compete" shall mean engaging in the same or any similar business as the Licensee, in any manner whatsoever, including without limitation as a proprietor, partner, investor, member, shareholder, director, officer, employee, manager, member, consultant, independent contractor, agent, distributor, representative, through stock ownership, investment of capital, lending of money or property, rendering of services or otherwise.

(c) As used in this Section 8 and throughout this Agreement, the term "directly or indirectly" shall be construed in the broadest sense and shall include, but not be limited to, the activities of any partnership, corporation, limited liability company or any other association which the Licensor may be involved.

9. **Reasonableness of Restrictions.** (a) A duly authorized officer of the Licensor has carefully read and considered the provisions of Sections 7 and 8 of this Agreement and has had the opportunity to consult with its legal counsel, and the Licensor agrees that the restrictions set forth in these sections, including but not limited to, the time period of restriction and the nature and scope of the restrictions, are fair and reasonable and reasonably required for the protection of the interests of Licensee and its shareholders, directors, officers, members, agents and employees. The Licensor acknowledges and agrees that the provisions of Sections 7 and 8 of this Agreement shall be strictly enforced and construed against the Licensor.

(b) In the event that, notwithstanding the foregoing, any of the provisions of Sections 7 and/or 8 of this Agreement shall be held to be invalid or unenforceable, the remaining provisions or parts thereof shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable parts had not been included therein. In the event that any provision of Sections 7 and/or 8 of this Agreement relating to the time period and/or the nature and scope of restriction and/or related aspects shall be declared by a court of competent jurisdiction or an authorized panel of arbitrators to exceed the maximum restrictiveness such court or such panel of arbitrators deems reasonable and enforceable, the time period and/or areas of restrictions and/or related aspects contained in this Agreement shall be reformed and modified to become those deemed reasonable and enforceable by the court or the panel of arbitrators and thereafter be the maximum restrictions in such regard, and the restrictions shall remain enforceable to the fullest extent deemed reasonable by such court or such panel of arbitrators.

(c) The restrictions set forth in Sections 7 and 8 of this Agreement are separate and distinct restrictions, each of which is intended to protect the Licensee in a separate area of legitimate concern on the part of Licensee, and each such restriction shall be deemed separate and distinct for all purposes of enforceability on behalf of Licensee. A waiver by Licensee of one or more of said restrictions, or a judicial determination that any one or more of said restrictions is invalid or unenforceable, shall not affect the continuing validity and enforceability of any other

said restrictions. The restrictions contained in Sections 7 and/or 8 of this Agreement shall be construed as independent of any other provision of this Agreement and/or the Distribution Agreement, and the existence of any other agreement, claim or cause of action of against Licensee, whether predicated upon this Agreement, the Distribution Agreement or otherwise, shall not constitute a defense to the enforcement by the Licensee of the restrictions contained in Sections 7 and/or 8 of this Agreement.

10. **Audit and Inspection; Copies of Financial Statements and Tax Returns.**

During the term of this Agreement and upon five (5) days prior written notice, the Licensor shall have the right to audit and inspect the books and records of the Licensee two (2) times in each calendar year to verify the Licensee's Net Cash Collections and the proper determination of the Royalty paid to Licensor. For any occasion in which Licensor identifies that Licensor has been paid a lesser Royalty than what was proper based upon the Licensee's Net Cash Collections, then the Licensee shall promptly pay to Licensor an amount equal to the sum of:

- (a) the cost and expense to Licensor to conduct such audit or inspection; and
- (b) the amount of such Royalty underpayment multiplied by three (3).

11. **Covenants of Sokol.** Sokol is the prior owner of some or all of the Intellectual Property Rights for the Products and a shareholder of the Licensor, and as a result of the foregoing, Sokol shall personally benefit from the License made pursuant to this Agreement. In consideration of such personal benefit, Sokol does hereby consent and agree to the terms and provisions contained in this Agreement. If for any reason any rights, title or interest in any of the Intellectual Property Rights becomes owned by, possessed by or inures to Sokol (or Sokol's successors, permitted assigns, estate, heirs, and/or legal representatives), then without any further consideration, Sokol and/or Sokol's successors, permitted assigns, estate, heirs, and/or legal representatives shall execute and deliver to the Licensee any and all documents or instruments requested by the Licensee to perform or implement the terms of this Agreement and/or the Distribution Agreement.

