HONORABLE SAMUEL J. STEINER

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

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| In re<br><br>PT HOLDINGS COMPANY, INC., *et al*.[1]<br>100 PAPER MILL HILL ROAD<br>PORT TOWNSEND, WA 98368<br>Debtors' Tax ID No. 91-1872662,<br><br>Debtors. | No. 07-10340 [Lead Case]<br><br>NOTICE OF FILING OF PLAN SUPPLEMENT TO THE AMENDED PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE JOINTLY PROPOSED BY THE DEBTORS AND THE INFORMAL COMMITTEE OF SENIOR SECURED NOTEHOLDERS |

TO: THE CLERK OF THE COURT
AND TO: THE HONORABLE SAMUEL J. STEINER
AND TO: ALL INTERESTED PARTIES

YOU ARE HEREBY NOTIFIED that, in accordance with Section 13.3 of the Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated June 26, 2007 ("Plan"[2]), the Plan Proponents have filed the Plan Supplement with the Bankruptcy Court, which consists of the following documents:

1. Exhibit A-1 – Amended and Restated Certificate of Incorporation of PT Holdings Company, Inc.;

[1] The Debtors are PT Holdings Company, Inc., Port Townsend Paper Corporation and PTPC Packaging Co., Inc.

[2] Capitalized terms not defined herein shall have the meaning given to them in the Plan.



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2. Exhibit A-2 – Certificate and Articles of Incorporation of Port Townsend Paper Corporation and Amendments thereto;

3. Exhibit A-3 – Certificate and Articles of Incorporation of PTPC Packaging Co., Inc.;

4. Exhibit B-1 – Bylaws of PT Holdings Company, Inc.;

5. Exhibit B-2 – Amended and Restated Bylaws of Port Townsend Paper Corporation;

6. Exhibit B-3 – Bylaws of PTPC Packaging Co., Inc.;

7. Exhibit C – Stockholders' Agreement;

8. Exhibit D – Registration Rights Agreement;

9. Exhibit E – Exit Working Capital Facility Commitment Letter and Term Sheet;

10. Exhibit F – Securities Purchase Agreement;

11. Exhibit G – Warrant Agreement; and

12. Exhibit H – Schedule of Directors and Officers of the Reorganized Debtors.

Any party in interest wishing to obtain any of the documents referenced above may (i) contact Katriana L. Samilijan of Bush Strout & Kornfeld at 206.292.2110 or by email at ksamiljan@bskd.com or (ii) view such documents by accessing the Court's website: http://www.wawb.uscourts.gov. A PACER password and login are needed to access documents on the Court's website. A PACER password can be obtained at http://www.pacer.psc.uscourts.gov.

DATED this 1st day of August, 2007.

BUSH STROUT & KORNFELD

By__/s/ Katriana L. Samiljan_____
Katriana L. Samiljan, WSBA #28672
Attorneys for Debtors in Possession



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**AMENDED AND RESTATED**
**CERTIFICATE OF INCORPORATION**
**OF**

**PT HOLDINGS COMPANY, INC.**

PT HOLDINGS COMPANY, INC. (the "***Corporation***"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "***DGCL***"), does hereby certify as follows:

1. The name of the Corporation is "PT Holdings Company, Inc." and the original certificate of incorporation was filed with the Secretary of State of the State of Delaware on [•] under the name "PT Holdings Company, Inc."

2. On January 29, 2007, the Corporation filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "***Bankruptcy Code***") in the United States Bankruptcy Court for the Western District of Washington at Seattle (the "***Bankruptcy Court***"). This Amended and Restated Certificate of Incorporation (this "***Certificate***") of the Corporation was duly adopted in accordance with Sections 245 and 303 of the DGCL and the order, dated [•], 2007, of the Bankruptcy Court (the "***Confirmation Order***") confirming the Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code Jointly Proposed by the Debtors and the Informal Committee of Senior Secured Noteholders, dated June 26, 2007 (the "***Plan***").

3 Effective on the "Effective Date" of the Plan and pursuant to the Confirmation Order, each share of the Corporation's capital stock issued and outstanding at any time prior to the "Effective Date" of the Plan, shall be cancelled and extinguished.

4. The text of the Amended and Restated Certificate of Incorporation, as heretofore amended and now in effect, is hereby amended and restated to read in its entirety as follows:

ARTICLE I

NAME

The name of the corporation is PT Holdings Company, Inc.

ARTICLE II

REGISTERED OFFICE

The address of the Corporation's registered office in the State of Delaware is 1013 Centre Road, County of New Castle, Wilmington, Delaware 19808. The name of its registered agent at such address is the Corporation Service Company.



EXHIBIT A-1

ARTICLE III

PURPOSE

The nature of the business of the Corporation and the objects or purposes to be transacted, promoted or carried on by it are to engage in any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE IV

CAPITAL STOCK

Section 4.1 Authorized Capital Stock.

(a) The total number of shares of all classes of capital stock which the Corporation is authorized to issue is [30,000,000] shares, consisting of [15,000,000] shares of common stock, par value $0.01 per share (the "***Common Stock***"), and [15,000,000] shares of preferred stock, par value $0.01 per share (the "***Preferred Stock***"), of which [•] shares of Preferred Stock are hereby designated Series A Preferred Stock (the "***Series A Preferred Stock***").

(b) Authorized but undesignated shares of Preferred Stock (the "***Junior Preferred Stock***") may be issued from time to time in one or more series as may be determined by the Corporation's Board of Directors (the "***Board***"). Subject to Section 4.2(f), the Board is hereby expressly authorized to provide for the issuance of shares of Junior Preferred Stock in one or more series and to establish from time to time the number of shares to be included in each such series and to fix the designation, powers, preferences and relative, participating, optional and other special rights, if any, of each such series and the qualifications, limitations and restrictions thereof, as shall be stated in the resolution(s) adopted by the Board providing for the issuance of such series and included in a certificate of designations (a "***Preferred Stock Designation***") filed pursuant to the DGCL.

Section 4.2 Preferred Stock.

(a) Rights and Privileges. All shares of Series A Preferred Stock shall be identical and shall entitle the holders thereof to the same rights and privileges.

(b) Dividends.

(i) Cumulative dividends shall accrue on each outstanding share of Series A Preferred Stock on each day from and after the date of issue of such share at a rate per annum of equal to twenty percent (20%) of the Unpaid Base Amount (as defined below) of such share (such dividends, "***Regular Dividends***"). Regular Dividends on each share of Series A Preferred Stock shall compound (i.e., be added to the Unpaid Base Amount of such share) on a semiannual basis on June 30 and December 31 of each year (each, a "***Dividend Compounding Date***"). Regular Dividends shall accrue on each share of Series A Preferred Stock whether or not declared and whether or not there are any funds of the Corporation legally available to for the

payment of dividends, and shall be computed on the basis of the actual number of days elapsed on a year of 365 or 366, as applicable. Regular Dividends shall be payable in cash at the time or times and to the extent declared by the Board and permitted by the holders of the Corporation's Senior Loan Documents (as defined below).

(ii) As used herein, (i) "***Accreted Value***" means, with respect to any share of Series A Preferred Stock as of any date of determination, the sum of (A) the Unpaid Base Amount (as defined below) of such share as of such date of determination and (B) the amount of accrued but unpaid Regular Dividends thereon since the most recent Dividend Compounding Date (or, if prior to the first Dividend Compounding Date, the date of issue of such share) and (ii) "***Unpaid Base Amount***" means, with respect to any share of Series A Preferred Stock, (A) $[•] plus (B) the aggregate amount of accrued but unpaid Regular Dividends added to the Unpaid Base Amount of such share on each Dividend Compounding Date since the date of issue of such share in accordance with subsection 4.2(b)(i) above.

(iii) The date on which the Corporation initially issues any particular share of Series A Preferred Stock shall be deemed to be its "date of issue" for purposes hereof regardless of the number of times transfer of such share is made on the stock records maintained by or for the Corporation and regardless of the number of certificates that may be issued to evidence such share.

(c) Redemption. The shares of Series A Preferred Stock shall not be redeemable except as follows:

(i) Redemption at the Option of the Corporation. The Corporation may redeem all or a portion of the shares of Series A Preferred Stock at any time and from time after all indebtedness under the Securities Purchase Agreement (the "***Securities Purchase Agreement***") and the Revolving Loan Agreement (the "***Revolving Loan Agreement***" and together with the Securities Purchase Agreement, the "***Senior Loan Documents***") have been repaid in full. Any such redemption shall be in the manner and with the effect provided in this subsection 4.2(c)(i) and subsections 4.2(c)(iii), (iv), (v) and (vi) hereof. Any date of which the Corporation shall have selected to redeem shares of Series A Preferred Stock as provided in this subsection 4.2(c)(i) is hereinafter referred to as a "***Corporation Redemption Date***".

(ii) Mandatory Redemption.

(A) Subject to the restrictions set forth in the Corporation's Securities Purchase Agreement, the Corporation shall use the net proceeds from any sale-leaseback (the "***Richmond Sale-Leaseback***") of the facility located in Richmond, British Columbia pursuant to the ground lease made the 9th day of May 1956 and registered in the New Westminster Land Title Office against title to the Lands under No. 199656C, as assigned to Crown under an assignment of lease dated October 1, 1997 and registered under No. BL332071, as modified, and, to the extent available, simultaneous with such application, the proceeds of any additional issuance of notes in the aggregate principal amount of up to $10,000,000 as provided for in the Securities Purchase Agreement, to redeem all or a portion of the shares of Series A Preferred Stock in accordance with this subsection 4.2(c)(ii) and subsections 4.2(c)(iii), (iv) , (v)

and (vi) hereof. For the purposes of this subsection 4.2(c)(ii), "***Net Proceeds***" means, with respect to the Richmond Sale-Leaseback, the amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment of deferred consideration) by or on behalf of the Corporation or its subsidiary, in connection therewith after deducting therefrom only (A) reasonable expenses related thereto incurred by such Issuer or such Subsidiary in connection therewith, (B) transfer taxes paid to any taxing authorities by the Corporation or its subsidiary in connection therewith, and (C) net income taxes payable in connection with, and during the 12 month period following such Richmond Sale-Leaseback (after taking into account any tax credits or deductions and any tax sharing arrangements).

(B) On [ , 2012],[1] the Corporation shall redeem all outstanding shares of Series A Preferred Stock (in the manner and with the effect provided in this subsection and subsections (iii), (iv), (v) and (vi) hereof).

(C) Any date on which the Corporation shall be required to redeem shares of Series A Preferred Stock as provided in this subsection 2.4(c)(ii) is hereinafter referred to as a "***Mandatory Redemption Date***". A Mandatory Redemption Date and a Corporation Redemption Date are hereinafter collectively referred to as a "***Redemption Date***".

(iii) Redemption Price. The Series A Preferred Stock to be redeemed on a Redemption Date shall be redeemed by paying for each outstanding share of Series A Preferred Stock (i) in the case of a redemption pursuant to subsection 4.2(c)(i) or 4.2(c)(ii)(A), the Accreted Value of such shares as of the Corporation Redemption Date multiplied by one hundred four percent (104%) (the "***Corporate Redemption Price***") and (ii) in the case of a redemption pursuant to subsection 4.2(c)(ii)(B), the Accreted Value of such shares (the "***Mandatory Redemption Price***", and together with the Corporate Redemption Price, each a "***Redemption Price***"). If on or before any Redemption Date the funds necessary for redemption shall have been set aside so as to be and continue to be available therefor, then, notwithstanding that any certificate for shares of Series A Preferred Stock to be redeemed shall not have been surrendered for cancellation, after the close of business on such Redemption Date, the shares so called for redemption shall no longer be deemed outstanding, the Regular Dividends thereon shall cease to accrue, and all rights with respect to such shares shall forthwith after the close of business on the Redemption Date, cease, except only the right of the holders thereof to receive, upon presentation of the certificate representing shares so called for redemption, the Redemption Price therefor, without interest thereon.

(iv) Redeemed or Otherwise Acquired Shares to Be Retired. Any shares of the Series A Preferred Stock redeemed pursuant to this Section 2.4(c) or otherwise acquired by the Corporation in any manner whatsoever shall be permanently retired and shall not under any circumstances be reissued; and the Corporation may from time to time take such appropriate corporate action as may be necessary to reduce the number of authorized shares of Preferred Stock accordingly.

(v) Shares to be Redeemed. In case of the redemption, for any reason, of only a part of the shares of Series A Preferred Stock on a Redemption Date, all shares of

[1] Five years from Closing Date.

Series A Preferred Stock to be redeemed shall be selected pro rata among all shares of Series A Preferred Stock, and there shall be so redeemed from each registered holder in whole shares, as nearly as practicable to the nearest share, that proportion of all the shares to be redeemed which the number of shares held of record by such holder bears to the number of shares of Series A Preferred Stock outstanding. Any shares of Series A Preferred Stock required to be redeemed and not redeemed on the Redemption Date shall be redeemed as soon thereafter as possible and in the manner in which such shares were to have been redeemed on the Redemption Date.

(vi) Notice. The Corporation shall give, by first class mail, postage prepaid, addressed to each holder of any shares of Series A Preferred Stock at the address of such holder as shown on the books of the Corporation, at least 20 days prior written notice of the date of any such redemption.

(d) Liquidation. (i) Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the shares of Series A Preferred Stock shall be entitled, before any distribution or payment is made upon any Common Stock or Junior Preferred Stock, to be paid an amount equal to the Accreted Value of each share of Series A Preferred Stock (such amounts being herein sometimes referred to in the aggregate as the "***Series A Liquidation Payment***"). If upon such liquidation, dissolution or winding up of the Corporation, the assets to be distributed among the holders of Series A Preferred Stock of the Corporation shall be insufficient to permit payment in full to the holders of Series A Preferred Stock of the Series A Liquidation Payments as aforesaid, then the entire assets of the Corporation shall be distributed ratably among the holders of the Series A Preferred Stock. After the holders of the Series A Preferred Stock shall have been paid in full their respective Series A Liquidation Payments, the remaining assets of the Corporation shall be distributed ratably among the holders of Common Stock and Junior Preferred Stock in proportion to the shares of Common Stock or Junior Preferred Stock, as applicable, then held by them.

(ii) (A) The consolidation or merger of the Corporation with or into any other corporation (other than a merger in which the Corporation is the surviving corporation and which will not result in more than 50% of the capital stock of the Corporation outstanding immediately after the effective date of such merger being owned of record or beneficially by persons other than the holders of such capital stock immediately prior to such merger in the same proportions in which such shares were held immediately prior to such merger), (B) a sale of all or substantially all of the properties and assets of the Corporation as an entirety to any other person, or (C) any other transaction or series of related transactions that effects a change of control of the Corporation in which the stockholders of the Corporation or any Affiliates of such stockholders (including any general or limited partners of any stockholder that is a partnership) immediately prior to such transaction or series of related transactions cease to own, collectively, either directly or indirectly, at least a majority of the voting power of the capital stock of the Corporation immediately after such transaction or series of related transactions shall be deemed to be a liquidation, dissolution or winding-up of the Corporation for purposes of this Section 4.2(d) (each, a "***Deemed Liquidation Event***") and each holder of any shares of Series A Preferred Stock shall receive in cash its full portion of the Series A Liquidation Payment in accordance with this Section 4.2(d) upon consummation of such Deemed Liquidation Event.

(iii) Written notice of any such liquidation, dissolution or winding up or Deemed Liquidation Event, stating a payment date, the amount of the Series A Liquidation Payment and the place where Series A Liquidation Payment shall be payable, shall be given by first class mail, postage prepaid, not less than 20 days prior to the payment date stated therein, addressed to each holder of any shares of Series A Preferred Stock at the address of such holder as shown on the books of the Corporation.

(e) Voting. The holders of the Series A Preferred Stock, shall be entitled to elect one director at each annual election of directors. In the case of any vacancy in the office of the director elected by the holders of the Series A Preferred Stock pursuant to this Section 4.2(e) resulting from death or resignation, such holders may, by the vote of the holders of a majority of the outstanding Series A Preferred Stock, elect a successor or successors to hold office for the unexpired term of the director whose place shall be vacant. If any of the Series A Preferred Stock remains outstanding on [ , 2012],[2] the holders of the Series A Preferred Stock shall have the right to appoint [four] additional directors. Any director who shall have been elected by the holders of the Series A Preferred Stock may be removed during the aforesaid term of office, either with or without cause, by, and only by, majority vote of the holders of the Series A Preferred Stock, given either at a special meeting of such holders of the Series A Preferred duly called for that purpose or pursuant to written consent, and any vacancy thereby created may be filled by vote of the holders of a majority of the Series A Preferred Stock represented at the meeting or pursuant to written consent.

(f) Protective Provisions. In addition to any other vote of stockholders required by law or by this Certificate, without the prior consent of the holders of at least fifty percent (50%) of the outstanding Series A Preferred Stock, in each case given in person or by proxy, either in writing or at a special meeting called for that purpose, at which meeting the holders of Series A Preferred Stock shall vote together as a class, the Corporation will not (whether by merger, consolidation or otherwise):

(i) increase or decrease the authorized number of shares of Series A Preferred Stock (other than by redemption), Junior Preferred Stock or Common Stock or issue any shares of Series A Preferred Stock, Junior Preferred Stock or Common Stock (except in accordance with subsection 4.2(f)(iii) below);

(ii) pay or declare any dividend or distribution on any shares of Junior Preferred Stock (other than a dividend payable solely of Junior Preferred Stock) or Common Stock (other than a dividend payable solely of Common Stock);

(iii) apply any of its assets to the redemption, retirement, purchase or other acquisition, directly or indirectly, through subsidiaries or otherwise, of any shares of Common Stock, Junior Preferred Stock or Series A Preferred Stock, other than (i) as provided in Section 4.2(c) hereof; and (ii) to the redemption, retirement, purchase or other acquisition, directly or indirectly, through subsidiaries or otherwise, of any shares of Common Stock of employees or directors no longer employed by or serving as directors of the Corporation but, in the case of such employees or directors, only so long as the aggregate amount paid for all such redemptions, retirements, purchases and other acquisitions does not exceed $[•];

[2] Five years from Closing Date.

(iv) increase the number of directors above five (subject to the increase in number of directors permitted by the second sentence of subsection 4.2(e));

(v) create, authorize, issue or reclassify any other class or classes of stock or series of capital stock or debt securities of the Corporation or any security convertible into or evidencing the right to purchase shares of any class or series of capital stock of the Corporation;

(vi) merge or consolidate with any other entity, or enter into any transaction that would result in a Deemed Liquidation Event;

(vii) liquidate, dissolve, wind up or effect a recapitalization or reorganization in any form of transaction of the Corporation or any of its subsidiaries;

(viii) sell, lease, transfer, assign or otherwise dispose of or abandon any material asset or a material portion of its assets;

(ix) enter into any transaction with any Affiliate except in the ordinary course of business, as conducted by the Corporation in accordance with past practice and undertaken by the Corporation in good faith, and pursuant to the reasonable requirements of the business of the Corporation provided that, upon fair and reasonable terms no less favorable to the Corporation than would be obtained in a comparable arm's length transaction with a person not an Affiliate of the Corporation and which are disclosed in writing to the holders of Series A Preferred Stock. For purposes of Article IV, "***Affiliate***" means, with respect to any person, any other person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such person. For purposes of this definition, "control" of a person means the power, directly or indirectly, either to (i) vote 10% or more of the capital stock having ordinary voting power for the election of directors of such person or (ii) direct or cause the direction of the management and policies of such person whether by contract or otherwise;

(x) make or suffer to exist any advance or loan to, or make or acquire any investment in, or capital contribution to any person; or

(xi) acquire all or substantially all of the assets of, or any capital stock or any debt or equity interests in (including without limitation, through merger or consolidation), any person.

(g) Additional Protective Provision. In addition to any other vote of stockholders required by law or by this Certificate, without the prior consent of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the outstanding Series A Preferred Stock (unless one stockholder holds at least such percentage of the outstanding Series A Preferred Stock in which case such consent shall also require the approval of one or more additional stockholders holding an aggregate of at least 5% of the outstanding Series A Preferred Stock), in each case given in person or by proxy, either in writing or at a special meeting called for that purpose, at which meeting the holders of Series A Preferred Stock shall vote together as a class, the Corporation will not (whether by merger, consolidation or otherwise) amend, alter or repeal any provision of, or add any provision to, the Corporation's Amended and Restated Certificate of Incorporation or Bylaws which alters the rights, preferences or privileges of the Series A Preferred Stock or the rights of any director elected by the holders of the Series A Preferred Stock.

The Corporation shall not permit any subsidiary of the Corporation to take any action which, if taken by the Corporation, would require the consent of the holders of the Series A Preferred Stock in accordance with the preceding sentence.

Section 4.3 Common Stock.

(a) The holders of shares of Common Stock shall be entitled to one vote for each such share of Common Stock held of record on the applicable record date on each matter properly submitted to a vote of the stockholders. Except as otherwise required by law or this Certificate (including any Preferred Stock Designation), at any annual or special meeting of the stockholders the Common Stock shall have the exclusive right to vote for the election of directors and on all other matters properly submitted to a vote of the stockholders. Notwithstanding the foregoing, except as otherwise required by law or this Certificate (including a Preferred Stock Designation), holders of Common Stock shall not be entitled to vote on any amendment to this Certificate (including any amendment to any Preferred Stock Designation) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate (including any Preferred Stock Designation.)

(b) Subject to the rights of the holders of Preferred Stock, the holders of shares of Common Stock shall be entitled to receive such dividends and other distributions (payable in cash, property or capital stock of the Corporation) when, as and if declared thereon by the Board from time to time out of any assets or funds of the Corporation legally available therefor and shall share equally on a per share basis in such dividends and distributions.

(c) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation, and subject to the rights of the holders of Preferred Stock in respect thereof, the holders of shares of Common Stock shall be entitled to receive all the remaining assets of the Corporation available for distribution to its stockholders, ratably in proportion to the number of shares of Common Stock held by them.

Section 4.4 Power to Sell and Purchase Shares. Subject to the requirements of law and the terms of any outstanding series of Preferred Stock, the Corporation shall have the power to issue and sell all or any part of any shares of any class or series of stock herein or hereafter authorized to such persons, and for such consideration, as the Board may from time to time, in its discretion, determine.

Section 4.5 Limitation on Nonvoting Stock. The Corporation shall not issue nonvoting capital stock to the extent prohibited by Section 1123 of the Bankruptcy Code; provided, however, that this Section 4.5 (i) will have no further force and effect beyond that required under Section 1123, (ii) will have such force and effect only for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the Corporation and (iii) in all events may

be amended or eliminated in accordance with applicable law as from time to time in effect.

## ARTICLE V

## TRANSFER RESTRICTIONS

For the purposes of this Article V capitalized terms used but not otherwise defined in this Certificate of Incorporation shall have the meanings set forth below:

"***Affiliate***" of any specified Person shall mean any other Person which, directly or indirectly, controls, is controlled by or is under direct or indirect common control with such specified Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

"***Code***" means the Internal Revenue Code of 1986, as amended.

"***Equity Securities***" shall mean (i) all shares of Common Stock, (ii) all shares of Preferred Stock, (iii) all other securities directly or indirectly convertible into or exchangeable for shares of Common Stock or Preferred Stock and (iv) any securities issued or issuable in respect of the foregoing upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event.

"***Exchange Act***" shall mean the Securities Exchange Act of 1934, as amended.

"***Five Percent Holder***" shall mean any stockholder beneficially owning or holding, in the aggregate, more than 5% of the Corporation's issued and outstanding Common Stock or Preferred Stock. For purposes of this definition (i) a stockholder's beneficial ownership of the Corporation's Common Stock or Preferred Stock will be determined in accordance with Section 13(d) of the Exchange Act and (ii) the number of shares of the Corporation's issued and outstanding Common Stock or Preferred Stock at the time of determination thereof shall be calculated on a non-diluted basis, without taking into account any outstanding warrants, options or other securities directly or indirectly convertible into or exchangeable for shares of Common Stock or Preferred Stock.

"***Permitted Transferee***" with respect to any Transfer by a Five Percent Holder, shall mean: (i) with respect to any Five Percent Holder who is a natural person, a Transfer to (a) such Five Percent Holder's spouse, issue or other family member, or (b) a trust, all of the beneficiaries of which, and a partnership all of the limited and general partners of which, consist of the Five Percent Holder, his spouse, issue or other family member; and (ii) with respect to any Five Percent Holder that is not a natural person, a Transfer to an Affiliate of such Five Percent Holder (including, in the case of (x) a partnership, to its partners or former partners in accordance with partnership interests, (y) a limited liability company, to its members or former members in accordance with the interest in the limited liability company or (z) a corporation, to its stockholders, in accordance with their interests in the corporation.

"***Person***" shall mean any individual, corporation, limited partnership, general partnership, limited liability company, joint stock company, joint venture, association, company, trust, or any governmental or political subdivision or any agency, department or instrumentality thereof.

"***Securities Act***" shall mean the Securities Act of 1933, as amended.

"***Tax Benefit***" means the net operating loss carryovers, capital loss carryovers, general business credit carryovers, alternative minimum tax credit carryovers and foreign tax credit carryovers, as well as any loss or deduction attributable to a "net unrealized built-in loss" within the meaning of Section 382 of the Code, of the Corporation or any direct or indirect subsidiary thereof.

"***Transfer***" shall mean any transfer, assignment, sale, merger, joint venture, exchange, gift, pledge, encumbrance, hypothecation or alienation, whether directly or indirectly, voluntarily or involuntarily or by operation of law.

Section 5.1 Restrictions on Transferability. No Equity Securities shall be Transferred, except upon the conditions set forth in this Article V, and the Corporation shall not register in its books the Transfer of any Equity Securities to any Person unless such Transfer has been affected in accordance with the terms of this Article V.

Section 5.2 Endorsement; Certain Transfers; Notification by Five Percent Holders. Notwithstanding any other provision of this Article V, (a) no Transfer of Equity Securities shall be effective (including to a Permitted Transferee) unless the Transferee shall have executed and delivered to the Corporation an endorsement agreeing to be bound by the terms and conditions of this Article V, (b) Equity Securities shall not be Transferred, and the Corporation shall not be required to register any Transfer of Equity Securities on its books, unless the Corporation shall be satisfied prior to such Transfer that registration under the Securities Act and the applicable securities laws of any other jurisdiction is not required in connection with the transaction resulting in such Transfer and (c) each Five Percent Holder who Transfers (in one or more of a series of related Transfers over a one-year period) Equity Securities which represent 5% or more of the issued and outstanding Common Stock shall be required to notify the Corporation of such Transfer upon the consummation thereof.

Section 5.3 Limitation on Number of Stockholders. Notwithstanding anything set forth in this Certificate, or the compliance with any of the terms hereof, no Transfer of Equity Securities shall be effective, and any such Transfer of Equity Securities shall be deemed null and void, if (1) as a result of any such Transfer, the number of holders of any class or series of Equity Securities of the Corporation would exceed 300 and (2) such Transfer does not also effectuate a Transfer of all such holder's rights to receive subsequent distributions of Equity Securities pursuant to the Plan.

Section 5.4 Legend. Each certificate representing shares of Equity Securities shall be stamped or otherwise imprinted with legends substantially similar to the following (in addition to any legend required under applicable state securities laws):

"THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES

LAWS. THEY MAY NOT BE SOLD OR OFFERED FOR SALE OR OTHERWISE TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO THE SECURITIES UNDER SAID ACT AND ANY APPLICABLE STATE SECURITIES LAW OR UNLESS THE CORPORATION HAS RECEIVED AN OPINION OF COUNSEL SATISFACTORY TO THE CORPORATION THAT SUCH REGISTRATION IS NOT REQUIRED TO EFFECTUATE SUCH TRANSACTION.

THE SALE, TRANSFER, ASSIGNMENT, PLEDGE OR HYPOTHECATION OF THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF THE CORPORATION, AS THE SAME MAY BE AMENDED AND IN EFFECT FROM TIME TO TIME. COPIES OF SUCH CERTIFICATE MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

NO TRANSFER OF ANY EQUITY SECURITIES, AS DEFINED IN THE CERTIFICATE OF INCORPORATION OF THE CORPORATION, SHALL BE EFFECTIVE, AND ANY SUCH TRANSFER OF ANY EQUITY SECURITIES SHALL BE DEEMED NULL AND VOID, IF, (1) AS A RESULT OF SUCH TRANSFER, THE NUMBER OF HOLDERS OF ANY CLASS OR SERIES OF EQUITY SECURITIES OF THE CORPORATION WOULD EXCEED 300 AND (2) SUCH TRANSFER DOES NOT ALSO EFFECTUATE A TRANSFER OF ALL SUCH HOLDER'S RIGHTS TO RECEIVE SUBSEQUENT DISTRIBUTIONS OF EQUITY SECURITIES PURSUANT TO THE PLAN, AS SUCH TERM IS DEFINED IN THE CERTIFICATE."

Section 5.5 Permitted Transfers. Any Transfer of Equity Securities that would otherwise be prohibited pursuant to this Article V shall nonetheless be permitted if prior to such Transfer being consummated (or, in the case of an involuntary transfer, as soon as practicable after the transaction is consummated), the Board, in its sole discretion, approves the Transfer (such approval may relate to a transfer or series of related transfers). In determining whether to approve a proposed transfer, the Board may, in its discretion, require an opinion of counsel selected by the Board that the Transfer will not result in the application of any limitation under Section 382 of the Code on the use of any Tax Benefits. The Board may establish a committee to determine whether to approve a proposed transfer or for any other purpose relating to this Article V.

Section 5.6 Termination. (a) The provisions of this Article V shall terminate, and shall be null and void and of no further force or effect, upon the earliest to occur of (i) the liquidation, dissolution or indefinite cessation of the business operations of the Corporation, (ii) the execution by the Corporation of a general assignment for the benefit of creditors or the appointment of a receiver or trustee to take possession of the property and assets of the Corporation, and (iii) the consummation of the Corporation's first firm commitment underwritten public offering of its Common Stock registered under the Securities Act.

ARTICLE VI

COMPROMISES OR ARRANGEMENTS WITH CREDITORS AND STOCKHOLDERS

Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them, and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of Title 8 of the DGCL or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under the provisions of Section 279 of Title 8 of the DGCL, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

ARTICLE VII

LIMITED LIABILITY; INDEMNIFICATION

Section 7.1 Limitation of Personal Liability. No director of the Corporation will be personally liable to the Corporation or its stockholders for or with respect to any acts or omissions in the performance of his or her duties as a director of the Corporation except (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders, or (b) for acts or omissions which are not in good faith or which involve intentional misconduct or knowing violation of the law, or (c) for any matter in respect of which such Directors shall be liable under Section 174 of Title 8 of the DGCL or any amendment thereto or successor provision thereto, or (d) for any transaction from which the director shall have derived an improper personal benefit. Any repeal or modification of this Section 7.1 will not adversely affect any right or protection of a director of the Corporation in respect of any act or omission occurring in whole or in part prior to such repeal or modification.

Section 7.2 Indemnification.

(a) Right to Indemnification. Each individual who was or is a party or is threatened to be made a party to or is otherwise involved in, any action, suit or proceeding, whether pending or threatened, whether civil, criminal, administrative or investigative and whether brought by or in the right of the Corporation or otherwise (a "***Proceeding***"), by reason of the fact that such individual is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation and is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust,

employee benefit plan or other enterprise (an "***Indemnitee***"), in each instance on or after the date hereof, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by the DGCL, as same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment) against all expenses, liability and loss (including, without limitation, attorneys' fees and expenses, judgments, fines, excise taxes or penalties pursuant to the Employee Retirement Income Security Act of 1974, as amended, and amounts paid in settlement) reasonably incurred or suffered by such Indemnitee in connection therewith. The right to indemnification shall extend to the heirs, executors, administrators and estate of any such director or officer. Without limiting the generality or the effect of the foregoing, the Corporation may adopt bylaws, or enter into one or more agreements with any individual, that provide for indemnification greater or otherwise different than that provided in this Section 7.2 or the DGCL, and any such agreement approved by a majority of the Board will be a valid and binding obligation of the Corporation regardless of whether one or more members of the Board, or all members of the Board, are parties thereto or to similar agreements. Notwithstanding anything to the contrary in this Section 7.2, in the event that the Corporation enters into a contract with any individual providing for indemnification of such individual, the provisions of that contract will exclusively govern the Corporation's obligations in respect of indemnification for or advancement of fees or disbursements of that individual's attorney(s) and any other professional engaged by that individual. Any amendment or repeal of, or adoption of any provision inconsistent with, this Section 7.2 will not adversely affect any right or protection existing hereunder, or arising out of events occurring or circumstances existing, in whole or in part, prior to such amendment, repeal or adoption, and no such amendment, repeal or adoption will affect the legality, validity or enforceability of any contract entered into or right granted prior to the effective date of such amendment, repeal or adoption.

(b) Right to Advancement of Expenses. The right to indemnification conferred in paragraph (a) of this Section 7.2 shall include the right to be paid by the Corporation the expenses (including, without limitation, attorneys' fees and expenses) reasonably incurred in defending any such Proceeding in advance of its final disposition (an "***Advancement of Expenses***"); provided, however, that, an Advancement of Expenses incurred by an Indemnitee in his or her capacity as a director or officer shall be made only upon delivery to the Corporation of an undertaking (an "***Undertaking***"), by or on behalf of such Indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (a "***Final Adjudication***") that such Indemnitee is not entitled to be indemnified for such expenses under this Section 7.2 or otherwise. The rights to indemnification and to the Advancement of Expenses conferred in paragraphs (a) and (b) of this Section 7.2 shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be a director or officer and shall inure to the benefit of the Indemnitee's heirs, executors, administrators and estate.

(c) Non-Exclusivity of Rights. The rights to indemnification and to the Advancement of Expenses conferred in this Section 7.2 (i) will not be exclusive of any other right which any individual may have or hereafter acquire under any statute, this Certificate, the bylaws of the Corporation, any agreement, any vote of stockholders or disinterested directors, or otherwise, and (ii) will be applicable to matters otherwise within its scope whether or not such

matters arose or arise before or after the adoption of this Section 7.2.

(d) Insurance. The Corporation may maintain insurance, at its expense, to protect the Corporation and any director, manager, trustee, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expenses, liability or loss, whether or not the Corporation would have the power to indemnify such individual against such expense, liability or loss under the DGCL.

(e) Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the Advancement of Expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Section 7.2 with respect to the indemnification and Advancement of Expenses of directors and officers of the Corporation.

## ARTICLE VIII

## CORPORATE OPPORTUNITIES

In recognition and anticipation that (i) certain holders of Common Stock, their Affiliates, and their respective directors, principals, officers, employees and/or other representatives may now engage, may continue to engage, or may, in the future, decide to engage, in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, and (ii) members of the Board who are not employees of the Corporation ("***Non-Employee Directors***") and their respective Affiliates may now engage, may continue to engage, or may, in the future, decide to engage, in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, the provisions of this Article VIII are set forth to regulate and define the conduct of certain affairs of the Corporation with respect to certain classes or categories of business opportunities as they may involve the holders of Common Stock, the Non-Employee Directors or their respective Affiliates and the powers, rights, duties and liabilities of the Corporation and its directors, officers and stockholders in connection therewith. Solely for purposes of this Article VIII, "***Affiliate***" shall mean (A) in respect of any specified person (other than the Corporation), any other person that, directly or indirectly, is controlled by, controls or is under common control with such specified person and shall include any principal, member, director, partner, stockholder, officer, employee or other representative of any of the foregoing, (B) in respect of a Non-Employee Director, any person that, directly or indirectly, is controlled by such Non-Employee Director (other than the Corporation and any entity that is controlled by the Corporation) and (C) in respect of the Corporation, any person that, directly or indirectly, is controlled by the Corporation.

Section 8.1 Identified Persons. None of (i) the holders of Common Stock or any of their Affiliates or (ii) any Non-Employee Director or any of his or her Affiliates (the persons identified in (i) and (ii) above being referred to, collectively, as "***Identified Persons***" and, individually, as an "***Identified Person***") shall have any duty to refrain, directly or indirectly, from (x) engaging in a corporate opportunity in the same or similar business activities or lines of

business in which the Corporation or any of its Affiliates now engages or proposes to engage or (y) otherwise competing with the Corporation, and, to the fullest extent permitted by the DGCL, no Identified Person shall be liable to the Corporation or its stockholders for breach of any fiduciary duty solely by reason of the fact that such Identified Person engages in any such activities. The Corporation hereby renounces any interest or expectancy in, or in being offered an opportunity to participate in, any business opportunity which may be a corporate opportunity for both an Identified Person and the Corporation or any of its Affiliates, except as specifically provided in Section 8.3.

Section 8.2 No Duty. In the event that any Identified Person acquires knowledge of a potential transaction or other business opportunity which may be a corporate opportunity both for itself or himself and the Corporation or any of its Affiliates, such Identified Person shall have no duty to communicate or offer such transaction or other business opportunity to the Corporation or any of its Affiliates and, to the fullest extent permitted by the DGCL, shall not be liable to the Corporation or its stockholders for breach of any fiduciary duty as a stockholder, director or officer of the Corporation solely by reason of the fact that such Identified Person pursues or acquires such corporate opportunity for itself or himself, or offers or directs such corporate opportunity to another person.

Section 8.3 Reservation of Rights. The Corporation does not renounce its interest in any corporate opportunity offered to any Non-Employee Director if such opportunity is expressly offered to such person solely in his or her capacity as a director of the Corporation and the provisions of Section 8.1 and Section 8.2 shall not apply to any such corporate opportunity.

Section 8.4 No Potential Corporate Opportunity. In addition to and notwithstanding the foregoing provisions of this Article VIII, a corporate opportunity shall be deemed not to be a potential corporate opportunity for the Corporation if it is a business opportunity that the Corporation is not financially able or contractually permitted or legally able to undertake, or that is, from its nature, not in the line of the Corporation's business or is of no practical advantage to it or that is one in which the Corporation has no interest or reasonable expectancy.

## ARTICLE IX

## BYLAWS

In furtherance and not in limitation of the powers conferred upon it by law, the Board shall have the power to adopt, amend, alter or repeal the bylaws of the Corporation by the affirmative vote of a majority (including the director selected by the Other Stockholders so long as such Other Stockholders have the right to designate such director) of the total number of directors that the Corporation would have if there were no vacancies. The bylaws also may be adopted, amended, altered or repealed by the affirmative vote of the holders of a majority of the Corporation's voting stock issued and outstanding and entitled to vote thereon. The Corporation may, in its bylaws, confer powers upon the Board in addition to the foregoing and in addition to the powers and authorities expressly conferred upon the Board by applicable law. For purposes of this Article IX, "***Other Stockholders***" means the holders of Common Stock who are not a Significant Stockholder, where "***Significant Stockholders***" means any person, together with its

Affiliates (as defined in Article V), who beneficially owns in excess of 35% of the outstanding Common Stock.

ARTICLE X

AMENDMENT OF CERTIFICATE OF INCORPORATION

The Corporation reserves the right at any time from time to time to amend, alter, change or repeal any provision contained in this Certificate (including any Preferred Stock Designation), and any other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by this Certificate, the bylaws of the Corporation or the DGCL; and except as set forth in Article VII, all rights, preferences and privileges herein conferred upon stockholders, directors or any other persons by and pursuant to this Certificate in its present form or as hereafter amended are granted subject to the right reserved in this Article X.

ARTICLE XI

BOARD OF DIRECTORS

The business and affairs of the Corporation shall be managed by or under direction of the Board except as otherwise provided herein or required by law. The number of directors of the Corporation shall be as from time to time fixed by or in the manner provided in the bylaws of the Corporation. Elections of directors need not be by written ballot except and to the extent provided in the bylaws of the Corporation.

ARTICLE XII

SECTION 203

The Corporation elects not to be governed by Section 203 of the DGCL.

ARTICLE XIII

PROVISIONS BINDING

Pursuant to the terms of the Confirmation Order, each holder of the Corporation's Equity Securities shall be deemed to be bound by, and shall hold such Equity Securities subject to, the terms and provisions of this Certificate (including, without limitation, provisions restricting the Transfer of Equity Securities), as the same may be amended from time to time, as though such holder of Equity Securities is party to a separately executed stockholders agreement containing the provisions hereof.

[Remainder of Page Intentionally Left Blank]

**IN WITNESS WHEREOF**, I have executed this Certificate this [●] day of [●] 2007.

_____

_____, President

# STATE of WASHINGTON

## SECRETARY of STATE

*I, RALPH MUNRO, Secretary of State of the State of Washington and custodian of its seal,* hereby issue this

## *CERTIFICATE OF AMENDMENT*

to

PORT TOWNSEND PAPER CORPORATION

a Washington Profit corporation. Articles of Amendment were filed for record in this office on the date indicated below.

UBI Number: 600 507 119

Date: April 10, 1998

*Given under my hand and the Seal of the State of Washington at Olympia, the State Capital*

RALPH MUNRO

*Ralph Munro, Secretary of State*

2-337482-0

EXHIBIT A2

A

# ARTICLES OF AMENDMENT TO ARTICLES OF INCORPORATION OF PORT TOWNSEND PAPER CORPORATION

FILED
STATE OF WASHINGTON

APR 10 1998

RALPH MUNRO
SECRETARY OF STATE

Pursuant to the provisions of RCW 23B.10, the undersigned officer of PORT TOWNSEND PAPER CORPORATION, a Washington corporation, executes the following Articles of Amendment to the Articles of Incorporation of this corporation:

1. The name of the corporation currently registered with the Washington Secretary of State is Port Townsend Paper Corporation.

2. The Articles of Incorporation of the corporation are amended by replacing and/or renumbering all existing Articles to read as follows:

## ARTICLE I
## NAME

The name of the corporation shall be Port Townsend Paper Corporation.

## ARTICLE II
## DURATION

The duration of the corporation shall be perpetual unless dissolved by operation of law or otherwise.

## ARTICLE III
## PURPOSE

The purpose of the corporation is to engage in any business or activity which may lawfully be conducted by a corporation organized under the Washington Business Corporation Act.

## ARTICLE IV
## AUTHORIZED CAPITAL STOCK

The aggregate number of shares which the corporation is authorized to issue is Five Hundred Thousand (500,000) shares of common stock having a par value of Ten Cents ($0.10) per share. Shares of common stock shall be

deemed fully paid and nonassessable. The holders of stock of the corporation shall not be liable to the corporation or to its creditors by reason of such stockholdings. The corporation shall have the right to purchase, take, receive, hold, own, pledge, transfer and otherwise acquire and dispose of its own shares to the full extent authorized by the laws of the State of Washington. Each share of common stock shall have one vote on all matters to come before the stockholders for vote.

## ARTICLE V
## PREEMPTIVE RIGHTS DENIED

Except as set forth in any separate shareholders' agreement, the owners of shares of stock of the corporation shall not be entitled to preemptive rights to subscribe for or purchase any part of new or additional issues of stock or securities convertible into stock of any class, whether issued for cash, property, services, by way of dividends, or otherwise.

## ARTICLE VI
## CUMULATIVE VOTING DENIED

There shall not be cumulative voting of the shares of the Corporation with respect to the election of directors.

## ARTICLE VII
## SHAREHOLDER ACTION WITHOUT A MEETING

Any action required or which may be taken at a meeting of shareholders of the Corporation may be taken without a meeting or vote if either (i) the action is taken by all shareholders entitled to vote; or (ii) the action is taken by shareholders holding of record or otherwise entitled to vote in the aggregate not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote on the action were present and voted, and at the time the action is taken the Corporation does not have (a) capital stock registered with the Securities and Exchange Commission pursuant to Section 12 of the Securities Exchange Act of 1934, as amended or (b) more than 300 shareholders of record. The taking of the action by shareholders without a meeting or vote must be evidenced by one or more written consents describing the action taken, signed by the shareholders holding of record or otherwise entitled to vote in the aggregate not less than the minimum number of votes necessary in order to take such action by written consent under (i) or (ii) immediately above, and delivered to the Corporation for inclusion in the minutes or filing with the Corporation's

records. If not otherwise fixed under Washington law, the record date for determining shareholders entitled to take action without a meeting is the date on which the first shareholder consent is signed. A written consent is not effective to take the action referred to in the consent unless, within sixty (60) days of the earliest consent delivered to the Corporation, written consents signed by a sufficient number of shareholders to take action are delivered to the Corporation. Unless the written shareholder consent specifies a later effective date, action taken by written consent is effective when both: (a) consents sufficient to authorize taking the action have been delivered to the Corporation; and (b) ten (10) days have lapsed (unless a longer period is required under Washington law) since the Corporation delivered written notice to all of the shareholders of the Corporation, requesting such action by written consent, which notice must contain or be accompanied by the same material that would have been required, under Washington law, to be sent to non-consenting or nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted for shareholder action.

## ARTICLE VIII
## DIRECTORS

The duties, number, term, qualifications and manner of election of directors of the corporation will be fixed by or in the manner provided in the Bylaws of the corporation.

## ARTICLE IX
## BYLAWS

Authority to make and amend the Bylaws of the corporation is expressly vested in the Board of Directors, subject to the power of the shareholders to change or repeal such Bylaws or any portion of such Bylaws.

## ARTICLE X
## DIRECTOR LIABILITY

A director of the corporation shall not be personally liable to the corporation or its shareholders for monetary damages for conduct as a director, except for liability of the director for (i) acts or omissions that involve intentional misconduct or a knowing violation of law by the director, (ii) conduct which violates RCW 23B.08.310 of the Washington Business Corporation Act, pertaining to unpermitted distributions to shareholders or unpermitted loans to directors, or (iii) any transaction from which the director will personally receive a benefit in money, property or services to which the

director is not legally entitled. If the Washington Business Corporation Act is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the Washington Business Corporation Act, as so amended. Any repeal or modification of the foregoing paragraph by the shareholders of the corporation shall not adversely affect any right or protection of a director of the corporation existing at the time of such repeal or modification.

## ARTICLE XI
## INDEMNIFICATION

The Corporation shall indemnify each officer and each director that is or may become a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal, to the maximum extent and under all circumstances permitted by law, and shall upon the request of such officer or director advance or reimburse expenses incurred in a proceeding; provided that no such indemnity shall indemnify an officer or director, as the case may be, from or on account of:

(i) Acts or omissions of an officer or director finally adjudged to be intentional misconduct or a knowing violation of law;

(ii) Conduct of a director finally adjudged to be an unlawful distribution under RCW 23B.08.310; or

(iii) Any transaction with respect to which it was finally adjudged that an officer or director personally received a benefit in money, property, or services to which the officer or director was not legally entitled.

## ARTICLE XII
## AMENDMENT

This corporation reserves the right to amend or repeal any provisions contained in these Articles of Incorporation in any manner now or hereafter permitted by statute. All rights of shareholders of the corporation and all powers of directors of the corporation are granted subject to this reservation.

ARTICLE XIII
REGISTERED OFFICE AND AGENT

The registered office of the corporation in the State of Washington is 520 Pike Street, Suite 2610, Seattle, WA 98101, and CT Corporation System is the corporation's registered agent at such address.

ARTICLE XIV
INCORPORATOR

The name and address of the incorporator, as set forth in the corporation's Articles of Incorporation filed with the Washington Secretary of State on November 1, 1983, is E.P. Swain, Jr., 2900 One Union Square, Seattle, WA 98101.

3. The amendments do not provide for an exchange, reclassification or cancellation of issued shares.

4. The date of the adoption of the above amendments is March 1, 1998.

5. The amendments were duly approved by the shareholders of the corporation in accordance with the provisions of RCW 23B.10.030 and 23B.10.040.

DATED April 1, 1998

PORT TOWNSEND PAPER CORPORATION

By: _____
John P. Begley, President/CEO

# STATE of WASHINGTON

## SECRETARY of STATE

*I, RALPH MUNRO, Secretary of State of the State of Washington and custodian of its seal,*

hereby certify this certificate that the attached is a true and correct copy of

CERTIFICATE OF AMENDMENT

of

**PORT TOWNSEND PAPER CORPORATION**

Increasing capital to $50,000.00

as filed in this office on December 16, 1983.

Date: November 19, 1997

*Given under my hand and the Seal of the State of Washington at Olympia, the State Capital*

RALPH MUNRO

*Ralph Munro, Secretary of State*

S. Green

# STATE of WASHINGTON SECRETARY of STATE

**I, Ralph Munro,** Secretary of State of the State of Washington and custodian of its seal, hereby issue this

## *CERTIFICATE OF AMENDMENT*

to

PORT TOWNSEND PAPER CORPORATION

a Washington profit corporation. Articles of Amendment were filed for record in this office on the date indicated below.