12. **Remedies.** In the event of a default, breach or threatened breach of any of the agreements, covenants and/or obligations in this Agreement by a party to this Agreement, then the nonbreaching party to this Agreement shall have all rights or remedies (to be exercised in the nonbreaching party's sole discretion) at law, in equity, pursuant to this Agreement and/or pursuant to the Distribution Agreement, including but not limited to monetary damages for any past breach, the right to equitable relief (including but not limited to specific performance by means of an injunction against the breaching party). The nonbreaching party's remedies described in this Section 12 are not intended to be exclusive of any other remedy available to the nonbreaching party, and each and every remedy available to the nonbreaching party shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute or otherwise.

13. **Amendments and Modifications.** This Agreement may be amended, supplemented or modified only by a writing signed by both Licensor and Licensee. The term "this

Agreement", as used herein, includes any future written amendment, modification or supplement made in accordance herewith.

14. **Severability.** The provisions of this Agreement are severable, and if any one or more of the provisions of this Agreement shall be determined by a court or panel of arbitrators to be illegal or otherwise unenforceable in whole or in part, the remaining provisions or portions of this Agreement shall nevertheless be binding upon and enforceable by and between Licensor and Licensee.

15. **Waiver.** No waiver of any portion of this Agreement shall be effective unless mutually agreed upon in writing. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision of this Agreement.

16. **Captions.** The captions and section headings used in this Agreement are for convenience and reference only, and they are not part of this Agreement and they shall not be used in the interpretation of the terms and conditions of this Agreement.

17. **Notices.** All notices required or permitted to be given under or pursuant to this Agreement shall be in writing and shall be deemed to have been fully given upon personal delivery, or the next business day if sent via a nationally recognize overnight courier service, or three (3) days after being sent by certified mail, postage prepaid, via the United States Postal Service. The notices and communications shall be addressed as follows:

To Licensor: UV Coatings, Ltd.  
140 Sheldon Road  
Berea, Ohio 44017  
Attn: Thomas W. Richardson

To Licensee: Scott Fishel  
36580 Biltmore Place  
Willoughby, Ohio 44094

To Sokol: Andrew Sokol  
c/o UV Coatings, Ltd.  
140 Sheldon Road  
Berea, Ohio 44017

Any party may, by written notice to the other, change the address for notices to be sent to such party.

18. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same Agreement, which shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may be executed by way of telephonic

transmission facsimile counterpart, with such facsimile counterparts having the same force and effect as originally executed counterparts.

19. **Assignment.** (a) Except as otherwise provided herein, neither this Agreement nor any interest herein shall be assignable by any party without the prior written consent of the other party.

(b) Notwithstanding the foregoing provisions of Subsection 20(a) of this Agreement, the Licensee may assign or transfer all of the Licensee's rights, interest, liabilities and obligations to and under this Agreement to: (i) any entity in which Fishel has an equity ownership interest, (ii) any entity which is a subsidiary of or affiliated with the Assignee or Fishel, (iii) any entity in which Fishel or the owners of the Assignee is/are the majority owner(s), and/or (iv) a successor corporation or entity in the event of a merger, consolidation, or transfer or sale of all or substantially all of the assets or shares of stock of the Assignee. In the case of any such permitted assignment, this Agreement shall be binding upon and shall inure to the benefit of the respective successors, heirs and assigns of the parties hereto. Upon the occurrence of any Assignment by Fishel to an Assignee, Fishel shall then have no duties, liabilities or obligations to the Licensor for or pursuant to this Agreement or the matters discussed herein.

(c) Notwithstanding the foregoing provisions of Subsection 19(a) of this Agreement, the Licensor may assign or transfer all of the Licensor's rights, interest, liabilities and obligations to and under this Agreement to: (i) any entity which is a subsidiary of or affiliated with the Licensor, (ii) any entity in which the owners of the Licensor are the majority owners, and/or (iii) a successor corporation or entity in the event of a merger, consolidation, or transfer or sale of all or substantially all of the assets or shares of stock of the Licensor. In the case of any such permitted assignment, this Agreement shall be binding upon and shall inure to the benefit of the respective successors, heirs and assigns of the parties hereto.