Increasing capital to $50,000.00

Corporation Number: 2-337482-0 Date: December 16, 1983

Given under my hand and the seal of the State of Washington, at Olympia, the State Capitol.

Ralph Munro

*Ralph Munro, Secretary of State*

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SECRETARY OF STATE
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ARTICLES OF AMENDMENT

TO

ARTICLES OF INCORPORATION

OF

PORT TOWNSEND PAPER CORPORATION

Pursuant to RCW 23A.16.020 and 23A.16.040, PORT TOWNSEND PAPER CORPORATION, a corporation formed and organized under the laws of the State of Washington (the "Corporation") adopts in duplicate the following Articles of Amendment to its Articles of Incorporation:

1. The name of the Corporation is PORT TOWNSEND PAPER CORPORATION.

2. The Articles of Incorporation shall be amended by deleting Article IV thereof in its entirety, and substituting the following in lieu thereof (the "Amendment"):

"ARTICLE IV

The total number of shares of stock authorized and which may be issued by this Corporation is 500,000 shares of common capital stock, one class only, with a par value of Ten Cents ($0.10) for each of such shares. In furtherance of and not in limitation of the general powers conferred by the laws of the State of Washington, purchases of its own shares may be made by the Corporation out of unreserved and unrestricted capital surplus."

3. The date of the adoption of the Amendment by resolution of the Directors of the Corporation was December 15, 1983.

4. The number of shares of the Corporation outstanding at the time of such adoption was zero (0).

5. No shares of the Corporation have been issued and, accordingly, no shares were entitled to vote on adoption of the Amendment.

6. The Amendment does not provide for an exchange, reclassification, or cancellation of issued shares.

7. The Amendment does not provide for a change in the amount of stated capital of the Corporation.

8. Except as changed by the Amendment, the Articles of Incorporation remain as originally executed and as previously changed or amended.

DATED this 15th day of December, 1983.

PORT TOWNSEND PAPER CORPORATION

By: E.P. Swain, Jr.
E.P. Swain, Jr.,
Secretary

19/738

STATE OF WASHINGTON )
) ss:
COUNTY OF K I N G )

E.P. SWAIN, JR., being first duly sworn, on oath deposes and says under the penalties of perjury that he is the Secretary of PORT TOWNSEND PAPER CORPORATION, the corporation named in the within and foregoing instrument; that he is authorized to execute the within and foregoing instrument on behalf of the corporation; that he has read the within and foregoing instrument, knows the contents thereof, and that the same is true to his knowledge.

E.P. Swain, Jr.

SUBSCRIBED AND SWORN to before me this 15th day of December, 1983.

NOTARY ~~PUBLIC~~ in and for the State of Washington, residing at Seattle

# STATE of WASHINGTON

# SECRETARY of STATE

*I, RALPH MUNRO, Secretary of State of the State of Washington and custodian of its seal,*

hereby certify this certificate that the attached is a true and correct copy of

ARTICLES OF MERGER

of

**PORT TOWNSEND PAPER CORPORATION**

Merging with and into itsel ISA INTERNATIONAL, INC.

as filed in this office on December 16, 1983.

Date: November 19, 1997

*Given under my hand and the Seal of the State of Washington at Olympia, the State Capital*

RALPH MUNRO

*Ralph Munro, Secretary of State*

S. Green

# STATE of WASHINGTON SECRETARY of STATE

**I, Ralph Munro,** Secretary of State of the State of Washington and custodian of its seal, hereby certify that

ARTICLES OF MERGER

of

PORT TOWNSEND PAPER CORPORATION

a Washington profit corporation,

was/were filed for record in this office on the date indicated below.

Merging with and into itself ISA INTERNATIONAL, INC.
(Alabama corporation not qualified in Washington)

Corporation Number: 2-337482-0 Date: December 16, 1983

Given under my hand and the seal of the State of Washington, at Olympia, the State Capitol.

Ralph Munro

*Ralph Munro, Secretary of State*

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SECRETARY OF STATE
STATE OF WASHINGTON

ARTICLES OF MERGER
OF
ISA INTERNATIONAL INC.
INTO
PORT TOWNSEND PAPER CORPORATION

Pursuant to the provisions of Section 10-2A-140, et seq., of the Alabama Corporations, Partnerships and Associations Law, and Section 23A.20.010 et seq. of The Business Corporations Act of the State of Washington, the undersigned corporations adopt the following Articles of Merger for the purposes of merging ISA International Inc. into Port Townsend Paper Corporation.

1. The names of the merging corporations and the states under the laws of which they are respectively organized are:

| Name | State |
|---|---|
| Port Townsend Paper Corporation | Washington |
| ISA International Inc. | Alabama |

2. The laws of the State of Washington and of the State of Alabama, the states under which such corporations are organized, permit such merger and such merger is in compliance therewith.

3. The name of the surviving corporation is Port Townsend Paper Corporation, and it is governed by the laws of the State of Washington. Port Townsend Paper Corporation was incorporated in Olympia, Washington, on November 1, 1983.

4. ISA International Inc. was incorporated in the County of Jefferson, State of Alabama, on October 14, 1980.

5. A Plan of Merger setting out the terms and conditions of the proposed merger was submitted and approved by the Board of Directors of each corporation and the sole shareholder of each corporation. A copy of said Plan of Merger is attached hereto as Exhibit "A" and by this reference incorporated as if fully set forth herein.

6. There is one (1) outstanding share of common stock of Port Townsend Paper Corporation and one hundred and four thousand (104,000) outstanding shares of common stock of ISA International Inc. Each corporation has only one class of stock.

7. Haindl Papier GmbH is the sole shareholder of both Port Townsend Paper Corproation and ISA International Inc. The sole shareholder of both parties to the merger voted all of its shares in favor of the merger.

8. There are no dissenting shareholders of either corporation which is a party to this merger.

DATED this 16th day of December, 1983.

PORT TOWNSEND PAPER CORPORATION,
a Washington corporation

By: _____
E. P. Swain, Jr.,
Vice President

By: _____
S. B. Osborne, Assistant
Secretary

ISA INTERNATIONAL INC.,
an Alabama corporation

By: _____
E. P. Swain, Jr.,
Vice President

By: _____
S. B. Osborne, Assistant
Secretary

13/251

STATE OF WASHINGTON )
) SS:
COUNTY OF K I N G )

E. P. SWAIN, JR., being first duly sworn on oath deposes and says:

I am Vice President of PORT TOWNSEND PAPER CORPORATION; I have read the within and foregoing Articles of Merger, know the contents thereof and believe the same to be true.

E. P. Swain, Jr.

SUBSCRIBED and SWORN to before me this 16th day of December, 1983.

Notary Public in and for the State of Washington, residing at Seattle.

STATE OF WASHINGTON )
) SS:
COUNTY OF K I N G )

E. P. SWAIN, JR., being first duly sworn on oath deposes and says:

I am Vice President of ISA INTERNATIONAL INC.; I have read the within and foregoing Articles of Merger, know the contents thereof and believe the same to be true.

E. P. Swain, Jr.

SUBSCRIBED and SWORN to before me this 16th day of December, 1983.

Notary Public in and for the State of Washington, residing at Seattle.

PLAN OF MERGER

PLAN OF MERGER dated December 16, 1983, between PORT TOWNSEND PAPER CORPORATION ("PTPC") and ISA INTERNATIONAL INC. ("ISA").

RECITALS

1. PTPC is a corporation duly organized and existing under the laws of the State of Washington, with its principal office located at 2900 One Union Square, Seattle, Washington 98101.

2. ISA is a corporation duly organized and existing under the laws of the State of Alabama with its principal office located at One Professional Court, P.O. Box 555, Eutaw, Alabama 35462.

3. Haindl Papier GmbH, a limited liability company organized under the laws of the Federal Republic of Germany ("Haindl Papier") is the sole owner of all of the issued and outstanding common stock of ISA. The number of outstanding shares of ISA are as follows:

| Class | Total Shares Outstanding | Shares Owned by Haindl Papier |
|---|---|---|
| Common Stock | 104,000 | 104,000 |

4. Haindl Papier is the sole owner of all of the issued and outstanding common stock of PTPC. The number of outstanding shares of PTPC are as follows:

EXHIBIT A

| Class | Total Shares Outstanding | Shares Owned by Haindl Papier |
|---|---|---|
| Common Stock | 1 | 1 |

5. The Boards of Directors of PTPC and ISA deem it desirable and in the best interests of the corporations that ISA be merged with and into PTPC in accordance with the provisions of the Business Corporation Act of Washington and the Alabama Corporations, Partnerships, and Associations Law.

TERMS OF MERGER

In consideration of the mutual covenants and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

1. Merger. ISA shall merge with and into PTPC and PTPC shall be the surviving corporation.

2. Terms and Conditions. On the effective date of the merger, the separate existence of ISA shall cease, and PTPC shall succeed to all of the rights, privileges, immunities, and franchises, and all of the property, real, personal, and mixed, of ISA, without the necessity for any separate transfer. PTPC shall thereafter be responsible and liable for all liabilities and obligations of ISA, and neither the rights of creditors nor any liens on the property of ISA shall be impaired by the merger.

3. Cancellation of Shares. Immediately upon this Plan of Merger becoming effective, all of the shares of ISA shall, without requirement of any other action on the part of ISA or PTPC be completely cancelled.

4. Articles of Incorporation. The Articles of Incorporation of PTPC, as amended, shall continue to be its Articles of Incorporation following the effective date of the merger.

5. Bylaws. The Bylaws of PTPC shall continue to be its Bylaws following the effective date of the merger.

6. Directors and Officers. The directors and officers of PTPC shall continue to be the directors and officers of PTPC following the effective date of the merger.

7. Mailing to Shareholder. Haindl Papier, being the sole stockholder of ISA and PTPC hereby waives any and all requirements by statute, Bylaws, or otherwise, as to the mailing or notice of this Plan of Merger.

8. Authorization of Shareholder. Haindl Papier is the owner of all of the issued and outstanding common stock of ISA which constitutes 100% of all shares of ISA stock issued and outstanding. Haindl Papier is the owner of all of the issued and outstanding common stock of PTPC which constitutes 100% of all shares of PTPC stock issued and outstanding. The said shareholder of both ISA and PTPC have unanimously approved the merger of ISA with and into PTPC.

9. Service of Process. Pursuant to § 20-2A-146 of the Alabama Corporations, Partnerships and Associations Law (the "Act") it is agreed that the Secretary of State of Alabama is authorized to accept service of process for the surviving corporation and that said Secretary of State is hereby irrevocably appointed agent to accept service of process in any proceeding against PTPC as the surviving corporation for the enforcement of the rights of any dissenting shareholder of ISA.

10. Dissenting Shareholders. PTPC agrees to promptly pay to the dissenting shareholders of ISA the amount, if any, to which such shareholders shall be entitled under the provisions of the Act with respect to the rights of dissenting shareholders.

IN WITNESS WHEREOF, the duly authorized officers of PTPC and of ISA have executed this Agreement under their respective corporate seals on the day and year first above written.

PORT TOWNSEND PAPER CORPORATION,
a Washington corporation

By: E. P. Swain
E. P. Swain, Jr.,
Vice-President

ATTEST:

S. B. Osborne,
Assistant Secretary

ISA INTERNATIONAL INC.,
an Alabama corporation

By: E. P. Swain
E. P. Swain, Jr.,
Vice-President

ATTEST:

S. B. Osborne,
Assistant Secretary

STATE OF WASHINGTON )
) ss:
COUNTY OF K I N G )

On this 15th day of December, 1983, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared E. P. SWAIN, JR., and S. B. OSBORNE, to me known to be the Vice-President and Assistant Secretary, respectively, of PORT TOWNSEND PAPER CORPORATION, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated he was authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

Michael McCann
NOTARY PUBLIC in and for the State of Washington, residing at Seattle

STATE OF WASHINGTON )
) ss:
COUNTY OF K I N G )

On this 15th day of December, 1983, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared E. P. SWAIN, JR., and S. B. OSBORNE, to me known to be the Vice President and Assistant Secretary, respectively, of ISA INTERNATIONAL INC. the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated he was authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the State of Washington, residing at Seattle

# STATE of WASHINGTON

## SECRETARY of STATE

*I, RALPH MUNRO, Secretary of State of the State of Washington and custodian of its seal,*

hereby certify this certificate that the attached is a true and correct copy of

CERTIFICATE OF INCORPORATION

of

**PORT TOWNSEND PAPER CORPORATION**

as filed in this office on November 1, 1983.

Date: November 19, 1997

*Given under my hand and the Seal of the State of Washington at Olympia, the State Capital*

RALPH MUNRO

*Ralph Munro, Secretary of State*

S. Green

# STATE of WASHINGTON SECRETARY of STATE

**I, Ralph Munro,** Secretary of State of the State of Washington and custodian of its seal, hereby issue this

## *CERTIFICATE OF INCORPORATION*

to

PORT TOWNSEND PAPER CORPORATION

a Washington profit corporation. Articles of Incorporation were filed for record in this office on the date indicated below.

Corporation Number: 2-337482-0 Date: November 1, 1983

Given under my hand and the seal of the State of Washington, at Olympia, the State Capitol.

Ralph Munro

*Ralph Munro, Secretary of State*

1706
073-080

SSF 57

# ARTICLES OF INCORPORATION

# OF

# PORT TOWNSEND PAPER CORPORATION

KNOW ALL MEN BY THESE PRESENTS: That E. P. SWAIN, JR., being over the age of eighteen (18) years and for the purpose of forming a corporation under the Washington Business Corporation Act does hereby certify and adopt in duplicate the following Articles of Incorporation:

## ARTICLE I

The name of this corporation shall be PORT TOWNSEND PAPER CORPORATION, and its existence shall be perpetual.

## ARTICLE II

The purposes and objects of this corporation are as follows:

1. To transact all lawful business of every kind and character in which by law this corporation may be authorized at any time to engage in the State of Washington and in all other jurisdictions, including but not limited to the further specific objects and purposes mentioned in this Article.

2. To purchase, own, construct improvements upon, and lease or sell real property and to otherwise engage in and do all things connected with real property.

3. To enter into and make, perform, and carry out contracts of every kind and description made for any lawful purpose, without limit as to amount, with any person, firm, association, or corporation, either public or private, or with any municipality, county, state, territory, colony,

province, nation, government, or agency or subdivision thereof.

4. To purchase or otherwise acquire the whole or any part of the assets, business, goodwill, or right of any persons, firm, association, corporation, or organization, and to assume and undertake the whole or any part of the obligations thereof.

5. To acquire by purchase, subscription, or otherwise, and to own, hold, sell, negotiate, assign, deal in and exchange, transfers, mortgage, pledge, hypothecate and otherwise deal in and dispose of any shares of the capital stock, script, or any voting trust certificates in respect of shares of capital stock of, or any bonds, notes, debentures, mortgages, securities or other evidences of indebtedness issued or created by any other corporation, joint stock company, or any other association under the laws of the State of Washington or any other state or government; and while the owner or holder of said shares of capital stock, script, voting trust certificates, bonds, notes, debentures, mortgages, and other securities or evidences of indebtedness, to possess and exercise in respect thereof any and all rights, powers, and privileges or ownership, including the right to vote thereon.

6. To borrow money for the business of the company and to give security therefor, and in pursuance of the business of the company to draw, make, accept, endorse, transfer, assign, execute, and issue bonds, debentures, promissory notes or other evidences of indebtedness, and for the purpose of securing any of its obligations or evidences of indebtedness or contracts, to convey, transfer, assign,

deliver, mortgage, and/or pledge all or any part of the property or assets of the company, whether real or personal.

ARTICLE III

1. The location and post office address of the registered office of the corporation in this State shall be 2900 One Union Square, Seattle, Washington 98101.

2. The registered agent of the corporation shall be E.P. Swain, Jr.

ARTICLE IV

The total number of shares of stock authorized and which may be issued by this corporation is 100 shares of common capital stock, one class only, with a par value of One Dollar ($1.00) for each of such shares. In furtherance of and not in limitation of the general powers conferred by the laws of the State of Washington, purchases of its own shares may be made by the corporation out of unreserved and unrestricted capital surplus.

ARTICLE V

1. The amount of paid-in capital with which this corporation will begin business is $100.00, and the corporation shall not commence business until it has received at least said sum in cash for issuance of shares.

2. Shareholders of the corporation shall be entitled to preemptive rights to subscribe for or purchase any part of new or additional issues of stock or securities.

ARTICLE VI

1. The number of directors of the corporation shall be fixed as provided in the Bylaws, and may be changed from time to time by amending the Bylaws as therein provided, but the number of directors shall not be less than three (3)

record by fewer than three (3) shareholders, the number of directors may be less than three (3) but not less than the number of such shareholders.

2. In furtherance of and not in limitation of the powers conferred by the laws of the State of Washington, the Board of Directors is expressly authorized to make, alter and repeal the Bylaws of the corporation, subject to the power of the shareholders of the corporation to change or repeal such Bylaws.

3. The corporation may enter into contracts and otherwise transact business as vendor, purchaser, or otherwise, with its directors, officers and shareholders and with corporations, associations, firms and entities in which they are or may be or become interested as directors, officers, shareholders, members or otherwise, as freely as though such adverse interests did not exist, even though the vote, action or presence of such director, officer or shareholder may be necessary to obligate the corporation upon such contracts or transactions; and in the absence of fraud, no officer or director shall be held liable to account to the corporation, by reason of such adverse interests or by reason of any fiduciary relationship to the corporation arising out of such office or stock ownership, for any profit or benefit realized by him through any such contract or transaction; provided, that in the case of directors and officers of the corporation (but not in the case of shareholders who are not directors or officers) the nature of the interest of such director or officer, though not necessarily the details or extent thereof, shall, if not already known to the Board of Directors of the corporation, be disclosed to such Board at the meeting

or confirmed. A general notice that a director or officer of the corporation is interested in any corporation, association, firm or entity shall be sufficient disclosure as to such director or officer with respect to all contracts and transactions with that corporation, association, firm or entity.

4. Any contract, transaction, or act of the corporation or of the directors or of any officers of the corporation which shall be ratified by a majority of a quorum of the shares of the corporation entitled to vote at any annual meeting or any special meeting called for such purpose, shall insofar as permitted by law, be as valid and as binding as though ratified by every shareholder of the corporation.

5. The initial directors of this corporation shall be four (4) in number and their names and post office addresses are as follows:

| Name | Post Office Address |
|---|---|
| Dr. Manfred Scholz | Postfach 10 17 49,<br>8900 Augsburg<br>West Germany |
| Juan del Valle | P. O. Box 9048<br>Garden City, ID 83707 |
| Scott B. Osborne | 2900 One Union Square<br>Seattle, WA 98101 |
| E. P. Swain, Jr. | 2900 One Union Square<br>Seattle, WA 98101 |

The term of the initial directors shall be until the first annual meeting of the shareholders of the corporation or until their successors are elected and qualified.

ARTICLE VII

The name and post office address of the undersign-

| Name | Post Office Address |
| --- | --- |
| E.P. Swain, Jr. | 2900 One Union Square<br>Seattle, WA 98101 |

ARTICLE VIII

The corporation reserves the right to amend, alter, change or repeal any provision contained in its Articles of Incorporation in any manner now or hereafter prescribed or permitted by statute. All rights of shareholders of the corporation are granted subject to this reservation.

IN WITNESS WHEREOF, the incorporator hereinabove named has hereunto set his hand in duplicate this 1st day of November, 1983.

E.P. Swain, Jr.

# STATE of WASHINGTON

# SECRETARY of STATE

*I, SAM REED, Secretary of State of the State of Washington and custodian of its seal,* hereby issue this

## *CERTIFICATE OF INCORPORATION*

to

PTPC PACKAGING CO., INC.

a Washington Profit corporation. Articles of Incorporation were filed for record in this office on the date indicated below.

UBI Number: 602 101 362

Date: February 27, 2001

*Given under my hand and the Seal of the State of Washington at Olympia, the State Capital*

*Sam Reed, Secretary of State*

2-947138-0

EXHIBIT A-3

602-101-362

# ARTICLES OF INCORPORATION

# OF

# PTPC PACKAGING CO., INC.

FILED
STATE OF WASHINGTON

FEB 27 2001

SECRETARY OF STATE

The undersigned, as incorporator of a corporation under the Washington Business Corporation Act, adopts the following Articles of Incorporation:

## ARTICLE 1. NAME

The name of this corporation is: PTPC Packaging Co., Inc.

## ARTICLE 2. SHARES

This corporation shall have authority to issue 50,000 shares of Common Stock, without par value.

## ARTICLE 3. REGISTERED OFFICE AND AGENT

The name of the initial registered agent of this corporation and the address of its initial registered office are as follows:

Lawco of Washington, Inc.
1201 Third Avenue, 40th Floor
Seattle, Washington 98101-3099

## ARTICLE 4. PREEMPTIVE RIGHTS

No preemptive rights shall exist with respect to shares of stock or securities convertible into shares of stock of this corporation.

## ARTICLE 5. CUMULATIVE VOTING

The right to cumulate votes in the election of Directors shall not exist with respect to shares of stock of this corporation.

## ARTICLE 6. DIRECTORS

The number of Directors of this corporation shall be determined in the manner provided by the Bylaws and may be increased or decreased from time to time in the manner provided therein. The initial Board of Directors shall consist of 10 Directors, and the names and addresses of the persons who shall serve as Directors until the first annual meeting of shareholders or until their successors are elected and qualified are:

| | |
|---|---|
| Richard Denman | 1851 Evergreen Point Road, Medina WA 98039 |
| John P. Begley | 100 Paper Mill Hill Road, Port Townsend, WA 98368 |
| Timothy D. Bernardez | 100 Paper Mill Hill Road, Port Townsend, WA 98368 |
| E. Perot Bissell, IV | 1201 Third Avenue, Suite 2765, Seattle, WA 98101 |
| Bradford Creswell | 1201 Third Avenue, Suite 2765, Seattle, WA 98101 |
| Wilbur R. Greenwood | 1001 Fourth Avenue Plaza, Suite 3000, Seattle, WA 98154 |
| William Hall | 2410 West Entrada Trail, #43, St. George, UT 84770 |
| Michael Nibarger | 1201 Third Avenue, Suite 2765, Seattle, WA 98101 |
| Don Tisdel | 1201 Third Avenue, Suite 2765, Seattle, WA 98101 |
| Jack Waechter | 42321 Linstead Road, Bermuda Dunes, CA 92201 |

## ARTICLE 7. AMENDMENTS TO ARTICLES OF INCORPORATION

This corporation reserves the right to amend or repeal any of the provisions contained in these Articles of Incorporation in any manner now or hereafter permitted by the Washington Business Corporation Act, and the rights of the shareholders of this corporation are granted subject to this reservation.

## ARTICLE 8. LIMITATION OF DIRECTOR LIABILITY

To the full extent that the Washington Business Corporation Act, as it exists on the date hereof or may hereafter be amended, permits the limitation or elimination of the liability of Directors, a Director of this corporation shall not be liable to this corporation or its shareholders for monetary damages for conduct as a Director. Any amendments to or repeal of this Article 8 shall not adversely affect any right or protection of a Director of this corporation for or with respect to any acts or omissions of such Director occurring prior to such amendment or repeal.

## ARTICLE 9. SHAREHOLDER ACTIONS

Any action required or permitted to be taken at a meeting of shareholders may be taken without a meeting or a vote if either:

(a) the action is taken by written consent of all shareholders entitled to vote on the action; or

(b) so long as this corporation is not a public company, the action is taken by written consent of shareholders holding of record, or otherwise entitled to vote, in the aggregate not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote on the action were present and voted.

To the extent the Washington Business Corporation Act requires prior notice of any such action to be given to nonconsenting or nonvoting shareholders, such notice shall be given at least one day before the date on which the action becomes effective. The form of the notice shall be sufficient to apprise the nonconsenting or nonvoting shareholder of the nature of the

action to be effected, in a manner approved by the Directors of this corporation or by the committee or officers to whom the Board of Directors has delegated that responsibility.

## ARTICLE 10. INCORPORATOR

The name and address of the incorporator is as follows:

Michael A. Nibarger
c/o Northwest Capital Appreciation, Inc.
1201 Third Avenue, Suite 2765
Seattle, WA 98101

Dated: February 27, 2001

Michael A. Nibarger, Incorporator

## CONSENT TO APPOINTMENT AS REGISTERED AGENT

Lawco of Washington, Inc. hereby consents to serve as registered agent in the State of Washington for the following corporation: **PTPC Packaging Co., Inc.**. Lawco of Washington, Inc. understands that as agent for the corporation, it will be its responsibility to accept service of process in the name of the corporation, to forward all mail and license renewals to the appropriate officer(s) of the corporation, and to notify the Office of the Secretary of State immediately of its resignation or of any changes in the address of the registered office of the corporation for which it is agent.

Dated: February 27, 2001

LAWCO OF WASHINGTON, INC.

By Suzanne Thomas
Suzanne Thomas, its Vice President

Lawco of Washington, Inc.
1201 Third Avenue, 40th Floor
Seattle, Washington 98101-3099

# BYLAWS

OF

PT HOLDINGS COMPANY, INC.,

a Delaware corporation

(the "***Corporation***")

(Adopted as of [•], 2007)



EXHIBIT B-1

# BYLAWS

# OF

# PT HOLDINGS COMPANY, INC.

## ARTICLE I
## OFFICES

**Section 1.1 Registered Office.** The registered office of the Corporation within the State of Delaware shall be located at either (a) the principal place of business of the Corporation in the State of Delaware or (b) the office of the corporation or individual acting as the Corporation's registered agent in Delaware.

**Section 1.2 Additional Offices.** The Corporation may, in addition to its registered office in the State of Delaware, have such other offices and places of business, both within and outside the State of Delaware, as the Board of Directors of the Corporation (the "***Board***") may from time to time determine or as the business and affairs of the Corporation may require.

## ARTICLE II
## STOCKHOLDERS MEETINGS

**Section 2.1 Annual Meetings.** The annual meeting of stockholders shall be held at such place and time and on such date as shall be determined by the Board and stated in the notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a). At each annual meeting, the stockholders shall elect directors of the Corporation and may transact any other business as may properly be brought before the meeting.

**Section 2.2 Special Meetings.** Except as otherwise required by applicable law or provided in the Corporation's Amended and Restated Certificate of Incorporation, as the same may be amended or restated from time to time (the "***Certificate of Incorporation***"), special meetings of stockholders, for any purpose or purposes, may be called only by the Chairman of the Board, Chief Executive Officer, the President, the Board pursuant to a resolution adopted by a majority of the Whole Board (as defined below) or the holders of 25% or more of the holders of the Corporation's Common Stock. Special meetings of stockholders shall be held at such place and time and on such date as shall be determined by the Board and stated in the Corporation's notice of the meeting, provided that the Board may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 9.5(a). "***Whole Board***" shall mean the total number of directors the Corporation would have if there were no vacancies.

**Section 2.3 Notices.** Notice of each stockholders meeting stating the place, if any, date, and time of the meeting, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting,

shall be given in the manner permitted by Section 9.3 to each stockholder entitled to vote thereat by the Corporation not less than 10 nor more than 60 days before the date of the meeting. If said notice is for a stockholders meeting other than an annual meeting, it shall in addition state the purpose or purposes for which the meeting is called, and the business transacted at such meeting shall be limited to the matters so stated in the Corporation's notice of meeting (or any supplement thereto). Any meeting of stockholders as to which notice has been given may be postponed, and any special meeting of stockholders as to which notice has been given may be cancelled, by the Board upon public announcement given before the date previously scheduled for such meeting.

**Section 2.4 Quorum.** Except as otherwise provided by applicable law, the Certificate of Incorporation or these Bylaws, the presence, in person or by proxy, at a stockholders meeting of the holders of shares of outstanding capital stock of the Corporation representing a majority of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote at such meeting shall constitute a quorum for the transaction of business at such meeting, except that when specified business is to be voted on by a class or series of stock voting as a class, the holders of shares representing a majority of the voting power of the outstanding shares of such class or series shall constitute a quorum of such class or series for the transaction of such business. If a quorum shall not be present or represented by proxy at any meeting of the stockholders, the chairman of the meeting may adjourn the meeting from time to time in the manner provided in Section 2.6 until a quorum shall attend. The stockholders present at a duly convened meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the voting power of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or any such other corporation to vote shares held by it in a fiduciary capacity.

**Section 2.5 Voting of Shares.**

(a) Voting Lists. The Secretary shall prepare, or shall cause the officer or agent who has charge of the stock ledger of the Corporation to prepare, at least 10 days before each meeting of stockholders, a complete list of the stockholders of record entitled to vote thereat arranged in alphabetical order and showing the address and the number of shares registered in the name of each stockholder. Nothing contained in this Section 2.5(a) shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If a meeting of stockholders is to be held solely by means of remote

communication as permitted by Section 9.5(a), the list shall be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of meeting. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list required by this Section 2.5(a) or to vote in person or by proxy at any meeting of stockholders.

(b) Manner of Voting. At any stockholders meeting, every stockholder entitled to vote may vote in person or by proxy. If authorized by the Board, the voting by stockholders or proxyholders at any meeting conducted by remote communication may be effected by a ballot submitted by electronic transmission (as defined in Section 9.3), provided that any such electronic transmission must either set forth or be submitted with information from which the Corporation can determine that the electronic transmission was authorized by the stockholder or proxyholder. The Board, in its discretion, or the chairman of the meeting of stockholders, in such person's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

(c) Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Proxies need not be filed with the Secretary until the meeting is called to order, but shall be filed with the Secretary before being voted. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, either of the following shall constitute a valid means by which a stockholder may grant such authority:

(i) A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of an electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder.

Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission authorizing another person or persons to act as proxy for a stockholder may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(d) Required Vote. Subject to the rights of the holders of one or more series of preferred stock of the Corporation ("***Preferred Stock***"), voting separately by class or series, to elect directors pursuant to the terms of one or more series of Preferred Stock set forth in the Certificate of Incorporation, the election of directors shall be determined by a plurality of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon. All other matters shall be determined by the vote of a majority of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon, unless the matter is one upon which, by applicable law, the Certificate of Incorporation or these Bylaws, a different vote is required, in which case such provision shall govern and control the decision of such matter.

(e) Inspectors of Election. The Board may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more persons as inspectors of election, who may be employees of the Corporation or otherwise serve the Corporation in other capacities, to act at such meeting of stockholders or any adjournment thereof and to make a written report thereof. The Board may appoint one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspectors of election or alternates are appointed by the Board, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall ascertain and report the number of outstanding shares and the voting power of each; the existence of a quorum; determine the number of shares present in person or represented by proxy at the meeting and the validity of proxies and ballots; count all votes and ballots and report the results; determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. No person who is a candidate for an office at an election may serve as an inspector at such election. Each report of an inspector shall be in writing and signed by the inspector or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors.

**Section 2.6 Adjournments**. Any meeting of stockholders, annual or special, may be adjourned by the chairman of the meeting, from time to time, whether or not there is a quorum, to reconvene at the same or some other place. Notice need not be given of any such adjourned meeting if the date, time, place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the stockholders, or the holders of any class or series of stock entitled to vote separately as a class, as the case may be, may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

**Section 2.7 Conduct of Meetings**. The chairman of each annual and special meeting of stockholders shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) or, in the absence (or inability or refusal to act of the Chief Executive Officer or if the Chief

Executive Officer is not a director, the President (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the President or if the President is not a director, such other person as shall be appointed by the Board. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairman of the meeting. The Board may adopt such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with these Bylaws or such rules and regulations as adopted by the Board, the chairman of any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Unless and to the extent determined by the Board or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The secretary of each annual and special meeting of stockholders shall be the Secretary or, in the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary so appointed to act by the chairman of the meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

**Section 2.8 Action by Consent of Stockholders in Lieu of Meeting.** Unless otherwise provided by the Certificate of Incorporation, any action required or permitted to be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum voting power that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation to its registered office in the State of Delaware, the Corporation's principal place of business, or the Secretary. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the date the earliest dated consent is delivered to the Corporation, a written consent or consents signed by a sufficient number of holders to take such action are delivered to the Corporation by delivery to the Corporation's registered office in the State of Delaware, the Corporation's principal place of business, or the Secretary. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. An electronic transmission consenting to the action to be taken and transmitted by a stockholder, proxyholder or a person or persons authorized to act for a stockholder or proxyholder shall be deemed to be written, signed and dated for purposes hereof if such electronic transmission sets forth or is delivered with information from which the Corporation can determine that such transmission was transmitted by a stockholder or proxyholder (or by a person authorized to act for a stockholder or proxyholder) and the date on which such stockholder, proxyholder or authorized person transmitted such transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and delivered to the Corporation by delivery either to the Corporation's registered office in the State of Delaware, the Corporation's principal place of business, or the Secretary. Delivery made to the Corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the limitations on delivery in the previous sentence, consents given

by electronic transmission may be otherwise delivered to the Corporation's principal place of business or to the Secretary if, to the extent, and in the manner provided by resolution of the Board. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used; provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders were delivered to the Corporation as provided in this Section 2.8.

## ARTICLE III
## DIRECTORS

**Section 3.1 Powers**. The business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws required to be exercised or done by the stockholders. Directors need not be stockholders or residents of the State of Delaware.

**Section 3.2 Number; Term**. The number of directors of the Corporation initially shall be five; provided, however, that if shares of the Corporation's Series A Preferred Stock are outstanding on [_____, 2012][1] , the number of directors shall increase to nine on such date, which shall be elected as set forth in the Certificate of Incorporation. Thereafter the number of directors, other than those who may be elected by the holders of one or more series of Preferred Stock voting separately by class or series, may be determined from time to time by resolution of the Board or the Stockholders, but no decrease in such number shall have the effect of shortening the term of any incumbent director. Except as otherwise provided in the Certificate of Incorporation, the directors shall be elected at the annual meeting of stockholders to hold office until the next succeeding annual meeting of stockholders. Each director shall hold office for the term for which such director is elected and until his or her successor shall have been elected and qualified, subject to such director's earlier death, resignation, retirement, disqualification or removal.

**Section 3.3 Newly Created Directorships and Vacancies**. Except as otherwise provided in the Certificate of Incorporation and subject to Section 3.4 below, vacancies resulting from death, resignation, retirement, disqualification, removal or other cause and newly created directorships resulting from an increase in the number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority vote of the directors then in office, even if less than a quorum, by a sole remaining director, or by the stockholders. Except as otherwise provided in the Certificate of Incorporation and subject to Section 3.4 below, if the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the Certificate of Incorporation, vacancies and newly created

[1] Five years from the Closing Date.

directorships of such class or classes or series may be filled only by the stockholders of such class or classes or series thereof. Except as otherwise provided in the Certificate of Incorporation, any director elected or chosen in accordance with this Section 3.3 shall hold office until the next annual election of directors and until his or her successor shall have been elected and qualified, subject to such director's earlier death, resignation, retirement, disqualification or removal.

**Section 3.4 Outside Director.**

(a) Outside Director. So long as any Person, together with its Affiliates, beneficially owns in excess of 35% of the outstanding Common Stock (a "***Significant Stockholder***"), the holders of Common Stock who are not a Significant Stockholder (the "***Other Stockholders***") shall have the right, commencing with the annual stockholders' meeting to be held in 2008 (or if no such annual meeting is held on or before _____, 2008, at a special meeting called by holders of not less than 25% of the outstanding Common Stock), to designate, by majority vote of the shares of Common Stock owned by the Other Stockholders, one person (the "***Other Stockholders Designee***") to serve as a director on the Board.

(b) Notification of Significant Stockholders. If a new Other Stockholders Designee is proposed to be appointed to the Board, the Other Stockholders shall notify the Corporation and the Significant Stockholders in writing of the proposed appointment and the identity of the Person proposed to be appointed. Any such notification shall contain sufficient information to permit the Significant Stockholders to make a determination as to whether or not such Person qualifies with the requirements of Section 3.4(a). The Other Stockholders or the Person nominated for election shall provide to the Significant Stockholders information reasonably requested by the Significant Stockholders in order to make such determination. The Significant Stockholders shall, within five (5) Business Days of receiving notice of the proposed appointment and any additional information reasonably requested by it, notify the Corporation whether it approves the appointment of the new Other Stockholders Designee (such approval not to be unreasonably withheld). Failure to so notify the Corporation shall be deemed approval of such Person. Should the Significant Stockholders not approve of the Other Stockholders Designee, such Other Stockholders Designee shall not take office, and the Other Stockholders may designate a new Other Stockholders Designee, which designation shall be notified to the Corporation and the Significant Stockholders in accordance with the provisions of this Section 3.4(d).

(c) Voting. The Significant Stockholders shall vote all of their shares of Common Stock in favor of the election of the Other Stockholders Designee at each annual stockholders meeting, or any special meeting of the stockholders at which an Other Stockholders Designee has been properly designated. In the event of the death, resignation or removal of any Other Stockholders Designee as a director, if a qualifying replacement Other Stockholders Designee is properly nominated, the Board shall promptly elect such replacement Other Stockholders Designee as a director, failing which Other Stockholders of at least 25% of the outstanding Common Stock may call a special meeting of the Stockholders for the purpose of electing the Other Stockholders Designee as a director.

(d) Removal of Other Stockholders Designee. The Other Stockholders Designee may only be removed from the Board (with or without cause) on the written direction or vote of a majority of the Other Stockholders. Any vacancies caused by the removal or resignation of the Other Stockholders Designee during the term of office of such director shall be filled by the affirmative vote of a majority of the shares of Common Stock held by the Other Stockholders. Upon the termination of the right of the Other Stockholders to designate the Other Stockholders Designee, the Person, if any, serving at such time as an Other Stockholders Designee shall resign and the vacancy created thereby shall be filled by the stockholders of the Corporation, voting together as a single class, as set forth in Section 3.3 for the election of directors.

(e) Exercise of Rights. The failure of the Other Stockholders to fully exercise their rights pursuant to this Section 3.4 shall not constitute a waiver or diminution of such rights, nor shall it prevent the Other Stockholders from fully exercising such rights prospectively.

(f) Sunset. This Section 3.4 shall expire upon the closing of a Qualified Public Offering.

(g) Definitions. For purposes of this Section 3.4, the following terms shall have the meaning ascribed to the below:

"*Affiliate*" means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"*Business Day*" means any day (other than a day which is a Saturday, Sunday or legal holiday in the States of New York or Delaware) on which banks are open for business in the States of New York and Delaware.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"*Person*" means an individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust or unincorporated organization, or government or any agency or political subdivision thereof.

"*Qualified Public Offering*" shall mean an underwritten public offering of shares of Common Stock that results in (i) the public distribution of shares of Common Stock representing at least ten percent (10%) of the shares of Common Stock to be outstanding immediately following such offering, (ii) an equity valuation, based on the offering price, of at least $[•] and (iii) the Common Stock being listed on a national securities exchange.

**Section 3.5 Compensation.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board shall have the authority to fix the compensation of directors. The directors may be reimbursed their expenses, if any, of attendance at each meeting

of the Board and may be paid either a fixed sum for attendance at each meeting of the Board or other compensation as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees of the Board may be allowed like compensation and reimbursement of expenses for attending committee meetings.

## ARTICLE IV
## BOARD MEETINGS

**Section 4.1 Annual Meetings.** The Board shall meet as soon as practicable after the adjournment of each annual stockholders meeting at the place of the annual stockholders meeting unless the Board shall fix another time and place and give notice thereof in the manner required herein for special meetings of the Board. No notice to the directors shall be necessary to legally convene this meeting, except as provided in this Section 4.1.

**Section 4.2 Regular Meetings.** Regularly scheduled, periodic meetings of the Board may be held without notice at such times, dates and places as shall from time to time be determined by the Board.

**Section 4.3 Special Meetings.** Special meetings of the Board (a) may be called by the Chairman of the Board or President and (b) shall be called by the Chairman of the Board, President or Secretary on the written request of at least a majority of directors then in office, or the sole director, as the case may be, and shall be held at such time, date and place as may be determined by the person calling the meeting or, if called upon the request of directors or the sole director, as specified in such written request. Notice of each special meeting of the Board shall be given, as provided in Section 9.3, to each director (i) at least 24 hours before the meeting if such notice is oral notice given personally or by telephone or written notice given by hand delivery or by means of a form of electronic transmission and delivery; (ii) at least two days before the meeting if such notice is sent by a nationally recognized overnight delivery service; and (iii) at least five days before the meeting if such notice is sent through the United States mail. If the Secretary shall fail or refuse to give such notice, then the notice may be given by the officer who called the meeting or the directors who requested the meeting. Any and all business that may be transacted at a regular meeting of the Board may be transacted at a special meeting. Except as may be otherwise expressly provided by applicable law, the Certificate of Incorporation, or these Bylaws, neither the business to be transacted at, nor the purpose of, any special meeting need be specified in the notice or waiver of notice of such meeting. A special meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting in accordance with Section 9.4.

**Section 4.4 Quorum; Required Vote.** A majority of the Whole Board shall constitute a quorum for the transaction of business at any meeting of the Board, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by applicable law, the Certificate of Incorporation or these Bylaws. If a quorum shall not be present at any meeting, a majority of the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

**Section 4.5 Consent In Lieu of Meeting.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions (or paper reproductions thereof) are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

**Section 4.6 Organization.** The chairman of each meeting of the Board shall be the Chairman of the Board or, in the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) or, in the absence (or inability or refusal to act) of the Chief Executive Officer or if the Chief Executive Officer is not a director, the President (if he or she shall be a director) or in the absence (or inability or refusal to act) of the President or if the President is not a director, a chairman elected from the directors present. The Secretary shall act as secretary of all meetings of the Board. In the absence (or inability or refusal to act) of the Secretary, an Assistant Secretary shall perform the duties of the Secretary at such meeting. In the absence (or inability or refusal to act) of the Secretary and all Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting.

## ARTICLE V
## COMMITTEES OF DIRECTORS

**Section 5.1 Establishment.** The Board may by resolution passed by a majority of the Whole Board designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Each committee shall keep regular minutes of its meetings and report the same to the Board when required. The Board shall have the power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee.

**Section 5.2 Available Powers.** Any committee established pursuant to Section 5.1 hereof, to the extent permitted by applicable law and by resolution of the Board, shall have and may exercise all of the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it.

**Section 5.3 Alternate Members.** The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee.

**Section 5.4 Procedures.** Unless the Board otherwise provides, the time, date, place, if any, and notice of meetings of a committee shall be determined by such committee. At meetings of a committee, a majority of the number of members of the committee (but not including any alternate member, unless such alternate member has replaced any absent or disqualified member at the time of, or in connection with, such meeting) shall constitute a quorum for the transaction of business. The act of a majority of the members present at any meeting at which a quorum is present shall be the act of the committee, except as otherwise specifically provided by applicable

law, the Certificate of Incorporation, these Bylaws or the Board. If a quorum is not present at a meeting of a committee, the members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. Unless the Board otherwise provides and except as provided in these Bylaws, each committee designated by the Board may make, alter, amend and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board is authorized to conduct its business pursuant to Article III and Article IV of these Bylaws.

## ARTICLE VI
## OFFICERS

**Section 6.1 Officers.** The officers of the Corporation elected by the Board shall be a Chairman of the Board, a Chief Executive Officer, a President, a Treasurer, a Secretary and such other officers (including without limitation a Chief Financial Officer, Vice Presidents, Assistant Secretaries and Assistant Treasurers) as the Board from time to time may determine. Officers elected by the Board shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article VI. Such officers shall also have such powers and duties as from time to time may be conferred by the Board. The Chairman of the Board, Chief Executive Officer or President may also appoint such other officers (including without limitation one or more Vice Presidents and Controllers) as may be necessary or desirable for the conduct of the business of the Corporation. Such other officers shall have such powers and duties and shall hold their offices for such terms as may be provided in these Bylaws or as may be prescribed by the Board or, if such officer has been appointed by the Chairman of the Board, Chief Executive Officer or President, as may be prescribed by the appointing officer.

(a) Chairman of the Board. The Chairman of the Board shall preside when present at all meetings of the stockholders and the Board. The Chairman of the Board shall advise and counsel the Chief Executive Officer and other officers and shall exercise such powers and perform such duties as shall be assigned to or required of the Chairman of the Board from time to time by the Board or these Bylaws.

(b) Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Corporation, shall have general supervision of the affairs of the Corporation and general control of all of its business subject to the ultimate authority of the Board, and shall be responsible for the execution of the policies of the Board. In the absence (or inability or refusal to act) of the Chairman of the Board, the Chief Executive Officer (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board.

(c) President. The President shall be the chief operating officer of the Corporation and shall, subject to the authority of the Chief Executive Officer and the Board, have general management and control of the day-to-day business operations of the Corporation and shall consult with and report to the Chief Executive Officer. The President shall put into operation the business policies of the Corporation as determined by the Chief Executive Officer and the Board and as communicated to the President by the Chief Executive Officer and the Board. The President shall make recommendations to the Chief Executive Officer on all operational matters that would normally be reserved for the final executive responsibility of the

Chief Executive Officer. In the absence (or inability or refusal to act) of the Chairman of the Board and Chief Executive Officer, the President (if he or she shall be a director) shall preside when present at all meetings of the stockholders and the Board.

(d) Vice Presidents. In the absence (or inability or refusal to act) of the President, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated by the Board) shall perform the duties and have the powers of the President. Any one or more of the Vice Presidents may be given an additional designation of rank or function.

(e) Secretary.

(i) The Secretary shall attend all meetings of the stockholders, the Board and (as required) committees of the Board and shall record the proceedings of such meetings in books to be kept for that purpose. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board and shall perform such other duties as may be prescribed by the Board, the Chairman of the Board, Chief Executive Officer or President. The Secretary shall have custody of the corporate seal of the Corporation and the Secretary, or any Assistant Secretary, shall have authority to affix the same to any instrument requiring it, and when so affixed, it may be attested by his or her signature or by the signature of such Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing thereof by his or her signature.

(ii) The Secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation's transfer agent or registrar, if one has been appointed, a stock ledger, or duplicate stock ledger, showing the names of the stockholders and their addresses, the number and classes of shares held by each and, with respect to certificated shares, the number and date of certificates issued for the same and the number and date of certificates cancelled.

(f) Assistant Secretaries. The Assistant Secretary or, if there be more than one, the Assistant Secretaries in the order determined by the Board shall, in the absence (or inability or refusal to act) of the Secretary, perform the duties and have the powers of the Secretary.

(g) Treasurer. The Treasurer shall perform all duties commonly incident to that office (including, without limitation, the care and custody of the funds and securities of the Corporation which from time to time may come into the Treasurer's hands and the deposit of the funds of the Corporation in such banks or trust companies as the Board, the Chief Executive Officer or the President may authorize).

(h) Assistant Treasurers. The Assistant Treasurer or, if there shall be more than one, the Assistant Treasurers in the order determined by the Board shall, in the absence (or inability or refusal to act) of the Treasurer, perform the duties and exercise the powers of the Treasurer.

**Section 6.2 Term of Office; Removal; Vacancies.** The elected officers of the Corporation shall be elected annually by the Board at its first meeting held after each annual meeting of stockholders. All officers elected by the Board shall hold office until the next annual meeting of the Board and until their successors are duly elected and qualified or until their earlier death, resignation, retirement, disqualification, or removal from office. Any officer may be removed, with or without cause, at any time by the Board. Any officer appointed by the Chairman of the Board, Chief Executive Officer or President may also be removed, with or without cause, by the Chairman of the Board, Chief Executive Officer or President, as the case may be, unless the Board otherwise provides. Any vacancy occurring in any elected office of the Corporation may be filled by the Board. Any vacancy occurring in any office appointed by the Chairman of the Board, Chief Executive Officer or President may be filled by the Chairman of the Board, Chief Executive Officer or President, as the case may be, unless the Board then determines that such office shall thereupon be elected by the Board, in which case the Board shall elect such officer.

**Section 6.3 Other Officers.** The Board may delegate the power to appoint such other officers and agents, and may also remove such officers and agents or delegate the power to remove same, as it shall from time to time deem necessary or desirable.

**Section 6.4 Multiple Officeholders; Stockholder and Director Officers.** Any number of offices may be held by the same person unless the Certificate of Incorporation or these Bylaws otherwise provide. Officers need not be stockholders or residents of the State of Delaware.

## ARTICLE VII
## SHARES

**Section 7.1 Entitlement to Certificates.** The shares of the Corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed in accordance with Section 7.3 representing the number of shares registered in certificate form. The Corporation shall not have power to issue a certificate representing shares in bearer form.