20. **Disputes, Controversies and Claims.** Any and all disputes, controversies or claims arising out of or relating to this Agreement or the breach of validity of any term or provision of this Agreement shall be resolved by final and binding arbitration. The arbitration shall be held in Cleveland, Ohio, in accordance with the Commercial Arbitration Rules of the American Arbitration Association and shall be conducted pursuant to the terms and provisions set forth in Exhibit F to the Distribution Agreement.

21. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Ohio. For any claims, allegations, causes of action or legal procedures not subject to the arbitration provisions specified by Section 21 of this Agreement, the parties to this Agreement do each hereby agree that they shall submit themselves to the venue and jurisdiction of the competent courts of the Cuyahoga County, Ohio, or the United States District Court for the Northern District of Ohio, Eastern Division, in connection with any and all such claims, allegations, causes of action or legal proceedings related to or arising from this Agreement, expressly waiving their rights to any other jurisdiction or venue which might correspond to them due to their domiciles or legal residence.

22. **Exhibits, Schedules and Attachments.** Any and all exhibits, schedules and attachments to this Agreement are incorporated herein and made a part of this Agreement. The recitals hereinabove contained in the "WHEREAS" clauses are incorporated herein and made a part of this Agreement.

23. **Further Assurances.** From time to time, without any further consideration, each party shall execute and deliver to the other parties such additional documents and/or instruments as may be reasonably necessary to consummate the transactions contemplated by this agreement.

24. **Parties Bound and Gender.** This Agreement shall be binding on and inure to the benefit of the parties to this Agreement and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns. The use of any gender herein shall be deemed to be or include the other genders and the use of the singular shall be deemed to be or include the plural (and vice versa), whenever appropriate.

IN WITNESS WHEREOF, the Licensee, Licensor and Sokol have caused this Agreement to be executed as of the day and year first written above.

UV COATINGS, LTD.

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

"Licensor"

\_\_\_\_\_  
Scott Fishel, Individually

"Licensee"

\_\_\_\_\_  
Andrew Sokol, Individually

"Sokol"

**EXHIBIT D**

**ESCROW AGREEMENT**

**THIS ESCROW AGREEMENT** (the "Agreement") is made and entered into as of the 15h day of January, 2000 by and between UV COATINGS, LTD., an Ohio limited liability company (the "Company"); SCOTT FISHEL, an individual resident of the State of Ohio ("Fishel"); and ANDREW SOKOL, an individual resident of the State of Ohio ("Sokol"). Fishel may establish either a corporation or limited liability company (hereinafter such corporation and limited liability company shall be collectively referred to as the Assignee"), and pursuant to Section 12 of this Agreement, Fishel may, in his sole discretion, assign (the "Assignment") all of his rights, interest, duties, responsibilities, liabilities and obligations to and under this Agreement to such Assignee. Hereinafter, for all purposes of this Agreement, the term "Distributor" shall initially mean Fishel, but upon the occurrence of the Assignment, "Distributor" shall mean the Assignee. Hereinafter, the Company, the Distributor and Sokol may from time to time be referred to collectively as the "Parties" and individually as a "Party." Hereinafter, where the term "Party" refers to the Company, then the term "Other Parties" shall refer to the Distributor and Sokol; where the term "Party" refers to the Distributor, the term "Other Parties" shall refer to the Company and Sokol; and where the term "Party" refers to Sokol, the term "Other Parties" shall refer to the Company and the Distributor.

**WITNESSETH:**

**WHEREAS**, the Company, the Distributor and Sokol are parties to a certain Exclusive and Sole Distribution Agreement, dated even herewith (the "Distribution Agreement"), and the terms used in this Agreement that are defined in the Distribution Agreement are used in this Agreement as so defined; and

**WHEREAS**, pursuant to the terms and provisions of the Distribution Agreement, the Company, the Distributor and Sokol have entered into a certain exclusive license agreement, dated even herewith (the "License Agreement"); and

**WHEREAS**, the terms and provisions of the Distribution Agreement (including but not limited to Section 10 thereof) require that the License Agreement be escrowed until the occurrence of certain events.

**NOW, THEREFORE**, is consideration of the matters set forth above and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Escrow. In consideration of each Party's execution of the Distribution Agreement, the Parties each hereby escrow the executed License Agreement with the Escrow Agent (as hereinafter defined) where such escrow shall be pursuant to and in accordance with the



Distribution Agreement (including but not limited to Subsection 10 thereof), the License Agreement and this Agreement.

2. Escrow Agent. Each of the Parties hereby appoints 2112 East Ohio Service Corporation to act as the escrow agent (the "Escrow Agent") for the License Agreement. The Escrow Agent shall hold the License Agreement on behalf of the Parties in constructive trust in conjunction with the Distribution Agreement. The Parties shall and do each hereby release, discharge, indemnify and hold the Escrow Agent harmless for any and all liabilities, losses, claims, actions, causes of action, demands, costs and/or expenses (including but not limited to attorney fees) arising out of or connected to this Agreement, the License Agreement and/or the Escrow Agent's actions in the performance of its duties under this Agreement. The Parties do each hereby waive any and all potential conflicts of interest of the Escrow Agent.

3. Release of License Agreement. (a) The License Agreement shall be released from escrow and delivered to the Distributor, if the Company or its successor or assigns breach any of the terms or provisions of the Distribution Agreement or if for any reason the Company or its successors or assigns are unable or unwilling (or the Company indicates or threatens that the Company may be unable or unwilling) either to:

- (i) manufacture, produce and/or timely deliver sufficient quantities of the Products (as such term is defined in the Distribution Agreement) to timely meet all the orders of the Distributor and/or the Distributor's customers for the Products, and/or
- (ii) manufacture or produce all of the Products in the United States of America,

and the Distributor exercises its option under the Distribution Agreement to require that the Company and its successors and assigns grant to the Distributor a license to manufacture, market and sell the Products.

(b) If there is any dispute as to whether the terms for the release of the License Agreement from escrow as set forth in Subsection 3(a) of this Agreement have been satisfied, the Escrow Agent shall not release the License Agreement from escrow and/or deliver the License Agreement to the Distributor, until there is presented to the Escrow Agent escrow release instructions pursuant to: (i) written joint instructions of escrow release executed by both the Company and the Distributor; (ii) the written determination of a panel of arbitrators pursuant to the terms and provisions of Section 4 of this Agreement; or (iii) the order of a court of law with appropriate jurisdiction.

4. Disputes, Controversies and Claims. Any and all disputes, controversies or claims arising out of or relating to this Agreement, including but not limited to whether the conditions for the release of the License Agreement have been satisfied, shall be resolved by final and binding arbitration. The arbitration shall be held in Cleveland, Ohio in accordance with the Commercial Arbitration Rules of the American Arbitration Association and shall be conducted pursuant to the terms and provisions set forth in Exhibit F to the Distribution Agreement.

5. Notices. All notices, requests, demands and other communications under or in connection with this Agreement shall be deemed to be made three (3) business days after mailing the same by certified or registered United States mail return receipt requested (with a copy sent by ordinary first class U.S. mail) to the addresses set forth below:

if to Company: UV Coatings, Ltd.  
140 Sheldon Road  
Berea, Ohio 44017  
Attn: Thomas W. Richardson

if to Distributor: Scott Fishel  
36580 Biltmore Place  
Willoughby, Ohio 44094

If to Sokol: Andrew Sokol  
c/o UV Coatings, Ltd.  
140 Sheldon Road  
Berea, Ohio 44017

if to Escrow Agent: 2112 East Ohio Service Corporation  
1717 East Ninth Street, #2112  
Cleveland, Ohio 44114  
Attn.: James H. Rownd, Vice President

6. Amendment or Modification. This Agreement may not be amended or modified except in writing, executed and signed by the Parties.

7. Additional Documents. Each Party to this Agreement agrees and stipulates that it will execute and deliver to the Other Parties, without further consideration, any and all additional documents that may be necessary to carry out the terms and provisions of this Agreement.

8. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition of enforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

9. Captions. The paragraph headings used in this Agreement are for convenience of reference only and shall not affect the construction hereof or be taken into consideration in the interpretation hereof.

10. Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties and their representatives, heirs, successors and permitted assigns.

11. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Ohio. For any claims, allegations, causes of action or

legal procedures not subject to the arbitration provisions specified by Section 4 of this Agreement, the parties to this Agreement do each hereby agree that they shall submit themselves to the venue and jurisdiction of the competent courts of the Cuyahoga County, Ohio, or the United States District Court for the Northern District of Ohio, Eastern Division, in connection with all such claims, allegations, causes of action or legal proceedings related to or arising from this Agreement, expressly waiving their rights to any other jurisdiction or venue which might correspond to them due to their domiciles or legal residence.

12. Assignment. (a) Except as otherwise provided herein, neither this Agreement nor any interest herein shall be assignable by any Party without the prior written consent of the Other Parties.

(b) Notwithstanding the foregoing provisions of Subsection 12(a) of this Agreement, the Distributor may assign or transfer all of the Distributor's rights, interest, liabilities and obligations to and under this Agreement to: (i) any entity in which Scott Fishel has an equity ownership interest, (ii) any entity which is a subsidiary of or affiliated with the Assignee or Fishel, (iii) any entity in which Fishel or the owners of the Assignee is/are the majority owner(s), and/or (iv) a successor corporation or entity in the event of a merger, consolidation, or transfer or sale of all or substantially all of the assets or shares of stock of the Assignee. In the case of any such permitted assignment, this Agreement shall be binding upon and shall inure to the benefit of the respective successors, heirs and assigns of the parties hereto. Upon the occurrence of any Assignment by Fishel to an Assignee, Fishel shall then have no duties, liabilities or obligations to the Company for or pursuant to this Agreement or the matters discussed herein.

(c) Notwithstanding the foregoing provisions of Subsection 12(a) of this Agreement, the Company may assign or transfer all of the Company's rights, interest, liabilities and obligations to and under this Agreement to: (i) any entity which is a subsidiary of or affiliated with the Company, (ii) any entity in which the owners of the Company are the majority owners, and/or (iii) a successor corporation or entity in the event of a merger, consolidation, or transfer or sale of all or substantially all of the assets or shares of stock of the Company. In the case of any such permitted assignment, this Agreement shall be binding upon and shall inure to the benefit of the respective successors, heirs and assigns of the parties hereto.

13. Waiver. No waiver by the Distributor of any default shall operate as a waiver of any other default or of the same default on a future occasion.

14. Recitals. The recitals hereinabove contained in the "WHEREAS" clauses are incorporated herein and made a part of this Agreement.

15. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall be deemed to be an original.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written above.

\_\_\_\_\_  
Scott Fishel, Individually

“Distributor”

UV COATINGS, LTD.

By: \_\_\_\_\_  
Thomas W. Richardson, Chief Operating Officer

“Company”

\_\_\_\_\_  
Andrew Sokol, Individually

“Sokol”

The undersigned does hereby accept its appointment as escrow agent.

2112 EAST OHIO SERVICE CORPORATION

By: \_\_\_\_\_  
James H. Rownd, Vice President

“Escrow Agent”

**EXHIBIT E**

**Patent Assignment**

See the Attached Document(s).

Our Reference: SAA-113

**EXHIBIT E**

PATENT ASSIGNMENT

WHEREAS, I, Andrew A. Sokol, of North Olmsted, State of Ohio, an Assignor, am the inventor of the inventions described and claimed in:

- A. U.S. Letters Patent No. 5,453,451 issued September 26, 1995; and
- B. U.S. Patent application Serial No. 08/533,679, filed September 26, 1995 for FINISHING COMPOSITION WHICH IS CURABLE BY UV LIGHT AND METHOD OF USING SAME; and
- C. A pending Mexican foreign counterpart application of said issued U.S. Patent;

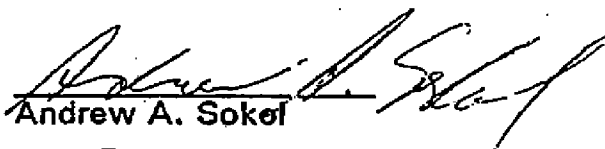
WHEREAS, UV Coatings, Ltd., a limited liability company of the State of Ohio, as Assignee, desires to acquire the entire right, title and interest in and to said patent and patent applications and the inventions defined therein, as well as any foreign counterparts thereof;