**Section 7.2 Multiple Classes of Stock.** If the Corporation shall be authorized pursuant to the Certificate of Incorporation to issue more than one class of stock or more than one series of any class, the Corporation shall (a) cause the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights to be set forth in full or summarized on the face or back of any certificate that the Corporation issues to represent shares of such class or series of stock or (b) in the case of uncertificated shares, within a reasonable time after the issuance or transfer of such shares, send to the registered owner thereof a written notice containing the information required to be set forth on certificates as specified in clause (a) above; provided, however, that, except as otherwise provided by applicable law, in lieu of the

foregoing requirements, there may be set forth on the face or back of such certificate or, in the case of uncertificated shares, on such written notice a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights.

**Section 7.3 Signatures**. Each certificate representing capital stock of the Corporation shall be signed by or in the name of the Corporation by (a) the Chairman of the Board, the Chief Executive Officer, the President or a Vice President and (b) the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Corporation. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar on the date of issue.

**Section 7.4 Consideration and Payment for Shares.**

(a) Subject to applicable law and the Certificate of Incorporation, shares of stock may be issued for such consideration, having in the case of shares with par value a value not less than the par value thereof, and to such persons, as determined from time to time by the Board. The consideration may consist of any tangible or intangible property or benefit to the Corporation including cash, promissory notes, services performed, contracts for services to be performed or other securities.

(b) Subject to applicable law and the Certificate of Incorporation, shares may not be issued until the full amount of the consideration has been paid, unless upon the face or back of each certificate issued to represent any partly paid shares of capital stock or upon the books and records of the Corporation in the case of partly paid uncertificated shares, there shall have been set forth the total amount of the consideration to be paid therefor and the amount paid thereon up to and including the time said certificate representing certificated shares or said uncertificated shares are issued.

**Section 7.5 Lost, Destroyed or Wrongfully Taken Certificates.**

(a) If an owner of a certificate representing shares claims that such certificate has been lost, destroyed or wrongfully taken, the Corporation shall issue a new certificate representing such shares or such shares in uncertificated form if the owner: (i) requests such a new certificate before the Corporation has notice that the certificate representing such shares has been acquired by a protected purchaser; (ii) if requested by the Corporation, delivers to the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, wrongful taking or destruction of such certificate or the issuance of such new certificate or uncertificated shares; and (iii) satisfies other reasonable requirements imposed by the Corporation.

(b) If a certificate representing shares has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the Corporation of that fact within a reasonable

time after the owner has notice of such loss, apparent destruction or wrongful taking and the Corporation registers a transfer of such shares before receiving notification, the owner shall be precluded from asserting against the Corporation any claim for registering such transfer or a claim to a new certificate representing such shares or such shares in uncertificated form.

**Section 7.6 Transfer of Stock.**

(a) If a certificate representing shares of the Corporation is presented to the Corporation with an indorsement requesting the registration of transfer of such shares or an instruction is presented to the Corporation requesting the registration of transfer of uncertificated shares, the Corporation shall register the transfer as requested if:

(i) in the case of certificated shares, the certificate representing such shares has been surrendered;

(ii) (A) with respect to certificated shares, the indorsement is made by the person specified by the certificate as entitled to such shares; (B) with respect to uncertificated shares, an instruction is made by the registered owner of such uncertificated shares; or (C) with respect to certificated shares or uncertificated shares, the indorsement or instruction is made by any other appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(iii) the Corporation has received a guarantee of signature of the person signing such indorsement or instruction or such other reasonable assurance that the indorsement or instruction is genuine and authorized as the Corporation may request;

(iv) the transfer does not violate any restriction on transfer imposed by the Corporation that is enforceable in accordance with Section 7.8(a); and

(v) such other conditions for such transfer as shall be provided for under applicable law have been satisfied.

(b) Whenever any transfer of shares shall be made for collateral security and not absolutely, the Corporation shall so record such fact in the entry of transfer if, when the certificate for such shares is presented to the Corporation for transfer or, if such shares are uncertificated, when the instruction for registration of transfer thereof is presented to the Corporation, both the transferor and transferee request the Corporation to do so.

**Section 7.7 Registered Stockholders.** Before due presentment for registration of transfer of a certificate representing shares of the Corporation or of an instruction requesting registration of transfer of uncertificated shares, the Corporation may treat the registered owner as the person exclusively entitled to inspect for any proper purpose the stock ledger and the other books and records of the Corporation, vote such shares, receive dividends or notifications with respect to such shares and otherwise exercise all the rights and powers of the owner of such shares, except that a person who is the beneficial owner of such shares (if held in a voting trust or by a nominee on behalf of such person) may, upon providing documentary evidence of beneficial ownership of such shares and satisfying such other conditions as are provided under applicable law, may also so inspect the books and records of the Corporation.

**Section 7.8 Effect of the Corporation's Restriction on Transfer.**

(a) A written restriction on the transfer or registration of transfer of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, if permitted by the Delaware General Corporation Law (the "***DGCL***") and noted conspicuously on the certificate representing such shares or, in the case of uncertificated shares, contained in a notice sent by the Corporation to the registered owner of such shares within a reasonable time after the issuance or transfer of such shares, may be enforced against the holder of such shares or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder.

(b) A restriction imposed by the Corporation on the transfer or the registration of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, even if otherwise lawful, is ineffective against a person without actual knowledge of such restriction unless: (i) the shares are certificated and such restriction is noted conspicuously on the certificate; or (ii) the shares are uncertificated and such restriction was contained in a notice sent by the Corporation to the registered owner of such shares within a reasonable time after the issuance or transfer of such shares.

**Section 7.9 Regulations.** The Board shall have power and authority to make such additional rules and regulations, subject to any applicable requirement of law, as the Board may deem necessary and appropriate with respect to the issue, transfer or registration of transfer of shares of stock or certificates representing shares. The Board may appoint one or more transfer agents or registrars and may require for the validity thereof that certificates representing shares bear the signature of any transfer agent or registrar so appointed.

## ARTICLE VIII
## INDEMNIFICATION

**Section 8.1 Right to Indemnification.** Directors and officers of the Corporation shall be entitled to indemnification as provided in the Certificate of Incorporation.

**Section 8.2 Non-Exclusivity of Rights.** The rights provided pursuant to this Article VIII shall not be exclusive of any other right which any person may have or hereafter acquire under applicable law, the Certificate of Incorporation, these Bylaws, an agreement, a vote of stockholders or disinterested directors, or otherwise.

**Section 8.3 Insurance.** The Corporation may maintain insurance, at its expense, to protect itself and/or any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

**Section 8.4 Indemnification of Other Persons.** This Article VIII shall not limit the right of the Corporation to the extent and in the manner authorized or permitted by law to indemnify and to advance expenses to any person. Without limiting the foregoing, the Corporation may, to the extent authorized from time to time by the Board, grant rights to

indemnification and to the advancement of expenses to any employee or agent of the Corporation and to any other person who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan.

**Section 8.5 Amendments**. Any repeal or amendment of this Article VIII by the Board or the stockholders of the Corporation or by changes in applicable law, or the adoption of any other provision of these Bylaws inconsistent with this Article VIII, will, to the extent permitted by applicable law, be prospective only (except to the extent such amendment or change in applicable law permits the Corporation to provide broader indemnification rights to indemnified persons on a retroactive basis than permitted prior thereto), and will not in any way diminish or adversely affect any right or protection existing hereunder in respect of any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

**Section 8.6 Contract Rights**. The rights provided to indemnified persons pursuant to this Article VIII shall be contract rights and such rights shall continue as to an indemnified person who has ceased to be a director, officer, agent or employee and shall inure to the benefit of the indemnified person's heirs, executors and administrators.

**Section 8.7 Severability**. If any provision or provisions of this Article VIII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Article VIII shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article VIII (including, without limitation, each such portion of this Article VIII containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

## ARTICLE IX
## MISCELLANEOUS

**Section 9.1 Place of Meetings**. If the place of any meeting of stockholders, the Board or committee of the Board for which notice is required under these Bylaws is not designated in the notice of such meeting, such meeting shall be held at the principal business office of the Corporation; provided, however, if the Board has, in its sole discretion, determined that a meeting shall not be held at any place, but instead shall be held by means of remote communication pursuant to Section 9.5 hereof, then such meeting shall not be held at any place.

**Section 9.2 Fixing Record Dates.**

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the business day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the business day next preceding the day on which

the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

**Section 9.3 Means of Giving Notice.**

(a) Notice to Directors. Whenever under applicable law, the Certificate of Incorporation or these Bylaws notice is required to be given to any director, such notice shall be given either (i) in writing and sent by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, (ii) by means of facsimile telecommunication or other form of electronic transmission, or (iii) by oral notice given personally or by telephone. A notice to a director will be deemed given as follows: (i) if given by hand delivery, orally, or by telephone, when actually received by the director, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iv) if sent by facsimile telecommunication, when sent to the facsimile transmission number for such director appearing on the records of the Corporation, (v) if sent by electronic mail, when sent to the electronic mail address for such director appearing on the records of the Corporation, or (vi) if sent by any other form of electronic transmission, when sent to the address, location or number (as applicable) for such director appearing on the records of the Corporation.

(b) Notice to Stockholders. Whenever under applicable law, the Certificate of Incorporation or these Bylaws notice is required to be given to any stockholder, such notice may be given (i) in writing and sent either by hand delivery, through the United States mail, or by a nationally recognized overnight delivery service for next day delivery, or (ii) by means of a form of electronic transmission consented to by the stockholder, to the extent permitted by, and subject to the conditions set forth in Section 232 of the DGCL. A notice to a stockholder shall be deemed given as follows: (i) if given by hand delivery, when actually received by the stockholder, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the stockholder at the stockholder's address appearing on the stock ledger of the Corporation, and (iv) if given by a form of electronic transmission consented to by the stockholder to whom the notice is given and otherwise meeting the requirements set forth above,

(A) if by facsimile transmission, when directed to a number at which the stockholder has consented to receive notice, (B) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice, (C) if by a posting on an electronic network together with separate notice to the stockholder of such specified posting, upon the later of (1) such posting and (2) the giving of such separate notice, and (D) if by any other form of electronic transmission, when directed to the stockholder. A stockholder may revoke such stockholder's consent to receiving notice by means of electronic communication by giving written notice of such revocation to the Corporation. Any such consent shall be deemed revoked if (1) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (2) such inability becomes known to the Secretary or an Assistant Secretary or to the Corporation's transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(c) Electronic Transmission. "***Electronic transmission***" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, including but not limited to transmission by telex, facsimile telecommunication, electronic mail, telegram and cablegram.

(d) Notice to Stockholders Sharing Same Address. Without limiting the manner by which notice otherwise may be given effectively by the Corporation to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. A stockholder may revoke such stockholder's consent by delivering written notice of such revocation to the Corporation. Any stockholder who fails to object in writing to the Corporation within 60 days of having been given written notice by the Corporation of its intention to send such a single written notice shall be deemed to have consented to receiving such single written notice.

(e) Exceptions to Notice Requirements. Whenever notice is required to be given, under the DGCL, the Certificate of Incorporation or these Bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

Whenever notice is required to be given by the Corporation, under any provision of the DGCL, the Certificate of Incorporation or these Bylaws, to any stockholder to whom (1) notice of two consecutive annual meetings of stockholders and all notices of stockholder

meetings or of the taking of action by written consent of stockholders without a meeting to such stockholder during the period between such two consecutive annual meetings, or (2) all, and at least two payments (if sent by first-class mail) of dividends or interest on securities during a 12-month period, have been mailed addressed to such stockholder at such stockholder's address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such stockholder shall not be required. Any action or meeting which shall be taken or held without notice to such stockholder shall have the same force and effect as if such notice had been duly given. If any such stockholder shall deliver to the Corporation a written notice setting forth such stockholder's then current address, the requirement that notice be given to such stockholder shall be reinstated. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to Section 230(b) of the DGCL. The exception in subsection (1) of the first sentence of this paragraph to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

**Section 9.4 Waiver of Notice.** Whenever any notice is required to be given under applicable law, the Certificate of Incorporation, or these Bylaws, a written waiver of such notice, signed before or after the date of such meeting by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to said notice, shall be deemed equivalent to such required notice. All such waivers shall be kept with the books of the Corporation. Attendance at a meeting shall constitute a waiver of notice of such meeting, except where a person attends for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

**Section 9.5 Meeting Attendance via Remote Communication Equipment.**

(a) Stockholder Meetings. If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication:

(i) participate in a meeting of stockholders; and

(ii) be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (B) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such votes or other action shall be maintained by the Corporation.

(b) Board Meetings. Unless otherwise restricted by applicable law, the Certificate of Incorporation or these Bylaws, members of the Board or any committee thereof may participate in a meeting of the Board or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Such participation in a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

**Section 9.6 Dividends.** The Board may from time to time declare, and the Corporation may pay, dividends (payable in cash, property or shares of the Corporation's capital stock) on the Corporation's outstanding shares of capital stock, subject to applicable law and the Certificate of Incorporation.

**Section 9.7 Reserves.** The Board may set apart out of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

**Section 9.8 Contracts and Negotiable Instruments.** Except as otherwise provided by applicable law, the Certificate of Incorporation or these Bylaws, any contract, bond, deed, lease, mortgage or other instrument may be executed and delivered in the name and on behalf of the Corporation by such officer or officers or other employee or employees of the Corporation as the Board may from time to time authorize. Such authority may be general or confined to specific instances as the Board may determine. The Chairman of the Board, the Chief Executive Officer, the President or any Vice President may execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation. Subject to any restrictions imposed by the Board, the Chairman of the Board, Chief Executive Officer, President or any Vice President may delegate powers to execute and deliver any contract, bond, deed, lease, mortgage or other instrument in the name and on behalf of the Corporation to other officers or employees of the Corporation under such person's supervision and authority, it being understood, however, that any such delegation of power shall not relieve such officer of responsibility with respect to the exercise of such delegated power.

**Section 9.9 Fiscal Year.** The fiscal year of the Corporation shall be fixed by the Board.

**Section 9.10 Seal.** The Board may adopt a corporate seal, which shall be in such form as the Board determines. The seal may be used by causing it or a facsimile thereof to be impressed, affixed or otherwise reproduced.

**Section 9.11 Books and Records.** The books and records of the Corporation may be kept within or outside the State of Delaware at such place or places as may from time to time be designated by the Board.

**Section 9.12 Resignation.** Any director, committee member or officer may resign by giving notice thereof in writing or by electronic transmission to the Chairman of the Board, the Chief Executive Officer, the President or the Secretary. The resignation shall take effect at the

time specified therein, or at the time of receipt of such notice if no time is specified or the specified time is earlier than the time of such receipt. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 9.13 Surety Bonds**. Such officers, employees and agents of the Corporation (if any) as the Chairman of the Board, Chief Executive Officer, President or the Board may direct, from time to time, shall be bonded for the faithful performance of their duties and for the restoration to the Corporation, in case of their death, resignation, retirement, disqualification or removal from office, of all books, papers, vouchers, money and other property of whatever kind in their possession or under their control belonging to the Corporation, in such amounts and by such surety companies as the Chairman of the Board, Chief Executive Officer, President or the Board may determine. The premiums on such bonds shall be paid by the Corporation and the bonds so furnished shall be in the custody of the Secretary.

**Section 9.14 Securities of Other Corporations**. Powers of attorney, proxies, waivers of notice of meeting, consents in writing and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chairman of the Board, Chief Executive Officer, President or any Vice President. Any such officer, may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities, or to consent in writing, in the name of the Corporation as such holder, to any action by such corporation, and at any such meeting or with respect to any such consent shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed. The Board may from time to time confer like powers upon any other person or persons.

**Section 9.15 Amendments**. The Board shall have the power to adopt, amend, alter or repeal the Bylaws. The affirmative vote of a majority of the Whole Board (including the Other Stockholders Designee so long as the Other Stockholders have the right to designate such director) shall be required to adopt, amend, alter or repeal the Bylaws. The Bylaws also may be adopted, amended, altered or repealed by the stockholders; provided, however, that in addition to any vote of the holders of any class or series of capital stock of the Corporation required by applicable law or the Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the voting power of all outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required for the stockholders to adopt, amend, alter or repeal the Bylaws. Notwithstanding the foregoing, Section 3.4 of the Bylaws may only be amended in a manner adverse to the Other Stockholders by a vote of holders of at least a majority of the Other Stockholders.

# AMENDED AND RESTATED
# BYLAWS
# OF
# PORT TOWNSEND PAPER CORPORATION

## ARTICLE I
## REGISTERED OFFICE AND REGISTERED AGENT

1. The registered office of the Corporation shall be located in the State of Washington at such place as may be fixed from time to time by the Board of Directors upon filing of such notices as may be required by law, and the registered agent shall have a business office identical with such registered office. A registered agent so appointed shall consent to appointment in writing and such consent shall be filed with the Secretary of State of the State of Washington.

2. If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of the Corporation by notifying the Corporation in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement of such change, as required by law.

3. The Corporation may change its registered agent at any time upon the filing of an appropriate notice with the Secretary of State, with the written consent of the new registered agent either included in or attached to such notice.

## ARTICLE II
## SHAREHOLDERS' MEETINGS

1. Meeting Place. All meetings of the shareholders shall be held, pursuant to proper notice as set forth in Article II Section 5 of these Bylaws, at the principal executive office of the Corporation, or at such other place as shall be determined from time to time by the Board of Directors.

2. Annual Meeting Time. The annual meeting of the shareholders for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held each year on such date and at such hour as may be determined by resolution of the Board of Directors from time to time. In the absence of such determination, the annual meeting shall be held each year on March 1 at the hour of 10:00



EXHIBIT B-2

a.m. if not a Saturday, Sunday or legal holiday, and if a Saturday, Sunday or legal holiday, then on the next business day following, at the same hour.

3. Annual Meeting - Order of Business. At the annual meeting of shareholders, the order of business shall be as follows:

(a) Call to order.

(b) Proof of notice of meeting (or filing of waiver).

(c) Reading of minutes of last annual meeting.

(d) Reports of officers.

(e) Reports of committees.

(f) Election of directors.

(g) Other business.

4. Special Meetings. Special meetings of the shareholders for any purpose may be called at any time by the President, the Board of Directors or the holders of at least ten percent of all the votes entitled to be cast on any issue proposed to be considered at such special meeting in accordance with RCW 23B.07.020. Special shareholders' meetings shall be held at the Corporation's principal executive office or at such other place as shall be identified in the notice of such meeting.

5. Notice.

(a) Except as provided in subsection (c) hereunder, notice of the date, time and place of the annual meeting of shareholders shall be given by delivering personally or by mailing a written or printed notice of the same, not less than ten (10) days, and not more than sixty (60) days, prior to the meeting to each shareholder of record entitled to vote at such meeting.

(b) Except as provided in subsection (c) hereunder, written or printed notice of each special meeting of shareholders shall be given not less than ten (10) days and not more than sixty (60) days prior to the meeting. Such notice shall state the date, time and place of such meeting, and the purpose or purposes for which the meeting is called, and

shall be delivered personally, or mailed to each shareholder of record entitled to vote at such meeting.

(c) Notice of a shareholders' meeting at which the shareholders will be called to act on an amendment to the articles of incorporation, a plan of merger or share exchange, a proposed sale of assets other than in the regular course of business or the dissolution of the Corporation shall be given not less than twenty (20) days and not more than sixty (60) days before the meeting date.

6. Record Date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders, or at any adjournment thereof, or entitled to receive dividends or distributions, the Board of Directors shall fix in advance a record date for any such determination of shareholders, such date to be not more than seventy (70) days and, in case of a meeting of shareholders, not less than ten (10) days prior to the date on which the particular action requiring such determination of shareholders is to be taken.

7. Shareholders' List. After fixing a record date for a shareholders' meeting, the Corporation shall prepare an alphabetical list of the names of all its shareholders on the record date who are entitled to notice of a shareholders' meeting. Such list shall be arranged by voting group, and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder. The shareholders' list shall be kept on file at the registered office of the Corporation for a period beginning ten days prior to such meeting and shall be kept open at the time and place of such meeting for the inspection by any shareholder, or any shareholder's agent or attorney.

8. Quorum. Except as otherwise required by law, a quorum at any annual or special meeting of shareholders shall consist of shareholders representing, either in person or by proxy, a majority of the votes entitled to be cast on the matter by each voting group.

9. Voting.

(a) Except as otherwise provided in the Articles of Incorporation and subject to the provisions of the laws of the State of Washington, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting.

(b) If a quorum exists, action on a matter, other than the election of directors, is approved by a voting group if the votes cast within the voting group favoring the action exceed the votes cast within the voting group opposing the action, unless the question is one which by express provision of law, of the Articles of Incorporation or of these Bylaws a greater number of affirmative votes is required.

(c) Unless otherwise provided in the Articles of Incorporation, in any election of directors the candidates elected are those receiving the largest numbers of votes cast by the shares entitled to vote in the election, up to the number of directors to be elected by such shares.

10. Proxies. A shareholder may vote either in person or by appointing a proxy by signing an appointment form, either personally or by the shareholder's attorney-in-fact or agent. An appointment of a proxy is effective when received by the person authorized to tabulate votes for the Corporation. An appointment of a proxy is valid for eleven months unless a longer period is expressly provided in the appointment form.

11. Action by Shareholders Without a Meeting. Any action required or which may be taken at a meeting of shareholders of the Corporation may be taken without a meeting or vote if either (i) the action is taken by all shareholders entitled to vote; or (ii) the action is taken by shareholders holding of record or otherwise entitled to vote in the aggregate not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote on the action were present and voted, and at the time the action is taken the Corporation does not have (a) capital stock registered with the Securities and Exchange Commission pursuant to Section 12 of the Securities Exchange Act of 1934, as amended or (b) more than 300 shareholders of record. The taking of the action by shareholders without a meeting or vote must be evidenced by one or more written consents describing the action taken, signed by the shareholders holding of record or otherwise entitled to vote in the aggregate not less than the minimum number of votes necessary in order to take such action by written consent under (i) or (ii) immediately above, and delivered to the Corporation for inclusion in the minutes or filing with the Corporation's records. If not otherwise fixed under Washington law, the record date for determining shareholders entitled to take action without a meeting is the date on which the first shareholder consent is signed. A written consent is not effective to take the action referred to in the consent unless, within sixty (60) days of the earliest consent delivered to the Corporation, written consents signed by a sufficient number of shareholders to take action are delivered to the Corporation. Unless the written shareholder consent specifies a later effective date, action taken by written consent is effective when both: (a) consents sufficient to authorize taking the action have been delivered to the Corporation; and (b) ten (10) days have lapsed (unless a longer period is required under Washington law) since the Corporation delivered written notice to all of the shareholders of the Corporation, requesting such action by written consent, which notice must contain or be accompanied by the same material that would have been required, under Washington law, to be sent to non-consenting or nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted for shareholder action.

12. Waiver of Notice. A written waiver of any notice required to be given to any shareholder, signed by the person or persons entitled to such notice, whether before or after the time stated therein for the meeting, shall be deemed the giving of such notice by the Corporation, provided that such waiver has been delivered to the Corporation for inclusion in the minutes or filing with the Corporation's records. A shareholder's attendance at a meeting waives any notice required, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

13. Action of Shareholders by Communications Equipment. Shareholders may participate in any meeting of shareholders by any means of communication by which all persons participating in the meeting can hear each other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.

## ARTICLE III
## SHARES OF STOCK

1. Issuance of Shares. No shares of the Corporation shall be issued unless authorized by the Board of Directors. Such authorization shall include the number of shares to be issued, the consideration to be received and a statement regarding the adequacy of the consideration. Shares may but need not be represented by certificates. Unless otherwise provided by law, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

2. Certificated Shares.

(a) If shares are represented by certificates, certificates of stock shall be issued in numerical order, and each shareholder shall be entitled to a certificate signed, either manually or in facsimile, by the President, or a Vice President, and the Secretary, and such certificate may bear the seal of the Corporation or a facsimile thereof. If an officer who has signed or whose facsimile signature has been placed upon such certificate ceases to be such officer before the certificate is issued, it may be issued by the Corporation with the same effect as if the person were an officer on the date of issue.

(b) At a minimum each certificate of stock shall state:

(i) the name of the Corporation;

(ii) that the Corporation is organized under the laws of the State of Washington;

(iii) the name of the person to whom the certificate is issued;

(iv) the number and class of shares and the designation of the series, if any, the certificate represents; and

(v) if the Corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences and limitations applicable to each class and the variations in rights, preferences and limitations determined for each series, and the authority of the Board of Directors to determine variations for future series, must be summarized either on the front or back of the certificate. Alternatively, the certificate may state conspicuously on its front or back that the Corporation will furnish the shareholder this information without charge on request in writing.

(c) In case of any mutilation, loss or destruction of any certificate of stock, another certificate may be issued in its place on proof of such mutilation, loss or destruction. The Board of Directors may impose conditions on such issuance and may require the giving of a satisfactory bond or indemnity to the Corporation in such sum as it might determine or establish such other procedures as it deems necessary or appropriate.

3. Uncertificated Shares.

(a) Unless the Articles of Incorporation provide otherwise, the Board of Directors may authorize the issue of any of the Corporation's classes or series of shares without certificates. This authorization does not affect shares already represented by certificates until they are surrendered to the Corporation.

(b) Within a reasonable time after the issuance of shares without certificates, the Corporation shall send the shareholder a complete written statement of the information required on certificates as provided in Article III Section 2 of these Bylaws.

4. Transfers.

(a) Transfers of stock shall be made only upon the stock transfer records of the Corporation, which records shall be kept at the registered office of the Corporation or at its principal place of business, or at the office of its transfer agent or registrar. The Board of Directors may, by resolution, open a share register in any state of the United States, and may employ an agent or agents to keep such register and to record transfers of shares therein.

(b) Shares of certificated stock shall be transferred by delivery of the certificates therefor, accompanied either by an assignment in writing on the back of the certificate or an assignment separate from certificate, or by a written power of attorney to sell, assign and transfer the same, signed by the holder of said certificate. No shares of certificated stock shall be transferred on the records of the Corporation until the outstanding certificates therefor have been surrendered to the Corporation or to its transfer agent or registrar.

(c) Shares of uncertificated stock shall be transferred upon receipt by the Corporation of a written request for transfer signed by the shareholder. Within a reasonable time after the transfer of shares without certificates, the Corporation shall provide the new shareholder a complete written statement of the information required on certificates as provided in Article III, Section 2 of these Bylaws.

5. Fractional Shares or Scrip. The Corporation may:

(a) issue fractions of a share;

(b) arrange for the disposition of fractional interests by the shareholders;

(c) pay in money the value of fractions of a share; and

(d) issue scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share upon the surrender of enough scrip to equal a full share.

6. Shares of Another Corporation. Shares owned by the Corporation in another corporation, domestic or foreign, may be voted by such officer, agent or proxy as the Board of Directors may determine or, in the absence of such determination, by the President of the Corporation.

## ARTICLE IV
## BOARD OF DIRECTORS

1. Powers. The management of all the affairs, property and interests of the Corporation shall be vested in a Board of Directors. In addition to the powers and authorities expressly conferred upon it by these Bylaws and by the Articles of Incorporation, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts as are not prohibited by statute or by the Articles of Incorporation or by these Bylaws or as directed or required to be exercised or done by the shareholders.

2. General Standards for Directors.

A director shall discharge the duties of a director, including duties as a member of a committee:

(a) in good faith;

(b) with the care an ordinary prudent person in a like position would exercise under similar circumstances; and

(c) in a manner the director reasonably believes to be in the best interests of the Corporation.

3. Number, Term and Qualifications. The authorized number of directors of the corporation shall be not less than three (3), the exact number being the number duly elected by the shareholders from time to time or appointed in accordance with the provisions of these Bylaws. Directors shall be elected by the shareholders at each annual shareholders' meeting to hold office until the next annual meeting of the shareholders and until their respective successors are elected and qualified. Directors need not be shareholders or residents of the State of Washington.

4. Change of Number. The number of directors may at any time be increased or decreased by resolution of either the shareholders or directors at any annual, special or regular meeting; provided, that no decrease in the number of directors shall have the effect of shortening the term of any incumbent director, except as provided in Sections 6 and 7 of this Article IV.

5. Vacancies. All vacancies in the Board of Directors, whether caused by resignation, death or otherwise, may be filled by the affirmative vote of a majority of the remaining directors in office though less than a quorum of the Board of Directors. A director

elected to fill a vacancy shall hold office until the next shareholders' meeting at which directors are elected and until his or her successor is elected and qualified. Any directorship to be filled by reason of an increase in the number of directors may be filled by the Board of Directors for a term of office continuing only until the next election of directors by the shareholders and until his or her successor is elected and qualified.

6. Resignation. A director may resign at any time by delivering written notice to the Board of Directors, the President or the Secretary. A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

7. Removal of Directors. At a special meeting of shareholders called expressly for that purpose, the entire Board of Directors, or any member thereof, may be removed, with or without cause, by a vote of the holders of a majority of shares then entitled to vote at an election of such directors. A director or directors may be removed only if the number of votes cast to remove the director exceeds the number of votes cast not to remove the director. The notice of such special meeting must state that the purpose, or one of the purposes, of the meeting is removal of the director or directors, as the case may be.

8. Regular Meetings. Regular meetings of the Board of Directors or any committee may be held without notice at the principal place of business of the Corporation or at such other place or places, either within or without the State of Washington, as the Board of Directors or such committee, as the case may be, may from time to time designate. The annual meeting of the Board of Directors shall be held without notice immediately after adjournment of the annual meeting of shareholders.

9. Special Meetings.

(a) Special meetings of the Board of Directors may be called at any time by the President or by any director, to be held at the principal place of business of the Corporation or at such other place or places as the Board of Directors or the person or persons calling such meeting may from time to time designate. Notice of all special meetings of the Board of Directors, stating the date, time and place thereof, shall be given at least twenty-four (24) hours prior to the date and time of the meeting, in accordance with the provisions set forth in Article VII of these Bylaws. Such notice need not specify the business to be transacted at, or the purpose of, the meeting.

(b) Special meetings of any committee of the Board of Directors may be called at any time by such person or persons and with such notice as shall be specified for such committee by the Board of Directors, or in the absence of such specification, in the manner and with the notice required for special meetings of the Board of Directors.

10. Waiver of Notice. A director may waive any notice required by law, by the Articles of Incorporation or by these Bylaws before or after the time stated for the meeting, and such waiver shall be equivalent to the giving of such notice. Such waiver must be in writing, signed by the director entitled to such notice and delivered to the Corporation for inclusion in the minutes or filing with the corporate records. A director's attendance at or participation in a meeting shall constitute a waiver of any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

11. Quorum. A majority of the full Board of Directors shall be necessary at all meetings to constitute a quorum for the transaction of business. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the Board of Directors.

12. Registering Dissent. A director who is present at a meeting of the Board of Directors at which action on a corporate matter is taken is deemed to have assented to such action unless:

(a) the director objects at the beginning of the meeting, or promptly upon the director's arrival, to the holding of, or transaction of business at, the meeting;

(b) the director's dissent or abstention from the action is entered in the minutes if the meeting; or

(c) the director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the Corporation within a reasonable time after adjournment of the meeting. The right to dissent or abstain is not available to a director who voted in favor of the action taken.

13. Action by Directors Without a Meeting.

(a) Any action required or permitted to be taken at a meeting of the Board of Directors, or of a committee thereof, may be taken without a meeting if the action is taken by all members of the Board of Directors. The action must be evidenced by one or more written consents setting forth the action taken, signed by each of the directors, or by each of the members of the committee, as the case may be, either before or after the action taken, and delivered to the Corporation for inclusion in the minutes or filing with the Corporation's records.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a later effective date.

14. Participation by Means of Communications Equipment. Any or all directors may participate in a regular or special meeting of the Board of Directors (or of a committee thereof) by, or may conduct the meeting through the use of, any means of communication by which all directors participating can hear each other during the meeting.

15. Committees.

(a) General. The Board of Directors, by resolution adopted by a majority of the full Board of Directors, may delegate the management of the day to day operations of the Corporation to one or more committees of directors, provided that the business and affairs of the Corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board of Directors. Each committee must have two or more members who serve at the pleasure of the Board of Directors. To the extent specified by the Board of Directors, each committee may exercise the authority of the Board of Directors, except that no committee shall have the authority to:

(i) authorize or approve a distribution except according to a general formula or method prescribed by the Board of Directors;

(ii) approve or propose to shareholders action that by law is required to be approved by shareholders;

(iii) fill vacancies on the Board of Directors or any of its committees;

(iv) amend the Articles of Incorporation;

(v) adopt, amend or repeal these Bylaws;

(vi) approve a plan of merger not requiring shareholder approval; or

(vii) authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences and limitations of a class or series of shares, except that the Board of Directors may authorize a committee (or a

senior executive officer of the Corporation) to do so within limits specifically prescribed by the Board of Directors.

(b) Executive Committee.

(i) There shall be an Executive Committee of the Board of Directors composed of three or more directors selected by the Board of Directors. Each member of the Executive Committee shall hold office until the first meeting of the Board of Directors after the next annual meeting of shareholders, unless earlier removed by the Board of Directors, or until such individual's successor is appointed.

(ii) The Executive Committee may exercise all the authority of the Board of Directors whenever the Board of Directors shall not be meeting; provided, however, that the Executive Committee shall not have the power to amend or repeal any resolution of the Board of Directors that by its terms shall not be subject to amendment or repeal by the Executive Committee, and the Executive Committee shall not have the authority of the Board of Directors in reference to any action which, under the Washington Business Corporation Act, may be taken only by the Board of Directors or the shareholders.

(iii) The Executive Committee shall meet from time to time on call of the Chief Executive Officer of the Corporation or of any two or more members of the Executive Committee. Meetings of the Executive Committee may be held at such place or places as the Executive Committee shall determine or as may be specified or fixed in the respective notices or waivers of notice of each meeting. The Executive Committee may fix its own rules of procedure, including provision for notice of its meetings. It shall keep a record of its proceedings and shall report these proceedings to the Board of Directors at the meeting of the Board of Directors held next after they have been taken, and all such proceedings shall be subject to revision or alteration by the Board of Directors except to the extent that action shall have been taken pursuant to or in reliance upon such proceedings prior to any such revision or alteration.

(iv) The Executive Committee shall act by majority vote of its members.

(c) Standards of Conduct. The creation of, delegation of authority to or action by a committee does not alone constitute compliance by a director with the standards of conduct required by the Washington Business Corporation Act and these Bylaws.

16. Remuneration. No stated salary shall be paid directors, as such, for their service, but by resolution of the Board of Directors, a fixed sum and expenses of

attendance, if any, may be allowed for attendance at each regular or special meeting of the Board of Directors or of a committee thereof; provided, that nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

## ARTICLE V
## OFFICERS

1. Designations. The officers of the Corporation shall be a President, a Secretary and, at the discretion of the Board of Directors, one or more Vice-Presidents and a Treasurer. The Board of Directors shall appoint all officers. Any two or more offices may be held by the same individual.

The Board of Directors, in its discretion, may elect a Chairman from among its members to serve as Chairman of the Board of Directors, who, when present, shall preside at all meetings of the Board of Directors and the shareholders, and who shall have such other powers as the Board may determine.

2. Appointment and Term of Office. The officers of the Corporation shall be appointed annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the shareholders. Each officer shall hold office until a successor shall have been appointed and qualified, or until such officer's earlier death, resignation or removal.

3. Powers and Duties. If the Board appoints persons to fill the following positions, such officers shall have the power and duties set forth below:

(a) The President. The President of the Corporation shall be the Chief Executive Officer of the Corporation and, subject to the direction and control of the Board of Directors, shall have general control and management of the business affairs and policies of the Corporation. The President shall act as liaison from and as spokesman for the Board of Directors. The President shall participate in long-range planning for the Corporation and shall be available to the other officers of the Corporation for consultation. The President shall possess power to sign all certificates, contracts and other instruments of the Corporation. Unless a Chairman of the Board of Directors has been appointed and is present, the President shall preside at all meetings of the shareholders and of the Board of Directors. The President shall perform all such other duties as are incident to the office of President or are properly required by the Board of Directors.

(b) Vice-Presidents. During the absence or disability of the President, the Executive or Senior Vice-Presidents, if any, and the Vice-Presidents, if any, in the order designated by the Board of Directors, shall exercise all the functions of the President. Each Vice-President shall have such powers and discharge such duties as may be assigned from time to time by the Board of Directors.

(c) The Secretary. The Secretary shall issue notices for all meetings, except for notices for special meetings of the shareholders and special meetings of the directors which are called by the requisite percentage of shareholders or number of directors, shall keep minutes of all meetings, shall have charge of the seal and the Corporation's books, and shall make such reports and perform such other duties as are incident to the office of Secretary, or are properly required of him or her by the Board of Directors.

(d) The Treasurer. The Treasurer shall have the custody of all moneys and securities of the Corporation and shall keep regular books of account. The Treasurer shall disburse the funds of the Corporation in payment of the just demands against the Corporation or as may be ordered by the Board of Directors, taking proper vouchers or receipts for such disbursements, and shall render to the Board of Directors from time to time as may be required an account of all transactions as Treasurer and of the financial condition of the Corporation. The Treasurer shall perform such other duties incident to his or her office or that are properly required of him or her by the Board of Directors.

4. Standards of Conduct for Officers.

An officer with discretionary authority shall discharge such officer's duties under that authority:

(a) in good faith;

(b) with the care an ordinary prudent person in a like position would exercise under similar circumstances; and

(c) in a manner the officer reasonably believes to be in the best interests of the Corporation.

5. Delegation. In the case of absence or inability to act of any officer of the Corporation and of any person herein authorized to act in such officer's place, the Board of Directors may from time to time delegate the powers or duties of such officer to any other officer or any director or other person whom it may in its sole discretion select.

6. Vacancies. Vacancies in any office arising from any cause may be filled by the Board of Directors at any regular or special meeting of the Board.

7. Other Officers. The Board of Directors, or a duly appointed officer to whom such authority has been delegated by Board resolution, may appoint such other officers and agents as it shall deem necessary or expedient, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

8. Resignation. An officer may resign at any time by delivering notice to the Corporation. Such notice shall be effective when delivered unless the notice specifies a later effective date. Any such resignation shall not affect the Corporation's contract rights, if any, with the officer.

9. Removal. Any officer elected or appointed by the Board of Directors may be removed at any time, with or without cause, by the affirmative vote of a majority of the whole Board of Directors, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

10. Salaries and Contract Rights. The salaries, if any, of the officers shall be fixed from time to time by the Board of Directors. The appointment of an officer shall not of itself create contract rights.

11. Bonds. The Board of Directors may, by resolution, require any and all of the officers to give bonds to the Corporation, with sufficient surety or sureties, conditioned for the faithful performance of the duties of their respective offices, and to comply with such other conditions as may from time to time be required by the Board of Directors.

## ARTICLE VI
## DISTRIBUTIONS AND FINANCE

1. Distributions. The Board of Directors may authorize and the Corporation may make distributions to its shareholders; provided that no distribution may be made if, after giving it effect, either:

(a) The Corporation would not be able to pay its debts as they become due in the usual course of business; or

(b) The Corporation's total assets would be less than the sum of its total liabilities plus the amount which would be needed, if the Corporation were to be

dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(c) The Board of Directors may authorize distributions to holders of record at the close of business on any business day prior to the date on which the distribution is made. If the Board of Directors does not fix a record date for determining shareholders entitled to a distribution, the record date shall be the date on which the Board of Directors authorizes the distribution.

2. Measure of Effect of a Distribution. For purposes of determining whether a distribution may be authorized by the Board of Directors and paid by the Corporation under Article VI, Section 1 of these Bylaws, the effect of the distribution is measured:

(a) In the case of a distribution of indebtedness, the terms of which provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made; or

(b) In the case of any other distribution:

(i) if the distribution is by purchase, redemption, or other acquisition of the Corporation's shares, the effect of the distribution is measured as of the earlier of the date any money or other property is transferred or debt incurred by the Corporation, or the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(ii) if the distribution is of an indebtedness other than described in subsection 2(a) and (b)(i) of this section, the effect of the distribution is measured as of the date the indebtedness is distributed; and

(iii) in all other cases, the effect of the distribution is measured as of the date the distribution is authorized if payment occurs within 120 days after the date of authorization, or the date the payment is made if it occurs more than 120 days after the date of authorization.

3. Depositories. The monies of the Corporation shall be deposited in the name of the Corporation in such bank or banks or trust company or trust companies as the Board of Directors shall designate, and shall be drawn out only by check or other order for

payment of money signed by such persons and in such manner as may be determined by resolution of the Board of Directors.

## ARTICLE VII
## NOTICES

Except as may otherwise be required by law, any notice to any shareholder or director must be in writing and may be transmitted by: mail, private carrier or personal delivery; telegraph or teletype; or telephone, wire or wireless equipment which transmits a facsimile of the notice. Written notice by the Corporation to its shareholders shall be deemed effective when mailed, if mailed with first-class postage prepaid and correctly addressed to the shareholder's address shown in the Corporation's current record of shareholders. Except as set forth in the previous sentence, written notice shall be deemed effective at the earliest of the following: (i) when received; (ii) three days after its deposit in the United States mail, as evidenced by the postmark, if mailed with first-class postage, prepaid and correctly addressed; (iii) on the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and receipt is signed by or on behalf of the addressee; or (iv) if sent to a shareholder's address, telephone number, or other number appearing on the records of the Corporation, when dispatched by telegraph, teletype or facsimile equipment.

## ARTICLE VIII
## SEAL

The Corporation may adopt a corporate seal which seal shall be in such form and bear such inscription as may be adopted by resolution of the Board of Directors.

## ARTICLE IX
## BOOKS AND RECORDS

The Corporation shall maintain appropriate accounting records and shall keep as permanent records minutes of all meetings of its shareholders and Board of Directors, a record of all actions taken by the shareholders or the Board of Directors without a meeting and a record of all actions taken by a committee of the Board of Directors. In addition, the Corporation shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders in alphabetical order by class of shares showing the number and class of the shares held by each. Any books, records and minutes may be in written form or any other form capable of being converted into written form within a reasonable time. The Corporation shall keep a copy of the following records at its principal office:

1. The Articles or Restated Articles of Incorporation and all amendments thereto currently in effect;

2. The Bylaws or Restated Bylaws and all amendments thereto currently in effect;

3. The minutes of all shareholders' meetings, and records of all actions taken by shareholders without a meeting, for the past three years;

4. Its financial statements for the past three years, including balance sheets showing in reasonable detail the financial condition of the Corporation as of the close of each fiscal year, and an income statement showing the results of its operations during each fiscal year prepared on the basis of generally accepted accounting principles or, if not, prepared on a basis explained therein;

5. All written communications to shareholders generally within the past three years;

6. A list of the names and business addresses of its current directors and officers; and

7. Its most recent annual report delivered to the Secretary of State of Washington.

## ARTICLE XI
## AMENDMENTS

1. By Shareholders. These Bylaws may be amended or repealed by the shareholders in the manner set forth in Article II Section 9 of these Bylaws at any regular or special meeting of the shareholders.

2. By Directors. The Board of Directors shall have power to amend or repeal the Bylaws of, or adopt new bylaws for, the Corporation. However, any such Bylaws, or any alteration, amendment or repeal of the Bylaws, may be subsequently changed or repealed by the holders of a majority of the stock entitled to vote at any shareholders' meeting.

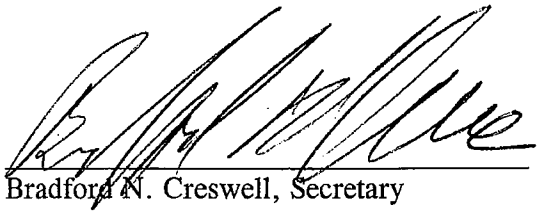
3. Emergency Bylaws. The Board of Directors may adopt emergency Bylaws, subject to repeal or change by action of the shareholders, which shall be operative during any emergency in the conduct of the business of the Corporation resulting from an

attack on the United States, any state of emergency declared by the federal government or any subdivision thereof, or any other catastrophic event.

4. Record of Amendment. Whenever a Bylaw is amended or a new Bylaw is adopted, it shall be copied and placed in the minute book of the corporation with the original Bylaws, in the appropriate place. If any Bylaw is repealed, the fact of repeal and the date of the meeting at which the repeal was enacted or written assent was given shall be filed in the minute book.

## CERTIFICATE OF SECRETARY

I certify that the foregoing Bylaws of this corporation were duly adopted by the Board of Directors of the corporation on March 1, 1998.



Bradford N. Creswell, Secretary

# BYLAWS

# OF

# PTPC PACKAGING CO., INC.

Originally adopted on: _____
Amendments are listed on page i



EXHIBIT B-3

## AMENDMENTS

| Section | Effect of Amendment | Date of Amendment |
|---|---|---|

## CONTENTS

# Bylaws

# of

# PTPC Packaging Co., Inc.

## SECTION 1. OFFICES

The principal office of the corporation shall be located at the principal place of business or such other place as the Board of Directors ("Board") may designate. The corporation may have such other offices as the Board may designate or as the business of the corporation may require.

## SECTION 2. SHAREHOLDERS

### 2.1 Annual Meeting

The annual meeting of the shareholders shall be held the 1st Monday of March in each year at 10:00 a.m. for the purpose of electing Directors and transacting such other business as may properly come before the meeting. If the day fixed for the annual meeting is a legal holiday at the place of the meeting, the meeting shall be held on the next succeeding business day.

### 2.2 Special Meetings

The Chairman of the Board, the President or the Board may call special meetings of the shareholders for any purpose. Further, a special meeting of the shareholders shall be held if the holders of not less than 10% of all the votes entitled to be cast on any issue proposed to be considered at such special meeting have dated, signed and delivered to the Secretary one or more written demands for such meeting, describing the purpose or purposes for which it is to be held.

### 2.3 Meetings by Communications Equipment

Shareholders may participate in any meeting of the shareholders by any means of communication by which all persons participating in the meeting can hear each other during the meeting. Participation by such means shall constitute presence in person at a meeting.

## 2.4 Date, Time and Place of Meeting

Except as otherwise provided in these Bylaws, all meetings of shareholders, including those held pursuant to demand by shareholders, shall be held on such date and at such time and place designated by or at the direction of the Board.

## 2.5 Notice of Meeting

Written notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called shall be given by or at the direction of the Board, the Chairman of the Board, the President or the Secretary to each shareholder entitled to notice of or to vote at the meeting not less than 10 nor more than 60 days before the meeting, except that notice of a meeting to act on an amendment to the Articles of Incorporation, a plan of merger or share exchange, the sale, lease, exchange or other disposition of all or substantially all of the corporation's assets other than in the regular course of business or the dissolution of the corporation shall be given not less than 20 or more than 60 days before such meeting. If an annual or special shareholders' meeting is adjourned to a different date, time or place, no notice of the new date, time or place is required if they are announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed, notice of the adjourned meeting must be given to shareholders entitled to notice of or to vote as of the new record date.

Such notice may be transmitted by mail, private carrier, personal delivery, telegraph, teletype or communications equipment that transmits a facsimile of the notice. If these forms of written notice are impractical in the view of the Board, the Chairman of the Board, the President or the Secretary, written notice may be transmitted by an advertisement in a newspaper of general circulation in the area of the corporation's principal office. If such notice is mailed, it is effective when deposited in the official government mail, first-class postage prepaid, properly addressed to the shareholder at such shareholder's address as it appears in the corporation's current record of shareholders. Notice given in any other manner is effective when dispatched to the shareholder's address, telephone number or other number appearing on the records of the corporation. Any notice given by publication is effective five days after first publication.

## 2.6 Waiver of Notice

Whenever any notice is required to be given to any shareholder under the provisions of these Bylaws, the Articles of Incorporation or the Washington Business Corporation Act, a waiver of notice in writing, signed by the person or persons entitled to such notice and delivered to the corporation, whether before or after the date and time of the meeting or before or after the action to be taken by consent is effective, shall be the equivalent of the giving of such notice. Further, notice of the time, place and purpose of any meeting will be waived by any shareholder by attendance in person or by proxy, unless such shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

## 2.7 Fixing of Record Date for Determining Shareholders

For the purpose of determining shareholders entitled (a) to notice of or to vote at any meeting of shareholders or any adjournment thereof, (b) to demand a special meeting, or (c) to receive payment of any dividend, or in order to make a determination of shareholders for any other purpose, the Board may fix a future date as the record date for any such determination. Such record date shall be not more than 70 days, and, in case of a meeting of shareholders, not less than 10 days, prior to the date on which the particular action requiring such determination is to be taken. If no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting, the record date shall be the day immediately preceding the date on which notice of the meeting is first given to shareholders. Such a determination shall apply to any adjournment of the meeting unless the Board fixes a new record date, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting. If no record date is set for the determination of shareholders entitled to receive payment of any stock dividend or distribution (other than one involving a purchase, redemption, or other acquisition of the corporation's shares) the record date shall be the date the Board authorizes the stock dividend or distribution.

## 2.8 Voting Record

At least 10 days before each meeting of shareholders, an alphabetical list of the shareholders entitled to notice of such meeting shall be made, arranged by voting group and by each class or series of shares, with the address of and number of shares held by each shareholder. This record shall be kept at the principal office of the corporation for 10 days prior to such meeting, and shall be kept open at such meeting, for the inspection of any shareholder or any shareholder's agent or attorney.

## 2.9 Quorum

A majority of the votes entitled to be cast on a matter by the holders of shares that, pursuant to the Articles of Incorporation or the Washington Business Corporation Act, are entitled to vote and be counted collectively upon such matter, represented in person or by proxy, shall constitute a quorum of such shares at a meeting of shareholders. If less than a majority of such votes are represented at a meeting, a majority of the votes so represented may adjourn the meeting from time to time. Any business may be transacted at a reconvened meeting that might have been transacted at the meeting as originally called, provided a quorum is present or represented at such meeting. Once a share is represented for any purpose at a meeting other than solely to object to holding the meeting or transacting business, it is deemed present for quorum purposes for the remainder of the meeting and any adjournment (unless a new record date is or must be set for the adjourned meeting) notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

## 2.10 Manner of Acting

If a quorum is present, action on a matter other than the election of Directors shall be approved if the votes cast in favor of the action by the shares entitled to vote and be counted collectively upon such matter exceed the votes cast against such action by the shares entitled to vote and be counted collectively thereon, unless the Articles of Incorporation or the Washington Business Corporation Act requires a greater number of affirmative votes.

## 2.11 Proxies

A shareholder may vote by proxy executed in writing by the shareholder or by his or her attorney-in-fact or agent. Such proxy shall be effective when received by the Secretary or other officer or agent authorized to tabulate votes. A proxy shall become invalid 11 months after the date of its execution, unless otherwise provided in the proxy. A proxy with respect to a specified meeting shall entitle its holder to vote at any reconvened meeting following adjournment of such meeting but shall not be valid after the final adjournment.

## 2.12 Voting of Shares

Except as provided in the Articles of Incorporation, each outstanding share entitled to vote with respect to a matter submitted to a meeting of shareholders shall be entitled to one vote upon such matter.

## 2.13 Voting for Directors

Each shareholder entitled to vote at an election of Directors may vote, in person or by proxy, the number of shares owned by such shareholder for as many persons as there are Directors to be elected and for whose election such shareholder has a right to vote. Unless otherwise provided in the Articles of Incorporation, the candidates elected shall be those receiving the largest number of votes cast, up to the number of Directors to be elected.

## 2.14 Action by Shareholders Without a Meeting

Any action that may or is required to be taken at a meeting of the shareholders may be taken without a meeting by unanimous consent if one or more written consents setting forth the action so taken shall be signed by all the shareholders entitled to vote with respect to the matter. Action may also be taken by less than unanimous consent. Action by less than unanimous consent may be taken if one or more written consents describing the action taken shall be signed by shareholders holding of record or otherwise entitled to vote in the aggregate not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote on the action were present and voted. If not otherwise fixed by the Board, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder consent is signed. A shareholder may withdraw a consent only by delivering a written notice of withdrawal to the corporation prior to the time that consents sufficient to authorize taking the action have been

delivered to the corporation. Every written consent shall bear the date of signature of each shareholder who signs the consent. A written consent is not effective to take the action referred to in the consent unless, within 60 days of the earliest dated consent delivered to the corporation, written consents signed by a sufficient number of shareholders to take action are delivered to the corporation. Unless the consent specifies a later effective date, actions taken by written consent of the shareholders are effective when (a) consents sufficient to authorize taking the action are in possession of the corporation and (b) the period of advance notice required by the Articles of Incorporation to be given to any nonconsenting or nonvoting shareholders has been satisfied. Any such consent shall be inserted in the minute book as if it were the minutes of a meeting of the shareholders.

## SECTION 3. BOARD OF DIRECTORS

### 3.1 General Powers

All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation shall be managed under the direction of, the Board, except as may be otherwise provided in these Bylaws, the Articles of Incorporation or the Washington Business Corporation Act.

### 3.2 Number and Tenure

The Board shall be composed of not less than 3 nor more than 10 Directors, the specific number to be set by resolution of the Board. The number of Directors may be changed from time to time by amendment to these Bylaws, but no decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director. Unless a Director dies, resigns, or is removed, his or her term of office shall expire at the next annual meeting of shareholders; provided, however, that a Director shall continue to serve until his or her successor is elected or until there is a decrease in the authorized number of Directors. Directors need not be shareholders of the corporation or residents of the state of Washington and need not meet any other qualifications.

### 3.3 Annual and Regular Meetings

An annual Board meeting shall be held without notice immediately after and at the same place as the annual meeting of shareholders. By resolution the Board, or any committee designated by the Board, may specify the time and place for holding regular meetings without notice other than such resolution.

### 3.4 Special Meetings

Special meetings of the Board or any committee designated by the Board may be called by or at the request of the Chairman of the Board, the President, the Secretary or, in the case of special Board meetings, any 2 Directors and, in the case of any special meeting of any committee designated by the Board, by its Chairman. The person or persons authorized to

call special meetings may fix any place for holding any special Board or committee meeting called by them.

### 3.5 Meetings by Communications Equipment

Members of the Board or any committee designated by the Board may participate in a meeting of such Board or committee by, or conduct the meeting through the use of, any means of communication by which all Directors participating in the meeting can hear each other during the meeting. Participation by such means shall constitute presence in person at a meeting.

### 3.6 Notice of Special Meetings

Notice of a special Board or committee meeting stating the place, day and hour of the meeting shall be given to a Director in writing or orally, as provided below. Neither the business to be transacted at nor the purpose of any special meeting need be specified in the notice of such meeting.

#### 3.6.1 Personal Delivery

If notice is given by personal delivery, the notice shall be delivered to a Director at least two days before the meeting.

#### 3.6.2 Delivery by Mail

If notice is delivered by mail, the notice shall be deposited in the official government mail at least five days before the meeting, properly addressed to a Director at his or her address shown on the records of the corporation, with postage thereon prepaid.

#### 3.6.3 Delivery by Private Carrier

If notice is given by private carrier, the notice shall be dispatched to a Director at his or her address shown on the records of the corporation at least three days before the meeting.

#### 3.6.4 Facsimile Notice

If notice is delivered by wire or wireless equipment that transmits a facsimile of the notice, the notice shall be dispatched at least two days before the meeting to a Director at his or her telephone number or other number appearing on the records of the corporation.

#### 3.6.5 Delivery by Telegraph

If notice is delivered by telegraph, the notice shall be delivered to the telegraph company for delivery to a Director at his or her address shown on the records of the corporation at least three days before the meeting.

### 3.6.6 Oral Notice

If notice is delivered orally, by telephone, in person or by wire or wireless equipment that does not transmit a facsimile of the notice, the notice shall be communicated to the Director at least two days before the meeting.

## 3.7 Waiver of Notice

### 3.7.1 In Writing

Whenever any notice is required to be given to any Director under the provisions of these Bylaws, the Articles of Incorporation or the Washington Business Corporation Act, a waiver thereof in writing, signed by the person or persons entitled to such notice and delivered to the corporation, whether before or after the date and time of the meeting, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at nor the purpose of any regular or special meeting of the Board or any committee designated by the Board need be specified in the waiver of notice of such meeting.

### 3.7.2 By Attendance

A Director's attendance at or participation in a Board or committee meeting shall constitute a waiver of notice of such meeting, unless the Director at the beginning of the meeting, or promptly upon his or her arrival, objects to holding the meeting or transacting business at such meeting and does not thereafter vote for or assent to action taken at the meeting.

## 3.8 Quorum

A majority of the number of Directors fixed by or in the manner provided in these Bylaws shall constitute a quorum for the transaction of business at any Board meeting but, if less than a majority are present at a meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice. A majority of the number of Directors composing any committee of the Board, as established and fixed by resolution of the Board, shall constitute a quorum for the transaction of business at any meeting of such committee but, if less than a majority are present at a meeting, a majority of such Directors present may adjourn the committee meeting from time to time without further notice.

## 3.9 Manner of Acting

If a quorum is present when the vote is taken, the act of the majority of the Directors present at a Board or committee meeting shall be the act of the Board or such committee, unless the vote of a greater number is required by these Bylaws, the Articles of Incorporation or the Washington Business Corporation Act.

### 3.10 Presumption of Assent

A Director of the corporation who is present at a Board or committee meeting at which any action is taken shall be deemed to have assented to the action taken unless (a) the Director objects at the beginning of the meeting, or promptly upon the Director's arrival, to holding the meeting or transacting any business at such meeting, (b) the Director's dissent or abstention from the action taken is entered in the minutes of the meeting, or (c) the Director delivers written notice of the Director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation within a reasonable time after adjournment of the meeting. The right of dissent or abstention is not available to a Director who votes in favor of the action taken.

### 3.11 Action by Board or Committees Without a Meeting

Any action that could be taken at a meeting of the Board or of any committee created by the Board may be taken without a meeting if one or more written consents setting forth the action so taken are signed by each of the Directors or by each committee member either before or after the action is taken and delivered to the corporation. Action taken by written consent of Directors without a meeting is effective when the last Director signs the consent, unless the consent specifies a later effective date. Any such written consent shall be inserted in the minute book as if it were the minutes of a Board or a committee meeting.

### 3.12 Resignation

Any Director may resign from the Board or any committee of the Board at any time by delivering either oral tender of resignation at any meeting of the Board or any committee or written notice to the Chairman of the Board, the President, the Secretary or the Board. Any such resignation is effective upon delivery thereof unless the notice of resignation specifies a later effective date and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

### 3.13 Removal

At a meeting of shareholders called expressly for that purpose, one or more members of the Board, including the entire Board, may be removed with or without cause (unless the Articles of Incorporation permit removal for cause only) by the holders of the shares entitled to elect the Director or Directors whose removal is sought if the number of votes cast to remove the Director exceeds the number of votes cast not to remove the Director.

### 3.14 Vacancies

Unless the Articles of Incorporation provide otherwise, any vacancy occurring on the Board may be filled by the shareholders, the Board or, if the Directors in office constitute fewer than a quorum, by the affirmative vote of a majority of the remaining Directors. Any vacant office to be held by a Director elected by the holders of one or more classes or series of

shares entitled to vote and be counted collectively thereon shall be filled only by the vote of the holders of such class or series of shares. A Director elected to fill a vacancy shall serve only until the next election of Directors by the shareholders.

## 3.15 Executive and Other Committees

### 3.15.1 Creation of Committees

The Board, by resolution adopted by the greater of a majority of the Directors then in office and the number of Directors required to take action in accordance with these Bylaws, may create standing or temporary committees, including an Executive Committee, and appoint members from its own number and invest such committees with such powers as it may see fit, subject to such conditions as may be prescribed by the Board, the Articles of Incorporation, these Bylaws and applicable law. Each committee must have two or more members, who shall serve at the pleasure of the Board.

### 3.15.2 Authority of Committees

Each committee shall have and may exercise all of the authority of the Board to the extent provided in the resolution of the Board creating the committee and any subsequent resolutions adopted in like manner, except that no such committee shall have the authority to: (1) authorize or approve a distribution except according to a general formula or method prescribed by the Board, (2) approve or propose to shareholders actions or proposals required by the Washington Business Corporation Act to be approved by shareholders, (3) fill vacancies on the Board or any committee thereof, (4) amend the Articles of Incorporation pursuant to RCW 23B.10.020, (5) adopt, amend or repeal Bylaws, (6) approve a plan of merger not requiring shareholder approval, or (7) authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences and limitations of a class or series of shares except that the Board may authorize a committee or a senior executive officer of the corporation to do so within limits specifically prescribed by the Board.

### 3.15.3 Minutes of Meetings

All committees shall keep regular minutes of their meetings and shall cause them to be recorded in books kept for that purpose.

### 3.15.4 Removal

The Board may remove any member of any committee elected or appointed by it but only by the affirmative vote of the greater of a majority of the Directors then in office and the number of Directors required to take action in accordance with these Bylaws.

### 3.16 Compensation

By Board resolution, Directors and committee members may be paid their expenses, if any, of attendance at each Board or committee meeting, or a fixed sum for attendance at each Board or committee meeting, or a stated salary as Director or a committee member, or a combination of the foregoing. No such payment shall preclude any Director or committee member from serving the corporation in any other capacity and receiving compensation therefor.

## SECTION 4. OFFICERS

### 4.1 Appointment and Term

The officers of the corporation shall be those officers appointed from time to time by the Board or by any other officer empowered to do so. The Board shall have sole power and authority to appoint executive officers. As used herein, the term "executive officer" shall mean the President, any Vice President in charge of a principal business unit, division or function or any other officer who performs a policy-making function. The Board or the President may appoint such other officers and assistant officers to hold office for such period, have such authority and perform such duties as may be prescribed. The Board may delegate to any other officer the power to appoint any subordinate officers and to prescribe their respective terms of office, authority and duties. Any two or more offices may be held by the same person. Unless an officer dies, resigns or is removed from office, he or she shall hold office until his or her successor is appointed.

### 4.2 Resignation

Any officer may resign at any time by delivering written notice to the corporation. Any such resignation is effective upon delivery, unless the notice of resignation specifies a later effective date, and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective.

### 4.3 Removal

Any officer may be removed by the Board at any time, with or without cause. An officer or assistant officer, if appointed by another officer, may be removed by any officer authorized to appoint officers or assistant officers.

### 4.4 Contract Rights of Officers

The appointment of an officer does not itself create contract rights.

### 4.5 Chairman of the Board

If appointed, the Chairman of the Board shall perform such duties as shall be assigned to him or her by the Board from time to time, and shall preside over meetings of the Board and shareholders unless another officer is appointed or designated by the Board as Chairman of such meetings.

### 4.6 President

If appointed, the President shall be the chief executive officer of the corporation unless some other officer is so designated by the Board, shall preside over meetings of the Board and shareholders in the absence of a Chairman of the Board, and, subject to the Board's control, shall supervise and control all of the assets, business and affairs of the corporation. In general, the President shall perform all duties incident to the office of President and such other duties as are prescribed by the Board from time to time. If no Secretary has been appointed, the President shall have responsibility for the preparation of minutes of meetings of the Board and shareholders and for authentication of the records of the corporation.

### 4.7 Vice President

In the event of the death of the President or his or her inability to act, the Vice President (or if there is more than one Vice President, the Vice President who was designated by the Board as the successor to the President, or if no Vice President is so designated, the Vice President first elected to such office) shall perform the duties of the President, except as may be limited by resolution of the Board, with all the powers of and subject to all the restrictions upon the President. Vice Presidents shall perform such other duties as from time to time may be assigned to them by the President or by or at the direction of the Board.

### 4.8 Secretary

If appointed, the Secretary shall be responsible for preparation of minutes of the meetings of the Board and shareholders, maintenance of the corporation records and stock registers, and authentication of the corporation's records and shall in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the President or by or at the direction of the Board. In the absence of the Secretary, an Assistant Secretary may perform the duties of the Secretary.

### 4.9 Treasurer

If appointed, the Treasurer shall have charge and custody of and be responsible for all funds and securities of the corporation, receive and give receipts for moneys due and payable to the corporation from any source whatsoever, and deposit all such moneys in the name of the corporation in banks, trust companies or other depositories selected in accordance with the provisions of these Bylaws, and in general perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the

President or by or at the direction of the Board. In the absence of the Treasurer, an Assistant Treasurer may perform the duties of the Treasurer.

### 4.10 Salaries

The salaries of the officers shall be fixed from time to time by the Board or by any person or persons to whom the Board has delegated such authority. No officer shall be prevented from receiving such salary by reason of the fact that he or she is also a Director of the corporation.

## SECTION 5. CONTRACTS, LOANS, CHECKS AND DEPOSITS

### 5.1 Contracts

The Board may authorize any officer or officers, or agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation. Such authority may be general or confined to specific instances.

### 5.2 Loans to the Corporation

No loans shall be contracted on behalf of the corporation and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances.

### 5.3 Checks, Drafts, Etc.

All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers, or agent or agents, of the corporation and in such manner as is from time to time determined by resolution of the Board.

### 5.4 Deposits

All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the Board may select.

## SECTION 6. CERTIFICATES FOR SHARES AND THEIR TRANSFER

### 6.1 Issuance of Shares

No shares of the corporation shall be issued unless authorized by the Board, or by a committee designated by the Board to the extent such committee is empowered to do so.

### 6.2 Certificates for Shares

Certificates representing shares of the corporation shall be signed, either manually or in facsimile, by the President or any Vice President and by the Treasurer or any Assistant Treasurer or the Secretary or any Assistant Secretary and shall include on their face written notice of any restrictions that may be imposed on the transferability of such shares. All certificates shall be consecutively numbered or otherwise identified.

### 6.3 Stock Records

The stock transfer books shall be kept at the principal office of the corporation or at the office of the corporation's transfer agent or registrar. The name and address of each person to whom certificates for shares are issued, together with the class and number of shares represented by each such certificate and the date of issue thereof, shall be entered on the stock transfer books of the corporation. The person in whose name shares stand on the books of the corporation shall be deemed by the corporation to be the owner thereof for all purposes.

### 6.4 Restriction on Transfer

Except to the extent that the corporation has obtained an opinion of counsel acceptable to the corporation that transfer restrictions are not required under applicable securities laws, or has otherwise satisfied itself that such transfer restrictions are not required, all certificates representing shares of the corporation shall bear a legend on the face of the certificate, or on the reverse of the certificate if a reference to the legend is contained on the face, which reads substantially as follows:

> The securities evidenced by this certificate have not been registered under the Securities Act of 1933, as amended (the "Act"), or applicable state securities laws, and no interest may be sold, distributed, assigned, offered, pledged or otherwise transferred unless (a) there is an effective registration statement under the Act and applicable state securities laws covering any such transaction involving said securities, (b) this corporation receives an opinion of legal counsel for the holder of these securities satisfactory to this corporation stating that such transaction is exempt from registration, or (c) this corporation otherwise satisfies itself that such transaction is exempt from registration.

### 6.5 Transfer of Shares

The transfer of shares of the corporation shall be made only on the stock transfer books of the corporation pursuant to authorization or document of transfer made by the holder of record thereof or by his or her legal representative, who shall furnish proper evidence of authority to transfer, or by his or her attorney-in-fact authorized by power of attorney duly executed and filed with the Secretary of the corporation. All certificates surrendered to the corporation for transfer shall be canceled and no new certificate shall be

issued until the former certificates for a like number of shares shall have been surrendered and canceled.

### 6.6 Lost or Destroyed Certificates

In the case of a lost, destroyed or damaged certificate, a new certificate may be issued in its place upon such terms and indemnity to the corporation as the Board may prescribe.

## SECTION 7. BOOKS AND RECORDS

The corporation shall:

(a) Keep as permanent records minutes of all meetings of its shareholders and the Board, a record of all actions taken by the shareholders or the Board without a meeting, and a record of all actions taken by a committee of the Board exercising the authority of the Board on behalf of the corporation.

(b) Maintain appropriate accounting records.

(c) Maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each; provided, however, such record may be maintained by an agent of the corporation.

(d) Maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) Keep a copy of the following records at its principal office:

1. the Articles of Incorporation and all amendments thereto as currently in effect;

2. these Bylaws and all amendments thereto as currently in effect;

3. the minutes of all meetings of shareholders and records of all action taken by shareholders without a meeting, for the past three years;

4. the financial statements described in Section 23B.16.200(1) of the Washington Business Corporation Act, for the past three years;

5. all written communications to shareholders generally within the past three years;

6. a list of the names and business addresses of the current Directors and officers; and

7. the most recent annual report delivered to the Washington Secretary of State.

## SECTION 8. ACCOUNTING YEAR

The accounting year of the corporation shall be the calendar year, provided that if a different accounting year is at any time selected by the Board for purposes of federal income taxes, or any other purpose, the accounting year shall be the year so selected.

## SECTION 9. SEAL

The Board may provide for a corporate seal that shall consist of the name of the corporation, the state of its incorporation and the year of its incorporation.

## SECTION 10. INDEMNIFICATION

### 10.1 Right to Indemnification

Each person who was, is or is threatened to be made a party to or is otherwise involved (including, without limitation, as a witness) in any threatened, pending or completed action, suit, claim or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (hereafter a "proceeding"), by reason of the fact that he or she is or was a Director or officer of the corporation or, that being or having been such a Director or officer of the corporation, he or she is or was serving at the request of the corporation as a Director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise (hereafter an "indemnitee"), whether the basis of a proceeding is alleged action in an official capacity or in any other capacity while serving as such a Director, officer, partner, trustee, employee or agent shall be indemnified and held harmless by the corporation against all losses, claims, damages (compensatory, exemplary, punitive or otherwise), liabilities and expenses (including attorneys' fees, costs, judgments, fines, ERISA excise taxes or penalties, amounts to be paid in settlement and any other expenses) actually and reasonably incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue as to an indemnitee who has ceased to be a Director or officer of the Company or a Director, officer partner, trustee, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Except as provided in subsection 10.4 of this Section with respect to proceedings seeking to enforce rights to indemnification, the corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if a proceeding (or part thereof) was authorized or ratified by the Board. The right to indemnification conferred in this Section shall be a contract right.

### 10.2 Restrictions on Indemnification

No indemnification shall be provided to any such indemnitee for acts or omissions of the indemnitee finally adjudged to be intentional misconduct or a knowing violation of law, for conduct of the indemnitee finally adjudged to be in violation of Section 23B.08.310 of the Washington Business Corporation Act, for any transaction with respect to which it was finally adjudged that such indemnitee personally received a benefit in money, property or services to which the indemnitee was not legally entitled or if the corporation is otherwise prohibited by applicable law from paying such indemnification. Notwithstanding the foregoing, if Section 23B.08.560 or any successor provision of the Washington Business Corporation Act is hereafter amended, the restrictions on indemnification set forth in this subsection 10.2 shall be as set forth in such amended statutory provision.

### 10.3 Advancement of Expenses

The right to indemnification conferred in this Section shall include the right to be paid by the corporation the expenses incurred in defending any proceeding in advance of its final disposition (hereinafter an "advancement of expenses"). An advancement of expenses shall be made upon delivery to the corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified.

### 10.4 Right of Indemnitee to Bring Suit

If a claim under subsection 10.1 or 10.3 of this Section is not paid in full by the corporation within 60 days after a written claim has been received by the corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the indemnitee may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim. If successful in whole or in part, in any such suit or in a suit brought by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of litigating such suit. The indemnitee shall be presumed to be entitled to indemnification under this Section upon submission of a written claim (and, in an action brought to enforce a claim for an advancement of expenses, when the required undertaking has been tendered to the corporation) and thereafter the corporation shall have the burden of proof to overcome the presumption that the indemnitee is so entitled.

### 10.5 Procedures Exclusive

Pursuant to Section 23B.08.560(2) or any successor provision of the Washington Business Corporation Act, the procedures for indemnification and the advancement of expenses set forth in this Section are in lieu of the procedures required by Section 23B.08.550 or any successor provision of the Washington Business Corporation Act.

### 10.6 Nonexclusivity of Rights

Except as set forth in subsection 10.5, the right to indemnification and the advancement of expenses conferred in this Section shall not be exclusive of any other right that any person may have or hereafter acquire under any statute, provision of the Articles of Incorporation or Bylaws of the corporation, general or specific action of the Board or shareholders, contract or otherwise.

### 10.7 Insurance, Contracts and Funding

The corporation may maintain insurance, at its expense, to protect itself and any Director, officer, partner, trustee, employee or agent of the corporation or another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any expense, liability or loss, whether or not the corporation would have the authority or right to indemnify such person against such expense, liability or loss under the Washington Business Corporation Act or other law. The corporation may enter into contracts with any Director, officer, partner, trustee, employee or agent of the corporation in furtherance of the provisions of this Section and may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to ensure the payment of such amounts as may be necessary to effect indemnification as provided in this Section.

### 10.8 Indemnification of Employees and Agents of the Corporation

In addition to the rights of indemnification set forth in subsection 10.1, the corporation may, by action of the Board, grant rights to indemnification and advancement of expenses to employees and agents or any class or group of employees and agents of the corporation (a) with the same scope and effect as the provisions of this Section with respect to indemnification and the advancement of expenses of Directors and officers of the corporation; (b) pursuant to rights granted or provided by the Washington Business Corporation Act; or (c) as are otherwise consistent with law.

### 10.9 Persons Serving Other Entities

Any person who, while a Director or officer of the corporation, is or was serving (a) as a Director, officer, employee or agent of another corporation of which a majority of the shares entitled to vote in the election of its directors is held by the corporation or (b) as a partner, trustee or otherwise in an executive or management capacity in a partnership, joint venture, trust, employee benefit plan or other enterprise of which the corporation or a wholly owned subsidiary of the corporation is a general partner or has a majority ownership shall conclusively be deemed to be so serving at the request of the corporation and entitled to indemnification and the advancement of expenses under subsections 10.1 and 10.3 of this Section.

## SECTION 11. AMENDMENTS

These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by the Board, except that the Board may not repeal or amend any Bylaw that the shareholders have expressly provided, in amending or repealing such Bylaw, may not be amended or repealed by the Board. The shareholders may also alter, amend and repeal these Bylaws or adopt new Bylaws. All Bylaws made by the Board may be amended, repealed, altered or modified by the shareholders.

The foregoing Bylaws were adopted by the Board of Directors on ~~February~~ March 8, 2001

Timothy D. Bernardez

Timothy D. Bernardez, Secretary

# STOCKHOLDERS' AGREEMENT

among

PT HOLDINGS COMPANY, INC.

and

EACH OF THE STOCKHOLDERS

NAMED ON THE SIGNATURE PAGES HERETO

Dated as of _____, 2007

EXHIBIT C

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# STOCKHOLDERS' AGREEMENT

This Stockholders' Agreement (the "***Agreement***") is made as of the [•] day of [•], 2007 by and among PT HOLDINGS COMPANY, INC., a Delaware corporation (the "***Company***"), THE INITIAL STOCKHOLDERS PARTY HERETO and each person that hereafter becomes a Stockholder (as defined below) and is required by this Agreement to become a party hereto (collectively, the "***Stockholders***").

## W I T N E S S E T H :

**WHEREAS**, on January 29, 2007, the Company and certain of its subsidiaries filed a voluntary case for reorganization under Chapter 11 of the United States Bankruptcy Code (Chapter 11 Case no. 07-10340 Lead Case) (the "***Case***");

**WHEREAS**, the Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code Jointly Proposed by the Debtors and the Informal Committee of Senior Secured Noteholders, dated June 26, 2007 (the "***Plan***") filed in the Case provides that the Company shall issue shares of Common Stock, Preferred Stock and Warrants to purchase shares of Common Stock (each as defined below); and

**WHEREAS**, in connection with the consummation of the transactions contemplated by the Plan, the Company and the Stockholders desire to enter into this Agreement to provide certain rights and obligations among them;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

## ARTICLE I

## CERTAIN DEFINITIONS

The following terms shall have the definitions set forth below:

"*Affiliate*" means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"*Agreement*" has the meaning set forth in the preamble of this Agreement.

"*Board*" means the Board of Directors of the Company.

"*Business Day*" means any day (other than a day which is a Saturday, Sunday or legal holiday in the States of New York or Delaware) on which banks are open for business in the States of New York and Delaware.

"*Common Stock*" means the common stock, par value $.01 per share, of the Company, and any such stock into which such common stock shall have been exchanged or converted, or any stock resulting from any reclassification of such common stock.

"*Confidential Information*" means any information concerning the organization, business, technology, trade secrets, know-how, finance, transactions or affairs of a Person (whether conveyed in written, oral or in any other form and whether such information has been furnished before, on or after the date of this Agreement), which is material and is not known to the public or otherwise publicly available.

"*Dilutive Securities*" has the meaning set forth in Section 5.1 hereof.

"*Disposing Shareholder*" has the meaning set forth in Section 4.5 hereof.

"*Drag Along Right*" has the meaning set forth in Section 4.2(b) hereof.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"*Majority Sale Drag Along Right*" has the meaning set forth in Section 4.2(a) hereof.

"*Majority Sale*" has the meaning set forth in Section 4.2(a) hereof.

"*Notifying Stockholder*" has the meaning set forth in Section 4.3(b) hereof.

"*Offered Preferred Stock*" has the meaning set forth in Section 4.5(a) hereof.

"*Other Stockholders*" has the meaning set forth in Section 4.5(a) hereof.

"*Parties*" means collectively the Company and the Stockholders. Each of the Parties shall be referred to individually as a "*Party*."

"*Permitted Transferee*" has the meaning set forth in Section 4.1(f) hereof.

"*Person*" means an individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust or unincorporated organization, or government or any agency or political subdivision thereof.

"*Plan*" has the meaning set forth in the preamble of this Agreement.

"*Preferred Stock*" means the Series A preferred stock, par value $.01 per share, of the Company.

"*Pro Rata Portion*" has the meaning set forth in Section 4.5(b) hereof.

"*Proposing Majority Sale Stockholders*" has the meaning set forth in Section 4.2(a) hereof.

"*Proposing Series A Stockholders*" has the meaning set forth in Section 4.2(b) hereof.

"*Proposing Stockholders*" has the meaning set forth in Section 4.2(b) hereof.

"*Purchaser*" has the meaning set forth in Section 4.2(a) hereof.

"*Qualified Public Offering*" shall mean an underwritten public offering of shares of Common Stock that results in (i) the public distribution of shares of Common Stock representing at least ten percent (10%) of the shares of Common Stock to be outstanding immediately following such offering, (ii) an equity valuation, based on the offering price, of at least $[•] and (iii) the Common Stock being listed on a national securities exchange.

"*Registration Rights Agreement*" means the Registration Rights Agreement, dated as of the date hereof, among the parties hereto, as amended from time to time in accordance with its terms.

"*Sale Notice*" has the meaning set forth in Section 4.5(a) hereof.

"*Sale Notice Expiration*" has the meaning set forth in Section 4.5(c) hereof.

"*SEC*" means the United States Securities and Exchange Commission, or any other federal agency at the time administering the Securities Act or the Exchange Act.

"*Securities Act*" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"*Series A Sale*" has the meaning set forth in Section 4.2(b) hereof.

"*Shares*" means, collectively, all shares of Common Stock, including shares of Common Stock issued or issuable upon the exercise of any then exercisable Warrant, and Preferred Stock, including any subdivisions, combinations, splits or reclassifications thereof.

"*Stockholders*" means each Party (other than the Company) named on the signature pages to this Agreement and any other Person who is a Transferee or a Permitted Transferee of Shares, whether from another Stockholder or from the Company, who is required by this Agreement to agree to be bound by the terms and conditions of this Agreement. The term "***Stockholder***" means any one of the Stockholders and, in the case of a Stockholder who is a natural person, the term "***Stockholder***" also includes such Stockholder's legal representatives, executors or administrators when the context so requires.

"*Subscribing Stockholder*" has the meaning set forth in Section 4.5(b) hereof.

"*Subsidiary*" means any Person in which the Company, directly or indirectly through Subsidiaries or otherwise, (i) beneficially owns more than fifty percent (50%) of the equity interests in such Person, (ii) has the power to elect, or to direct the election of, a majority of the

members of the board of directors or other governing body of such Person, (iii) in the case of a Person that is a partnership, is a general partner, or (iv) in the case of a Person that is a limited liability company or other similar entity, is a managing member or serves in a similar role.

"*Substantial Sale*" has the meaning set forth in Section 4.3(b) hereof.

"*Tag Along Right*" has the meaning set forth in Section 4.3(a) hereof.

"*Transfer*" means any sale, transfer, assignment, conveyance or other disposition, including without limitation by merger, operation of law, bequest or pursuant to any domestic relations order, whether voluntarily or involuntarily, other than a sale, transfer, assignment, conveyance or other disposition by or to the Company; provided, that a pledge or the creation of a lien on the Shares shall not constitute a Transfer if the instrument creating such pledge or lien specifically references this Agreement and the pledgee or holder of the lien specifically agrees to be bound by the provisions hereof; provided further, that any foreclosure (including the retention of the collateral in satisfaction of any obligations) shall constitute a Transfer.

"*Transferee*" has the meaning set forth in Section 4.1(c) hereof

## ARTICLE II

## ACCESS TO INFORMATION

SECTION 2.1. General Information to be Provided by the Company. The Company shall provide to each Stockholder the following information:

(i) within forty-five (45) days after the end of each of the first three fiscal quarters for the Company, unaudited quarterly financial statements for the quarterly period then ended and the comparable period in the prior year (including a narrative comparing the results of operations and financial position of the Company in the most recent period to the corresponding period in the prior fiscal year (including, but not limited to any change made to the Company's management or the Board), which narrative need not contain all of the information that would be required in a "Management's Discussion and Analysis" pursuant to Regulation S-K under the Exchange Act); and

(ii) within one hundred twenty (120) days after the end of each fiscal year, audited financial statements for the Company and its consolidated Subsidiaries for such year (including a narrative comparing the results of operations and financial position of the Company in the most recent period to the corresponding period in the prior fiscal year, which narrative need not contain all of the information that would be required in a "Management's Discussion and Analysis" pursuant to Regulation S-K under the Exchange Act), together with a copy of the audit report of the Company's independent public accountants.

SECTION 2.2. Manner of Delivery. The information to be provided pursuant to Section 10.1 shall be considered timely delivered by the Company (i) if given by hand delivery, when actually received by the Stockholder, (ii) if sent through the United States mail,

when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the stockholder at the Stockholder's address appearing on the stock ledger of the Company, (iii) if sent for delivery by a nationally recognized delivery service, when deposited with such service, with fees thereon prepaid, addressed to the Stockholder at the Stockholder's address appearing on the stock ledger of the Company, and (iv) if given by a form of electronic transmission consented to by the Stockholder to whom the notice is given, (A) if by facsimile transmission, when directed to a number at which the Stockholder has consented to receive notice, (B) if by electronic mail, when directed to an electronic mail address at which the Stockholder has consented to receive notice, (C) if by a posting on an electronic network together with separate notice to the Stockholder of such specified posting, upon the later of (1) such posting and (2) the giving of such separate notice, and (D) if by any other form of electronic transmission, when directed to the Stockholder.

SECTION 2.3. Right to Access.

(a) Each holder of at least four percent (4%) of the then outstanding shares of Common Stock shall have the right, upon reasonable notice and at reasonable times, to meet with the management of the Company and to have access to the auditors and other representatives of the Company, provided, however, that the Company shall have a right to limit such access if the Company determines that it is necessary to do so in order for the Company to preserve any privilege that the Company is entitled to claim.

(b) The Company shall hold quarterly conference calls with the holders of at least four percent (4%) of the then outstanding shares of Common Stock to discuss the results of the Company's operations and the financial performance of the Company and to answer questions related thereto.

(c) Each Stockholder shall have the right to request and be provided with the information required by Rule 144A(d)(4) under the Securities Act, and each Stockholder may furnish such information to any prospective transferee that enters into a confidentiality agreement reasonably acceptable to the Company.

SECTION 2.4. Notice of Certain Events. The Company shall, within a reasonable time after the occurrence of an event described below, provide notice to the Stockholders of (i) any litigation or administrative proceeding commenced against the Company or any of its Subsidiaries which, were the Company subject to the Exchange Act, would be required to be reported in a Current Report on Form 8-K or in an Annual Report on Form 10-K and (ii) any default or event of default under an agreement which, if the Company were subject to the reporting requirements under the Exchange Act, would be required to be included in a Current Report on Form 8-K pursuant to Item 2.04 of such Form.

## ARTICLE III

## CERTIFICATE OF INCORPORATION AND BYLAWS

The Stockholders acknowledge and agree that in connection with the execution of this Agreement, the initial Certificate of Incorporation and the initial Bylaws of the Company shall be as set forth in Exhibits A and B hereto, respectively.

## ARTICLE IV

## TRANSFERS OF SHARES

SECTION 4.1. Restrictions on Transfers; Permitted Transferees.

(a) Each Stockholder, severally and not jointly, agrees and acknowledges that such Stockholder will not Transfer any Shares unless (i) such Transfer complies with the provisions of this Agreement, and (ii) (x) such Transfer is pursuant to an effective registration statement under the Securities Act and has been registered under all applicable state securities or "blue sky" laws or (y) no such registration is required for such Transfer because of the availability of an exemption from registration under the Securities Act and all applicable state securities or "blue sky" laws.

(b) No Stockholder may, without the prior written consent of the holders of a majority of the outstanding Shares, Transfer any Shares (i) if, as a result of such Transfer, any class of equity securities of the Company would be held of record by more than three hundred (300) Persons or otherwise in circumstances that the Board determines could require the Company to file reports under the Exchange Act, if it is not otherwise subject to such requirements, and (ii) unless the acquirer of the Shares shall have executed and delivered to the Company, as a condition precedent to any Transfer of Shares, an instrument in form and substance satisfactory to the Company confirming that such acquirer takes such shares subject to all the terms and conditions of this Agreement, and agrees to be bound by the terms of this Agreement.

(c) The Company shall not issue, sell or otherwise transfer any Shares to any Person (all Persons acquiring Shares from the Company, regardless of the method of transfer, shall be referred to collectively as "***Transferees***" and individually as a "***Transferee***") unless such Shares bear legends as provided in Section 4.4.

(d) The Company shall not transfer upon its books any Shares to any Person except in accordance with this Agreement.

(e) None of the restrictions contained in this Article V with respect to Transfers of Shares (other than those set forth in Sections 4.1(a), 4.1(b) and 4.4) shall apply: (i) to any transfer or assignment for consideration or to any gift by any Stockholder to any spouse, child, parent, sibling or grandchild of such Stockholder, or by any of such relatives to such Stockholder or to any one or more of such relatives, or by any Stockholder or any such relatives to a trust of which there are no principal beneficiaries other than such Stockholder and/or one or more of such relatives; (ii) to any transfer to a legal representative in the event any

Stockholder becomes mentally incompetent; (iii) to any transfer by will or the laws of descent; and (iv) with respect to a Stockholder which is not an individual, to any transfer by such Stockholder to any Affiliate thereof; provided that in each of cases (i) through (iv) each transferee, donee or distributee (a "***Permitted Transferee***") agrees to take subject to and to comply with the provisions of this Agreement, and each Permitted Transferee shall have executed and delivered documentation reasonably satisfactory to the Company evidencing such agreement. For purposes hereof, the Permitted Transferees of a Stockholder shall include the Permitted Transferees of such Stockholder's Permitted Transferees.

SECTION 4.2. Drag Along Right.

(a) In the event that any Stockholder or any group of Stockholders acting together or pursuant to a common plan or arrangement, proposes to sell, or otherwise dispose of, to a Person or a group of Persons, other than an Affiliate of the transferring Stockholders (a "***Purchaser***"), Shares representing more than fifty percent (50%) of the then outstanding shares of Common Stock (a "***Majority Sale***"), such Stockholder(s) (the "***Proposing Majority Sale Stockholders***"), shall have the right (the "***Majority Sale Drag Along Right***") to require each of the other Stockholders, to sell, transfer and deliver, or cause to be sold, transferred and delivered, to the Purchaser a number of Shares of Common Stock held by each such other Stockholder as shall equal the same percentage of the Shares held by such other Stockholders as the percentage of the Shares of Common Stock held by the Proposing Stockholders that the proposing Stockholders propose to sell to the Purchaser, upon the same terms (including the purchase price) and subject to the same conditions as are applicable to the Proposing Stockholders.

(b) Provided that any Shares of Preferred Stock are outstanding, on and after [_____, 2012][1], in the event that the Stockholders holding a majority of the outstanding Preferred Stock agree to or otherwise approve a sale of the Corporation, by merger, sale of stock, sale of assets or otherwise, (the "***Series A Sale***", and together with a Majority Sale, a "***Drag Along Sale***"), then such Stockholder(s) (the "***Proposing Series A Sale Stockholders***", and together with the Proposing Majority Sale Stockholders, the "***Proposing Stockholders***") shall have the right (the "***Series A Sale Drag Along Right***", and together with the Majority Sale Drag Along Right, the "***Drag Along Right***") to require each of the other Stockholders, to sell, transfer and deliver, or cause to be sold, transferred and delivered, to the Purchaser all Shares of Common Stock held by each such other Stockholder upon the same terms (including the purchase price) and subject to the same conditions as are applicable to the Proposing Stockholders.

(c) The applicable Proposing Stockholders shall provide notice to each of the other Stockholders (a "***Drag Along Notice***") of (i) the Proposing Stockholders intent to exercise their Drag Along Right in accordance with Section 4.2(a) or (b); (ii) the identity of the proposed Purchaser in such Drag Along Sale and (iii) a summary of the purchase price and other relevant terms and conditions of such Drag Along Sale no later than ten (10) Business Days prior to the proposed closing of such Drag Along Sale. At the closing of the sale pursuant to the applicable Drag Along Right, the applicable Proposing Stockholders and the other Stockholders subject to

[1] Five years from the Closing Date.

such Drag Along Right shall deliver to the proposed Purchaser certificates representing their Shares of Common Stock, duly endorsed in blank for transfer or accompanied by stock powers duly endorsed in blank, and the Purchaser shall pay to each such Stockholder the consideration payable at the Closing pursuant to such transaction. Notwithstanding the foregoing, any such transaction may be structured as a merger, consolidation, amalgamation or similar transaction at the discretion of the Proposing Stockholders and the Purchaser and, in such event, each Stockholder subject to the Drag Along Right agrees, if such transaction entitles Stockholders to vote thereupon or consent thereto, (i) to vote all of the Shares of Common Stock held by such Stockholder in favor of, or to consent to, any such transaction and (ii) if applicable, not to exercise any appraisal or similar rights with respect to such transaction.

(d) Notwithstanding anything herein to the contrary:

(i) No Stockholder shall be required (A) to make representations and warranties in connection with a Drag Along Sale, except representations and warranties with respect to such Stockholder's authority, and title and ownership of the Common Stock owned by it, (B) except as provided in (C) below, to indemnify the Purchaser or any other Person in connection with a Drag Along Sale other than for a breach of a representation or warranty made by the Stockholder pursuant to clause (A) above, or (C) to make a payment in connection with any indemnification obligation to the Purchaser or a purchase price adjustment for an amount that exceeds the lesser of (x) such Stockholder's pro rata share of such indemnification obligation or purchase price adjustment obligation, based on such Stockholder's pro rata share of the aggregate net proceeds received by all of the Stockholders arising out of the ownership of Common Stock in connection with the Drag Along Sale, or (y) the amount of the net proceeds received by such Stockholder in the Approved Sale; provided, however, that the limitations of this clause (C) shall not apply to payments required in connection with an indemnification obligation for a breach of a representation made by the Stockholder pursuant to clause (A) above.

(ii) Any proceeds from a Drag Along Sale due or owing to the Company which are subject to claims or potential claims for indemnification or purchase price adjustment from the Company shall, unless the Company elects otherwise, be held in escrow pending expiration of all such claims or potential claims.

SECTION 4.3. Tag Along Rights.

(a) In the event of a Majority Sale, the Proposing Stockholders shall provide notice of such proposed Majority Sale to each of the other Stockholders no later than twenty (20) Business Days prior to the proposed closing of such Majority Sale, and each of such other Stockholders shall have the right (a "***Majority Tag Along Right***") to require the Proposing Stockholders to reduce the number of Shares of Common Stock to be sold by them and to cause the Purchaser to purchase, on the same terms and conditions as the Proposing Stockholders, from the Stockholders electing to exercise a Majority Tag Along Right, that number of Shares of Common Stock derived by multiplying the total number of Shares to be purchased by the Purchaser by the electing Stockholder's fractional interest, rounded to the nearest one hundredth of a percent.

(b) In the event that a Stockholder or group of Stockholders acting together or pursuant to a common plan or arrangement proposes to sell, or otherwise dispose of, to a Purchaser, Shares representing more than thirty-five percent (35%) of the then outstanding shares of Common Stock (a "***Substantial Sale***"), such Stockholders (the "***Notifying Stockholders***") shall provide notice of such proposed Substantial Sale to each of the other Stockholders no later than twenty (20) Business Days prior to the proposed closing of such Substantial Sale, and each of such other Stockholders holding more than 5% of the issued and outstanding Shares of Common Stock shall have the right (a "***Substantial Tag Along Right***") to require the Notifying Stockholders to reduce the number of Shares of Common Stock to be sold by and them and to cause the Purchaser to purchase, on the same terms and conditions as the Notifying Stockholders, from the Stockholders holding more than 5% of either class of issued and outstanding Shares of Common Stock electing to exercise a Substantial Tag Along Right, that number of Shares of Common Stock derived by multiplying the total number of Shares to be purchased by the Purchaser by the electing Stockholder's fractional interest, rounded to the nearest one hundredth of a percent.

(c) For purposes of this Section 4.3, the term "fractional interest" means (a) the sum of the total number of Shares of Common Stock owned by the electing Stockholder, divided by (b) the sum of the total number of Shares of Common Stock outstanding. Each electing Stockholder shall give written notice of its election to the Proposing Stockholders no later than five (5) Business Days after its receipt of a Tag Along Notice.

SECTION 4.4. Legend on Certificates. Each outstanding certificate representing Shares that are subject to this Agreement shall bear an endorsement reading substantially as follows:

> "THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED ON **[•]**, 2007 PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENT OF SECTION 5 OF THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT") (INCLUDING, BUT NOT LIMITED TO, SECTION 1145 OF THE BANKRUPTCY CODE, 11 U.S.C. 1145) AND HAVE NOT BEEN REGISTERED UNDER THE ACT OR ANY STATE SECURITIES LAW, AND TO THE EXTENT THE HOLDER OF THESE SECURITIES IS AN "UNDERWRITER" AS DEFINED IN SECTION 1145(B)(1) OF THE BANKRUPTCY CODE, SUCH SECURITIES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN EXEMPTION FROM REGISTRATION THEREUNDER.
>
> THE SALE, ASSIGNMENT, PLEDGE, ENCUMBRANCE OR OTHER TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS RESTRICTED BY THE TERMS OF, AND THE HOLDER HEREOF IS SUBJECT TO CERTAIN OTHER OBLIGATIONS PURSUANT TO, A STOCKHOLDERS' AGREEMENT, DATED AS OF **[•]**, 2007, AMONG THE COMPANY AND CERTAIN HOLDERS OF ITS SECURITIES. BY ACCEPTING ANY INTEREST IN THE SECURITIES REPRESENTED BY THIS CERTIFICATE, THE RECIPIENT OF SUCH SECURITIES SHALL BE

DEEMED TO AGREE TO AND SHALL BECOME BOUND BY SUCH TRANSFER RESTRICTIONS AND OTHER OBLIGATIONS. A COPY OF SAID STOCKHOLDERS' AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY."

SECTION 4.5. Right of First Refusal. Any Stockholder proposing to Transfer Preferred Stock (a "***Disposing Stockholder***"), other than a Transfer permitted pursuant to Sections 4.1(e), 4.2 and 4.3 hereof agrees not to consummate such Transfer until the parties to such Transfer have been finally determined pursuant to and in compliance with this Section 4.5.

(a) Sale Notice by Disposing Stockholder. The Disposing Stockholder will deliver a written notice (the "***Sale Notice***") to the Company and each of the other Stockholders that own Preferred Stock who are not the Disposing Stockholder (collectively, the "***Other Stockholders***") disclosing in reasonable detail the identity of the prospective transferees, the Preferred Stock proposed to be Transferred (the "***Offered Preferred Stock***") and the terms and conditions of the proposed Transfer.