NOW, THEREFORE, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, receipt whereby is hereby acknowledged, I, Andrew A. Sokol, by these presents do sell, assign and transfer unto said L.L.C., its successors and assigns, all right, title and interest in the United States of America and all foreign countries in and to said patent and said applications and said inventions as described in the aforesaid patent and patent applications and to any improvements on said inventions heretofore or hereafter made and any divisions or continuations of said applications, and all Patents, United States and foreign, granted upon any such applications or for the inventions described therein, and any reissues or extensions of said Patents; and I hereby authorize and request the Commissioner of Patents and Trademarks to issue all Patents issuing on said application on said United States applications to said L.L.C. as assignee thereof.

ASSIGNOR hereby covenants that no assignment, sale, agreement or encumbrance has been or will be made or entered into which would conflict with this assignment.

ASSIGNOR further covenants that ASSIGNEE will, upon its request, be provided promptly with all pertinent facts and documents relating to said invention and said Letters Patent and legal equivalents as may be known and accessible to ASSIGNOR and will testify as to the same in any interference, litigation or proceeding related thereto and will promptly execute and deliver to ASSIGNEE or its legal representatives any and all papers, instruments or affidavits required to apply for, obtain, maintain, issue and enforce said application, said invention and said Letters Patent and said equivalents thereof which may be necessary or desirable to carry out the purposes thereof.

FOR SAID CONSIDERATIONS I, Andrew A. Sokol, hereby covenant and agree that I am the owner of the full title herein assigned and have the right to assign the same, and agree that I will communicate to said L.L.C. or its representatives, any facts known to me respecting said invention or inventions and testify in any legal proceedings relating thereto when called upon, and will sign all instruments and documents and render such assistance which in the judgment of said L.L.C. is necessary to vest in it and protect the legal title sought to be assigned.

  
Andrew A. Sokol

Signed and sealed this 10<sup>th</sup> day of MARCH, 1996

After recordation return this Assignment to:

Arnold S. Weintraub  
WEINTRAUB, DuROSS & BRADY  
30200 Telegraph Road, Suite 444  
Bingham Farms, MI 48025

**EXHIBIT F****Arbitration Procedures**

1. To initiate arbitration, the Company and/or the Distributor (hereinafter referred to in this Schedule collectively as "parties" and individually as a "party") shall serve written notice upon the other parties demanding arbitration and identifying specifically the matters to be arbitrated. If the parties cannot agree upon a mutually acceptable arbitrator, then within five (5) days thereafter, each party to the dispute shall appoint one person to act as an arbitrator. Such person shall have no personal or pecuniary interest, either directly or indirectly, from any business or family relationship in the outcome of the matters disputed, and such person shall not be an employee, agent or contractor of any party. If any party fails to appoint an arbitrator within the allotted time, the other party or parties may appoint an arbitrator for it, provided that such arbitrator meets the qualifications described above. Once arbitrators are so selected, they shall have ten (10) calendar days from the date of the appointment of the last of the two arbitrators appointed, to appoint a final arbitrator, who shall be likewise disinterested. If the arbitrators selected by the respective parties are unable to appoint the final arbitrator within the allotted time, then the parties agree to approach the American Arbitration Association for a list of ten (10) names and each party shall have ten (10) calendar days from the date of receipt of such list within which to select six (6) names from the list of ten (10), ranking them, in order of preference, starting with number one through six. The final arbitrator shall be the person selected by the parties with the lowest number of combined points in the combination of their total rankings as designated by them.
2. When selected, the final arbitrator shall serve as chairperson of the panel. The arbitrators shall be compensated in the same amount and in the same manner as arbitrators are paid under the rules of the American Arbitration Association for commercial arbitrators. The compensation expense of the arbitrators shall be divided equally between the parties. Expenses of witnesses and of preparation for the arbitration, including the cost of counsel and other expenses of each side, shall be borne by the respective party. All other expenses not specifically relating to the presentation of its case by a party shall be borne equally by the parties.
3. In preparation for the arbitration, the parties agree to participate and engage in discovery in accordance with the Ohio Rules of Civil Procedure except that the parties agree to expedite the time periods set forth in the Ohio Rules of Civil Procedure to conform to the shorter arbitration deadlines set forth herein. It is the intention of the parties to participate and engage in a discovery process in the arbitration proceeding that is as thorough and cooperative as that which is provided to litigants in Ohio courts.
4. The parties shall cooperate in providing discovery in a reasonable amount of time before the commencement of the arbitration hearing, but all such discovery which is requested by a party shall be exchanged no later than five (5) calendar days before the scheduled date of the