(b) Purchase by Other Stockholders. Each Other Stockholder may elect to purchase all or a portion of its pro rata portion (based on the Shares of Preferred Stock held by each such Other Stockholder) (the "***Pro Rata Portion***") of the Offered Preferred Stock upon the same terms and conditions as those set forth in the Sale Notice by delivering a written notice of such election to the Disposing Stockholder and the Company within thirty (30) days after the receipt of the Sale Notice from the Disposing Stockholder; provided, however, that the Other Stockholders shall be allowed to pay cash equal to the fair market value (as determined in good faith by the Board of Directors) of any non-cash consideration described in the Sale Notice. If an Other Stockholder elects to purchase its full Pro Rata Portion (a "***Subscribing Stockholder***"), such Subscribing Stockholder may also specify in its election notice the maximum number of additional Offered Preferred Stock the Subscribing Stockholder is committed to purchase in the event that any Other Stockholder elects to purchase less than its entire Pro Rata Portion of the Offered Preferred Stock. In the event of oversubscription by the Subscribing Stockholders, the Company will allocate the remaining Offered Preferred Stock among the Subscribing Stockholders according to their respective Pro Rata Portions.

(c) Time for Completion. If the Other Stockholders and/or the Company have not elected to purchase all of the Offered Preferred Stock within thirty (30) days after the delivery of the Sale Notice, or have so elected to purchase all of the Offered Preferred Stock but have not consummated the purchase of the Offered Preferred Stock within forty-five (45) days (subject to extension for purposes of obtaining any necessary governmental approvals) of the delivery of the Sale Notice ("***Sale Notice Expiration***"), the Disposing Stockholder may Transfer the Offered Preferred Stock within ten (10) days of the Sale Notice Expiration to the transferees identified in the Sale Notice and at a price and on terms no more favorable to such transferees than those specified in the Sale Notice. Any Securities not transferred within such ten (10) day period will again be subject to the provisions of this Section 4.5 with respect to any subsequent Transfer.

SECTION 4.6. No Circumvention of Stock Transfer Restrictions. Each Party agrees that the Transfer restrictions in this Agreement may not be avoided by the holding of

Shares directly or indirectly through a Person that can itself be sold in order to dispose of an interest in Shares free of such restrictions. Any Transfer of any Shares (or other interest) resulting in any change in the control, directly or indirectly, of a Stockholder or of any other Person having control, directly or indirectly, over that Stockholder shall be treated as being a Transfer of the Shares held by that Stockholder, and the provisions of this Agreement that apply in respect of the Transfer of Shares shall thereupon apply in respect of the Shares so held.

## ARTICLE V

## ADDITIONAL AGREEMENTS

SECTION 5.1. Dilutive Securities.

(a) In the event that the Company proposes to sell or otherwise issue equity securities of the Company, any securities convertible into or exchangeable for equity securities of the Company or any options rights or warrants to purchase equity securities of the Company (collectively, "***Dilutive Securities***"), each Stockholder holding more than 5% of issued and outstanding Shares of Common Stock (including shares of Common Stock issuable upon the exercise of an exercisable Warrant) shall have the right to acquire that number or amount of the Dilutive Securities, at the price and upon the same terms and conditions as such Dilutive Securities are to be offered or placed by the Company to third parties, as shall enable such Stockholder to maintain the percentage equity interest of Common Stock (including shares of Common Stock issuable upon the exercise of an exercisable Warrant) of such Stockholder in the Company immediately prior to such issuance. No Dilutive Securities shall be issued by the Company to any Person unless the Company has first offered such securities to the Stockholders holding more than 5% of issued and outstanding Shares of Common Stock (including shares of Common Stock issuable upon the exercise of an exercisable Warrant) in the accordance with this Section 5.1. This Section 5.1 shall not apply to (i) the sale or issuance of Dilutive Securities pursuant to any employee stock option plan, stock purchase plan, employee benefit plan, employment contract or any similar benefit or incentive program or agreement covering employees or consultants of the Company and its Subsidiaries, where the primary purpose of such plan, program or agreement is not to raise capital for the Company; (ii) the issuance of equity securities pursuant to any merger or business combination transaction involving the Company or any of its Subsidiaries or as consideration for the acquisition by the Company or any of its Subsidiaries of asset or another business entity; (ii) the issuance of equity securities pursuant to the Warrants; or (iv) any public offering of equity securities registered under the Securities Act.

(b) In the event the Company proposes, at any time during which clause (a) applies, to issue or sell any equity securities, the Company shall, no later than fifteen (15) Business Days prior to the consummation of such transaction, give notice in writing to the Stockholders holding more than 5% of either class of issued and outstanding Shares. Such notice shall contain an offer to sell to such Stockholder, on the same terms and conditions (including the closing date) offered to the proposed transferee(s) of such equity securities, such Stockholder's pro rata share of such securities (the "***Dilutive Rights Offer***"). If any such Stockholder fails to accept in writing the Dilutive Rights Offer by the twelfth (12th) day after the Company's delivery of such Dilutive Rights Offer, such non-responding stockholder shall have

no further rights with respect to the proposed transaction. To the extent that elections pursuant to this Section 5.1(b) shall not be made with respect to any Dilutive Securities within such fifteen (15) Business Day period (or during such additional three (3) Business Day period as provided below), then the Company may issue such Dilutive Securities, but only for consideration not less than, and otherwise on terms no less favorable to the Company than ,those set forth in the Company's Dilutive Rights Offer and only within ninety (90) days of such fifteen (15) Business Day period. In the event that any Stockholder accepts the Dilutive Rights Offer, (i) the Company shall sell to such Stockholder and such Stockholder shall purchase from the Company, for the consideration and on the terms set forth in the Dilutive Rights Offer such securities as the Stockholder shall have elected to purchase, (ii) the Company shall offer to each Stockholder that has agreed to purchase Dilutive Securities the right to buy all or any part of such Stockholder's proportionate share of the balance of the Dilutive Securities the Company proposes to sell so long as such Stockholder provides notice to the Company of its election to purchase all or a part of such Dilutive Securities within three (3) Business Days of receipt of such additional offer, and (iii) the Company may sell the balance, if any, of the Dilutive Securities it proposed to sell in accordance with the immediately preceding sentence.

SECTION 5.2. Confidentiality. Each Stockholder who has received Confidential Information from the Company or its representatives agrees that, except with respect to disclosure (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors who need to know such information for the purposes of evaluating such Stockholder's ownership of Common Stock (it being understood that such Stockholder will cause such Persons to treat such information in a confidential manner and in accordance with the terms of this Section 5.2), (b) to the extent necessary or required under any applicable law or in connection with any judicial process regarding any legal action, suit or proceeding arising out of or relating to this Agreement, after giving prior written notice to the other parties to this Agreement to the extent practicable under the circumstances, and subject to having undertaken any reasonably available arrangements to protect confidentiality (for example, seeking a protective order in relation to such Confidential Information), or (c) to the extent such Confidential Information (i) becomes generally available to the public other than as a result of a breach of this Section or (ii) becomes available to any Stockholder on a nonconfidential basis from a source (other than any party to this Agreement or an Affiliate or representative thereof) without a breach of any obligation of confidentiality that such source may have to the Company or any party to this Agreement and that is known to such Stockholder, it shall not, and shall cause its Affiliates and representatives not to, reveal to any other Person any such Confidential Information without the prior written consent of the Company; provided, however, a Stockholder may disclose Confidential Information with respect to the Company to a third party who is not a competitor to the Company and who has executed a confidentiality agreement with such Stockholder, in form and substance reasonably acceptable to the Company, whereby such party is bound by the confidentiality provisions of this Agreement.

SECTION 5.3. Board of Directors.

(a) Outside Director. So long as any Person, together with its Affiliates, beneficially owns in excess of 35% of the outstanding Common Stock (a "***Significant Stockholder***"), the holders of Common Stock who are not a Significant Stockholder (the "***Other Stockholders***") shall have the right, commencing with the annual stockholders' meeting to be

held in 2008 (or if no such annual meeting is held on or before _____, 2008, at a special meeting called by holders of not less than 25% of the outstanding Common Stock), to designate, by majority vote of the shares of Common Stock owned by the Other Stockholders, one person (the "***Other Stockholders Designee***") to serve as a director on the Board.

(b) Notification of Significant Stockholders. If a new Other Stockholders Designee is proposed to be appointed to the Board, the Other Stockholders shall notify the Company and the Significant Stockholders in writing of the proposed appointment and the identity of the Person proposed to be appointed. Any such notification shall contain sufficient information to permit the Significant Stockholders to make a determination as to whether or not such Person qualifies with the requirements of Section 5.3(a). The Other Stockholders or the Person nominated for election shall provide to the Significant Stockholders information reasonably requested by the Significant Stockholders in order to make such determination. The Significant Stockholders shall, within five (5) Business Days of receiving notice of the proposed appointment and any additional information reasonably requested by it, notify the Company whether it approves the appointment of the new Other Stockholders Designee (such approval not to be unreasonably withheld). Failure to so notify the Company shall be deemed approval of such Person. Should the Significant Stockholders not approve of the Other Stockholders Designee, such Other Stockholders Designee shall not take office, and the Other Stockholders may designate a new Other Stockholders Designee, which designation shall be notified to the Company and the Significant Stockholders in accordance with the provisions of this Section 5.3(d).

(c) Voting. The Significant Stockholders shall vote all of their shares of Common Stock in favor of the election of the Other Stockholders Designee at each annual stockholders meeting, or any special meeting of the stockholders at which an Other Stockholders Designee has been properly designated. In the event of the death, resignation or removal of any Other Stockholders Designee as a Director, if a qualifying replacement Other Stockholders Designee is properly nominated, the Board shall promptly elect such replacement Other Stockholders Designee as a director, failing which Other Stockholders of at least 25% of the outstanding Common Stock may call a special meeting of the Stockholders for the purpose of electing the Other Stockholders Designee as a director.

(d) Removal of Other Stockholders Designee. The Other Stockholders Designee may only be removed from the Board (with or without cause) on the written direction or vote of a majority of the Other Stockholders. Any vacancies caused by the removal or resignation of the Other Stockholders Designee during the term of office of such director shall be filled by the affirmative vote of a majority of the shares of Common Stock held by the Other Stockholders. Upon the termination of the right of the Other Stockholders to designate a director as set forth in Section 5.3(a), the Person, if any, serving at such time as an Other Stockholders Designee shall resign and the vacancy created thereby shall be filled by the stockholders of the Company, voting together as a single class, as set forth in the Bylaws for the election of directors.

(e) Exercise of Rights. The failure of the Other Stockholders to fully exercise their rights pursuant to this Section 5.3 shall not constitute a waiver or diminution of such rights, nor shall it prevent the Other Stockholders from fully exercising such rights prospectively.

## ARTICLE VI

## MISCELLANEOUS

SECTION 6.1. Term. This Agreement shall terminate on the completion of a Qualified Public Offering; provided, that, the provisions of Section 5.2 shall survive the termination of this Agreement.

SECTION 6.2. Modifications. This Agreement may, except as expressly provided otherwise herein, be modified or amended only by a writing signed by (i) the Company, with the approval of a majority of the entire Board and (ii) Stockholders holding at least 66⅔% of the Shares then held by the Stockholders; provided, that, Section 5.3 may not be amended in a manner adverse to the Other Stockholders except by vote or consent by holders of a majority of the outstanding Common Stock held by the Other Stockholders.

SECTION 6.3. Aggregation of Common Stock. All shares of Common Stock or Preferred Stock held or acquired by Affiliates shall be aggregated for the purpose of determining the availability of any rights under this Agreement.

SECTION 6.4. Insurance and Indemnification Agreements. The Company shall maintain insurance, at its expense, to protect all directors of the Corporation, in amounts as reasonably agreed to by the Board. Upon request by any director, the Company shall enter into an indemnification agreement with such director, upon terms reasonably acceptable to both parties but in all cases to the fullest extent permitted by the General Corporation Laws of the State of Delaware as may be amended.

SECTION 6.5. Notices. All notices, requests, waivers and other communications made pursuant to this Agreement shall be in writing and shall be deemed to have been effectively given (a) when personally delivered to the party to be notified; (b) when sent by confirmed facsimile to the party to be notified at the number set forth below; (c) three (3) Business Days after deposit in the United States mail postage prepaid by certified or registered mail return receipt requested and addressed to the party to be notified as set forth below; or (d) one Business Day after deposit with a national overnight delivery service, postage prepaid, addressed to the party to be notified as set forth below with next-business-day delivery guaranteed, in each case as follows:

In the case of the Company, to:

PT Holdings Company, Inc.

_____

_____

Attn: _____

With a copy to (which shall not constitute notice):

_____

_____

_____

Attn: _____

[In the case of _____, to:

_____
_____
_____
Attn: _____

With a copy to (which shall not constitute notice):

_____
_____
_____
Attn: _____]

In the case of any other Stockholder, to such Stockholder at its address set forth in the stock ledger of the Company

A party may change its address for purposes of notice hereunder by giving 10 days' notice of such change to all other parties in the manner provided in this Section 6.4.

SECTION 6.6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto; provided that the transfer of Shares to any transferee is effected in accordance with the provisions of this Agreement.

SECTION 6.7. Entire Agreement. This Agreement (together with the documents attached as exhibits hereto and any documents or agreements (specifically contemplated hereby) supersedes all prior discussions and agreements among any of the parties hereto (and their Affiliates) with respect to the subject matter hereof and contains the entire understanding of the parties with respect to the subject matter hereof.

SECTION 6.8. Counterparts. This Agreement may be executed in counterparts, each of which shall be signed by the Company and one or more Stockholders, and all of which are deemed to be one and the same agreement binding upon the Company and each of the Stockholders.

SECTION 6.9. Headings. The headings of the various sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of this Agreement.

SECTION 6.10. Bylaws. If and to the extent that any provision of this Agreement conflicts with or is inconsistent with any provision of the Bylaws of the Company, such provision of this Agreement shall be controlling and, to the extent practicable, the conflicting or inconsistent provision of the Bylaws shall be construed in a manner consistent with such provision of this Agreement. It is hereby agreed that the Bylaws of the Company shall not be amended to be inconsistent with this Agreement.

SECTION 6.11. Further Acts and Assurances. Each Party shall give such further assurance, provide such further information, take such further actions and execute and deliver such further documents and instruments as are, in each case, within its power to give, provide and take so as to give full force and effect to the provisions of this Agreement.

SECTION 6.12. Governing Law; Consent to Jurisdiction and Service of Process. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to its conflicts of law doctrine. Each party hereby submits to the exclusive jurisdiction of the United States of America District Court for the Southern District of New York and of any New York State Court sitting in the City of New York and any judicial proceeding brought against any of the parties on any dispute arising out of this Agreement or any matter related hereto shall be brought in such courts. Each party hereby irrevocably waives, to the fullest extent permitted by law, any objection it may have or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. Each party hereby consents to process being served in any such proceeding by the mailing of a copy thereof by registered or certified mail, postage prepaid, to the address specified in Section 6.4, or in any other manner permitted by law. EACH PARTY HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUCH ACTION OR PROCEEDING.

SECTION 6.13. Injunctive Relief. It is hereby agreed and acknowledged that it will be impossible to measure in money the damages that would be suffered if the parties to this Agreement fail to comply with any of the obligations imposed on them by this Agreement and that in the event of any such failure, an aggrieved person will be irreparably damaged and will not have an adequate remedy at law. Any such person shall, therefore, be entitled to seek injunctive relief, including specific performance, to enforce such obligations, and if any action should be brought in equity to enforce any of the provisions of this Agreement, none of the parties hereto shall raise the defense that there is an adequate remedy at law.

SECTION 6.14. Severability. The invalidity or unenforceability of any provisions of this Agreement in any jurisdiction shall not affect the validity, legality or enforceability of the remainder of this Agreement in such jurisdiction or the validity, legality or enforceability of any provision of this Agreement in any other jurisdiction, it being intended that all rights and obligations of the parties hereunder shall be enforceable to the fullest extent permitted by law.

SECTION 6.15. Recapitalization, etc. In the event that any capital stock or other securities are issued in respect of, in exchange for, or in substitution of, shares of capital stock of the Company by reason of any reorganization, recapitalization, reclassification, merger, consolidation, spin-off, partial or complete liquidation, stock dividend, split-up, sale of assets, distribution to stockholders or combination of shares or any other change in the Company's capital structure, appropriate adjustments shall be made to the provisions of this Agreement so as to fairly and equitably preserve, as far as practicable, the original rights and obligations of the parties hereto under this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned, thereunto duly authorized, have hereunto set their respective hands as of the day and year first above written.

**PT HOLDINGS COMPANY, INC.**

By: _____
Name:
Title:

**STOCKHOLDERS**

By: _____
Name:
Title:

By: _____
Name:
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By: _____
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# EXHIBIT A

# CERTIFICATE OF INCORPORATION

# EXHIBIT B

# BYLAWS

# REGISTRATION RIGHTS AGREEMENT

among

PT HOLDINGS COMPANY, INC.

and

EACH OF THE STOCKHOLDERS

NAMED ON THE SIGNATURE PAGES HERETO

Dated as of _____, 2007

EXHIBIT D

TABLE OF CONTENTS

# REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT, is made as of the ____ day of _____, 2007, among PT Holdings Company, Inc., a Delaware corporation (the "***Company***"), and the Holders (as defined below). Capitalized terms not otherwise defined herein have the meanings set forth in Section 1.

**W I T N E S S E T H :**

**WHEREAS**, pursuant to the terms of that certain Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code Jointly Proposed by the Debtors and the Informal Committee of Senior Secured Noteholders, dated June 26, 2007 (the "***Plan***"), the Company shall issue to the Holders shares (the "***Shares***") of Common Stock and Warrants (as defined below) to purchase shares of Common Stock; and

**WHEREAS**, in order to induce the Holders to complete the transactions contemplated by the Plan, on the effective date of the Plan, the Company is granting to the Holders certain rights to cause the Company to register the Shares and certain other Registrable Shares (as defined below), on the terms and subject to the conditions set forth herein.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

**Section 1. Definitions.** As used in this Agreement, the following terms shall have the following meanings:

"***Advice***" shall have the meaning set forth in Section 5 hereof.

"***Affiliate***" means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"***Business Day***" means any day (other than a day which is a Saturday, Sunday or legal holiday in the States of New York or Delaware) on which banks are open for business in the States of New York and Delaware.

"***Capital Stock***" means, with respect to any person, any and all shares, interests, participations or other equivalents (however designated) of corporate stock issued by such person, including each class of common stock and preferred stock of such person.

"***Common Stock***" means the common stock, par value $.01 per share, of the Company, and any such stock into which such common stock shall have been exchanged or converted or any stock resulting from any reclassification of such common stock.

"***Company***" shall have the meaning set forth in the introductory clauses hereof.

"***Delay Period***" shall have the meaning set forth in Section 2(d) hereof.

"***Demand Notice***" shall have the meaning set forth in Section 2(a) hereof.

"***Demand Registration***" shall have the meaning set forth in Section 2(b) hereof.

"***Effectiveness Period***" shall have the meaning set forth in Section 2(c) hereof.

"***Exchange Act***" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"***Hold Back Period***" shall have the meaning set forth in Section 4 hereof.

"***Holder***" means each person identified as a Holder on the signature pages hereto who is the record or beneficial owner of Registrable Shares, together with their respective successors and permitted assigns.

"***Interruption Period***" shall have the meaning set forth in Section 5 hereof.

"***IPO***" shall mean the underwritten initial public offering of Common Stock by the Company that results in net proceeds to the Company of at least $[50] million and following which the Common Stock is listed on a national securities exchange.

"***Person***" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"***Piggyback Registration***" shall have the meaning set forth in Section 3 hereof.

"***Plan***" shall have the meaning ascribed to it in the preamble.

"***Prospectus***" means the prospectus included in any Registration Statement (including a prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Shares covered by such Registration Statement and all other amendments and supplements to such prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such prospectus.

"***Registrable Shares***" means (i) the Shares, (ii) shares of Common Stock issued or issuable upon the exercise of any Warrant and (iii) any additional Shares acquired by any Holder after the date hereof if the Shares would constitute "restricted securities" in the hands of such Holder within the meaning of Rule 144 under the Securities Act, including without limitation any shares of Common Stock issued or distributed by way of a dividend, stock split or other distribution in respect of the Shares, or acquired by way of any rights offering or similar offering made in respect of the Shares. As to any particular Registrable Shares, once issued, such

securities shall cease to be Registrable Shares when (i) a registration statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been disposed of in accordance with such registration statement, (ii) they shall have been distributed to the public pursuant to Rule 144, or (iii) all securities held by a Holder may be transferred without restriction pursuant to Rule 144(k) under the Securities Act or (iv) they shall have ceased to be outstanding.

"***Registration***" means registration under the Securities Act of an offering of Registrable Shares pursuant to a Demand Registration or a Piggyback Registration.

"***Registration Statement***" means any registration statement under the Securities Act of the Company that covers any of the Registrable Shares pursuant to the provisions of this Agreement, including the related Prospectus, all amendments and supplements to such registration statement, including pre- and post-effective amendments, all exhibits thereto and all material incorporated by reference or deemed to be incorporated by reference in such registration statement. The term "Registration Statement" shall also include any registration statement filed pursuant to Rule 462(b) to register additional securities in connection with any offering.

"***SEC***" means the Securities and Exchange Commission.

"***Securities Act***" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"***Shares***" shall have the meaning ascribed to it in the preamble.

"***Shelf Registration***" shall have the meaning set forth in Section 2(b) hereof.

"***underwritten registration***" or "***underwritten offering***" means a registration under the Securities Act in which securities of the Company are sold to an underwriter for reoffering to the public.

"***Warrant***" means any warrant issued by the Company pursuant to the terms of the Securities Purchase Agreement, dated as of [•], 2007, among the Company, the Issuers party thereto, the Purchasers party thereto from time to time and Wells Fargo, Bank, N.A., as Administrative Agent.

**Section 2. Demand Registration.**

(a) (i) Subject to the terms and conditions hereof, any Holder or group of Holders holding in the aggregate at least 50.1% of the then-outstanding Common Stock shall have the right, commencing on the fifth anniversary of this Agreement, by written notice (the "***Demand Notice***") given to the Company, to request the Company to register under and in accordance with the provisions of the Securities Act all or any portion of the Registrable Shares designated by such Holder(s); provided, however, that prior to the time the Company is eligible to use Form S-3 for the registration of Registrable Shares for resale, such Holder(s) shall be entitled to four (4) Demand Registrations pursuant to the provisions of this Section 2(a)(i) unless any Demand Registration does not become effective or is not maintained in effect for the

respective periods set forth in Section 2(c), in which case such Holder(s) will be entitled to an additional Demand Registration pursuant hereto.

(ii) Subject to the terms and conditions hereof, following the completion of an IPO, any Holder or group of Holders holding, in the aggregate, ten percent (10%) or more of the Registrable Shares issued in connection with the execution of this Agreement, shall have the right to request the Company to register under and in accordance with the provisions of the Securities Act all or any portion of the Registrable Shares designated by such Holder(s); provided, however, that (i) such Registrable Shares represent at least ten percent (10%) of the Registrable Shares issued in connection with the execution of this Agreement, and (ii) prior to the time the Company is eligible to use Form S-3 for the registration of Registrable Shares for resale, all Holder(s), in the aggregate, shall be entitled to one (1) Demand Registration pursuant to the provisions of this Section 2(a)(ii) unless such Demand Registration does not become effective or is not maintained in effect for the respective periods set forth in Section 2(c), in which case the relevant Holder(s) will be entitled to an additional Demand Registration pursuant hereto. Following the completion of an IPO and the Company becoming eligible for use of Form S-3, such Holder or group of Holders holding, in the aggregate, ten percent (10%) or more of the Registrable Shares issued in connection with the execution of this Agreement, shall have the right to request the Company to register under and in accordance with the provisions of the Securities Act all or any portion of the Registrable Shares designated by such Holder(s); provided, however, that (i) such Registrable Shares represent at least ten percent (10%) of the Registrable Shares issued in connection with the execution of this Agreement.

(iii) Upon receipt of a Demand Notice, the Company shall promptly (and in any event within ten (10) Business Days from the date of receipt of such Demand Notice, notify all other Holders of the receipt of such Demand Notice and allow them the opportunity to include Registrable Shares held by them in the proposed registration by submitting their own Demand Notice. In connection with any Demand Registration in which more than one Holder participates, in the event that such Demand Registration involves an underwritten offering and the managing underwriter or underwriters participating in such offering advise in writing the Holders of Registrable Shares to be included in such offering that the total number of Registrable Shares to be included in such offering exceeds the amount that can be sold in (or during the time of) such offering without materially delaying or jeopardizing the success of such offering (including the price per share of the Registrable Shares to be sold), then the Registrable Shares to be offered for the account of the Holders who have elected to participate shall be equally divided between such Holders *pro rata* on the basis of the number of Registrable Shares beneficially owned by each such Holder.

(b) The Company, within forty-five (45) days of the date on which the Company receives a Demand Notice given by Holders in accordance with Section 2(a) hereof, shall file with the SEC, and the Company shall thereafter use its best efforts to cause to be declared effective as promptly as practicable, a Registration Statement on the appropriate form for the registration and sale, in accordance with the intended method or methods of distribution, of the total number of Registrable Shares specified by the Holders in such Demand Notice (a "***Demand Registration***"), which may, at the request of the Holders, be a "shelf" registration (a "***Shelf Registration***") pursuant to Rule 415 under the Securities Act.

(c) The Company shall use commercially reasonable efforts to keep each Registration Statement filed pursuant to this Section 2 continuously effective and usable for the resale of the Registrable Shares covered thereby (i) in the case of a Registration that is not a Shelf Registration, for a period of one hundred twenty (120) days from the date on which the SEC declares such Registration Statement effective and (ii) in the case of a Shelf Registration, for a period of two (2) years from the date on which the SEC declares such Registration Statement effective, in either case (x) until such earlier date as all of the Registrable Shares covered by such Registration Statement have been sold pursuant to such Registration Statement, and (y) as such period may be extended pursuant to this Section 2. The time period for which the Company is required to maintain the effectiveness of any Registration Statement shall be extended by the aggregate number of days of all Delay Periods and all Interruption Periods occurring with respect to such Registration and such period and any extension thereof is hereinafter referred to as the "***Effectiveness Period***."

(d) The Company shall be entitled to postpone the filing of any Registration Statement otherwise required to be prepared and filed by the Company pursuant to this Section 2, or suspend the use of any effective Registration Statement under this Section 2, for a reasonable period of time (a "***Delay Period***"), if the Board of Directors of the Company determines that in the Board of Directors' reasonable judgment and good faith the registration and distribution of the Registrable Shares covered or to be covered by such Registration Statement would materially interfere with any pending material financing, acquisition or corporate reorganization or other material corporate development involving the Company or any of its subsidiaries or would require premature disclosure thereof and promptly gives the Holders written notice of such determination, containing a general statement of the reasons for such postponement and an approximation of the period of the anticipated delay; provided, however, that (i) the aggregate number of days included in all Delay Periods during any consecutive twelve (12) months shall not exceed the aggregate of (x) forty-five (45) days minus (y) the number of days occurring during all Interruption Periods during such consecutive twelve (12) months and (ii) a period of at least forty-five (45) days shall elapse between the termination of any Delay Period or Interruption Period and the commencement of the immediately succeeding Delay Period. If the Company shall so postpone the filing of a Registration Statement, the Holders of Registrable Shares to be registered shall have the right to withdraw the request for registration by giving written notice from the Holders of a majority of the Registrable Shares that were to be registered to the Company within forty-five (45) days after receipt of the notice of postponement or, if earlier, the termination of such Delay Period (and, in the event of such withdrawal, such request shall not be counted for purposes of determining the number of requests for registration to which the Holders of Registrable Shares are entitled pursuant to this Section 2). The Company shall not be entitled to initiate or continue a Delay Period unless it shall (A) concurrently prohibit sales by all other security holders under registration statements covering securities held by such other security holders and (B) in accordance with the Company's policies from time to time in effect, forbid purchases and sales in the open market by senior executives of the Company.

(e) The Company shall not include any securities that are not Registrable Shares in any Registration Statement filed pursuant to this Section 2 without the prior written consent of the Holders of a majority in number of the Registrable Shares covered by such Registration Statement.

(f) Holders of a majority in number of the Registrable Shares to be included in a Registration Statement pursuant to this Section 2 may, at any time prior to the effective date of the Registration Statement relating to such Registration, revoke such request by providing a written notice to the Company revoking such request. Any such Demand Request so withdrawn shall not be counted for purposes of determining the number of requests for registration to which the Holders of Registrable Shares are entitled pursuant to this Section 2 if the Holders of Registrable Shares who revoked such request reimburse the Company for all its out-of-pocket expenses incurred in the preparation, filing and processing of the Registration Statement; provided, however, that, if such revocation was based on (i) the Company's failure to comply in any material respect with its obligations hereunder, (ii) the institution by the Company of a Delay Period or (iii) a material adverse change in the condition, business or prospects of the Company not known to the Holders at the time of their request for such Registration and such revocation was made with reasonable promptness after the Holders learned of such material adverse change, such reimbursement shall not be required.

**Section 3. Piggyback Registration.**

(a) Right to Piggyback. If at any time the Company proposes to file a registration statement under the Securities Act with respect to a public offering of securities of the same type as the Registrable Shares by the Company for its own account or for the account of any other holder of the Company's securities (other than a registration statement (i) in connection with an IPO, or (ii) on Form S-8 or Form S-4 or any successor forms thereto, or (iii) filed solely in connection with a dividend reinvestment plan or employee benefit plan covering officers or directors of the Company or its Affiliates), then the Company shall give written notice of such proposed filing to the Holders at least fifteen (15) days before the anticipated filing date. Such notice shall offer the Holders the opportunity to register such amount of Registrable Shares as they may request (a "***Piggyback Registration***"). Subject to Section 3(b) hereof, the Company shall include in each such Piggyback Registration all Registrable Shares with respect to which the Company has received written requests for inclusion therein within ten (10) days after notice has been given to the Holders. Each Holder shall be permitted to withdraw all or any portion of the Registrable Shares of such Holder from a Piggyback Registration at any time prior to the effective date of such Piggyback Registration.

(b) Priority on Piggyback Registrations. The Company shall permit the Holders to include all such Registrable Shares on the same terms and conditions as any similar securities, if any, of the Company or any other persons included therein. Notwithstanding the foregoing:

(i) If a Piggyback Registration is an underwritten primary registration on behalf of the Company and the Company or the managing underwriter advises the Holders in writing that the total amount of securities requested to be included in such Piggyback Registration exceeds the amount which can be sold in (or during the time of) such offering without delaying or jeopardizing the success of the offering (including the price per share of the securities to be sold), then the amount of securities to be offered for the account of the Holders and other holders of securities who have Piggyback Registration rights with respect thereto shall be allocated (i) first, to the Holders of the Registrable Securities requested to be

included in the Registration Statement pro rata on the basis of the number of Registrable Shares beneficially owned by each such Holder and (ii) second, other securities requested to be included in such Registration Statement; and

(ii) If a Piggyback Registration is an underwritten secondary registration on behalf of the Holders and the Company or the managing underwriter advises the Holders in writing that the total amount of securities requested to be included in such Piggyback Registration exceeds the amount which can be sold in (or during the time of) such offering without delaying or jeopardizing the success of the offering (including the price per share of the securities to be sold), then the amount of securities to be offered shall be allocated (i) first, to the Holders of the Registrable Securities requested to be included in the Registration Statement pro rata on the basis of the number of Registrable Shares beneficially owned by each such Holder and (ii) second, other securities requested to be included in such Registration Statement.

(c) Right To Abandon. Nothing in this Section 3 shall create any liability on the part of the Company to the Holders if the Company in its sole discretion should decide not to file a registration statement proposed to be filed pursuant to Section 3(a) hereof with respect to the pubic offering of securities for its own account or to withdraw such registration statement subsequent to its filing, regardless of any action whatsoever that a Holder may have taken, whether as a result of the issuance by the Company of any notice hereunder or otherwise.

**Section 4. Holdback Agreement.** If (i) in connection with an IPO, the Company shall file a registration statement (other than in connection with the registration of securities issuable pursuant to an employee stock option, stock purchase or similar plan or pursuant to a merger, exchange offer or a transaction of the type specified in Rule 145(a) under the Securities Act) with respect to an underwritten public offering of the Common Stock or securities convertible into, or exchangeable or exercisable for, such securities, (ii) with reasonable prior notice, the managing underwriter or underwriters advises the Company in writing (in which case the Company shall notify the Holders) that a public sale or distribution of Registrable Shares would materially adversely impact such offering and (iii) the underwriter or underwriters have obtained written holdback agreements from the Company, each executive officer of the Company and each other person who has been granted registration rights by the Company, then each Holder shall, to the extent not inconsistent with applicable law, refrain from effecting any public sale or distribution of Registrable Shares during the ten (10) days prior to the effective date of such registration statement and until the earliest of (A) the abandonment of such offering, and (B) one hundred twenty (120) days from the effective date of such registration statement (each such period, a "***Hold Back Period***"). Notwithstanding the foregoing, any obligations of the Holders under this Section 4 shall terminate in the event that the Company or any underwriter terminates, releases or waives, in whole or in part, the holdback agreements with respect to the Company, any executive officer of the Company or any such other person who has been granted registration rights by the Company.

**Section 5. Registration Procedures.** In connection with the registration obligations of the Company pursuant to and in accordance with Sections 2 and 3 hereof (and subject to Sections 2 and 3 hereof), the Company shall use commercially reasonable efforts to effect such registration to permit the sale of such Registrable Shares in accordance with the intended method or methods of disposition thereof, and pursuant thereto the Company shall as expeditiously as possible:

(a) prepare and file with the SEC a Registration Statement for the sale of the Registrable Shares on any form for which the Company then qualifies or which counsel for the Company shall deem appropriate in accordance with such Holders' intended method or methods of distribution thereof, subject to Section 2(b) hereof, and, subject to the Company's right to terminate or abandon a registration pursuant to Section 3(c) hereof, use commercially reasonable efforts to cause such Registration Statement to become effective and remain effective as provided herein;

(b) prepare and file with the SEC such amendments (including post-effective amendments) to such Registration Statement, and such supplements to the related Prospectus, as may be required by the rules, regulations or instructions applicable to the Securities Act during the applicable period in accordance with the intended methods of disposition specified by the Holders of the Registrable Shares covered by such Registration Statement, make generally available earnings statements satisfying the provisions of Section 11(a) of the Securities Act (provided that the Company shall be deemed to have complied with this Section if it has complied with Rule 158 under the Securities Act), and cause the related Prospectus as so supplemented to be filed pursuant to Rule 424 under the Securities Act; provided, however, that before filing a Registration Statement or Prospectus, or any amendments or supplements thereto (other than reports required to be filed by it under the Exchange Act that are incorporated or deemed to be incorporated by reference into the Registration Statement and the Prospectus except to the extent that such reports related primarily to the offering), the Company shall furnish to the Holders of Registrable Shares covered by such Registration Statement and their counsel for review and comment, copies of all documents required to be filed;

(c) notify the Holders of any Registrable Shares covered by such Registration Statement promptly and (if requested) confirm such notice in writing, (i) when a Prospectus or any Prospectus supplement or post-effective amendment has been filed, and, with respect to such Registration Statement or any post-effective amendment, when the same has become effective, (ii) of any request by the SEC for amendments or supplements to such Registration Statement or the related Prospectus or for additional information regarding such Holders, (iii) of the issuance by the SEC of any stop order suspending the effectiveness of such Registration Statement or the initiation of any proceedings for that purpose, (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Shares for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose, and (v) of the happening of any event that requires the making of any changes in such Registration Statement, Prospectus or documents incorporated or deemed to be incorporated therein by reference so that they will not contain any untrue statement

of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading;

(d) use commercially reasonable efforts to prevent the issuance of any order suspending the effectiveness of such Registration Statement or the qualification or exemption from qualification of any Registrable Shares for sale in any jurisdiction in the United States, and to obtain the lifting or withdrawal of any such order at the earliest practicable time;

(e) furnish to the Holder of any Registrable Shares covered by such Registration Statement, each counsel for such Holders and each managing underwriter, if any, without charge, one conformed copy of such Registration Statement, as declared effective by the SEC, and of each post-effective amendment thereto, in each case including financial statements and schedules and all exhibits and reports incorporated or deemed to be incorporated therein by reference; and deliver, without charge, such number of copies of the preliminary prospectus, any amended preliminary prospectus, each final Prospectus and any post-effective amendment or supplement thereto, as such Holder may reasonably request in order to facilitate the disposition of the Registrable Shares of such Holder covered by such Registration Statement in conformity with the requirements of the Securities Act;

(f) prior to any public offering of Registrable Shares covered by such Registration Statement, use commercially reasonable efforts to register or qualify such Registrable Shares for offer and sale under the securities or "blue sky" laws of such jurisdictions as the Holders of such Registrable Shares shall reasonably request in writing; provided, however, that the Company shall in no event be required to qualify generally to do business as a foreign corporation or as a dealer in any jurisdiction where it is not at the time so qualified or to execute or file a general consent to service of process in any such jurisdiction where it has not theretofore done so or to take any action that would subject it to general service of process or taxation in any such jurisdiction where it is not then subject;

(g) upon the occurrence of any event contemplated by Section 5(c)(v) above, prepare a supplement or post-effective amendment to such Registration Statement or the related Prospectus or any document incorporated or deemed to be incorporated therein by reference and file any other required document so that, as thereafter delivered to the purchasers of the Registrable Shares being sold thereunder (including upon the termination of any Delay Period), such Prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(h) use commercially reasonable efforts to cause all Registrable Shares covered by such Registration Statement to be listed on each securities exchange or automated interdealer quotation system, if any, on which similar securities issued by the Company are then listed or quoted, or, if not so listed or quoted, on such securities exchange or automated interdealer quotation system reasonably selected by the Company;

(i) on or before the effective date of such Registration Statement, provide the transfer agent of the Company for the Registrable Shares with printed certificates for the Registrable Shares covered by such Registration Statement, which are in a form eligible for deposit with The Depository Trust Company;

(j) if such offering is an underwritten offering, make available for inspection by any Holder of Registrable Shares included in such Registration Statement, any underwriter participating in any offering pursuant to such Registration Statement, and any attorney, accountant or other agent retained by any such Holder or underwriter (collectively, the "***Inspectors***"), all financial and other records and other information, pertinent corporate documents and properties of any of the Company and its subsidiaries and affiliates (collectively, the "***Records***"), as shall be reasonably necessary to enable them to exercise their due diligence responsibilities; provided, however, that the Records that the Company determines, in good faith, to be confidential and which it notifies the Inspectors in writing are confidential shall not be disclosed to any Inspector unless such Inspector signs a confidentiality agreement reasonably satisfactory to the Company (which shall permit the disclosure of such Records in such Registration Statement or the related Prospectus if necessary to avoid or correct a material misstatement in or material omission from such Registration Statement or Prospectus) or either (i) the disclosure of such Records is necessary to avoid or correct a misstatement or omission in such Registration Statement or (ii) the release of such Records is ordered pursuant to a subpoena or other order from a court of competent jurisdiction; provided further, *however*, that (A) any decision regarding the disclosure of information pursuant to subsection (i) shall be made only after consultation with counsel for the applicable Inspectors and the Company and (B) with respect to any release of Records pursuant to subsection (ii), each Holder of Registrable Shares agrees that it shall, promptly after learning that disclosure of such Records is sought in a court having jurisdiction, give notice to the Company so that the Company, at the Company's expense, may undertake appropriate action to prevent disclosure of such Records; and

(k) if such offering is an underwritten offering, enter into such agreements (including an underwriting agreement in form, scope and substance as is customary in underwritten offerings) and take all such other appropriate and reasonable actions requested by the Holders of a majority of the Registrable Shares being sold in connection therewith (including those reasonably requested by the managing underwriters) in order to expedite or facilitate the disposition of such Registrable Shares, and in such connection, (i) use commercially reasonable efforts to obtain opinions of counsel to the Company and updates thereof (which counsel and opinions (in form, scope and substance) shall be reasonably satisfactory to the managing underwriters and counsel to the Holders of the Registrable Shares being sold), as to the matters customarily covered in opinions requested in underwritten offerings and such other matters as may be reasonably requested by such counsel and underwriters, (ii) use commercially reasonable efforts to obtain "cold comfort" letters and updates thereof from the independent certified public accountants of the Company (and, if necessary, any other independent certified public accountants of any subsidiary of the Company or of any business acquired by the Company for which financial statements and financial data are, or are required to be, included in the Registration Statement), addressed to each selling holder of Registrable

Shares covered by the Registration Statement (unless such accountants shall be prohibited from so addressing such letters by applicable standards of the accounting profession) and each of the underwriters, such letters to be in customary form and covering matters of the type customarily covered in "cold comfort" letters in connection with underwritten offerings, (iii) if requested and if an underwriting agreement is entered into, provide indemnification provisions and procedures customary for underwritten public offerings, but in any event no less favorable to the indemnified parties than the provisions set forth in Section 8 hereof. The above shall be done at each closing under such underwriting or similar agreement, or as and to the extent required thereunder.

The Company may require each Holder of Registrable Shares covered by a Registration Statement to furnish such information regarding such Holder and such Holder's intended method of disposition of such Registrable Shares as it may from time to time reasonably request in writing. If any such information is not furnished within a reasonable period of time after receipt of such request, the Company may exclude such Holder's Registrable Shares from such Registration Statement.

Each Holder of Registrable Shares covered by a Registration Statement agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 5(c)(ii), 5(c)(iii), 5(c)(iv) or 5(c)(v) hereof, that such Holder shall discontinue disposition of any Registrable Shares covered by such Registration Statement or the related Prospectus until receipt of the copies of the supplemented or amended Prospectus contemplated by Section 5(g) hereof, or until such Holder is advised in writing (the "***Advice***") by the Company that the use of the applicable Prospectus may be resumed, and has received copies of any amended or supplemented Prospectus or any additional or supplemental filings which are incorporated, or deemed to be incorporated, by reference in such Prospectus (such period during which disposition is discontinued being an "***Interruption Period***") and, if requested by the Company, the Holder shall deliver to the Company (at the expense of the Company) all copies then in its possession, other than permanent file copies then in such holder's possession, of the Prospectus covering such Registrable Shares at the time of receipt of such request.

Each Holder of Registrable Shares covered by a Registration Statement further agrees not to utilize any material other than the applicable current preliminary prospectus or Prospectus in connection with the offering of such Registrable Shares.

**Section 6. Registration Expenses.** Whether or not any Registration Statement is filed or becomes effective, the Company shall pay all costs, fees and expenses incident to the Company's performance of or compliance with this Agreement, including (i) all registration and filing fees, including NASD filing fees, (ii) all fees and expenses of compliance with securities or Blue Sky laws, including reasonable fees and disbursements of counsel in connection therewith, (iii) printing expenses (including expenses of printing certificates for Registrable Shares and of printing prospectuses if the printing of prospectuses is requested by the Holders or the managing underwriter, if any), (iv) messenger, telephone and delivery expenses, (v) fees and disbursements of counsel for the Company, (vi) fees and disbursements of all independent certified public accountants of the Company (including expenses of any "cold comfort" letters required in connection with this Agreement) and all other persons retained by the Company in connection with such Registration Statement, (vii) fees and disbursements of one counsel, other

than the Company's counsel, selected by Holders of a majority of the Registrable Shares being registered, to represent all such Holders and (viii) all other costs, fees and expenses incident to the Company's performance or compliance with this Agreement. Notwithstanding the foregoing, the fees and expenses of any persons retained by any Holder, other than one counsel for all such Holders, and any discounts, commissions or brokers' fees or fees of similar securities industry professionals and any transfer taxes relating to the disposition of the Registrable Shares by a Holder, will be payable by such Holder and the Company will have no obligation to pay any such amounts.

**Section 7. Underwriting Requirements.**

(a) Subject to Section 7(c) hereof, any Holder shall have the right, by written notice, to request that any Demand Registration provide for an underwritten offering.

(b) In the case of any underwritten offering pursuant to a Demand Registration, the Holders of a majority of the Registrable Shares to be disposed of in connection therewith shall select the institution or institutions that shall manage or lead such offering, which institution or institutions shall be reasonably satisfactory to the Company. In the case of any underwritten offering pursuant to a Piggyback Registration, the Company shall select the institution or institutions that shall manage or lead such offering, which institution or institutions shall be reasonably satisfactory to a majority of the Holders of Registrable shares participating in such Piggyback Registration.

(c) In the case of any Piggyback Registration that is an underwritten offering, no Holder shall be entitled to participate in an underwritten offering unless and until such Holder has entered into an underwriting or other agreement with such institution or institutions for such offering in such form as the Company and such institution or institutions shall determine; provided, that no holder of Registrable Shares included in any underwritten registration shall be required to make any representations or warranties to the Company or the underwriters (other than representations and warranties regarding such holder and such holder's ownership of the shares to be sold pursuant to such underwriting) or to undertake any indemnification or contribution obligations to the Company or any underwriter with respect thereto, other than as specifically provided in Section 8.

**Section 8. Indemnification.**

(a) Indemnification by the Company. The Company shall, without limitation as to time, indemnify and hold harmless, to the full extent permitted by law, each Holder of Registrable Shares whose Registrable Shares are covered by a Registration Statement or Prospectus, the officers, directors, agents and employees of each of them, each Person who controls each such Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, agents and employees of each such controlling person, to the fullest extent lawful, from and against any and all losses, claims, damages, liabilities, judgment, costs (including, without limitation, costs of investigation or preparation and reasonable attorneys' fees) and expenses (collectively, "***Losses***"), as incurred, arising out of or based upon any untrue or alleged untrue statement of a material fact contained in such Registration Statement or Prospectus or in any amendment or supplement thereto or in any

preliminary prospectus, or arising out of or based upon any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as the same are based upon information furnished in writing to the Company by or on behalf of such Holder expressly for use therein; provided, however, that the Company shall not be liable to any such Holder to the extent that any such Losses arise out of or are based upon an untrue statement or alleged untrue statement or omission or alleged omission made in any preliminary prospectus if (i) having previously been furnished by or on behalf of the Company with copies of the Prospectus, such Holder failed to send or deliver a copy of the Prospectus with or prior to the delivery of written confirmation of the sale of Registrable Shares by such Holder to the person asserting the claim from which such Losses arise and (ii) the Prospectus would have corrected in all material respects such untrue statement or alleged untrue statement or such omission or alleged omission; and provided further, however, that the Company shall not be liable in any such case to the extent that any such Losses arise out of or are based upon an untrue statement or alleged untrue statement or omission or alleged omission in the Prospectus, if (x) such untrue statement or alleged untrue statement, omission or alleged omission is corrected in all material respects in an amendment or supplement to the Prospectus and (y) having previously been furnished by or on behalf of the Company with copies of the Prospectus as so amended or supplemented, such Holder thereafter fails to deliver such Prospectus as so amended or supplemented, prior to or concurrently with the sale of Registrable Shares.

(b) Indemnification by Holder of Registrable Shares. In connection with any Registration Statement in which a Holder is participating, such Holder shall furnish to the Company in writing such information as the Company reasonably requests for use in connection with such Registration Statement or the related Prospectus and agrees to indemnify, to the full extent permitted by law, the Company, its directors, officers, agents or employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act) and the directors, officers, agents or employees of such controlling Persons, from and against all Losses arising out of or based upon any untrue or alleged untrue statement of a material fact contained in such Registration Statement or the related Prospectus or any amendment or supplement thereto, or any preliminary prospectus, or arising out of or based upon any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, to the extent, but only to the extent, that such untrue or alleged untrue statement or omission or alleged omission is based upon and is consistent with information so furnished in writing by or on behalf of such Holder to the Company expressly for use in such Registration Statement or Prospectus; provided, however, that the obligations of such Holder hereunder will be limited to an amount equal to the net proceeds of such Holder (after deducting all underwriter's discounts and commissions and all other expenses paid by such Holder in connection with the registration in question) from the disposition of Registrable Shares pursuant to such registration.

(c) Conduct of Indemnification Proceedings. If any Person shall be entitled to indemnity hereunder (an "***indemnified party***"), such indemnified party shall give prompt notice to the party from which such indemnity is sought (the "***indemnifying party***") of any claim or of the commencement of any proceeding with respect to which such indemnified party seeks indemnification or contribution pursuant hereto; provided, however, that the delay or failure to so notify the indemnifying party shall not relieve the indemnifying party from any obligation or

liability except to the extent that the indemnifying party has been materially prejudiced by such delay or failure. The indemnifying party shall have the right, exercisable by giving written notice to an indemnified party promptly after the receipt of written notice from such indemnified party of such claim or proceeding, to assume, at the indemnifying party's expense, the defense of any such claim or proceeding, with counsel reasonably satisfactory to such indemnified party; provided, however, that (i) an indemnified party shall have the right to employ separate counsel in any such claim or proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless: (1) the indemnifying party agrees to pay such fees and expenses; (2) the indemnifying party fails promptly to assume the defense of such claim or proceeding or fails to employ counsel reasonably satisfactory to such indemnified party; or (3) the named parties to any proceeding (including impleaded parties) include both such indemnified party and the indemnifying party, and such indemnified party shall have been advised by counsel that there may be one or more legal defenses available to it that are in addition to or are inconsistent with those available to the indemnifying party or that a conflict of interest is likely to exist among such indemnified party and any other indemnified parties (in which case the indemnifying party shall not have the right to assume the defense of such action on behalf of such indemnified party); and (ii) subject to subsection (3) above, the indemnifying party shall not, in connection with any one such claim or proceeding or separate but substantially similar or related claims or proceedings in the same jurisdiction, arising out of the same general allegations or circumstances, be liable for the fees and expenses of more than one firm of attorneys (together with appropriate local counsel) at any time for all of the indemnified parties. Whether or not such defense is assumed by the indemnifying party, such indemnified party shall not be subject to any liability for any settlement made without its consent. The indemnifying party shall not consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release, in form and substance reasonably satisfactory to the indemnified party, from all liability in respect of such claim or litigation for which such indemnified party would be entitled to indemnification hereunder.

(d) Contribution. If the indemnification provided for in this Section 8 is applicable in accordance with its terms but is legally unavailable to an indemnified party in respect of any Losses, then each applicable indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such Losses, in such proportion as is appropriate to reflect the relative fault of the indemnifying party, on the one hand, and such indemnified party, on the other hand, in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such indemnifying party, on the one hand, and indemnified party, on the other hand, shall be determined by reference to, among other things, whether any action in question, including any untrue statement of a material fact or omission or alleged omission to state a material fact, has been taken by, or relates to information supplied by, such indemnifying party or indemnified party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent any such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include any legal or other fees or expenses incurred by such party in connection with any investigation or proceeding. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 8(d) were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in the

immediately preceding paragraph. Notwithstanding the provision of this Section 8(d), an indemnifying party that is a Holder shall not be required to contribute any amount which is in excess of the amount by which the total proceeds received by such Holder from the sale of the Registrable Shares sold by such Holder (net of all underwriting discounts and commissions) exceeds the amount of any damages that such indemnifying party has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

**Section 9. Rule 144 Information.** With a view to making available the benefits of certain rules and regulations of the SEC which may at any time permit the sale of the Registrable Shares to the public without registration, after such time as a registration statement relating to the Common Stock of the Company has been declared effective under either the Securities Act or the Exchange Act, the Company agrees to use its best efforts to:

(a) Make and keep public information available, as those terms are understood and defined in Rule 144 under the Securities Act, at all times after the effective date that the Company becomes subject to the reporting requirements of the Securities Act or the Exchange Act, and for so long as the Company remains subject to the periodic reporting requirements under Section 13 or 15(d) of the Exchange Act.

(b) Use its best efforts to file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements).

(c) Furnish to any Holder forthwith upon request a written statement by the Company as to its compliance with the reporting requirements of Rule 144 under the Securities Act (at any time after 90 days after the effective date of the first registration statement filed by the Company for an offering of its securities to the general public), and of the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), a copy of the most recent annual or quarterly report of the Company, and such other reports and documents of the Company and other information in as such Holder may reasonably request in availing itself of any rule or regulation of the SEC allowing such Holder to sell any such securities without registration.

**Section 10. Miscellaneous.**

(a) Termination. This Agreement and the obligations of the Company and the Holders hereunder (other than Section 8 hereof) shall terminate on the first date on which no Registrable Shares remain outstanding.

(b) Notices. All notices or communications hereunder shall be in writing (including telecopy or similar writing), addressed as follows:

To the Company:

PT Holdings Company, Inc.

_____

_____

Attn: _____

With a copy to (which shall not constitute notice):

[Name]
[Address]
Attn:

To any of the Holders:

To the names and addresses set forth on the signature pages hereto.

Any such notice or communication shall be deemed given (i) when made, if made by hand delivery, (ii) upon transmission, if sent by confirmed telecopier, (iii) one Business Day after being deposited with a next-day courier, postage prepaid, or (iv) three Business Days after being sent certified or registered mail, return receipt requested, postage prepaid, in each case addressed as above (or to such other address or to such other telecopier number as such party may designate in writing from time to time).

(c) Severability. If any provision of this Agreement shall be declared to be invalid or unenforceable, in whole or in part, such invalidity or unenforceability shall not affect the remaining provisions hereof which shall remain in full force and effect.

(d) Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, legatees, legal representatives, successors and assigns. The rights to cause the Company to register Registrable Shares pursuant to Sections 2 and 3 may be assigned in connection with any transfer or assignment by a Holder of Registrable Shares provided that: (i) such transfer may otherwise be effected in accordance with applicable securities laws, (ii) such transfer is effected in compliance with the restrictions on transfer contained in this Agreement, the Certificate of Incorporation and in any other agreement between the Company and the Holder. No transfer or assignment will divest a Holder or any subsequent owner of such rights and powers unless all Registrable Shares are transferred or assigned.

(e) Entire Agreement. This Agreement represents the entire agreement of the parties and shall supersede any and all previous contracts, arrangements or understandings between the parties hereto with respect to the subject matter hereof.

(f) Amendments and Waivers. This Agreement may be modified or amended only by a writing signed by (i) the Company, with the approval of a majority of the entire Board and (ii) Holders holding at least 66 2/3% of the Registrable Shares then held by the Holders.

(g) Publicity. No public release or announcement concerning the transactions contemplated hereby shall be issued by any party without the prior consent of the other parties, except to the extent that such party is advised by counsel that such release or announcement is necessary or advisable under applicable law or the rules or regulations of any securities

exchange, in which case the party required to make the release or announcement shall to the extent practicable provide the other party with an opportunity to review and comment on such release or announcement in advance of its issuance.

(h) Aggregation of Common Stock. All shares of Common Stock held or acquired by Affiliates shall be aggregated for the purpose of determining the availability of any rights under this Agreement.

(i) Interpretation. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(j) Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be one and the same agreement, and shall become effective when counterparts have been signed by each of the parties and delivered to each other party.

(k) Governing Law. This Agreement shall be construed, interpreted, and governed in accordance with the internal laws of Delaware.

(l) Calculation of Time Periods. Except as otherwise indicated, all periods of time referred to herein shall include all Saturdays, Sundays and holidays; provided, however, that if the date to perform the act or give any notice with respect to this Agreement shall fall on a day other than a Business Day, such act or notice may be timely performed or given if performed or given on the next succeeding Business Day.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

PT HOLDINGS COMPANY, INC.

By: _____
Name: _____
Title: _____

[HOLDER]

By: _____
Name: _____
Title: _____

Address for Notices:
Attention: _____
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**The CIT Group/Business Credit, Inc.**
c/o CIT Group Inc
505 Fifth Avenue
New York, New York 10017

July 31, 2007

Revolving Credit Facility
Commitment Letter

CONFIDENTIAL

Port Townsend Paper Corporation
PT Holdings Company, Inc.
100 Paper Mill Hill Road
Port Townsend, Washington 98368

Attention: Emmett Bergman,
Chief Restructuring Officer

Mr. Bergman:

Reorganized Port Townsend Paper Corporation, Reorganized PT Holdings Company, Inc. and all of their direct and indirect domestic subsidiaries (individually and collectively, the "Borrower") on a joint and several basis has requested that The CIT Group/Business Credit, Inc. ("CIT" or the "Agent") commit to provide a senior secured revolving credit facility consisting of revolving loans and letters of credit in the aggregate principal amount of up to $30,000,000 (the "Revolving Credit Facility") to the Borrower, as such entity will be reorganized pursuant to its chapter 11 cases (the "Chapter 11 Cases"), in order to (i) facilitate the confirmation of the plan of reorganization (the "Plan") that the Borrower has submitted in the Chapter 11 Cases, (ii) refinance existing debtor-in-possession financing of the Borrower, (iii) fund the Borrower's ongoing working capital requirements, (iv) pay for fees and expenses associated with the Revolving Credit Facility and other reorganization expenses, and (v) pay for general corporate purposes.

Based upon and subject to the terms and conditions set forth in this commitment letter (the "Commitment Letter"), the Summary Terms and Conditions attached hereto as Appendix A (the "Term Sheet") and the fee letter of even date herewith (the "Fee Letter", and together with the Commitment Letter and the Term Sheet, the "Commitment"), CIT is pleased to advise you of its commitment to provide the Revolving Credit Facility.



EXHIBIT E

In consideration of the commitments and agreements hereunder, you agree to pay fees described in the Term Sheet and the Fee Letter.

The Commitment does not set forth all of the terms and conditions of the proposed financing; rather, it only summarizes the major points of understanding which will be the basis of the final financing agreements and related documentation (which are collectively referred to herein as the "Loan Documents") which will be drafted by, and will be in form and substance satisfactory to, CIT and its counsel. All terms used in this Commitment Letter and not otherwise defined herein shall have the meanings ascribed to them in the Term Sheet.

The Commitment is issued by CIT based upon the financial and other information regarding the Borrower and its subsidiaries. Accordingly, the Commitment and the structure and terms of the Revolving Credit Facility set forth in the Term Sheet are subject to the fulfillment to the satisfaction of CIT of the following conditions (in addition to those set forth in the Term Sheet): (i) there shall not have occurred after the last reviewed financial statements available any event, development or circumstance that has had or could reasonably be expected to have a material adverse effect on (a) the business, assets, liabilities (actual or contingent), operations, financial condition (financial or otherwise) of the Borrower and its subsidiaries, taken as a whole or (b) the Bankruptcy Court (as defined below) shall fail to enter an order confirming the Plan (a "Material Adverse Change"); (ii) CIT shall not become aware of any information or other matter (including new or updated financial information or projections) concerning the Borrower and its subsidiaries or the contemplated financing that differs from, or is inconsistent with, the information previously provided to CIT by or on behalf of the Borrower in any materially adverse respect; and (iii) CIT shall have completed and be satisfied with the results of a business, legal, tax, accounting and due diligence investigation of the Borrower and its subsidiaries. Further, the Commitment is subject to there not having occurred after the date hereof at any time prior to funding the Revolving Credit Facility any disruption or adverse change in the financial, banking or capital markets.

You hereby represent and covenant that (i) all information, other than financial projections ("Projections") and other forward looking information, which has been or is hereafter made available to CIT by or on behalf of the Borrower or its representatives in connection with the transactions contemplated hereby ("Information") is or, when furnished, will be complete, when taken as a whole, and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not materially misleading in light of the circumstances under, and the time at which such statements are made, and (ii) the Projections that have been or will be made available to CIT have been and will be prepared in good faith based upon assumptions that are reasonable at the time made and at the time made available to CIT. The parties acknowledge that the Projections are subject to inherent uncertainty and actual results may vary, however at the time the Projections were and are developed they were and will developed in good faith based upon reasonable assumptions. You hereby agree to supplement the Information and the Projections from time to time until the closing date of the Revolving Credit Facility

so that the representation and warranty in the preceding sentence is correct on the closing date of the Revolving Credit Facility. In structuring and entering into the Revolving Credit Facility, CIT will be using and relying on the Information and the Projections without independent verification thereof.

Subject to the approval of the United States Bankruptcy Court (the "Bankruptcy Court") having jurisdiction over the Chapter 11 Cases, you hereby agree (a) to indemnify and hold harmless CIT and the Lenders (as defined in the Term Sheet) and their respective affiliates and controlling persons and the respective officers, directors, employees, agents, members and successors and assigns of each of the foregoing (each, an "Indemnified Person") from and against any and all losses, claims, damages, liabilities and expenses, joint or several, to which any such Indemnified Person may become subject arising out of or in connection with this Commitment Letter (including the Term Sheet), the Fee Letter, the Revolving Credit Facility or any claim, litigation, investigation or proceeding relating to any of the foregoing, regardless of whether any such Indemnified Person is a party thereto, and to reimburse each such Indemnified Person upon demand for any reasonable legal or other expenses incurred in connection with investigating or defending any of the foregoing; *provided* that the foregoing indemnity will not, as to any Indemnified Person, apply to losses, claims, damages, liabilities or related expenses to the extent they are found in a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the willful misconduct or gross negligence of such Indemnified Person, and (b) to reimburse each Indemnified Person from time to time, upon presentation of a summary statement (with satisfactory supporting documentation, if requested), for all reasonable out-of-pocket expenses (including but not limited to expenses of CIT's due diligence investigation (including a fee of $1,000 per examiner per day for performance by CIT's personnel of collateral field examinations), travel expenses, reasonable fees, disbursements and other charges of counsel to CIT, in each case incurred in connection with the Revolving Credit Facility and the preparation of this Commitment Letter, the Fee Letter, the definitive documentation for the Revolving Credit Facility and any security arrangements in connection therewith. Notwithstanding any other provision of this Commitment Letter, no Indemnified Person shall be liable for (i) any damages arising from the use by others of information or other materials obtained through electronic, telecommunications or other information transmission systems, except to the extent such damages are found in a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the willful misconduct or gross negligence of such Indemnified Person or (ii) any indirect, special, punitive or consequential damages in connection with its activities related to the Revolving Credit Facility.

You acknowledge that CIT and its affiliates may be providing debt financing, equity capital or other services (including financial advisory services) to other persons in respect of which you may have conflicting interests regarding the transactions described herein and otherwise. Neither CIT nor any of its affiliates will use confidential information obtained from you by virtue of the transactions contemplated by this Commitment Letter or their other relationships with you in connection with the performance by them of services for other persons, and neither CIT nor any of its affiliates will furnish any such information to other persons. You also acknowledge that neither CIT nor any of its affiliates have any obligation to use in connection with the transactions contemplated by

this Commitment Letter, or to furnish to you, confidential information obtained by them from other persons.

This Commitment Letter is delivered to you with the understanding that this Commitment Letter and the terms and provisions hereof may be filed with Bankruptcy Court; otherwise none of this Commitment Letter, Term Sheet and Fee Letter nor any of their terms or substance shall be disclosed, directly or indirectly, to any other person except (a) to your respective directors, officers, employees, attorneys, accountants and advisors on a confidential and need-to-know basis; or (b) to the Informal Committee in the Chapter 11 Cases and its attorneys and advisors; (c) solely as to this Commitment Letter and Term Sheet, to the Term Lenders and their attorneys and advisors (d) as required by the Chapter 11 Cases; or (e) as required by applicable law or compulsory legal process (in which case you agree to inform us promptly thereof).

The compensation, reimbursement, indemnification, confidentiality, governing law and waiver of jury trial provisions contained herein and in the Fee Letter shall remain in full force and effect regardless of whether definitive financing documentation shall be executed and delivered and notwithstanding the termination of this Commitment Letter or CIT's commitment hereunder.

The Commitment shall not be assignable by you without the prior written consent of CIT. The Commitment is intended to be solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or to create any rights in favor of, any person other than the parties hereto (and Indemnified Persons) and is not intended to create a fiduciary relationship among the parties hereto. CIT may assign its commitment hereunder to any of its affiliates or any Lender. Any such assignment to an affiliate will not relieve CIT from any of its obligations hereunder unless and until such affiliate shall have funded the portion of the commitment so assigned. Any assignment to a Lender shall release CIT from the portion of its commitment hereunder so assigned. Any and all obligations of, and services to be provided by, CIT hereunder (including, without limitation, CIT's commitment) may be performed and any and all rights of CIT hereunder may be exercised by or through any of its affiliates. THIS COMMITMENT LETTER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY OR ON BEHALF OF ANY PARTY RELATED TO OR ARISING OUT OF THIS COMMITMENT LETTER OR THE PERFORMANCE OF SERVICES HEREUNDER.

Each of the parties hereto hereby irrevocably and unconditionally (a) submits, for itself and its property, to the non-exclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in New York City, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Commitment Letter or the transactions contemplated hereby, or for recognition or enforcement of any judgment, and agrees that all claims in respect of any such action or

proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court, (b) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Commitment Letter or the transactions contemplated hereby in any New York State or in any such Federal court and (c) waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

CIT hereby notifies you that, pursuant to the requirements of the USA Patriot Act, Title III of Pub. L. 107-56 (signed into law on October 26, 2001) (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Borrower and each Guarantor (as defined in the Term Sheet), which information includes names and addresses and other information that will allow CIT and each Lender to identify the Borrower and each Guarantor in accordance with the Patriot Act.

The Commitment Letter, together with the Term Sheet and the Fee Letter, embodies the entire understanding among the parties hereto relating to the matters discussed herein and therein and supersedes all prior discussions, negotiations, proposals, agreements and understandings, whether oral or written, relating to the subject matter hereof and thereof. No course of prior conduct or dealings between the parties hereto, no usage of trade, and no parole or extrinsic evidence of any nature, shall be used or be relevant to supplement, explain or modify any term used herein. Any modification or waiver of the Commitment or the terms hereof must be in writing, must be stated to be such and must be signed by an authorized representative of each party hereto.

If you wish to accept the Commitment, please return executed counterparts of this Commitment Letter and the Fee Letter to CIT, together with the good faith deposit in the amount required by the Fee Letter, on or before 5:00 p.m., New York City time, on August 15, 2007; otherwise, the offer set forth herein shall automatically terminate on such date and time and be of no further force or effect. In the event that the initial borrowing in respect of the Revolving Credit Facility does not occur on or before September 30, 2007, then this Commitment Letter and CIT's commitment and undertakings hereunder shall automatically terminate unless CIT shall, in its discretion, agree to an extension. Before such date, Agent may terminate this Commitment Letter if (a) any Material Adverse Change has occurred, or (b) any event occurs or information becomes available that, in the good faith exercise of its credit judgment, results or is likely to result in the failure to satisfy any condition precedent set forth or referred to herein or in the Term Sheet or the other exhibits hereto.

This Commitment Letter may be executed in any number of counterparts, each of which, when so executed, shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

Very truly yours,

**THE CIT GROUP/BUSINESS CREDIT, INC.**

By: _____
Name:
Title:

**The Foregoing Is Hereby Accepted And Agreed To In All Respects By The Undersigned:**

**REORGANIZED PORT TOWNSEND PAPER CORPORATION**

By: _____
Name:
Title:

**REORGANIZED PT HOLDINGS COMPANY, INC.**

By: _____
Name:
Title:

# APPENDIX A

## SUMMARY TERMS AND CONDITIONS

## Reorganized Port Townsend Paper Corporation

### July 20, 2007

### $30,000,000 Revolving Credit Facility

*The Summary Terms and Conditions outlined below is the "Term Sheet" referred to in the Commitment Letter, dated July 20, 2007 from CIT (the "Commitment Letter"). Terms used in this Term Sheet without definition have the meanings assigned to such terms in the Commitment Letter.*

| | |
|---|---|
| **Borrower:** | Reorganized Port Townsend Paper Corporation, Reorganized PT Holdings Company, Inc. and all of their direct and indirect domestic subsidiaries (individually and collectively, the "Borrower"), on a joint and several basis |
| **Guarantors:** | All foreign subsidiaries of Borrower secured by all of the assets |
| **Agent:** | The CIT Group/Business Credit, Inc. ("CIT" or "Agent"). |
| **Lenders:** | A group of lenders (including CIT) to be arranged by the Agent, in consultation with the Borrower. |

**REVOLVING CREDIT FACILITY**

| | |
|---|---|
| **Facility:** | $30,000,000 revolving credit facility, including a sub-limit for swingline advances and the issuance of letters of credit (amount, terms and conditions to be determined) (the "Revolver" or "Revolving Credit Facility"). The maximum amount available under the Revolver will be limited to the lesser of (i) $30,000,000 and (ii) the Borrowing Base (as described below). So long as no event of default exists, amounts repaid on the Revolver may be reborrowed. |
| **Borrowing Base:** | All advances under the Revolver will be subject to a Borrowing Base formula, which will be comprised of trade accounts receivable and inventory subject to eligibility criteria. Eligibility definitions and criteria will be defined in the Loan Documentation (as defined below under the heading "Loan Documentation"). The Borrowing Base will be equal to: (A) 85% of eligible accounts receivable plus (B) the lesser of (x) 70% of eligible raw materials and finished goods inventory and (y) 85% of appraised NOLV of eligible raw materials and finished goods inventory, plus (C) the lesser of (x) 85% of appraised NOLV of stores inventory and (y) a to be determined amount, minus (D) applicable |

reserves. Agent shall have the ability to impose additional eligibility criteria with respect to accounts receivable and inventory and/or impose, upon written notice to Borrower, additional reserves (including, but not limited to, rent and logger reserves) against the Borrowing Base in its commercially reasonable discretion. The Borrowing Base shall include eligibility criteria with respect to Borrower's Canadian accounts receivable and inventory, in each case to be defined and mutually agreed upon in the Loan Documentation.

After giving effect to all advances under the Revolver, including issuances of letters of credit, if applicable, the Borrower's availability under the Revolver shall not be less than a to be agreed amount at close. Such requirement contemplates that all of the Borrower's debts, obligations and payables are then current in accordance with its usual business practices.

Agent will have its own internal auditor or an independent accounting firm perform periodic field audit(s) (limited to not more than two (2) per fiscal year unless and Event of Default has occurred) of the Borrower's books and records, if necessary, and accounts receivable and inventory during the term of the Revolving Credit Facility.

**Interest Rate:** See Schedule A hereto.

**Maturity:** The fifth anniversary of the date on which the Revolving Credit Facility closes ("Close Date").

**Letter of Credit Issuing Bank:** The Agent shall either issue letters of credit directly or select another banking or financial institution to issue letters of credit as to which the Agent shall issue letter of credit participation or support agreements (such letters of credit and letter of credit participation or support agreements are referred to herein as "L/Cs").

**Optional Prepayment:** The Borrower may prepay principal amounts outstanding under the Revolver, and may terminate commitments under the Revolver, from time to time without premium or penalty (except as described below), in each case subject to applicable minimum amounts to be mutually agreed upon.

**Mandatory Prepayment:** Borrower subject to the Intercreditor Agreement with the Term Lenders will be required to make mandatory prepayments in respect of the Revolver with proceeds of, among other things, asset sales, new debt, and new equity in amounts to be determined, subject to customary exceptions and re-investment provisions to be agreed upon; provided, however no such prepayment shall be required as a result of the monetization of the Richmond Lease.

The Revolver shall also be prepaid and the L/Cs shall be cash collateralized to the extent extensions of credit then outstanding under the Revolver exceed (i) the amount of the Revolver commitments (as reduced) or (ii) the then-current Borrowing Base; provided, however,

Borrower shall have a five (5) day grace period for such prepayment and cash collateralization to the extent such overadvance is caused solely by the imposition by CIT of additional reserves or changes in eligibility criteria or advance rates.

**Unused Line Fees:** An unused line fee at a rate per annum equal to .375% shall be payable on the daily unutilized portion of the Revolver. Such fee will be payable monthly in arrears on the first day of each month. The undrawn amount of L/Cs shall count as utilization of the Revolver for purposes of calculating this fee.

**L/C Fees:** An L/C fee shall be payable to the Agent, for the benefit of the Lenders, in an amount equal to the applicable margin per annum used for determining interest payable in respect of LIBOR loans made under the Revolver on the average daily undrawn amount of L/Cs, payable monthly in arrears. The Borrower shall also be responsible for paying any fees, costs or expenses (including fronting fees) due to any banking or financial institution (other than the Agent) for any L/Cs issued by such other banking or financial institution in reliance on credit support furnished by the Agent.

**Other Fees:** The other fees are set forth in the Fee Letter.

## COLLATERAL

A perfected first priority security interest in all receivables, cash and cash equivalents, deposit accounts, and inventory, whether now owned or hereafter acquired, and all proceeds and products of any of the foregoing properties of the Borrower, the Guarantors and their respective present and future domestic subsidiaries, whether now owned or hereafter acquired, and all proceeds and products of any of the foregoing, and a perfected second priority interest in all other assets of the Borrower, the Guarantors and their respective present and future domestic subsidiaries and all proceeds and products of any of the foregoing; provided, however, the collateral shall not include any interest in the Richmond Lease.

## CERTAIN CONDITIONS

**Conditions Precedent:** Closing and the initial funding under the Revolving Credit Facility will be subject to the satisfaction of all conditions precedent deemed necessary or appropriate by Agent, including but not limited to:

- Execution and delivery of satisfactory Loan Documentation (including, without limitation, a satisfactory intercreditor agreement with the lenders under the Term Loan);

- Availability under the Revolver at close (after paying all amounts related to the Chapter 11 Cases and consummation of the Plan and any advances to be made on the Close Date) shall not be less than an

amount to be determined;

- Agent shall have received and be satisfied with Borrower's monthly projections and related assumptions;

- Agent shall have received and be satisfied with Borrower's insurance policies, including endorsements in favor of the Agent with respect thereto;

- The Agent's satisfaction with an examination of the books and records of the Borrower;

- The Agent's satisfaction with the intercompany financing structure of the Borrower's domestic and Canadian operations, which shall be on terms and conditions satisfactory to both CIT and Borrower;

- The capitalization, management, structure and equity ownership of the Borrower after consummation of the Plan shall be satisfactory to the Agent;

- The terms and provisions of the Term Loan and Preferred Stock must be reasonably satisfactory to the Agent in all respects;

- Evidence of a valid and perfected security interest in the Collateral (having the priority described in "Collateral" above), including UCC and other applicable lien search reports;

- Agent shall have received and approved in form and substance landlord and mortgagee waivers and consents satisfactory to the Agent, executed by each owner, mortgagee and lessor, for all of the Borrower's and the Guarantors' locations in the U.S. or Canada, otherwise Agent will establish a rent reserve in the amount of three months rent for each location where Agent does not have a satisfactory landlord waiver;

- Satisfactory completion of all legal and other due diligence;

- Agent shall have received all fees, costs and expenses payable on or prior to the Close Date of the Revolving Credit Facility;

- (i) Agent's review of and satisfaction in all respects with (x) the final Plan (including, without limitation, (A) the sources and uses of funds used to consummate the Plan, (B) the terms regarding the issuance (if any) of new securities of the Borrower under the Plan, (C) the terms of any material contracts which survive the confirmation of the Plan, and (D) the terms and provisions providing for the restructuring of the debt, leasing arrangements and capitalization of the Borrower and Guarantors) and (y) the order of the Bankruptcy Court (the "Confirmation Order"), which Confirmation Order shall include such provisions with respect to the Revolving Credit Facility as Agent may reasonable request, (ii) (y) the Confirmation Order shall be a valid,

subsisting and continuing final order, and (z) the satisfaction (or valid waiver) of all conditions precedent to the confirmation of the Plan (other than any condition relating to the funding under the Revolving Credit Facility); (iii) Agent's confirmation that any retention of jurisdiction by the Bankruptcy Court shall not govern the enforcement of the Revolving Credit Facility or any rights and remedies related thereto, (iv) no motion, action or proceeding shall be pending or filed by any party-in-interest to Borrower's Chapter 11 Cases which could adversely affect the Plan, the consummation of the Plan, the business or operations of the Borrower, or the Revolving Credit Facility, and (v) the Confirmation Order not having been reversed, vacated, amended, supplemented, modified or appealed;

- Agent shall be satisfied that there has been no material adverse change in business, assets, liabilities (actual or contingent), operations, financial condition of the Borrower and/or its subsidiaries, since the last reviewed financial statements submitted to the Agent; and

- Agent shall have received such legal opinions, officer solvency certificates and other documents and instruments as are customary for transactions of this type or as it may reasonably request.

**Conditions to Extensions of Credit:**

The making of each extension of credit (including amendments, extensions and increases of L/Cs) shall be conditioned upon (i) the accuracy in all material respects of all representations and warranties contained in the Loan Documentation (including, without limitations, the material adverse change and litigation representations), (ii) there being no default or event of default in existence at the time of, or after giving effect to the making of, such extension of credit and (iii) availability under the Borrowing Base.

## CERTAIN DOCUMENTATION MATTERS

**Loan Documentation:** The Revolving Credit Facility will be subject to the terms and conditions set forth in a definitive credit agreement, related security agreement(s), guarantees, pledge agreements, mortgages (including leasehold mortgages), assignment agreements and other instruments and documents, all of which will be acceptable to the Agent and its legal counsel and Borrower, consistent with this term sheet (collectively, the "Loan Documentation").

**Representations and Warranties:** The Revolving Credit Facility will contain such representations and warranties by the Borrower as are usual and customary for financings of this kind, including, without limitation, corporate power and authority, due organization and authorization, execution, delivery and enforceability of the Loan Documents, financial condition and solvency, no material adverse change, title to properties, sufficiency of assets and rights, liens, litigation, payment of taxes, compliance with laws, environmental and ERISA matters, consents and approvals and full disclosure (subject to qualifications, exclusions and grace periods to be agreed).

**Reporting:** The Borrower will provide the Agent with periodic financial and collateral reporting, including: reviewed for fiscal year 2007 and audited for all fiscal years thereafter annual financial statements; unaudited monthly financial statements; annual financial projections; compliance certificates; periodic borrowing base certificates, receivables and payables aging reports and inventory reports; notice of material events and such other information reasonably requested by the Agent.

**Covenants:** Affirmative covenants will be subject to customary qualifications, exclusions and cure periods to be agreed upon and will likely include, but not be limited to: receipt of timely and accurate financial information; notification of litigation, investigations, environmental and ERISA matters and other material adverse changes; payment and performance of obligations; conduct of business; maintenance of existence; maintenance of property and insurance (including hazard and business interruption coverage); maintenance of accurate records and accounts; inspection of property and books and records; compliance with laws (including, without limitation, environmental laws); maintenance of licenses, permits and franchises issued or granted by any governmental authority; payment of taxes; ERISA; and further assurances (including with respect to security interests in after-acquired property).

Negative covenants will be subject to customary qualifications, exclusions and cure periods to be agreed upon and likely include, but not be limited to: restrictions and limitations against incurring additional indebtedness and guarantee obligations; encumbrances, liens and other obligations; restricted payments (including, but not limited to, ownership distributions and dividends, and management, acquisition, arrangement

and other similar fees); loans and investments; mergers, consolidations and acquisitions; sale and leaseback transactions; asset transfers and dispositions; changes in business; subsidiaries; transactions with affiliates; prepayments of and amendments to indebtedness (including, without limitation, prepayment of, and amendments to, any subordinated debt); restrictive agreements; amendments to organizational documents; and changes in fiscal year or accounting method.

Financial covenants will include a springing fixed charge coverage ratio (at a level to be determined) if availability falls below the lesser of (i) $3,000,000 and (ii) a percentage to be determined of the Borrowing Base.

**Events of Default:** Events of default will include those which are customarily found in financing transactions of the type contemplated hereby, subject to customary qualifications, exceptions and cure periods, including, but not limited to: nonpayment of principal when due; nonpayment of interest, fees or other amounts; inaccuracy of representations and warranties in all material respects; violation of covenants (subject, in the case of certain affirmative covenants, to a grace period to be agreed upon); cross-default to material indebtedness; bankruptcy events; certain ERISA events; material judgments; actual or asserted invalidity of any guarantee or security document or subordination provisions, if applicable; material adverse change; and a change of control.

**Cash Management:** Borrower shall implement cash management procedures reasonably satisfactory to the Agent. In the event that availability is less than $5,000,000 for five consecutive days or an event of default occurs, funds deposited into any depository account will be swept into a collection account controlled by the Agent. Such requirement will cease to apply (unless subsequently triggered again) if availability is greater than $5,000,000 for 30 consecutive days. Collections will be credited to the Borrower's loan account one business day following the Agent's receipt of good funds at its bank account in New York, New York (or such other bank account as the Agent may otherwise designate).

**Lock Box:** Prior to closing, the Borrower shall have established a lock box and collateral proceeds account in favor of the Agent for all collections and proceeds of collateral. Such lock box and collateral proceeds account shall be subject to blocked account arrangements having provisions as described in the paragraph above entitled, "Cash Management".

**Costs and Expenses:** The Borrower shall be responsible for the payment (whether or not the transaction contemplated hereby closes or is consummated) of all of Agent's reasonable documented costs, fees and expenses of documenting and closing the transaction contemplated hereby (including, without limitation, reasonable costs, fees and expenses of outside legal counsel, collateral audits, travel, lodging and similar expenses) or otherwise paid or incurred by Agent in connection with the Loan Documentation or the transaction contemplated hereby, including, but not limited to, those paid or incurred by Agent in connection with

the preparation, negotiation, execution and closing of the Loan Documentation and the transaction contemplated hereby, the arrangement, syndication and administration of the Revolving Credit Facility, the creation or perfection of liens and security interests in connection therewith, and any amendment, modification or waiver in respect of the Loan Documentation. The Borrower shall also be responsible for all fees and expenses of Agent and Lenders incurred or in connection with enforcing rights, remedies and actions taken under the Revolving Credit Facility. The Borrower will also be responsible for any periodic collateral audit fees and expenses incurred after Close Date in accordance with the Loan Documentation (including a fee of $1,000 per examiner per day for collateral field examinations performed by Agent's personnel).

**Indemnification:** Subject to the approval of the Bankruptcy Court (to the extent required), the Borrower shall indemnify and hold harmless Agent, the Lenders and their respective affiliates, directors, officers, employees, agents, representatives and controlling persons (each being an "Indemnified Party") from and against any and all claims, damages, liabilities and expenses (including without limitation, fees and expenses of counsel) that may be incurred by or asserted against such Indemnified Party in connection with the investigation of, preparation for, or defense of any pending or threatened claim or any action or proceeding (whether or not such Indemnified Party is a party thereto) or otherwise arising out of or relating to any of the transactions contemplated hereby, any commitment or similar letter issued in connection therewith, any of the Loan Documentation, any of the transactions contemplated thereby, or any action or omission of any Indemnified Party or other matter or thing under or in connection with any of the foregoing, except for (with respect to any Indemnified Party) any such claims, damages, liabilities or expenses resulting from such Indemnified Party's own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final nonappealable order or judgment.

**Yield Protection:** The Loan Documentation shall contain customary provisions, subject to a 180 day look back limitation (i) protecting the Agent against increased costs or loss of yield resulting from changes in reserve, tax, capital adequacy and other requirements of law and from the imposition of or changes in withholding and other taxes and (ii) indemnifying Agent for "breakage costs" incurred in connection with, among other things, any prepayment or conversion of a LIBOR loan on a day other than the last day of the interest period applicable thereto.

**Mutual Waiver of Right to Consequential Damages** The documentation shall contain a mutual waiver by the Borrower and CIT of the right to recover consequential damages in any dispute arising out of or related to the transactions contemplated herein.

**Governing Law and Jurisdiction:** State of New York.

| | |
|---|---|
| **Waiver of Jury Trial and Consent to Service of Process:** | Such waivers as are customary for financing transactions of the type contemplated hereby. Mutual consent to service of process by mail |
| **Agent's Counsel:** | To be determined. |

Schedule A

## INTEREST RATES

**Revolver:**

Prior to delivery of the monthly compliance certificate for the period ending March 31, 2008, Borrower will be required to pay interest on advances outstanding under the Revolver at either: (i) the Prime Rate plus 0.00% per annum or (ii) LIBOR plus 1.50% per annum.

Thereafter the applicable interest margins for the Revolver will be adjusted based on the Borrower's availability in accordance with the following grid:

| Availability | Prime Rate Margin | LIBOR Margin |
|---|---|---|
| Greater than or equal to $10MM | 0% | 1.50% |
| Less than $10MM but greater than $5MM | 0.25% | 1.75% |
| Less than or equal to $5MM | 0.50% | 2.00% |

**Prime Rate:**

The "Prime Rate" will mean the greater of: (i) the rate of interest per annum announced by JPMorgan Chase Bank from time to time as its prime rate in effect at its principal office in the City of New York (or if such rate is at any time not available, the prime rate so quoted by any banking institution selected by Agent), which rate is not intended to be the lowest rate charged by JPMorgan Chase Bank (or any such other banking institution) to its borrowers or (ii) the Federal Funds Effective Rate per annum plus 0.50%. Interest on Prime Rate loans will be computed and payable monthly in arrears on the basis of a 360 day year and based on the actual number of days elapsed.

**LIBOR:**

"LIBOR" will mean the London Interbank Offered Rate appearing on page 3750 of the Telerate screen and adjusted for applicable reserves.

LIBOR-based loans will be made available, subject to market conditions, for interest periods of one, two, three or six months (as selected by the Borrower). The Borrower may elect to use the LIBOR rate provided (i) the Borrower gives Agent at least three business days prior notice of such election and (ii) no default is then outstanding under the Loan Documentation. Interest on LIBOR-based loans will be computed and payable at the end of the applicable LIBOR interest period (or, in the case of any interest period longer than three months, at the end of each three month period) in arrears on the basis of a 360 day year and based on the

actual number of days elapsed.

**Default Interest:** Upon the occurrence and during the continuance of an Event of Default (upon written notice, except in the case of any bankruptcy, insolvency, reorganization, liquidation or other similar proceeding), amounts outstanding under the Revolving Credit Facility shall bear interest at 2.00% per annum above the rate otherwise applicable thereto. Overdue interest, fees and other amounts shall accrue interest at 2.00% above the rate applicable to Prime Rate loans.

applicable state law or otherwise to perform its duties and enforce its rights with respect to the Collateral and under the Note Documents. The Note Parties and each Noteholder by their execution and delivery of this Agreement hereby consent to the foregoing.

Section 15.10 Communications Platform. (a) The Note Parties and the Noteholders agree that the Administrative Agent may distribute routine communications ("Communications") to the Noteholders, including without limitation financial statements and other information as provided in Section 9.02, and Note Documents for execution by the parties thereto (but not for any other purpose) by posting such Communications on Intralinks or a substantially similar electronic transmission system selected by the Administrative Agent (the "Platform").

(b) ANY PLATFORM, IF PROVIDED, IS PROVIDED "AS IS" AND "AS AVAILABLE". NEITHER AGENT WARRANTS THE ACCURACY OR COMPLETENESS OF ANY COMMUNICATION OR THE ADEQUACY OF THE PLATFORM, AND THE AGENTS EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN ANY COMMUNICATION. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE AGENTS IN CONNECTION WITH ANY COMMUNICATION OR THE PLATFORM. IN NO EVENT SHALL THE AGENTS OR ANY ISSUER HAVE ANY LIABILITY TO THE ISSUER, ANY NOTEHOLDER OR ANY OTHER PERSON FOR DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF THE ISSUERS', OR ANY AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT SUCH DAMAGES ARE FOUND IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION NO LONGER SUBJECT TO APPEAL TO HAVE RESULTED FROM SUCH PERSON'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. WITHOUT LIMITING THE FOREGOING, NEITHER THE AGENTS NOR THE ISSUERS SHALL, UNDER ANY CIRCUMSTANCE, BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF THE PLATFORM OR, ANY AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET.

(c) Each Noteholder agrees that notice to it (as provided in the next sentence) specifying that a Communication has been posted to the Platform shall constitute effective delivery of such Communication to such Noteholder for purposes of the Note Documents. Each Noteholder agrees (i) to notify the Agents from time to time of the e-mail address to which the foregoing notice may be sent and (ii) that such notice may be sent to such e-mail address.

Section 15.11 Actions With Respect To Collateral. The Agents shall not have any responsibility for (i) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Collateral, whether or not the Agents have or are deemed to have knowledge of such matters, (ii) taking any necessary steps to preserve the rights against any parties with respect to any Collateral or (iii) taking any action other than as directed in writing by the Required Noteholders, subject to the provisions of this Agreement.

## ARTICLE XVI

## MISCELLANEOUS

Section 16.01 Notices, Etc. All notices and other communications provided for hereunder shall be in writing and shall be mailed, telecopied or delivered, if to the Issuers, at the following address:

If to the Issuers, to the following address:

Port Townsend Paper Corporation
100 Mill Road
Port Townsend, WA 98368
Attention: John Bagley
Telephone: (360) 379-2149
Telecopier: (360) 379-2213

with a copy to (such copy not to constitute notice):

_____
_____
_____
Attention:
Telephone: (202) 887-4000
Telecopier: (202) 887-4288

if to the Administrative Agent, to it at the following address:

Wells Fargo Bank, N.A.
Corporate Trust Services
MAC N9303-120
Sixth Street and Marquette Avenue
Minneapolis, MN 55479
Attention: Jeffery T. Rose
Telephone: (612) 667-0337
Telecopier: (612) 667-9825

with a copy to (such copy not to constitute notice):

Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036
Telephone: (212) 596-9000
Facsimile: (212) 596-9090
Attention: Mark Somerstein, Esq.

if to the Collateral Agent, to it at the following address:

Wells Fargo Bank, N.A.
Corporate Trust Services

MAC N9303-120
Sixth Street and Marquette Avenue
Minneapolis, MN 55479
Attention: Jeffery T. Rose
Telephone: (612) 667-0337
Telecopier: (612) 667-9825

with a copy to (such copy not to constitute notice):

Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036
Telephone: (212) 596-9000
Facsimile: (212) 596-9090
Attention: Mark Somerstein, Esq.

or, as to each party, at such other address as shall be designated by such party in a written notice to the other parties complying as to delivery with the terms of this Section 16.01. All such notices and other communications shall be effective, (i) if mailed (by registered or certified mail, first class postage prepaid and return receipts requested), when received or three Business Days after deposited in the mails, whichever occurs first, (ii) if telecopied, when transmitted and confirmation received, or (iii) if delivered, upon delivery, except that notices to any Agent pursuant to ARTICLE II shall not be effective until received by such Agent.

Section 16.02 Amendments, Etc. No amendment or waiver of any provision of any Note Document, and no consent to any departure by the Note Parties therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Noteholders or by the Agents with the prior written consent of the Required Noteholders, and then, in each case, such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given, provided, that no such amendment or waiver shall change the aggregate principal amount of the Notes authorized hereunder, increase the commitment of any Noteholder, defer or reduce any payment of interest payable hereunder, alter the Maturity Date, permit the release of all or substantially all of the Collateral or the release of any Guarantor, or reduce any percentage required to approve any amendment, waiver or consent without the approval of all the Noteholders. Notwithstanding the foregoing, no amendment, waiver or consent shall, unless in writing and signed by an Agent, affect the rights or duties of such Agent (but not in its capacity as a Noteholder) under this Agreement or the other Note Documents.

Section 16.03 No Waiver; Remedies, Etc. No failure on the part of any Agent or any Purchaser to exercise, and no delay in exercising, any right hereunder or under any other Note Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right under any Note Document preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Agents and the Purchasers provided herein and in the other Note Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Agents and the Noteholders under any Note Document against any party thereto are not conditional or contingent on any attempt by the

Agents and the Noteholders to exercise any of their rights under any other Note Document against such party or against any other Person.

Section 16.04 [Reserved]

Section 16.05 Right of Set-off. Upon the occurrence and during the continuance of any Event of Default, any Agent at the written direction of the Required Noteholders or any Noteholder may, and is hereby authorized to, at any time and from time to time, without notice to the Issuers (any such notice being expressly waived by the Issuers) and to the fullest extent permitted by law, set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Agent or such Noteholder to or for the credit or the account of the Issuers against any and all obligations of the Issuers either now or hereafter existing under any Note Document, irrespective of whether or not such Agent or such Noteholder shall have made any demand hereunder or thereunder and although such obligations may be contingent or unmatured. Each Agent and each Noteholder agrees to notify the Issuers promptly after any such set-off and application made by such Agent or such Noteholder provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Agents and the Noteholders under this Section 16.05 are in addition to the other rights and remedies (including other rights of set-off) which the Agents and the Noteholder may have under this Agreement or any other Note Documents of law or otherwise.

Section 16.06 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 or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 16.07 Register; Transfer, Registration and Substitution of Notes; Successors, Assigns and Transfers.

(a) Transfer by Purchasers. Each Purchaser may transfer to one or more other Persons all or a portion of its rights and obligations under this Agreement (including all or a portion of the Notes owing to it); provided that (i) the Issuers and the Administrative Agent shall receive notice of such transfer; (ii) the parties to each such transfer shall execute and deliver to the Administrative Agent, for its acceptance and recording in the Register, a Transfer and Acceptance; (iii) except in the case of a transfer to a Person that, immediately prior to such transfer, was a Purchaser or an Affiliate of a Purchaser, or a transfer of all of a Purchaser's rights and obligations under this Agreement, the aggregate principal amount of the Notes held by the transferring Purchaser being transferred pursuant to each such transfer (determined as of the date of the Transfer and Acceptance with respect to such transfer) shall in no event be less than $1,000,000; and (iv) such transfer shall be either pursuant to an effective registration statement under the Securities Act or pursuant to an exemption from such registration. Upon such execution, delivery, acceptance and recording, from and after the effective date specified in such Transfer and Acceptance, (x) the transferee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been transferred to it pursuant to such Transfer and Acceptance, have the rights and obligations of a Purchaser hereunder and under the other Note Documents (including, without limitation, the obligation to fund its pro rata share of each

Additional Issuance) and (y) the transferor thereunder shall, to the extent that rights and obligations hereunder have been transferred by it pursuant to such Transfer and Acceptance, relinquish its rights and be released from its obligations under this Agreement (and, in the case of a Transfer and Acceptance covering all or the remaining portion of a transferring Purchaser's rights and obligations under this Agreement, such Purchaser shall cease to be a party hereto).

(b) Undertaking of Transferor and Transferee. By executing and delivering a Transfer and Acceptance, the Purchaser transferor thereunder and the transferee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Transfer and Acceptance, such transferring Purchaser makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other instrument or document furnished pursuant hereto; (ii) such transferring Purchaser makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Issuers or the performance or observance by the Issuers of any of their respective obligations under this Agreement or any other instrument or document furnished pursuant hereto; (iii) such transferee confirms that it has received a copy of this Agreement, together with copies of the Financial Statements and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Transfer and Acceptance; (iv) such transferee will, independently and without reliance upon any Agent, such transferring Purchaser or any other Purchaser and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such transferee appoints and authorizes the Agents to take such action as agents on its behalf and to exercise such powers under this Agreement as are delegated to the Agents by the terms hereof and of the other Note Documents, together with such powers as are reasonably incidental thereto; (vi) such transferee agrees that it will perform in accordance with their terms all of the obligations that by the terms of this Agreement and the other Note Documents are required to be performed by it as a Purchaser; (vii) such transferee has provided the Issuers and the Administrative Agent with the forms and documents with respect to such transferee referred to in Section 4.05; and (viii) such transferee, by its acceptance of a Note registered in its name, as set forth below in paragraph (c), shall be deemed to have made any representations and warranties set forth in ARTICLE VII herein and agrees to promptly provide to the Issuers or to the Issuers' counsel any and all information necessary or advisable to demonstrate compliance with an exemption from the Securities Act and applicable blue sky laws.

(c) Register. The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Issuers, shall maintain at its address referred to in Section 16.01 a copy of each Transfer and Acceptance delivered to and accepted by it and a register for the recordation of the names and addresses of the Noteholders and principal amount of the Notes held by each Purchaser from time to time (the "Register"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Issuers, the Agents and the Noteholders shall treat each Person whose name is recorded in the Register as a Purchaser hereunder for all purposes of this Agreement. No transfer shall be effective until it is recorded in the Register pursuant to this Section 16.07(c). The Register shall be available for inspection by the Issuers at any reasonable time and from time to time upon reasonable prior notice.

(d) Transfer and Acceptance. Upon its receipt of a Transfer and Acceptance executed by a transferring Purchaser and an transferee and the Note or Notes, or the portion of thereof, being surrendered for transfer, the Administrative Agent shall, if such Transfer and Acceptance has been completed and is in the form of Exhibit F hereto, (i) accept such Transfer and Acceptance, (ii) record the information contained therein in the Register, (iii) give prompt notice thereof to the Issuers and request that the Issuers, at its own expense (except as provided below), execute and deliver one or more new Notes (as requested by the Purchaser thereof) in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Notes, or portions thereof. Each such new Note shall be payable to the Person as such Purchaser may request and shall be substantially in the form of Exhibit A. Each such new Note shall be dated and bear interest from the date to which such interest shall have been paid on the surrendered Note, or portion thereof, or dated the date of the surrendered Note, or portion thereof, if no interest shall have been paid thereon. The Issuers may require payment by the transferee of any such Note, or portion thereof, of a sum sufficient to cover any stamp tax, transfer tax or governmental charge imposed in respect of any such transfer of Notes, or portions thereof.