commencement of the arbitration hearing. This shall include but shall not be limited to (a) the names, addresses and occupations of witnesses or affiant and a brief statement of the subject matter and nature of the testimony for which they will be presented; and (b) identification of and exchange of all exhibits or documents to be offered or used at the arbitration hearing. Unresolved discovery disputes may be brought to the attention of the arbitration panel and such disputes shall be disposed of by the panel.

5. There shall be a preliminary administrative conference which shall be held not less than five (5) nor more than ten (10) calendar days before the arbitration hearing and at such preliminary conference the parties shall specify issues to be resolved, stipulate to uncontested facts, and consider any other matters which will expedite, or, if unresolved, could delay the arbitration proceedings. In addition, at this preliminary conference, the arbitration panel shall actively work to seek out a settlement to the dispute(s) at issue.

6. The arbitration hearing shall occur not less than twenty-five (25) calendar days nor more than forty-five (45) calendar days following the date of the appointment of the final arbitrator unless extended by mutual agreement of the parties in interest. The arbitrators shall have complete discretion to establish the time and place of the arbitration in greater Cleveland, Ohio.

7. Any matters regarding the arbitration not specifically set forth or defined herein shall, to the extent not inconsistent herewith, be administered pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Except as may be specifically provided herein or in the Commercial Arbitration Rules of the American Arbitration Association, the arbitrators shall have discretion to establish and determine the conduct and rules of the proceedings.

8. All parties to the dispute shall be permitted to present their respective cases without regard to the formalities of the Rules of Evidence as used in the courts of the State of Ohio. The arbitrators, with the guidance and arguments of the parties, may give such weight to the matters presented as they deem appropriate.

9. The parties recognize that confidential information in the nature of trade secrets and proprietary information may be disclosed during the course of an arbitration proceeding. The parties agree to hold such information in confidence during and following such proceedings. The parties agree that any confidential information and proprietary information disclosed by one party to the other before or during the arbitration will not be used for any purpose other than conducting the arbitration. Likewise, the arbitrators shall keep such information confidential and by their acceptance of appointment as arbitrators shall agree to be bound by this standard. All confidential information and proprietary information disclosed by one party to another party in any form will be returned to the producing party at the conclusion of the arbitration.

10. The arbitrators shall have the authority to award any remedy or relief a court of the State of Ohio could order or grant, including, without limitation, specific performance of any

obligation created under the agreement, the issuance of an injunction, or the imposition of sanctions for abuse or frustration of the arbitration process, but specifically excepting herefrom any punitive and exemplary damages.

11. The final decision of the arbitrators as well as all other decisions of the arbitrators shall be made by a vote of at least two-thirds of the arbitrators.

12. The final decision of the arbitrators shall be in writing with a clear and concise statement of their decision and shall specify the factual and legal basis for the decision. The decision of the arbitrators shall be submitted to the parties no later than five (5) calendar days after the conclusion of the arbitration proceeding. Upon receipt of the written decision of the arbitrators, any party may request a clarification session by making such request to the chairperson. The arbitrators will convene forthwith at which time any party may ask for clarification of the decision as to any matter(s) which appears to be unclear. The arbitrators shall then forthwith issue in writing any clarifications to their decision which they deem appropriate in order to ensure that the decision is understood by all parties without ambiguity. The decision of the arbitrators as originally presented or as clarified, if applicable, shall be final and binding upon, and fully enforceable against, the parties in accordance with Section 2711.01 et. seq. of the Ohio Revised Code and shall not be subject to judicial appeal except to the extent set forth in Sections 2711.10 to 2711.16 of the Ohio Revised Code, as the same may be amended from time to time.