(e) [Reserved]

(f) Disclosure of Information. Any Purchaser may, in connection with any transfer or participation or proposed transfer or participation pursuant to this Section 16.07, disclose to the transferee or participant or proposed transferee or participant, any information relating to the Note Parties furnished to such Purchaser by or on behalf of the Note Parties; provided that, prior to any such disclosure, the transferee or participant or proposed transferee or participant shall agree in writing to preserve the confidentiality of any confidential information received by it from any Purchaser in accordance with Section 16.18.

(g) Other Pledges. Anything in this Section 16.07 to the contrary notwithstanding, each Purchaser shall be permitted to pledge its interest in the Securities in the Ordinary Course of Business.

(h) No Purchase, Transfers or Participations to Note Parties. Anything in this Section 16.07 to the contrary notwithstanding, none of the Note Parties or their Subsidiaries may acquire any Notes (whether by purchase, redemption, redemption, transfer, participation or otherwise), and no Purchaser shall sell, transfer or participate to any Note Party or Subsidiary of a Note Party, directly or indirectly, any Notes. The Note Parties shall promptly cancel all Notes acquired by it pursuant to any payment, redemption or purchase of Notes pursuant to any provision of this Agreement and promptly notify the Administrative Agent thereof, and no Notes may be issued in substitution or exchange for any such Notes.

(i) Replacement of Notes. Upon receipt by the Issuers and the Administrative Agent of notice from any Purchaser of the ownership of and loss, theft, destruction or mutilation of any Note, and (a) in the case of loss, theft or destruction, of such Purchaser's agreement of indemnity with respect thereto, or (b) in the case of mutilation, upon surrender and cancellation thereof, the Issuers at their own expense shall execute and deliver, in lieu thereof, a new Note, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen,

destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

(j) Successors, Assigns and Transfers. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns or transfers, provided that the Issuers may not assign or transfer any of its rights or obligations hereunder or under the other Note Documents without the prior written consent of the Required Noteholders, and any purported assignment or transfer without such consent shall be null and void.

Section 16.08 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telecopier shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telecopier also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Note Document *mutatis mutandis*.

Section 16.09 GOVERNING LAW. THIS AGREEMENT, THE NOTES AND THE OTHER NOTE DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER NOTE DOCUMENT IN RESPECT OF SUCH OTHER NOTE DOCUMENT) SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK.

Section 16.10 CONSENT TO JURISDICTION; SERVICE OF PROCESS AND VENUE. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT, THE NOTES OR ANY OTHER NOTE DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK IN NEW YORK COUNTY OR OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, THE ISSUER AND EACH PURCHASER BY ITS ACCEPTANCE OF A NOTE HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. THE ISSUERS, GUARANTORS, AGENTS, AND EACH PURCHASER HEREBY IRREVOCABLY APPOINTS THE SECRETARY OF STATE OF THE STATE OF NEW YORK AS AGENT FOR SERVICE OF PROCESS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING AND FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS AND IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE ISSUERS, GUARANTORS, AGENTS AND EACH PURCHASER AT ITS ADDRESS FOR NOTICES AS SET FORTH IN SECTION 16.01 AND TO THE SECRETARY OF STATE OF THE STATE OF NEW YORK, SUCH SERVICE TO BECOME EFFECTIVE TEN (10) DAYS AFTER SUCH MAILING. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE AGENTS OR THE NOTEHOLDERS TO SERVICE OF PROCESS IN ANY

OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL ACTIONS OR PROCEEDINGS OR OTHERWISE PROCEED AGAINST THE ISSUERS IN ANY OTHER JURISDICTION. THE ISSUERS, GUARANTORS, AGENTS AND THE PURCHASERS HEREBY EXPRESSLY AND IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT AN ISSUER, GUARANTOR, THE AGENTS, OR EACH PURCHASER HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, THE ISSUERS, AGENTS AND EACH PURCHASER HEREBY IRREVOCABLY WAIVE SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER NOTE DOCUMENTS.

Section 16.11 WAIVER OF JURY TRIAL, ETC. EACH ISSUER, EACH GUARANTOR, EACH AGENT AND EACH PURCHASER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT, THE NOTES OR THE OTHER NOTE DOCUMENTS, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION THEREWITH, OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION, PROCEEDINGS OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH ISSUER CERTIFIES THAT NO OFFICER, REPRESENTATIVE, AGENT OR ATTORNEY OF ANY AGENT OR ANY PURCHASER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ANY AGENT OR ANY PURCHASER WOULD NOT, IN THE EVENT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM, SEEK TO ENFORCE THE FOREGOING WAIVERS. EACH ISSUER HEREBY ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE AGENTS AND THE PURCHASERS ENTERING INTO THIS AGREEMENT.

Section 16.12 Consent by the Agents and Purchasers. Except as otherwise expressly set forth herein to the contrary, if the consent, approval, satisfaction, determination, judgment, acceptance or similar action (an "Action") of any Agent or any Purchaser shall be permitted or required pursuant to any provision hereof or any provision of any other agreement to which any Issuer is a party and to which any Agent or any Purchaser has succeeded thereto, such Action shall be required to be in writing and may be withheld or denied by such Agent or such Purchaser, in its sole discretion, with or without any reason, and without being subject to question or challenge on the grounds that such Action was not taken in good faith.

Section 16.13 No Party Deemed Drafter. Each of the parties hereto agrees that no party hereto shall be deemed to be the drafter of this Agreement.

Section 16.14 Reinstatement; Certain Payments. If any claim is ever made upon any Agent or any Purchaser for repayment or recovery of any amount or amounts received by such Agent or such Purchaser in payment or on account of any of the Note Obligations, such Agent or such Purchaser shall give prompt notice of such claim to each other Agent and Purchaser and the Issuers, and if such Agent or such Purchaser repays all or part of such amount by reason of (i) any judgment, decree or order of any court or administrative body having jurisdiction over such Agent or such Purchaser or any of its property, or (ii) any good faith settlement or compromise of any such claim effected by such Agent or such Purchaser with any such claimant, then and in such event the Issuers agree that (A) any such judgment, decree, order, settlement or compromise shall be binding upon it notwithstanding the cancellation of any Indebtedness hereunder or under the other Note Documents or the termination of this Agreement or the other Note Documents, and (B) it shall be and remain liable to such Agent or such Purchaser hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by such Agent or such Purchaser.

Section 16.15 Indemnification.

(a) General Indemnity. In addition to the Issuers' other Note Obligations under this Agreement, the Issuers agree to defend, protect, indemnify and hold harmless each Agent and each Purchaser and all of their respective officers, directors, employees, attorneys, consultants and agents (collectively called the "Indemnitees") from and against any and all losses, damages, liabilities, obligations, penalties, fees, reasonable costs and expenses (including, without limitation, reasonable attorneys' fees, costs and expenses) incurred by such Indemnitees, whether prior to or from and after the Effective Date, whether direct, indirect or consequential, as a result of or arising from or relating to or in connection with any of the following: (i) the negotiation, preparation, execution or performance or enforcement of this Agreement, any other Note Document or of any other document executed in connection with the transactions contemplated by this Agreement, (ii) any Agent's or any Purchaser's furnishing of funds to the Issuers under this Agreement or the other Note Documents, (iii) any matter relating to the financing transactions contemplated by this Agreement or the other Note Documents or by any document executed in connection with the transactions contemplated by this Agreement or the other Note Documents, or (iv) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto (collectively, the "Indemnified Matters"); provided, however, that the Issuers shall not have any obligation to any Indemnitee under this subsection (a) for any Indemnified Matter caused by the gross negligence or willful misconduct of such Indemnitee, as determined by a final judgment of a court of competent jurisdiction no longer subject to appeal.

(b) Environmental Indemnity. Without limiting Section 16.15(a) hereof, the Issuers agrees to defend, indemnify, and hold harmless the Indemnitees in their capacity as holders of the Notes or Equity Securities against any and all Environmental Liabilities and Costs and all other claims, demands, penalties, fines, liability (including strict liability), losses, damages, costs and expenses (including without limitation, reasonable legal fees and expenses, consultant fees and laboratory fees), arising out of (i) any Releases or threatened Releases (x) at any property presently or formerly owned or operated by any Issuer, or any predecessor in interest, or (y) of any Hazardous Materials generated and disposed of by the Issuers, or any predecessor in interest; (ii) any violations of Environmental Laws; (iii) any Environmental

Action relating to the Issuers, or any predecessor in interest; (iv) any personal injury (including wrongful death) or property damage (real or personal) arising out of exposure to Hazardous Materials used, handled, generated, transported or disposed by the Issuers, or any predecessor in interest; and (v) any breach of any warranty or representation regarding environmental matters made by the Issuers in Section 8.22. Notwithstanding the foregoing, the Issuers shall not have any obligation to any Indemnitee under this subsection (b) regarding any potential environmental matter covered hereunder which is caused by the gross negligence or willful misconduct of such Indemnitee, as determined by a final judgment of a court of competent jurisdiction no longer subject to appeal.

(c) Contribution. To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section 16.15 may be unenforceable because it is violative of any law or public policy, the Issuers shall contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all Indemnified Matters incurred by the Indemnitees. The indemnities set forth in this Section 16.15 shall the repayment of the Note Obligations and discharge of any Liens granted under the Note Documents.

Section 16.16 Records. The unpaid principal of and interest on the Notes, the interest rate or rates applicable to such unpaid principal and interest, the duration of such applicability, and the accrued and unpaid fees payable herein, shall at all times be ascertained from the records of the Agents, which shall be conclusive and binding absent manifest error.

Section 16.17 Binding Effect. This Agreement shall become effective when it shall have been executed by each Issuer, each Agent and each Purchaser and when the conditions precedent set forth in Section 6.01 hereof have been satisfied or waived in writing by the Required Purchasers, and thereafter shall be binding upon and inure to the benefit of the Issuers, each Agent and each Purchaser, and their respective successors and assigns (including any trustee succeeding to the rights of the Issuers pursuant to Chapter 11 of the Bankruptcy Code or pursuant to any conversion to a case under Chapter 7 of the Bankruptcy Code), except that the Issuers shall not have the right to assign or transfer its rights hereunder or any interest herein without the prior written consent of each Purchaser, and any transfer by any Purchaser shall be governed by Section 16.07 hereof.

Section 16.18 Confidentiality. Each Agent and each Purchaser agrees (on behalf of itself and each of its affiliates, directors, officers, employees and representatives) to keep confidential non-public information supplied to it by the Issuers pursuant to this Agreement or the other Note Documents which is identified in writing by the Issuers as being confidential at the time the same is delivered to such Person (and which at the time is not, and does not thereafter become, publicly available or available to such Person from another source not known to be subject to a confidentiality obligation to such Person not to disclose such information), provided that nothing herein shall limit the disclosure of any such information (i) to such Person's Affiliates or such Person's employees, attorneys, advisors and other experts involved in the transactions contemplated hereby who, in each case, are informed of the confidential nature of such information and agree to maintain the confidentiality thereof, (ii) to the extent required by statute, rule, regulation or judicial process or required in connection with any Bankruptcy Court or other proceeding seeking to enforce the Purchasers or such Agent's rights hereunder (solely to extent believed, in good faith, by the disclosing party to be material to such

enforcement action); provided, that in the case of any disclosure pursuant to this clause (ii), that the party proposing to disclose such information agrees to promptly notify the Issuers thereof; (iii) to counsel for any Agent or any Purchaser, (iv) to examiners, auditors, regulators or accountants on a need to know basis, (v) in connection with any litigation to which any Agent or any Purchaser is a party (solely to extent believed, in good faith, by the disclosing party to be material to such enforcement action); provided, that in the case of any disclosure pursuant to this clause (v), that the party proposing to disclose such information agrees to promptly notify the Issuers thereof), or (vi) to any transferee or participant (or prospective transferee or participant) so long as such transferee or participant (or prospective transferee or participant) first agrees, in writing, to be bound by confidentiality provisions similar in substance to this Section 16.18. Notwithstanding the foregoing, each Agent and each Purchaser may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the financing contemplated by this Agreement, and all materials of any kind (including opinions or other tax analyses) that are provided to any Agent or any Purchaser relating to such tax treatment and tax structure. Each Agent and each Purchaser agrees that, upon receipt of a request or identification of the requirement for disclosure pursuant to clause (ii) or (v) hereof, it will make reasonable efforts to keep the Issuers informed of such request or identification; provided that the Issuers acknowledge that each Agent and each Purchaser may make disclosure as required or requested by any Governmental Authority or representative thereof and that each Agent and each Purchaser may be subject to review by regulatory agencies and may be required to provide to, or otherwise make available for review by, the representatives of such agencies any such non-public information.

Section 16.19 Integration. This Agreement, together with the other Note Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

Section 16.20 Legend. A copy of this Agreement shall be filed with the secretary of the Issuers and kept with the records of the Issuers. Each certificate, note or other document representing the Securities subject to the terms hereof and each certificate, note or other document issued in exchange for or upon the transfer of any such Secuirites shall be stamped or otherwise imprinted with a legend in substantially the following form (unless the transfer of such Securities is being made pursuant to an effective registration statement):

"THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE, AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED OR HYPOTHECATED UNLESS THERE IS AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT AND THE SECURITIES LAWS OF ANY STATE COVERING SUCH SECURITIES."

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

ISSUERS:

PORT TOWNSEND PAPER CORPORATION

By: _____
Name:
Title:

PT HOLDINGS COMPANY, INC.

By: _____
Name:
Title:

PTPC PACKAGING CO., INC.

By: _____
Name:
Title:

COLLATERAL AGENT AND
ADMINISTRATIVE AGENT

WELLS FARGO BANK, N.A.
as Collateral Agent and Administrative Agent

By: _____
Name:
Title:

PURCHASERS:

By: _____
Name:
Title:

# SECURITIES PURCHASE AGREEMENT

**dated as of August [_], 2007[1]**

**among**

**PORT TOWNSEND PAPER CORPORATION,**
**PT HOLDINGS COMPANY, INC.,**
**PTPC PACKAGING CO., INC.,**
**PTPC CORRUGATED COMPANY,**
**CROWN PACKAGING PROPERTIES LTD,**

**THE PURCHASERS IDENTIFIED HEREIN,**

**and**

**WELLS FARGO BANK, N.A.,**
**as Administrative Agent and Collateral Agent**

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**Up to $45,000,000 Senior Secured Notes due 2012**

**[ ] Shares of Series A Preferred Stock of PT Holdings Company, Inc.[2]**

**Warrants for up to [ ] Shares of Common Stock of PT Holdings Company, Inc.**

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[1] This Securities Purchase Agreement is a draft and remains subject to negotiation.

[2] In the event that the Richmond Lease Transaction is consummated on or before the Effective Date of the Plan of Reorganization, and the proceeds of such are sufficient to make the issuance of the Preferred Stock unnecessary, the Securities Purchase Agreement will be modified to eliminate references to the Series A Preferred Stock, the Warrants and the Additional Issuance and may be further modified to increase the initial issuance of the Notes from $35 million to up to $45 million to replace the balance of the contemplated proceeds of the Series A Preferred Stock to the extent the net proceeds of the Richmond Lease Transaction are less than $25 million.



EXHIBIT F

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SCHEDULES AND EXHIBITS

# SECURITIES PURCHASE AGREEMENT

This **SECURITIES PURCHASE AGREEMENT**, dated as of August [_], 2007 is entered into by and among **PORT TOWNSEND PAPER CORPORATION**, a Washington corporation (the "Company"), **PT HOLDINGS COMPANY, INC.,** a Delaware corporation ("Parent"), **PTPC PACKAGING CO., INC.,** a Washington corporation ("Packaging" and collectively with the Company and Parent, the "Issuers"), **PTPC CORRUGATED COMPANY,** a Nova Scotia Unlimited Liability Company ("PTPC"), **CROWN PACKAGING PROPERTIES LTD.**, a British Columbia Corporation ("Crown" and together with PTPC, the "Guarantors"), the Purchasers party hereto from time to time, and **WELLS FARGO BANK, N.A.**, as Administrative Agent (in such capacity, "Administrative Agent") and Collateral Agent (in such capacity, "Collateral Agent" and together with the Administrative Agent, the "Agents").

## RECITALS:

**WHEREAS**, capitalized terms used but not defined in these Recitals shall have the respective meanings set forth for such terms in Section 1.01 hereof;

**WHEREAS**, the Company and certain of its Affiliates have commenced voluntary cases (the "Chapter 11 Cases") under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Washington (the "Bankruptcy Court"), and the Company and such Affiliates have continued to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code;

**WHEREAS**, the Company and its Affiliates, certain purchasers party thereto (the "DIP Lenders") and Wells Fargo Bank, N.A., as administrative agent and collateral agent (in such capacity, the "DIP Agent"), are parties to a Senior Secured Post-Petition Note Purchase Agreement, dated as of March 30, 2007 (the "DIP Financing Agreement"), pursuant to which the DIP Lenders provided financing in an aggregate principal amount of $50,000,000;

**WHEREAS**, by Order, dated August [ ], 2007, the Bankruptcy Court confirmed the Debtors' First Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, Jointly Proposed by the Debtors and the Informal Committee of Senior Secured Noteholders (as amended, supplemented or otherwise modified from time to time, the "Plan of Reorganization"), in accordance with section 1129 of the Bankruptcy Code;

**WHEREAS**, pursuant to the Plan of Reorganization, the Company and its Affiliates are herewith entering into this Agreement and other documents to provide funding for payments required under and in connection with the Plan of Reorganization, to fund the ongoing working capital requirements and general corporate purposes of Company and its Affiliates, to pay certain fees, costs and expenses, to repay all of the obligations under the DIP Financing Agreement and to consummate the Plan of Reorganization and, in connection therewith, the Purchasers will initially purchase an aggregate principal amount of $35,000,000 of Senior Secured Notes due 2012 (the "Notes") in the form of Exhibit A, [ ] shares of Series A Preferred Stock (the "Series A Preferred") in the form of Exhibit B, and Warrants to purchase up to [ ] shares of the common stock of the Parent in the form of Exhibit C (subject to adjustment

and vesting, pursuant to the Warrant) (the "Warrants" and, collectively with the Notes and Series A Preferred, the "Securities");

**WHEREAS**, the Issuers have agreed to secure all of their Note Obligations by granting to Collateral Agent, for the benefit of the Purchasers, a fully perfected security interest in substantially all of their respective assets; and

**WHEREAS**, Guarantors have agreed to guarantee the Note Obligations of the Issuers hereunder and to secure their guarantee of the Note Obligations by granting to the Collateral Agent, for the benefit of the Purchasers, a fully perfected security interest in substantially all of their respective assets (except for their interest in the Richmond Lease).

**NOW, THEREFORE**, in consideration of the promises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

## ARTICLE I

## DEFINITIONS; CERTAIN TERMS

Section 1.01 Definitions. As used in this Agreement, the following terms shall have the respective meanings indicated below, such meanings to be applicable equally to both the singular and plural forms of such terms:

"Account Debtor" means each debtor, customer or obligor in any way obligated on or in connection with any Account Receivable.

"Account Receivable" means, with respect to any Person, any and all rights of such Person to payment for goods sold and/or services rendered, including accounts, general intangibles and any and all such rights evidenced by chattel paper, instruments or documents, whether due or to become due and whether or not earned by performance, and whether now or hereafter acquired or arising in the future, and any proceeds arising therefrom or relating thereto.

"Action" has the meaning specified in Section 16.12.

"Additional Issuance" has the meaning specified in Section 2.05.

"Administrative Agent" has the meaning specified in the preamble hereto.

"Administrative Agent's Account" means an account at a bank designated by the Administrative Agent from time to time as the account into which the Issuers shall make all payments to the Administrative Agent for the benefit of the Agents and the Purchasers under this Agreement and the other Note Documents.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, either to (i) vote 10% or more of the Capital Stock having ordinary voting power for the election of directors of such Person or (ii) direct or cause the direction of

the management and policies of such Person whether by contract or otherwise. Notwithstanding anything herein to the contrary, in no event shall any Agent be considered an "Affiliate" of any Issuer.

"Agent" has the meaning specified in the preamble hereto.

"Agreement" means this Securities Purchase Agreement, including all amendments, modifications and supplements and any exhibits or schedules to any of the foregoing, and shall refer to the Agreement as the same may be in effect at the time such reference becomes operative.

"Authorized Officer" means, with respect to any Person, the chief executive officer, chief restructuring officer, chief financial officer, president, treasurer, comptroller or executive vice president of such Person.

"Bankruptcy Code" means chapter 11 of title 11 of the United States Code.

"Bankruptcy Court" means the United States Bankruptcy Court for the Western District of Washington.

"Board" means the Board of Governors of the Federal Reserve System of the United States.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in New York City, Minneapolis, Minnesota or Seattle, Washington are authorized or required to close.

"Capital Expenditures" means, with respect to any Person for any period, the sum of (i) the aggregate of all expenditures by such Person and its Subsidiaries during such period that in accordance with GAAP are or should be included in "property, plant and equipment" or in a similar fixed asset account on its balance sheet, whether such expenditures are paid in cash or financed and including all Capitalized Lease Obligations paid or payable during such period, and (ii) to the extent not covered by clause (i) above, the aggregate of all expenditures by such Person and its Subsidiaries during such period to acquire by purchase or otherwise the business or fixed assets of, or the Capital Stock of, any other Person.

"Capital Stock" means (i) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock, and (ii) with respect to any Person that is not a corporation, any and all partnership, membership or other Equity Interests of such Person.

"Capitalized Lease Obligations" means, with respect to any Person, obligations of such Person and its Subsidiaries under capitalized leases, and, for purposes hereof, the amount of any such obligation shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Equivalents" means: (a) securities issued or fully guaranteed or insured by the United States Government or any agency thereof having maturities of not more than twelve

(12) months from the date of acquisition; (b) certificates of deposit, time deposits, repurchase agreements, reverse repurchase agreements, or bankers' acceptances, having in each case a tenor of not more than twelve (12) months, issued by any Lender under the Senior Credit Agreement, or by any U.S. commercial bank or any branch or agency of a non-U.S. bank licensed to conduct business in the U.S. having combined capital and surplus of not less than $250,000,000; (c) commercial paper of an issuer rated at least A-1 by Standard & Poor's Corporation or P-1 by Moody's Investors Service Inc. and in either case having a tenor of not more than six (6) months and (d) money market funds and mutual funds provided that substantially all of the assets of such fund are comprised of securities of the type described in clauses (a) through (c).

"Change in Law" has the meaning specified in Section 5.05(a).

"Change of Control" means each occurrence of any of the following:

(a) the acquisition by any person or group (within the meaning of Section 13(d)(3) of the Exchange Act), other than Permitted Holders, of beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of the aggregate outstanding voting power of the Capital Stock of Parent,

(b) Parent ceases to own and control, directly or indirectly, 100% of the shares of the Capital Stock of the Company,

(c) the Company ceases to own and control, directly or indirectly, 100% of the shares of the Capital Stock of its Subsidiaries extant as of the Closing Date, unless otherwise permitted hereunder, or

(d) (i) Parent consolidates with or merges into another entity or conveys, transfers or leases all or substantially all of its property and assets to any Person, or (ii) any entity consolidates with or merges into Parent, which in either event (i) or (ii) is pursuant to a transaction in which the outstanding voting Capital Stock of Parent is reclassified or changed into or exchanged for cash, securities or other property.

"Chapter 11 Cases" has the meaning specified in the recitals hereto.

"Closing Date" has the meaning specified in Section 6.01.

"Closing Date Mortgaged Property" has the meaning specified in Section 6.01(h)(i).

"Code" means the Internal Revenue Code of 1986, as amended (or any successor statute thereto) and the regulations thereunder.

"Collateral" means all collateral on which a lien is granted pursuant to any Note Document.

"Collateral Agent" has the meaning specified in the preamble hereto.

"Confirmation Order" has the meaning specified in Section 6.01(c).

"Consolidated" and "Consolidating", when used with reference to any term, mean that term as applied to the accounts of a specified Person and all of its Subsidiaries (or other specified group of Persons), or such of its Subsidiaries as may be specified, Consolidated (or combined) or Consolidating (or combining), as the case may be, in accordance with GAAP and with appropriate deductions for minority interests in Subsidiaries.

"Consolidated EBITDA" means, with respect to any Person for any period, the Consolidated Net Income of such Person and its Subsidiaries for such period, plus without duplication, the sum of the following amounts of such Person and its Subsidiaries for such period and to the extent deducted in determining Consolidated Net Income of such Person and its Subsidiaries for such period: (a) Consolidated Net Interest Expense, (b) net income tax expense, (c) depreciation expense, (d) amortization expense (e) any extraordinary or non-recurring non-cash charges for such period and (f) Reorganization Expenses, minus, without duplication, (g) any cash expenditures with respect to any extraordinary or non-recurring non cash charges (including restructuring charges) that were added back to Consolidated EBITDA or excluded in the calculation of Consolidated Net Income for a prior period (or would pursuant to this Agreement have been so added back or excluded had this Agreement been in effect during such prior period).

"Consolidated Net Income" means, with respect to any Person for any period, the net income (loss) of such Person and its Subsidiaries for such period, determined on a consolidated basis and in accordance with GAAP, but excluding from the determination of Consolidated Net Income (without duplication) (a) any non-cash extraordinary or non-recurring gains or losses or non-cash gains or losses from Dispositions, (b) any extraordinary cash gains, including any gains from dispositions, (c) non-cash restructuring charges, (d) non-cash effects of discontinued operations, (e) dividends that are paid-in-kind, and (f) any tax refunds, net operating losses or other net tax benefits received during such period on account of any prior period.

"Consolidated Net Interest Expense" means, with respect to any Person for any period, gross cash interest expense of such Person and its Subsidiaries for such period determined on a consolidated basis and in accordance with GAAP (including interest expense paid to Affiliates of such Person), less (i) the sum of (a) interest income for such period and (b) gains for such period on Hedging Agreements (to the extent not included in interest income above and to the extent not deducted in the calculation of gross cash interest expense), plus (ii) the sum of (a) losses for such period on Hedging Agreements (to the extent not included in such gross cash interest expense) and (b) the upfront costs or fees for such period associated with Hedging Agreements (to the extent not included in such gross cash interest expense), in each case, determined on a consolidated basis and in accordance with GAAP.

"Contingent Obligation" means, with respect to any Person, any obligation of such Person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, (i) the direct or indirect guarantee, endorsement (other than for collection or deposit in the Ordinary Course of Business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of a primary obligor, (ii) the obligation to make take-or-pay or similar payments, if required,

regardless of nonperformance by any other party or parties to an agreement, (iii) any obligation of such Person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (b) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase property, assets, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (d) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term "Contingent Obligation" shall not include any product warranties extended in the Ordinary Course of Business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation with respect to which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto at the date of determination, as determined by such Person in good faith.

"Conversion Rate" means, in relation to the conversion of one currency to another on a particular day, the rate of exchange quoted by Wells Fargo Bank, N.A. as its spot rate of exchange for the conversion of one currency to the other at approximately 9:00 a.m. (Minneapolis time) on such day;

"Controlled Group" means each Note Party and all members of a controlled group of corporations and all members of a controlled group of trades or businesses (whether or not incorporated) under common control and all other entities which, together with any Note Party, are treated as a single employer under Section 414 of the Code.

"Default" means an event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Defaulting Noteholder" shall mean any Noteholder that has failed to fund its allocable share of any Additional Issuance of Notes.

"DIP Agent" has the meaning specified in the recitals hereto.

"DIP Financing Agreement" has the meaning specified in the recitals hereto.

"DIP Lenders" has the meaning specified in the recitals hereto.

"Disposition" means any transaction, or series of related transactions, pursuant to which any Issuer or any Subsidiary of an Issuer sells, assigns, transfers or otherwise disposes of any property or assets (whether now owned or hereafter acquired) to any other Person, in each case, whether or not the consideration therefor consists of cash, securities or other assets owned by the acquiring Person, excluding any sales of Inventory in the Ordinary Course of Business on ordinary business terms.

"Dollar," "Dollars" and the symbol "$" each means lawful money of the United States of America.

"Employee Plan" means an employee benefit plan (other than a Multiemployer Plan) covered by Title IV of ERISA and maintained (or that was maintained at any time during the six (6) calendar years preceding the date of any borrowing hereunder) for employees of the Issuers or any of its ERISA Affiliates.

"Environmental Actions" means any complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter or other communication from any Person or Governmental Authority involving violations of Environmental Laws or Releases of Hazardous Materials (i) from any assets, properties or businesses owned or operated by the Issuers or any predecessor in interest thereof; (ii) from adjoining properties or businesses; or (iii) onto any facilities which received Hazardous Materials generated by the Issuers or any predecessor in interest thereof.

"Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), the Federal Clean Water Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.) and the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), *Canadian Environmental Protection Act*, S.C. 1999, c. 33, the Canadian *Fisheries Act*, R.S. 1985, c. F-14, the Canadian *Transportation of Dangerous Goods Act*, S.C. 1992, c. 34, the *Canada Water Act*, R.S. 1985, c. C-11 and the Canadian *Environmental Management Act*, S.B.C. 2003, c. 53, as such laws may be amended or otherwise modified from time to time, and any other present or future federal, state, local or foreign statute, ordinance, rule, regulation, order, judgment, decree, permit, license or other binding determination of any Governmental Authority imposing liability or establishing standards of conduct for protection of the environment or other government restrictions relating to the protection of the environment, environmental assessment, plant, animal or human health, including occupational health, management of waste and safety and transportation of dangerous goods or the Release, deposit or migration of any Hazardous Materials into the environment.

"Environmental Liabilities and Costs" means all liabilities, monetary obligations, Remedial Actions, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants and costs of investigations and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim or demand by any Governmental Authority or any third party, and which relate to any environmental condition or a Release of Hazardous Materials from or onto (i) any property presently or formerly owned by the Issuers or (ii) any facility which received Hazardous Materials generated by the Issuers.

"Equipment" means and include as to each Note Party all of such Note Party's goods (other than Inventory) whether now owned or hereafter acquired and wherever located including all equipment, machinery, apparatus, motor vehicles, fittings, furniture, furnishings, fixtures, parts, accessories and all replacements and substitutions therefor or accessions thereto.

"Equity Documents" means the Certificate of Incorporation, the Warrants, the Series A Preferred Share certificates and the Stockholders Agreement, as the same may be amended, modified, supplemented or restated in accordance with the terms thereof or hereof.

"Equity Interests" of any Person shall mean any and all shares, rights to purchase, options, warrants, general, limited or limited liability partnership interests, member interests, participation or other equivalents of or interest in (regardless of how designated) equity of such Person, whether voting or nonvoting, including common stock, preferred stock, convertible securities or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

"Equity Securities" has the meaning set forth in the recitals hereto.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and regulations thereunder, in each case, as in effect from time to time. References to sections of ERISA shall be construed also to refer to any successor sections.

"ERISA Affiliate" means, with respect to any Person, any trade or business (whether or not incorporated) which is a member of a group of which such Person is a member and which would be deemed to be a "controlled group" within the meaning of Sections 414(b), (c), (m) and (o) of the Code.

"Event of Default" means any of the events set forth in Section 13.01.

"Event of Loss" means, with respect to any Property, any of the following: (a) any loss, destruction or damage of such Property; or (b) any actual condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, of such Property, or confiscation of such Property or the requisition of the use of such Property.

"Excess Cash Flow Amount" has the meaning set forth in Section 3.02(e).

"Excess Cash Flow" means, with respect to any Person for any period, on a Consolidated basis, without duplication: (i) Consolidated EBITDA of such Person and its Subsidiaries for such period, minus (ii) the sum of (a) all principal payments made on the Notes made during such period (excluding any principal payments that were previously deducted in the calculation of the Excess Cash Flow Amount or made pursuant to Section 3.02(e)), (b) all principal payments made on other Indebtedness (other than the Revolving Loan Obligation) of such Person or any of its Subsidiaries during such period to the extent such other Indebtedness is permitted to be incurred, and such payments are permitted to be made, under this Agreement, (c) the cash portion of Capital Expenditures (net of (y) any proceeds reinvested in accordance with Section 3.02(d)(i)), and (z) any proceeds of related financings (other than Revolving Loan Obligation) with respect to such expenditures) made by such Person and its Subsidiaries during such period to the extent permitted to be made under this Agreement, (d) interest paid in cash during such period and (e) cash Taxes paid with respect to such period (or paid in such period with respect to a prior period to the extent not previously deducted in the calculation of Excess Cash Flow) plus (iii) (x) any extraordinary cash gains that were deducted in the calculation of

Consolidated Net Income for such period and (y) any cash tax refunds received during such period (but excluding any such applied as a credit against future Taxes).

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

"Exit Facility Commitment Letter" means that certain agreement dated June 20 2007, among the Issuers, Thales Holdings, Ltd. and GoldenTree Asset Management, LP.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"Fee Letters" means the letters dated August [ ], 2007 executed by the Issuers related to the fees, expenses and disbursements of the Agents.

"Filing Date" means January 29, 2007, the date on which the Issuers commenced the Chapter 11 Cases.

"Financial Statements" means the unaudited consolidated balance sheet of the Issuers and their Subsidiaries for the Fiscal Year ended December 31, 2006 and the related statement of operations and cash flows and the statement of shareholders' equity for the Fiscal Year then ended.

"Fiscal Year" means the fiscal year of the Issuers ending on the 31st of December of each year.

"GAAP" means generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis.

"Governmental Authority" means any nation or government, any Federal, state, city, town, municipality, county, local or other political subdivision thereof or thereto and any department, commission, board, bureau, instrumentality, agency or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Guarantees" means those guaranties and security agreements provided by the Guarantors as surety for the Note Obligations of the Issuers hereunder, and the other cross-guaranties provided under ARTICLE XIV hereof.

"Guarantor" means each entity that has guarantied the Note Obligations pursuant to the Guaranties.

"Hazardous Material" means (a) any element, compound or chemical that is defined, listed or otherwise classified as a contaminant, pollutant, toxic pollutant, toxic or hazardous substance, extremely hazardous substance or chemical, hazardous waste, special waste, or solid waste under Environmental Laws; (b) petroleum and its refined products; (c) polychlorinated biphenyls; (d) any substance exhibiting a hazardous waste characteristic, including, without limitation, corrosivity, ignitability, toxicity or reactivity as well as any radioactive or explosive materials; and (e) any raw materials, building components (including, without limitation, asbestos-containing materials) and manufactured products containing Hazardous Materials.

"Hedging Agreement" means any interest rate, foreign currency, commodity or equity swap, collar, cap, floor or forward rate agreement, or other agreement or arrangement designed to protect against fluctuations in interest rates or currency, commodity or equity values (including, without limitation, any option with respect to any of the foregoing and any combination of the foregoing agreements or arrangements), and any confirmation executed in connection with any such agreement or arrangement.

"Indebtedness" means, with respect to any Person, without duplication, (i) all indebtedness of such Person for borrowed money; (ii) all obligations of such Person for the deferred purchase price of property or services (other than trade payables or other accounts payable incurred in the ordinary course of such Person's business and not outstanding for (A) more than 90 days after the date such payable was created (with the exception of up to [$2,000,000] in advance payments for purchases of Inventory in the Ordinary Course of Business) or (B) a longer period if such payable is being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted, and a reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made therefor); (iii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments or upon which interest payments are customarily made; (iv) all obligations and liabilities of such Person created or arising under any conditional sales or other title retention agreement with respect to property used and/or acquired by such Person, even though the rights and remedies of the lessor, seller and/or lender thereunder may be limited to repossession or sale of such property; (v) all Capitalized Lease Obligations of such Person; (vi) all obligations and liabilities, contingent or otherwise, of such Person, in respect of letters of credit, acceptances and similar facilities; (vii) all obligations and liabilities, calculated on a basis satisfactory to the Required Purchasers and in accordance with accepted practice, of such Person under Hedging Agreements; (viii) all Contingent Obligations of such Person; (ix) liabilities incurred under Title IV of ERISA with respect to any Plan (other than a Multiemployer Plan) covered by Title IV of ERISA and maintained for employees of such Person or any of its ERISA Affiliates; (x) withdrawal liability incurred under ERISA by such Person or any of its ERISA Affiliates with respect to any Multiemployer Plan; (xi) all other items which, in accordance with GAAP, would be included as indebtedness on the balance sheet of such Person; and (xii) all obligations referred to in clauses (i) through (xi) of this definition of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien upon property owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness. The Indebtedness of any Person shall include the Indebtedness of any partnership of or joint venture in which such Person is a general partner or a joint venturer.

"Indemnified Matters" has the meaning specified in Section 16.15.

"Indemnitees" has the meaning specified in Section 16.15.

"Intellectual Property" means any and all property constituting under any applicable law, a patent, patent application, copyright, copyright application, trademark, trademark application, service mark, trade license, design right, trade secret or license or other right to use any of the foregoing.

"Intercreditor Agreement" means that certain Intercreditor Agreement of even date herewith between the Collateral Agent and the Revolving Loan Collateral Agent as the same may be amended, modified, supplemented or restated.

"Interest Payment Date" has the meaning specified in Section 3.01(c).

"Interest Period" means a period commencing on the Closing Date, or with respect to any Interest Period commencing thereafter, commencing on the day following the last day of a prior Interest Period, and ending one, three or six months thereafter; provided, however, that (a) if any Interest Period would end on a day that is not a Business Day, such Interest Period shall be extended (subject to clauses (c)-(e) below) to the next succeeding Business Day, (b) interest shall accrue at the applicable rate based upon the LIBOR Rate from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (c) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (d) with respect to an Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is one, three or six months after the date on which the Interest Period began, as applicable, and (e) the Issuers may not elect an Interest Period which will end after the Maturity Date.

"Inventory" means, with respect to any Person, all goods and merchandise of such Person, including, without limitation, all raw materials, work-in-process, packaging, supplies, materials and finished goods of every nature used or usable in connection with the shipping, storing, advertising or sale of such goods and merchandise, whether now owned or hereafter acquired.

"Issuer" has the meaning specified in the preamble hereto.

"Issuers" has the meaning specified in the preamble hereto.

"Landlord Collateral Access Agreement" means a Landlord Waiver and Consent Agreement substantially in a form approved by Collateral Agent.

"Landlord Consent and Estoppel" means, with respect to any Leasehold Property, a letter, certificate or other instrument in writing from the lessor under the related lease, pursuant to which, among other things, the landlord consents to the granting of a Mortgage on form and

substance acceptable to Collateral Agent in its reasonable discretion, but in any event sufficient for Collateral Agent to obtain a Title Policy with respect to such Mortgage.

"Lease" means any lease of real property to which a Issuer or Guarantor is a party as lessor or lessee.

"Leasehold Property" means any leasehold interest of any Note Party as lessee under any lease of real property, other than any such leasehold interest designated from time to time by Collateral Agent in its sole discretion as not being required to be included in the Collateral.

"Legal Requirement" means any present or future requirement imposed upon any of the Parent and its Subsidiaries by any law, statute, rule, regulation, directive, order, decree or guideline (or any interpretation thereof by courts or of administrative bodies) of the United States of America, or any state, or other political subdivision thereof, or by any board, Governmental Authority of the United States of America or any other jurisdiction in which the Parent or any of its Subsidiaries owns property or conducts its business, or any political subdivision of any of the foregoing.

"LIBOR Notice" means the officer's certificate delivered to the Administrative Agent setting forth Company's election of the applicable LIBOR Rate.

"LIBOR Rate" means the applicable British Bankers' Association LIBOR Rate for deposits in U.S. dollars for a period of one, three or six months, as the Company may elect pursuant to a LIBOR Notice, as reported by any generally recognized financial information service as of 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period; provided, that, if no such British Bankers' Association LIBOR Rate is available to the Company, the LIBOR Rate for the relevant Interest Period shall instead be the rate at which [ ] or one of its affiliate banks offers to place deposits in U.S. dollars with first-class banks in the London interbank market for a period of one, three or six months (as applicable) as of approximately 11:00 a.m. (London time) two business days prior to the first day of such Interest Period, in amounts equal to $1.0 million.

"Lien" means any mortgage, deed of trust, pledge, lien (statutory or otherwise), security interest, charge or other encumbrance or security or preferential arrangement of any nature, including, without limitation, any conditional sale or title retention arrangement, any Capitalized Lease and any assignment, deposit arrangement or financing lease intended as, or having the effect of, security.

"Margin Stock" means "margin stock" within the meaning of Regulations T, U or X of the Board.

"Material Adverse Effect" means, since any specified date or from the circumstances existing immediately prior to the happening of any specified event, a material adverse change in (a) the business, assets, financial condition or income of the Parent and its Subsidiaries, taken as a whole, (b) the ability of any Issuer to perform its obligations under this Agreement or the Securities or the ability of any Subsidiary of any Issuer to perform any of its obligations under any guarantee of the Notes, in each case, taken as a whole or (c) the rights and

remedies of any Agent or any Purchaser under any Note Document; provided, that where no date is specified, the measurement date shall be from and include the Closing Date.

"Maturity Date" means August __, 2012.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Mortgage" means a Mortgage substantially in the form of Exhibit D, as it may be amended, supplemented or otherwise modified from time to time.

"Multiemployer Plan" means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA to which the Issuers or any of their ERISA Affiliates has contributed to, or has been obligated to contribute, at any time during the preceding six (6) years.

"Net Cash Proceeds" means, with respect to any Disposition by any Issuer or any of its Subsidiaries, the amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment of deferred consideration) by or on behalf of such Issuer or such Subsidiary, in connection therewith after deducting therefrom only (A) the principal amount of any Indebtedness secured by any Lien on the applicable asset disposed of (other than Indebtedness assumed by the purchaser of such asset) which Lien is permitted hereunder to be senior to the Liens securing the Notes and which Indebtedness is required to be, and is, repaid in connection with such Disposition (other than Indebtedness under this Agreement), (B) reasonable expenses related thereto incurred by such Issuer or such Subsidiary in connection therewith, (C) transfer taxes paid to any taxing authorities by such Issuer or such Subsidiary in connection therewith, and (D) net income taxes payable in connection with, and during the 12 month period following, any such Disposition (after taking into account any tax credits or deductions and any tax sharing arrangements).

"Note" has the meaning specified in the recitals hereto, and shall mean and include any Notes issued upon an assignment or replacement of any Notes.

"Note Documents" means this Agreement, the Notes, the Intercreditor Agreement, the Mortgages, the Security and Pledge Agreement and any other document pursuant to which any Note Party grants security for the Note Obligations, as the same may be amended, modified, supplemented, restated, replaced, refinanced or substituted in accordance with the terms thereof or hereof.

"Noteholders" shall mean the holders of the Notes. "Noteholder" shall mean any of the Noteholders, individually.

"Note Obligations" means all present and future indebtedness, obligations, and liabilities of the Note Parties to the Agents and the Noteholders relating to or under the Note Documents, whether or not the right of payment in respect of such claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured, unsecured, and whether or not such claim is discharged, stayed or otherwise affected by any proceeding referred to in Section 13.01. Without limiting the generality of the foregoing, the Note Obligations include (a) the obligation to pay principal, interest, the Prepayment Premium, charges, expenses, fees, attorneys' fees and disbursements, indemnities and other amounts

payable by the Note Parties under the Note Documents, and (b) the obligation of the Issuers to reimburse any amount in respect of any of the foregoing that any Agent may elect to pay or advance on behalf of the Issuers.

"Note Parties" means the Issuers, the Guarantors and each other Person guaranteeing or providing Collateral to secure the Note Obligations.

"Ordinary Course of Business" means, in respect of any transaction involving Parent, the Company or any Subsidiary of the Company, the ordinary course of such Person's business, as conducted by any such Person in accordance with past practice and undertaken by such Person in good faith and not for purposes of evading any covenant or restriction in the Agreement.

"Organizational Documents" means (i) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by laws, as amended, (ii) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (iii) with respect to any general partnership, its partnership agreement, as amended, and (iv) with respect to any limited liability company, its articles of organization, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement or any other Note Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "Organizational Document" shall only be to a document of a type customarily certified by such governmental official.

"Other Taxes" has the meaning specified in Section 4.02.

"Outstanding" means, as of the date of determination, all Notes delivered under this Agreement, except:

(i) Notes theretofore canceled by the Administrative Agent or delivered to the Administrative Agent for cancellation; or

(ii) Notes, or portions thereof, for whose payment or redemption immediately available funds in the necessary amount have been theretofore deposited with the Administrative Agent (other than the Issuers) in trust or set aside and segregated in trust by the Issuers (if the Issuers shall act as their own Administrative Agent) for the Noteholders of such Notes; provided that, if the Notes are to be redeemed, notice of such redemption has been duly given pursuant to this Agreement;

provided, however, that in determining whether the Noteholders of the requisite principal amount of the outstanding Notes have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Notes owned by the Issuers or any Subsidiary thereof shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Administrative Agent or the Issuers, as the case may be, shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes which a Responsible Officer of the Administrative Agent actually knows to be so owned shall be so disregarded.

"Parent" has the meaning specified in the preamble hereto.

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereto.

"Permitted Disposition" means:

(a) the sale of Inventory in the Ordinary Course of Business;

(b) the sale, transfer or disposition of any assets of any Issuer that are (i) worn-out or obsolete, (ii) replaced in the Ordinary Course of Business of such Issuer, or (iii) no longer used in the business of such Issuer;

(c) the termination of leases, surrender or sublease of real or personal property in the Ordinary Course of Business of the Issuers;

(d) the incurrence of any Permitted Lien;

(e) the liquidation, sale or disposition of Cash Equivalents in the Ordinary Course of Business;

(f) the discount or write-off of Accounts Receivable overdue by more than ninety (90) days or the sale of any such accounts receivable for the purpose of collection, in each case in the Ordinary Course of Business; and

(g) sales, transfers or dispositions of assets for aggregate consideration not exceeding $1,000,000 in the aggregate during any Fiscal Year.

"Permitted Holder" means (i) any holder of 5% or more of the Capital Stock of the Parent immediately following consummation of the Plan (and after giving effect to distributions thereunder) and (ii) any current Affiliates of such holders.

"Permitted Indebtedness" means:

(a) any Indebtedness owing to any Agent or any Purchaser under this Agreement and the other Note Documents;

(b) any Indebtedness owing to any agent or lender under the Revolving Loan Documents as such amount may be increased in accordance with the Intercreditor Agreement so long as any Liens securing such Indebtedness are subject to the terms of the Intercreditor Agreement, including that such Liens are subordinate to the Liens securing the Notes on all Collateral other than the "ABL Priority Collateral" (as defined in the Intercreditor Agreement);

(c) any Indebtedness existing on the Closing Date and set forth on Schedule III; and

(d) any Indebtedness with respect to Hedging Agreements entered into in the Ordinary Course of Business and not for speculative purposes.

"Permitted Investment" means (i) marketable direct obligations issued or unconditionally guaranteed by the United States Government or the Canadian Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case, maturing within six (6) months from the date of acquisition thereof; (ii) commercial paper, maturing not more than 270 days after the date of issue rated P-1 by Moody's or A-1 by Standard & Poor's; (iii) certificates of deposit maturing not more than 270 days after the date of issue, issued by commercial banking institutions and money market or demand deposit accounts maintained at commercial banking institutions, each of which is a member of the Federal Reserve System or of an equivalent system in Canada and has a combined capital and surplus and undivided profits of not less than $500,000,000; (iv) repurchase agreements having maturities of not more than ninety (90) days from the date of acquisition which are entered into with major money center banks included in the commercial banking institutions described in clause (iii) above and which are secured by readily marketable direct obligations of the United States Government or the Canadian Government or any agency thereof; (v) money market accounts maintained with mutual funds having assets in excess of $2,500,000,000; (vi) tax exempt securities rated A or higher by Moody's or A+ or higher by Standard & Poor's; (vii) any investment with respect to Hedging Agreements entered into in the Ordinary Course of Business and not for speculative purposes; (viii) investments in Wholly-Owned Subsidiaries that are Guarantors of the Notes; (ix) investments existing on the Closing Date and set forth on Schedule 10.04; and (x) investments in Account Debtors or Affiliates of such distributed to the Note Parties received in consideration of Accounts Receivable of such Account Debtor in a bankruptcy or work-out with respect to such Account Debtor, or otherwise to settle a defaulted Account Receivable.

"Permitted Liens" means:

(a) Liens securing the Note Obligations;

(b) Liens securing the Revolving Loan Obligations; provided such Liens shall have, in accordance with the Intercreditor Agreement, a first priority security interest solely with respect to the working capital assets (i.e., Inventory, Accounts Receivable and proceeds thereof) of the Note Parties;

(c) Liens for taxes, assessments and governmental charges the payment of which is not required under ARTICLE IV;

(d) Liens imposed by law, such as carriers', warehousemen's, mechanics', materialmen's, landlords' and other similar Liens arising in the Ordinary Course of Business and securing obligations (other than Indebtedness for borrowed money) that are not overdue by more than thirty (30) days or are being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted, and a reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made therefor;

(e) Liens existing on the Closing Date, and set forth on Schedule 10.01;

(f) deposits and pledges of cash securing (i) obligations incurred in respect of workers' compensation, unemployment insurance or other forms of governmental insurance or

benefits, (ii) the performance of bids, tenders, leases, contracts (other than for the payment of money) and statutory obligations or (iii) obligations on surety or appeal bonds, but only to the extent such deposits or pledges are made or otherwise arise in the Ordinary Course of Business and secure obligations not past due;

(g) easements, zoning restrictions and similar encumbrances on real property and minor irregularities in the title thereto that do not (i) secure obligations for the payment of money or (ii) materially impair the value of such property or its use by the Issuers in the normal conduct of the Issuers' business;

(h) Liens that are valid and perfected or capable of being perfected on logs, spars, piles, cord wood, shingle bolts, or other timber of the Issuers on lumber pursuant to RCW 60.24.030, on the lot tract, parcel of land, or any other type of real property or real property improvements upon which the type of activities listed in RCW 60.24.020, 60.24.030 or 60.24.035 are to be performed pursuant to RCW 60.24.033, on saw logs, spars, piles, or other timber pursuant to RCW 60.24.035 and,

(i) maritime liens on Inventory or proceeds of Inventory in transit; and

(j) Liens on Inventory securing up to [$2,000,000] of advance payments owing to customers in the Ordinary Course of Business.

"Person" means an individual, corporation, limited liability company, partnership, association, joint-stock company, trust, unincorporated organization, joint venture or other enterprise or entity or Governmental Authority.

"Plan" means any Employee Plan or Multiemployer Plan.

"Plan of Reorganization" has the meaning specified in the recitals hereto

"Post-Default Rate" means a rate of interest per annum equal to the rate of interest otherwise in effect from time to time pursuant to the terms of this Agreement plus 2.0%.

"Prepayment Premium" means the premium to be paid in connection with certain prepayments of the Notes pursuant to the Agreement equal to 2% of the aggregate principal amount of the Notes then prepaid or required to be prepaid.

"Prepetition Agents" means U.S. Bank, N.A. as trustee for Prepetition Indebtedness Holders, and Wells Fargo Bank, N.A., as administrative agent for the DIP Lenders.

"Prepetition Debt Obligations" means the Senior Secured Notes.

"Prepetition Indebtedness Holders" means the holders of the Senior Secured Notes.

"Pro Forma Balance Sheet" has the meaning specified in Section 8.05(a).

"Pro Forma Financial Statements" has the meaning specified in Section 8.05(b).

"Projections" has the meaning specified in Section 8.05(b).

"Pro Rata Share" means, with respect to any Noteholder, the percentage obtained by dividing the aggregate unpaid principal amount of such Noteholder's Notes, by the aggregate unpaid principal amount of all Outstanding Notes.

"Purchaser" has the meaning specified in the preamble hereto and includes each Person that becomes a party hereto pursuant to Section 16.07.

"Qualified Plan" means a Pension Plan intended to be tax-qualified under Section 401(a) of the Code and which any ERISA Group Person sponsors, maintains, or to which it makes, is making or is obligated to make contributions, or in the case of a multiple employer plan (as described in Section 4064(a) of ERISA) has made contributions at any time during the immediately preceding period covering at least five (5) plan years, but excluding any Multiemployer Plan.

"Real Estate Asset" means, at any time of determination, any interest (fee, leasehold or otherwise) then owned by any Note Party in any real property.

"Register" has the meaning specified in Section 16.07(c).

"Registration Rights Agreement" means that certain Registration Rights Agreement dated as of the Closing Date, by and among [_____], as the same may be modified, supplemented, restated or replaced.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping or disposing of any Hazardous Material (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Material) into the indoor or outdoor environment, including, without limitation, the movement of Hazardous Materials through or in the ambient air, soil, surface or ground water, or property.

"Remedial Action" means all actions taken to (i) clean up, remove, remediate, contain, treat, monitor, assess, evaluate or in any other way address Hazardous Materials in the indoor or outdoor environment; (ii) prevent or minimize a Release or threatened Release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; (iii) perform pre-remedial studies and investigations and post-remedial operation and maintenance activities; or (iv) perform any other actions authorized by 42 U.S.C. § 9601.

"Reorganization Expenses" means all professional fees, costs and expenses associated with the Plan of Reorganization to the extent not capitalized, as demonstrated (both as to amount and as to eligibility to be treated as Reorganization Expenses) to the reasonable satisfaction of the Required Noteholders.

"Replaced Noteholder" has the meaning specified in Section 3.06.

"Replacement Noteholder" has the meaning specified in Section 3.06.

"Reportable Event" means an event described in Section 4043 of ERISA (other than the commencement of the Chapter 11 Case and any event not subject to the provision for 30-day notice to the PBGC under the regulations promulgated under such Section).

"Required Noteholders" means the holders of more than 50% of the aggregate principal amount of the Notes then outstanding; provided that for this purpose, the Notes held by any Defaulting Noteholder shall be disregarded.

"Requirement of Law" means, as to any Person, any law (statutory or common), ordinance, treaty, rule, regulation, order, policy, other legal requirement or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

"Responsible Officer" means, when used with respect to an Agent, any officer within the corporate trust department of such Agent, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of such Agent who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject and who shall have responsibility for the administration of this Agreement by such Agent.

"Restricted Payment" has the meaning specified in Section 10.11.

"Revolving Loan Agreement" means that certain Revolving Loan Agreement dated as of August __, 2007, by and among [ ] and Lenders party thereto, as the same may be amended, modified, supplemented, restated, replaced, refinanced or substituted in accordance with the Intercreditor Agreement.

"Revolving Loan Collateral Agent" means [ ], as collateral agent under the Revolving Loan Agreement.

"Revolving Loan Documents" means the Revolving Loan Agreement and the other documents executed from time to time pursuant thereto, as the same may be amended, modified, supplemented, restated, replaced, refinanced or substituted.

"Revolving Loan Obligations" means all present and future indebtedness, obligations, and liabilities of the Note Parties to the agents and the lenders under the Revolving Loan Documents.

"Richmond Lease" means the ground lease made the 9th day of May 1956 and registered in the New Westminster Land Title Office against title to the Lands under No. 199656C, as assigned to Crown under an assignment of lease dated October 1, 1997 and registered under No. BL332071, as modified.

"Richmond Lease Transaction" means any sale-leaseback transaction in connection with the Richmond Lease.

"Securities" has the meaning specified in the recitals hereto.

"Securities Act" means the United States Securities Act of 1933, as amended (and any successor statute).

"Security and Pledge Agreement" means the Security and Pledge Agreement substantially in the form of Exhibit E, as it may be amended, supplemented or otherwise modified from time to time.

"Senior Secured Notes" means the 11% Senior Secured Notes due 2011 in the original aggregate principal amount of $125,000,000 issued by the Company.

"Series A Preferred" has the meaning specified in the recitals hereto.

"Stockholders Agreement" means that certain Stockholders Agreement dated as of the Closing Date, by and among [ ], as the same may be amended, modified, supplemented, restated, or replaced.

"Solvent" means, as to any Person at any time, that (a) the fair value of the Property of such Person is greater than the amount of such Person's liabilities (including disputed, contingent and unliquidated liabilities) as such value is established and liabilities evaluated for purposes of Section 101(32)(A) of the Bankruptcy Code and, in the alternative, for purposes of the Uniform Fraudulent Transfer Act; (b) the present fair saleable value (on a going concern basis) of the Property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured; (c) such Person is able to realize upon its Property and generally pay its debts and other liabilities (including disputed, contingent and unliquidated liabilities) as they mature in the normal course of business; (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to generally pay as such debts and liabilities mature; and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's Property would constitute unreasonably small capital.

"Standard & Poor's" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

"Subordinated Indebtedness" means the Indebtedness of the Parent or any of its Subsidiaries which is subordinated in right of payment to the Notes.

"Subsidiary" means, with respect to any Person at any date, any corporation, limited or general partnership, limited liability company, trust, association or other entity (i) the accounts of which would be consolidated with those of such Person in such Person's consolidated financial statements if such financial statements were prepared in accordance with GAAP or (ii) of which more than 50% of (A) the outstanding Capital Stock having (in the absence of contingencies) ordinary voting power to elect a majority of the board of directors if a corporation, (B) the interest in the capital or profits if a partnership or limited liability company or (C) the beneficial interest in such trust or estate is, at the time of determination, owned or controlled directly or indirectly through one or more intermediaries, by such Person.

"Supplemental Closing Date" shall mean the date on which Notes are issued and sold pursuant to the Additional Issuance.

"Taxes" has the meaning specified in Section 4.01.

"Termination Event" means (i) a Reportable Event with respect to any Employee Plan, (ii) any event that causes any Issuer or any of its ERISA Affiliates to incur liability under Section 409, 502(i), 502(l), 515, 4062, 4063, 4064, 4069, 4201, 4204 or 4212 of ERISA or Section 4971 or 4975 of the Code, (iii) the filing of a notice of intent to terminate an Employee Plan or the treatment of an Employee Plan amendment as a termination under Section 4041 of ERISA, (iv) the institution of proceedings by the PBGC to terminate an Employee Plan, or (v) any other event or condition which might constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Employee Plan; provided, however, that no Termination Event shall be deemed to have occurred as a result of the commencement of the Chapter 11 Case.

"Transactions" has the meaning specified in Section 8.05(a).

"Transfer and Acceptance" means a transfer and acceptance entered into by an assigning Purchaser and an assignee, and accepted by the Administrative Agent, in accordance with Section 16.07 hereof and substantially in the form of Exhibit F hereto or such other form acceptable to the Administrative Agent.

"Unaudited Financial Statements" has the meaning specified in Section 8.05(c).

"Uniform Commercial Code" has the meaning specified in Section 1.03.

"Warrants" has the meaning set forth in the recitals hereto.

"Wholly-Owned Subsidiary" means any Subsidiary in which (other than directors' qualifying shares required by law) one hundred percent (100%) of equity securities, at the time as of which any determination is being made, is owned, beneficially and of record, by the Company, or by one or more of the other Wholly-Owned Subsidiaries, or both.

Section 1.02 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any right or interest in or to assets and properties of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible. References in

this Agreement to "determination" by any Agent include good faith estimates by such Agent (in the case of quantitative determinations) and good faith beliefs by such Agent (in the case of qualitative determinations).

Section 1.03 Accounting and Other Terms. Unless otherwise specifically provided herein, all accounting terms not specifically defined herein shall be construed, all accounting determinations hereunder shall be made, and all financial computations required to be delivered pursuant hereto shall be prepared, in accordance with GAAP consistently applied; provided that notwithstanding any treatment of the Series A Preferred as indebtedness under GAAP, the Series A Preferred shall not be considered indebtedness or "Indebtedness" for purposes of any calculations under Article XI, and any accrual or dividend payment with respect to the Series A Preferred (regardless whether paid in cash) shall be disregarded in any calculation of Consolidated Interest Expense for purposes of any such calculations. All financial tests relating to the Company shall be calculated with respect to the Parent and its Subsidiaries on a Consolidated basis. If any change in GAAP results in a change in the calculation of the financial covenants or interpretation of related provisions of this Agreement, then the Note Parties and the Required Noteholders agree to amend such provisions of this Agreement so as to equitably reflect such changes in GAAP with the desired result that the criteria for evaluating the financial condition of the Parent and its Subsidiaries on a Consolidated basis shall be the same after such change in GAAP as if such change had not been made, provided that, notwithstanding any other provision of this Agreement, the Required Noteholders' agreement to any amendment of such provisions shall be sufficient to bind all Noteholders; and, provided further, until such time as the financial covenants and the related provisions of this Agreement have been amended in accordance with the provisions of this Section 1.03, the calculations of financial covenants and the interpretation of any related provisions shall be calculated and interpreted in accordance with GAAP consistently applied as in effect immediately prior to such change in GAAP. All terms used in this Agreement which are defined in Article 8 or Article 9 of the Uniform Commercial Code as in effect in the State of New York (the "Uniform Commercial Code") and which are not otherwise defined herein shall have the same meanings herein as set forth therein, capitalization notwithstanding.

Section 1.04 Time References. Unless otherwise indicated herein, all references to time of day refer to Eastern Standard Time or Eastern daylight saving time, as in effect in New York City on such day. For purposes of the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding"; provided, however, that with respect to a computation of fees or interest payable to any Agent or any Purchaser, such period shall in any event consist of at least one full day. Any references to dates or days for deliveries or notices shall be deemed to be Business Days and if such calendar day is not a Business Day, shall be deemed to be the next succeeding Business Day.

## ARTICLE II

## AUTHORIZATION; PURCHASE AND SALE OF THE SECURITIES

Section 2.01 Authorization of Securities. The Issuers have authorized the issuance and sale of the Notes to the Purchasers of an aggregate principal amount of up to

$45,000,000 of Notes on the terms and conditions set forth herein. Parent has authorized the issuance and sale to the Purchasers of the Equity Securities on the terms and conditions set forth herein. The Equity Securities shall have the rights, preferences and privileges set forth in the Equity Documents.

Section 2.02 Purchase and Sale of the Securities at Closing. Subject to the terms and conditions of this Agreement, the other Note Documents, the Equity Documents, and on the basis of the representations and warranties set forth herein, the Issuers hereby agree to issue and sell to each Purchaser, and by its acceptance hereof, each such Purchaser agrees to purchase from the Issuers, at the Closing, the principal amount of Notes, the number of shares of Series A Preferred and the Warrants, set forth opposite the name of such Purchaser on Schedule I hereto for the respective purchase prices set forth thereon, which purchase prices shall reflect a 1% purchase discount. The aggregate principal amount of Notes to be purchased at the Closing shall be $35,000,000.

Section 2.03 Purchase Price for Securities; Allocation of Purchase Price. The purchase price to each Purchaser for the Securities purchased at Closing is the amount set forth opposite such Purchaser's name on Schedule I hereto. The Issuers and the Purchasers agree that, for purposes of Sections 305 and 1271 through 1275 of the Code or any other jurisdiction, the aggregate original purchase price of each of the Securities shall be allocated as set forth on Schedule I hereto (as such schedule may be amended), and that such allocation shall be appropriately used by the Issuers and each Purchaser for financial and income tax reporting purposes; provided that the allocation of the purchase price between the Series A Preferred and the Warrants shall be determined following the Closing in a manner mutually agreeable to Parent and to the Purchasers holding a majority of the shares of Series A Preferred and Warrants.

Section 2.04 The Closing. The purchase and sale of the Securities to be acquired by the Purchasers will occur at a closing (the "Closing") to be held on August __, 2007, at 10:00 a.m. (New York time), at the offices of Ropes & Gray LLP, 1211 Avenue of the Americas, New York, New York 10036, or at such other date, time and/or location as may be agreed upon by the parties hereto, subject to the terms and conditions hereof, including, without limitation, the simultaneous execution of the Equity Documents and the Revolving Loan Documents and the occurrence of the effective date of the Plan of Reorganization.

Section 2.05 Additional Issuance of Notes. Subject to the conditions set forth in Section 6.02, the Issuers may sell to each Purchaser in one additional issuance (such issuance, the "Additional Issuance") and each such Purchaser agrees to purchase in their respective Pro Rata Shares from the Issuers, additional Notes in the aggregate principal amount of up to $10,000,000. All purchases and sales of Notes under this Section 2.05 shall be at the purchase price of 99% of the principal amount thereof. All proceeds of any Additional Issuance pursuant to this Section 2.05 shall be used, in conjunction with Net Cash Proceeds of any Richmond Lease Transaction, to redeem the Series A Preferred.

Section 2.06 Payment of Purchase Price; Timing. On the Closing Date and Supplemental Closing Date relating to any Additional Issuance, in consideration of payment to the Issuers by wire transfer of immediately available funds in an amount equal to the purchase price of the Notes, Series A Preferred and Warrants purchased on such Closing Date and

Supplemental Closing Date, the Issuers will deliver Notes, Series A Preferred and/or Warrants registered in the names of any Purchasers that have requested physical delivery of such Note, Series A Preferred and/or Warrant (with the Purchasers' holdings of Notes to be evidenced and reflected by a register to be maintained by the Administrative Agent, regardless whether Notes have been physically delivered).

Section 2.07 Use of Proceeds. The proceeds of the sale by the Issuers of the Securities at the Closing shall be used solely to (i) repay all obligations under the DIP Financing Agreement, (ii) provide funding for payments, fees and expenses required under or in connection with the Plan of Reorganization and (iii) provide working capital and for other general corporate purchases. Proceeds of the sale by the Issuers of the Additional Issuance on the Supplemental Closing Date shall be used solely to redeem the Series A Preferred. No portion of the proceeds of the sale of the Securities hereunder shall be used, directly or indirectly, for the purpose, whether immediate, incidental or ultimate, of buying or carrying any "margin stock" within the meaning of any regulation, interpretation or ruling of the Board, all as from time to time in effect, refunding of any indebtedness incurred for such purpose, or making any investment prohibited by foreign trade regulations. Without limiting the foregoing, the Issuers agree that in no event shall any proceeds of the sale of the Securities hereunder be used in any manner which might cause the Securities or the application of such proceeds to violate any of Regulations T, U or X of the Board or any other regulation of the Board, or to violate the Exchange Act, each as in effect as of the Closing (or the Supplemental Closing Date) and as of such use of proceeds.

## ARTICLE III

## TERMS OF THE NOTES

Section 3.01 Interest on the Notes.

(a) Interest. From and including the Closing Date (or, with respect to any Note issued in the Additional Issuance, the Supplemental Closing Date), the Notes shall bear interest at a rate equal to the LIBOR Rate plus 7% per annum on the unpaid principal amount thereof.

(b) Default Interest. After and during the continuance of any Event of Default, the Notes shall bear interest at the Post-Default Rate, including, in the event of a payment default, on any overdue principal (including any overdue prepayment of principal, and any principal due upon acceleration) and on any overdue installment of interest (to the extent permitted by applicable law).

(c) Interest Payment. Interest on the Notes shall be payable in cash on the first calendar day of each of April, July, October and January (each, an "Interest Payment Date") or if such calendar day is not a Business Day, on the next succeeding Business Day, commencing on the first Business Day of January 2008. Interest shall be paid by wire transfer or other same day funds to the Administrative Agent's Account as set forth on Schedule II hereto.

(d) Interest Computation. Interest on the Notes shall be computed on the basis of for the actual number of days elapsed and a year of 360 days. In computing such

interest, the date or dates of the making of the Notes shall be included and the date of payment shall be excluded.

(e) LIBOR Rate.

(i) The Issuers may, at any time and from time to time, so long as no Event of Default has occurred and is continuing, elect the LIBOR Rate by delivering to the Administrative Agent a LIBOR Notice prior to 2:00 p.m. (Minneapolis time) at least 3 Business Days prior to the commencement of the proposed Interest Period (the "LIBOR Deadline"). Notice of the Issuers' election of the LIBOR Rate for an Interest Period pursuant to this subsection (e) shall be made by delivery to Administrative Agent of a LIBOR Notice received by Administrative Agent before the LIBOR Deadline. Promptly upon its receipt of each such LIBOR Notice, Administrative Agent shall provide a copy thereof to each of the Noteholders. To the extent that, on an applicable LIBOR Deadline, an Event of Default has occurred and is continuing or the Issuers fail to elect the LIBOR Rate on or before the LIBOR Deadline, the applicable LIBOR Rate shall be the LIBOR Rate for deposits in U.S. dollars for a period of one month, as reported by any generally recognized financial information service as of 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period.

(ii) Each LIBOR Notice delivered by the Issuers shall be irrevocable and binding on the Issuers. The Issuers shall indemnify, defend, and hold Administrative Agent and the Noteholders harmless against any loss, cost, or expense incurred by Administrative Agent or any Noteholder as a result of (1) the payment of any principal of the Notes other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default) or (2) the failure to borrow, continue or prepay the Notes on the date specified in any LIBOR Notice delivered pursuant hereto (such losses, costs, and expenses, collectively, "Funding Losses"). Funding Losses shall, with respect to Administrative Agent or any Noteholder, be deemed to equal the amount determined by Administrative Agent or such Noteholder to be the excess, if any, of (x) the amount of interest that would have accrued on the principal amount of such Notes had such event not occurred, at the LIBOR Rate that would have been applicable thereto, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow or continue, for the period that would have been the Interest Period therefor), minus (y) the amount of interest that would accrue on such principal amount for such period at the interest rate which Administrative Agent or such Noteholder would be offered were it to be offered, at the commencement of such period, Dollar deposits of a comparable amount and period in the London interbank market. A certificate of Administrative Agent or a Noteholders delivered to the Issuers setting forth any amount or amounts that Administrative Agent or such Noteholders is entitled to receive pursuant to this Section shall be conclusive absent manifest error.

(iii) The Issuers shall have not more than five Interest Periods in effect at any given time.

(f) Alternate Rate of Interest. If prior to the commencement of any Interest Period:

(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the LIBOR Rate for such Interest Period; or

(ii) the Administrative Agent is advised in writing by any Noteholder that the LIBOR Rate for such Interest Period will not adequately and fairly reflect the cost to such Noteholder of making or maintaining the Note Obligation included for such Interest Period (other than for reasons related to the identity or creditworthiness of such Noteholder);

then the Administrative Agent shall give notice thereof to the Issuers and the Noteholders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent, upon being so advised in writing by the applicable Noteholders, notifies the Issuers and the Noteholders that the circumstances giving rise to such notice no longer exist, such Noteholder's Note shall accrue interest at such rate as such Noteholder shall determine (in a certificate delivered by such Noteholder to the Administrative Agent setting forth the basis of the computation of such rate, which certificate shall in the absence of manifest error be conclusive on the Issuers) to be necessary to compensate such Noteholder for its cost (rounded upward, if necessary, to the nearest 1/16th of 1%) of obtaining (in good faith and using reasonable efforts to minimize the interest cost to the Issuers) funds for such period in an amount comparable to the aggregate principal amount of such portion of such Noteholder's Notes plus 7% per annum. The Administrative Agent shall notify the Issuers of such determination as promptly as practicable. After the Administrative Agent shall have notified the Issuers of such determination and during the period such interest rate continues to be applicable, the Issuers may elect to prepay that portion of the Notes so affected, but without premium or penalty, in accordance with the provisions of Section 3.02(c); provided that if at any time prior to such prepayment the Administrative Agent determines, upon being so advised in writing by the applicable Noteholders, that the circumstance or circumstances referred to in clauses (a) and (b) that gave rise to the operation of this subsection (f) have ceased to exist and that no other circumstance exists that would give rise to the operation of this subsection (f), the Administrative Agent shall so notify the Issuers, and as promptly as practicable thereafter the rate of interest on that portion of the Notes so affected shall again be determined in accordance with Section 3.01 (and any election to prepay the Notes in accordance with this sentence may be revoked by the Issuers by notice to the Administrative Agent).

(g) Break Funding Payments. In the event of (a) the payment of any principal of any Note other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the failure to borrow, continue or prepay any Note on the date specified in any notice delivered pursuant hereto or (c) the assignment of any Note other than on the last day of the Interest Period applicable thereto as a result of an election by the Issuers pursuant to Section 3.06, then, in any such event, the Issuers shall compensate each Noteholder for the loss, cost and expense attributable to such event. Such loss, cost or expense to any Noteholder shall be deemed to include an amount determined by such Noteholder to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Notes had such event not occurred, at the Reference Rate that would have been applicable to such Notes, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow or continue, for the period that would have been the Interest Period for such Notes), over (ii) the amount of interest which would

accrue on such principal amount for such period at the interest rate which such Noteholder would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Noteholder setting forth any amount or amounts that such Noteholder is entitled to receive pursuant to this Section shall be delivered to the Issuers and shall be conclusive absent manifest error. The Issuers shall pay such Noteholder the amount shown as due on any such certificate within 10 days after receipt thereof.

Section 3.02 Evidence of Debt; Payment of Notes;.

(a) Evidence of Debt. The Administrative Agent shall maintain accounts in which it shall record (i) the amount of the Notes issued hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from the Issuers to each Noteholder hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Noteholders and each Noteholder's share thereof. The entries made in the accounts maintained pursuant to this Section 3.02(a) shall be presumptive evidence of the existence and amounts of the obligations recorded therein absent demonstrable error; provided that the failure of the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Issuers to repay the Notes in accordance with the terms of this Agreement. Any Noteholder may request that the Note Obligations shall be evidenced by a promissory note. In such event, the Issuers shall execute and physically deliver to each such Noteholder a Note payable to the order of such Noteholder (or, if requested by such Noteholder, to such Noteholder and its registered assigns) in the form of Exhibit A. Thereafter, the Note evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 16.07) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

(b) Scheduled Payments. All outstanding principal and all accrued interest then outstanding, and all other amounts then owing hereunder with respect to the Notes shall be paid in full in cash on the Maturity Date.

(c) Voluntary Prepayments. Subject to the terms and conditions herein, the Notes may be prepaid at the Issuers' option, at any time, and from time to time, in whole or in part (in a minimum amount of $1,000,000 and in integral multiples of $500,000, or such lesser amount as is then outstanding), on ten Business Days' prior written notice to the Administrative Agent; provided, that any such voluntary prepayment of the Notes shall include the accrued interest and the Prepayment Premium on the amount so prepaid.

(d) Mandatory Prepayments.

(i) Asset Dispositions. If any of the Issuers or any of their Subsidiaries shall at any time or from time to time:

(1) make a Disposition; or

(2) suffer an Event of Loss;

then such Issuer and/or Subsidiary shall (i) so long as no Event of Default shall have occurred or be continuing and within 180 days of receipt by such Issuer and/or Subsidiary of the Net Cash Proceeds from the Disposition or Event of Loss, reinvest or enter into a binding contract to reinvest the Net Cash Proceeds of such Disposition or Event of Loss in replacement assets or (ii) apply all such Net Cash Proceeds to the prepayment of the Notes, together with the accrued interest and the Prepayment Premium thereon; provided, that in the event that a binding contract to reinvest is entered into, but is subsequently terminated or modified such that all or a portion of the Net Cash Proceeds contemplated to be utilized thereunder are not so utilized, such Net Cash Proceeds shall be immediately applied to the prepayment of the Notes.

(ii) Richmond Lease Transaction. To the extent that any Net Cash Proceeds of the Richmond Lease Transaction are not applied to redeem the Series A Preferred, the Issuers shall promptly apply all such Net Cash Proceeds of the Richmond Lease Transaction not applied to redeem the Series A Preferred to the prepayment of the Notes, together with the accrued interest and the Prepayment Premium thereon.

(iii) Equity and Debt Issuance. Upon the issuance or incurrence by any Note Party or any of its Subsidiaries of any Indebtedness (other than Permitted Indebtedness), or the sale or issuance by any Note Party or any of its Subsidiaries of any shares of its Capital Stock (other than issuances pursuant to a management or employee incentive plan), the Issuers shall prepay the Notes, together with the accrued interest and the Prepayment Premium thereon, in an amount equal to 100% of the Net Cash Proceeds received by such Note Party in connection therewith. The provisions of this subsection (iii) shall not be deemed to be implied consent to any such issuance, incurrence or sale otherwise prohibited by the terms and conditions of this Agreement.

(e) Repurchase Offer with Excess Cash Flow. Within 10 days of delivery to the Administrative Agent of audited annual financial statements pursuant to Section 9.02(a) (or if not timely delivered, within 10 days of the deadline for such delivery), commencing with the financial statements for the Fiscal Year ended December 31, 2008, the Issuers shall (A) notify the Administrative Agent of any Excess Cash Flow Amount (including providing reasonably detailed calculations demonstrating the calculation of such) and (B) make an offer to use the Excess Cash Flow Amount to prepay the Notes, together with accrued interest thereon. The "Excess Cash Flow Amount" for any Fiscal Year shall be an amount equal to (i) 75% of Excess Cash Flow for such Fiscal Year minus (ii) the amount of any voluntary prepayment on the Notes made following the end of applicable Fiscal Year and prior to the offer to prepay the Notes pursuant to this Section 3.02(e). The Noteholders shall have not less than 30 days to accept any offer pursuant to this Section 3.02(e) and, within two Business Days after the expiration of such 30 day period (or, if earlier, the date on which all Noteholders shall have responded to the offer), the Issuers shall apply the Excess Cash Flow Amount to the purchase of Notes of any accepting Noteholders on a pro rata basis in accordance with the principal amount of the Notes of the accepting Noteholders.

Section 3.03 Payment Procedures.

(a) All redemptions of Notes under Section 3.02(c) and Section 3.02(d), shall be made together with any Prepayment Premium on the principal amount redeemed and the

accrued interest to the date of such redemption. Each payment or prepayment of Notes shall be applied to the Outstanding principal amount of the Notes of each Noteholder ratably based on such Noteholder's Pro Rata Share.

(b) Upon surrender of a Note that is paid or prepaid in part, the Issuers shall promptly execute and deliver to the Administrative Agent (at the Issuers' expense) a new Note equal in principal amount to the unpaid portion of the Note surrendered.

(c) Subject to the terms and conditions herein, all payments or prepayments (whether voluntary or mandatory) shall be applied: (i) first, to the payment of Agents' fees and other amounts in accordance with the Fee Letters that are due and payable under this Agreement, (ii) second, to the payment of any accrued and unpaid interest to, but not including, the date of such payment or prepayment, (iii) third, to the payment of any Prepayment Premium on the principal amount of the Notes so paid or prepaid, and (iv) fourth, to the principal amount of the Notes so paid or prepaid. All such payments shall be made by wire transfer or other same day funds to the Administrative Agent's Account as set forth on Schedule II hereto in accordance with Section 5.02.

Section 3.04 Fees. The Issuer shall pay the Agents' fees and other amounts in accordance with the Fee Letters and any other written agreements between an Agent and the Issuers. The Issuers' obligations set forth in this Section 3.04 shall survive the repayment of the Note Obligations and discharge of any Liens granted under the Note Documents.

Section 3.05 Joint and Several Liability of Issuers; Guaranty. Notwithstanding anything in this Agreement or any other Note Document to the contrary, each Issuer, jointly and severally, in consideration of the financial accommodations to be provided by Agent and the Purchasers under this Agreement and the other Note Documents, for the mutual benefit, directly and indirectly, of each Issuer and in consideration of the undertakings of the other Issuers to accept joint and several liability for the Note Obligations, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Issuers, with respect to the payment and performance of all of the Note Obligations (including, without limitation, any Note Obligations arising under this Section 3.05), it being the intention of the parties hereto that all of the Note Obligations shall be joint and several obligations of each Issuer without preference or distinction among them. Without limiting the foregoing, and notwithstanding anything to the contrary contained elsewhere in this Agreement, it is understood and agreed by the various parties to this Agreement that all Note Obligations to repay principal of, interest on, and all other amounts with respect to, outstanding Notes and other obligations of the Issuers shall constitute the joint and several obligations of all of the Issuers, and shall be fully and unconditionally guaranteed, jointly and severally, by the Guarantors, both as to payment and performance, and not merely collectibility. Each Note Party acknowledges and agrees that it is receiving direct benefits as a result of the extensions of credit to each Issuer hereunder, and that the Purchasers and the Agents may proceed against any or all of the Note Parties with respect to any or all of the Note Obligations hereunder.

Section 3.06 Replacement of Noteholders. If any Noteholder (a) demands payment of costs or additional amounts pursuant to ARTICLE V which are materially more than those charged by other Noteholders, other than any withholding or other tax imposed by any

Canadian federal or provincial taxing authority (subject to such Noteholder's right to rescind such demand or assertion within ten days after the notice from the Issuers), or (b) has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to any provision of this Agreement requires the consent of all affected Noteholders and with respect to which Noteholders holding in the aggregate at least two-thirds of the outstanding Notes have granted their consent or (c) becomes a Defaulting Noteholder (any such Noteholder being hereinafter referred to as a "Replaced Noteholder"), then in such case the Issuers, may upon at least five (5) Business Days' prior written notice to such Replaced Noteholder, designate a replacement Noteholder or Noteholders (each a "Replacement Noteholder") to which such Replaced Noteholder shall, subject to its receipt (unless a later date for the remittance thereof shall be agreed upon by the Required Noteholders and the Replaced Noteholder) of (i) the amount that is equal to the principal amount of all Outstanding Notes held by such Replaced Noteholder from the Replacement Noteholder, (ii) all accrued interest thereon to the date of payment from the Replacement Noteholder, and (iii) all amounts owed to such Replaced Noteholder under ARTICLE V, assign (with the assignment fee to be paid by the Issuers, in such instance) all (and not less than all) of its rights, obligations, and interests hereunder and under any Note Document. Upon any assignment by any Noteholder pursuant to this Section 3.06 becoming effective, the Replaced Noteholder shall cease to be a "Noteholder" for all purposes under this Agreement and the Replacement Noteholder shall be substituted therefor upon payment to the Replaced Noteholder by the Replacement Noteholder of all amounts set forth in this Section 3.06 without any further action of the Replaced Noteholder.

## ARTICLE IV

## TAXATION

Section 4.01 Payments Made Free of Taxes. Any and all payments by the Issuers hereunder shall be made, in accordance with Section 5.02, free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding, in the case of each Agent and each Purchaser, income and franchise taxes imposed on or measured by net income of such Person by the United States or by any other jurisdiction in which such Person is organized or in which its principal office is located (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes"). If the Issuers shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder to any Agent or any Purchaser, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 4.01) such Person receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Issuers shall make such deductions and (iii) the Issuers shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law.

Section 4.02 Other Taxes. In addition, the Issuers agree to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made by it hereunder or from the execution, delivery or registration of this Agreement or any Note Document (hereinafter referred to as "Other Taxes").

Section 4.03 Indemnification. The Issuers agree to indemnify each Agent and each Purchaser for the full amount of Taxes or Other Taxes (including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this ARTICLE IV) paid by such Agent or Purchaser and any liability (including penalties, additions to tax, interest and expenses) arising therefrom or with respect thereto, whether or not correctly asserted. This indemnification shall be made within thirty (30) days from the date such Agent or Purchaser makes written demand therefor and such Agent's or such Purchaser's determination that it is liable for such Taxes or Other Taxes shall be conclusive absent manifest error. The indemnities set forth in this Section 4.03 shall survive the repayment of the Note Obligations and discharge of any Liens granted under the Note Documents.

Section 4.04 Evidence of Payments. Within thirty (30) days after the date of any payment of Taxes or Other Taxes, the Issuers will furnish to the Administrative Agent, at its address referred to in Section 16.01, an official receipt or appropriate evidence of payment thereof.

Section 4.05 Certain Obligations of Non-U.S. Purchasers. Each Purchaser organized under the laws of a jurisdiction outside the United States shall, on or prior to the date of its execution and delivery of this Agreement (in the case of each Purchaser) and on the date of the Transfer and Acceptance pursuant to which it became a Purchaser (in the case of each other Purchaser), and from time to time thereafter if requested in writing by the Issuers or the Administrative Agent, at the written direction of the Required Purchasers, or promptly upon the occurrence of any event requiring a change in the last form delivered by such Purchaser (but, in each case, only so long as such Purchaser remains lawfully able to do so after the date such Purchaser becomes a Purchaser hereunder), provide the Administrative Agent and the Issuers with either (i) Internal Revenue Service form W8-BEN or W-8ECI, as appropriate, or any successor form prescribed by the Internal Revenue Service, certifying that such Purchaser is entitled to benefits under an income tax treaty to which the United States is a party that reduces the rate of withholding tax on payments under this Agreement and the Notes or certifying that the income receivable pursuant to this Agreement and the Notes is effectively connected with the conduct of a trade or business in the United States or (ii) Internal Revenue Service form W-8, upon which the Issuers is entitled to rely, pursuant to Sections 881(c)(2)(B) or 871(h)(5) of the Code, or any successor form or statement prescribed by the Internal Revenue Service in order to establish that such Purchaser is entitled to treat the interest payments under this Agreement and the Notes as portfolio interest that is exempt from withholding tax under the Code, together with a certificate stating that such Purchaser is not described in Section 881(c)(3) of the Code. If the form provided by a Purchaser at the time such Purchaser first becomes a party to this Agreement indicates a United States interest withholding tax rate on payments of interest hereunder in excess of zero (or if the Purchaser cannot provide at such time such form because it is not entitled to reduced withholding under a treaty, the payments are not effectively connected income and the payments do not qualify as portfolio interest), withholding tax at such rate (or at the then existing U.S. statutory rate if the Purchaser cannot provide the form) shall be excluded from Taxes unless and until such Purchaser provides the appropriate form certifying that a lesser rate applies, whereupon withholding tax at such lesser rate only shall be excluded from Taxes for periods governed by such form; provided that, if at the date of the Transfer and Acceptance pursuant to which a Purchaser transferee becomes a party to this Agreement, the Purchaser transferor was entitled to payments under Section 4.01 in respect of United States withholding

tax with respect to amounts paid hereunder at such date, then, to the extent such tax results in liability for such payments, the term Taxes shall include (in addition to withholding taxes that may be imposed in the future or other amounts otherwise includable in Taxes) United States interest withholding tax, if any, applicable with respect to the Purchaser transferee on such date.

Section 4.06 Limitation upon Indemnification of Non-U.S. Purchasers. For any period with respect to which a Purchaser has failed to provide the Issuers and the Administrative Agent with the appropriate form described in Section 4.05 (other than if such failure is due to a change in law occurring after the date on which a form originally was required to be provided or if such form otherwise is not required under Section 4.05), such Purchaser shall not be entitled to indemnification under Section 4.01 or Section 4.03 of this Agreement with respect to Taxes imposed by the United States. If any Agent or Purchaser determines that it has received a refund of any Taxes or Other Taxes as to which it has received an additional amount pursuant to Section 4.01 or for which it has been indemnified pursuant to Section 4.05, it shall pay to the Issuers an amount equal to such refund; provided that the Issuers agree to repay the amount paid over to the Issuers to such Agent or Purchaser in the event that such Agent or Purchaser is required to repay such refund to a Governmental Authority.

Section 4.07 Survival. Without prejudice to the survival of any other agreement of the Issuers hereunder, the agreements and obligations of the Issuers contained in this ARTICLE IV shall survive the repayment of the Note Obligations and discharge of any Liens granted under the Note Documents.

## ARTICLE V

## FEES, PAYMENTS AND OTHER COMPENSATION

Section 5.01 Audit and Collateral Monitoring Expenses. The Issuers acknowledge that pursuant to Section 9.10, representatives of the Agents may visit the Issuers and/or conduct audits, inspections, appraisals, valuations and/or field examinations of the Issuers or the Collateral at any time and from time to time in a manner so as to not unduly disrupt the business of the Issuers. The Issuers agree to pay (i) the Agents' out-of-pocket costs and reasonable expenses incurred in connection with all such visits, audits, inspections, appraisals, valuations and field examinations and (ii) the actual cost of all visits, audits, inspections, appraisals, valuations and field examinations conducted by a third party on behalf of the Agents.

Section 5.02 Payments and Computations. The Issuers will make each payment under this Agreement or any other Note Document so as to be received by the Administrative Agent not later than 2:00 p.m. (New York City time) on the day when due, in lawful money of the United States of America and in immediately available funds, to the Administrative Agent's Account, and any payment received by the Administrative Agent after such time shall be deemed to be made on the next Business Day. All payments shall be made by the Issuers without set-off, counterclaim, deduction or other defense to the Agents and/or the Noteholders. After receipt, the Administrative Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal ratably to the Noteholders in accordance with their Pro Rata Shares and like funds relating to the payment of any other amount payable to any Noteholder to such Noteholder, in each case to be applied in accordance with the terms of this Agreement. Whenever any

payment to be made under any Note Document shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall in such case be included in the computation of interest or fees, as the case may be. All computations of fees shall be made by the Administrative Agent on the basis of a year of 360 days for the actual number of days (including the first day but excluding the last day) occurring in the period for which such fees are payable. Each determination by the Administrative Agent of an interest rate or fees hereunder shall be conclusive and binding for all purposes in the absence of manifest error.

Section 5.03 Sharing of Payments, Etc. If any Purchaser shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of any Note Obligation in excess of its ratable share of payments on account of similar obligations obtained by all the Purchasers, such Purchaser shall forthwith purchase from the other Purchasers such participations in such similar obligations held by them as shall be necessary to cause such purchasing Purchaser to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Purchaser, such purchase from each Purchaser shall be rescinded and such Purchaser shall repay to the purchasing Purchaser the purchase price to the extent of such recovery together with an amount equal to such Purchaser's ratable share (according to the proportion of (i) the amount of such Purchaser's required repayment to (ii) the total amount so recovered from the purchasing Purchaser of any interest or other amount paid by the purchasing Purchaser in respect of the total amount so recovered). The Issuers agree that any Purchaser so purchasing a participation from another Purchaser pursuant to this Section 5.03 may, to the fullest extent permitted by law, exercise all of its rights (including the Purchaser's right of set-off) with respect to such participation as fully as if such Purchaser were the direct creditor of the Issuers in the amount of such participation.

Section 5.04 Apportionment of Payments. Subject to any written agreement among the Agents and/or the Purchasers:

(a) all payments of principal and interest in respect of outstanding Notes, all payments of fees other than the audit and collateral monitoring expenses provided for in Section 5.01) and all other payments in respect of any other Note Obligations, shall be allocated by the Administrative Agent among such of the Purchasers as are entitled thereto, in proportion to their respective Pro Rata Shares or otherwise as provided herein or, in respect of payments not made on account of Notes, as designated in writing by the Person making payment when the payment is made.

(b) Either before or after the occurrence and during the continuance of an Event of Default, the Administrative Agent shall apply all payments in respect of any Note Obligations and all proceeds of the Collateral, subject to the provisions of this Agreement, (i) first, ratably to pay the Note Obligations in respect of any fees, expense reimbursements, indemnities and other amounts then due to the Agents until paid in full; (ii) second, ratably to pay the Note Obligations in respect of any fees, expense reimbursements, indemnities and Prepayment Premium, if any, then due to the Purchasers until paid in full; (iii) third, ratably to pay interest due in respect of the Notes until paid in full; (iv) fourth, ratably to pay principal of the Notes until paid in full; and (v) fifth, to the ratable payment of all other Note Obligations

then due and payable (or, to the extent such Note Obligations are contingent, to provide cash collateral in respect of any such Note Obligations as to which demand or claim has been asserted, or otherwise as required by the Agents or the Required Purchasers in the case of any foreseeable claim).

(c) In the event of a direct conflict between the priority provisions of this Section 5.04 and other provisions contained in any other Note Document, it is the intention of the parties hereto that both such priority provisions in such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 5.04 shall control and govern.

Section 5.05 Increased Costs and Reduced Return.

(a) If any Purchaser or any Agent shall have determined that the adoption or implementation of, or any change in, any law, rule, treaty or regulation, or any policy, guideline or directive of, or any change in, the interpretation or administration thereof by, any court, central bank or other administrative or Governmental Authority, or compliance by any Purchaser or any Agent or any Person controlling any such Purchaser or any such Agent with any directive of, or guideline from, any central bank or other Governmental Authority or the introduction of, or change in, any accounting principles applicable to any Purchaser or any Agent or any Person controlling any such Purchaser or any such Agent (in each case, whether or not having the force of law) (each a "Change in Law"), shall (i) subject such Purchaser or such Agent, or any Person controlling such Purchaser or such Agent to any tax, duty or other charge with respect to this Agreement or any Purchaser or such Agent agreeing to accept for transfer, fund or maintain any Notes, or change the basis of taxation of payments to such Purchaser or such Agent or any Person controlling such Purchaser or such Agent of any amounts payable hereunder (except for taxes on the overall net income of such Purchaser or such Agent or any Person controlling such Purchaser or such Agent), (ii) impose, modify or deem applicable any reserve, special deposit or similar requirement against any Purchaser by virtue of such Purchaser's holding of its Notes, or against assets of or held by, or deposits with or for the account of, or credit extended by, such Purchaser or any Person controlling such Purchaser or (iii) impose on such Purchaser or such Agent or any Person controlling such Purchaser or such Agent any other condition regarding this Agreement, any Note Document or any Note, and the result of any event referred to in clauses (i), (ii) or (iii) above shall be to increase the cost to such Purchaser or such Agent of holding its Notes, or agreeing to fund or maintain its Notes, or to reduce any amount received or receivable by such Purchaser or such Agent hereunder or thereunder, then, upon demand by such Purchaser or such Agent, the Issuers shall pay to such Purchaser or such Agent such additional amounts as will compensate such Purchaser or such Agent for such increased costs or reductions in amount.

(b) If any Purchaser or any Agent shall have determined that any Change in Law either (i) affects or would affect the amount of capital required or expected to be maintained by such Purchaser or such Agent or any Person controlling such Purchaser or such Agent, and such Purchaser or such Agent determines that the amount of such capital is increased as a direct or indirect consequence of such Purchaser holding its Notes, such Purchaser's or such Agent's or such other controlling Person's other obligations hereunder, or (ii) has or would have the effect of reducing the rate of return on such Purchaser's or such Agent's or such other controlling

Person's capital to a level below that which such Purchaser or such Agent or such controlling Person could have achieved but for such circumstances as a consequence of such Purchaser holding its Notes or such Purchaser's or such Agent's or such other controlling Person's other obligations hereunder (in each case, taking into consideration, such Purchaser's or such Agent's or such other controlling Person's policies with respect to capital adequacy), then, upon demand by such Purchaser or such Agent, the Issuers shall pay to such Purchaser or such Agent from time to time such additional amounts as will compensate such Purchaser or such Agent for such cost of maintaining such increased capital or such reduction in the rate of return on such Purchaser's or such Agent's or such other controlling Person's capital.

(c) All amounts payable under this Section 5.05 shall bear interest from the date that is ten (10) days after the date of demand by any Purchaser or any Agent until payment in full to such Purchaser or such Agent at the LIBOR Rate. A certificate of such Purchaser or such Agent claiming compensation under this Section 5.05, specifying the event herein above described and the nature of such event shall be submitted by such Purchaser or such Agent to the Issuers, setting forth the additional amount due and an explanation of the calculation thereof, and such Purchaser's or such Agent's reasons for invoking the provisions of this Section 5.05, and shall be final and conclusive absent manifest error.

(d) Mitigation of Increased Costs. Any Purchaser or any Agent, upon determining that any additional amounts will be payable pursuant to this Section 5.05, shall use commercially reasonable efforts to mitigate or avoid, (i) any obligation by the Issuers to pay any amount pursuant to this Section 5.05 or (ii) the occurrence of any circumstances described in this Section 5.05 and, if any Purchaser or any Agent has given notice of any such event described in clause (i) or (ii) above and thereafter such event ceases to exist, such Purchaser or such Agent shall promptly so notify the Issuers. Without limiting the foregoing, Purchaser or Agent will designate a different funding office or source if such designation will avoid (or reduce the costs to the Issuers of any event described in clause (i) or (ii) of the preceding sentence and such designation will not, in such Purchaser's or such Agent's reasonable judgment, be otherwise disadvantageous to Purchaser or Agent. Purchaser or Agent shall give prompt written notice of any circumstance covered by this Section 5.05 to Issuers and if such notice requires payment of additional amounts by Issuers pursuant to this Section 5.05, such notice shall show in reasonable detail the basis for calculation of such additional amounts payable by the Issuers pursuant to this Section 5.05; provided that Issuers shall not be required to compensate Purchaser or Agent pursuant to this Section 5.05 for any increased costs incurred more than 180 days prior to the date that Purchaser or Agent notifies Issuers in writing of the increased costs and of Purchaser's or Agent's intention to claim compensation thereof; provided further that, if the change in law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 5.06 Currency.

(a) The Issuers hereby agree that payments hereunder on account of the Note Obligations shall be made in the currency (the "Agreed Currency") in which each such Note Obligation is payable and if any payment is received in another currency (the "Other Currency"), such payment shall constitute a discharge of the liability of the Issuers hereunder only to the extent of the amount of the Agreed Currency which the Administrative Agent is able to purchase

with the amount of the Other Currency received by it on the Business Day immediately following such receipt in accordance with normal procedures and after deducting any premium and costs of exchange.

(b) If, in connection with any claim or proof made or filed against the Issuers, any action brought in connection with this Agreement or any judgment or order obtained as a result thereof, it becomes necessary to convert any amount due hereunder in one currency (the "first Currency") into another currency (the "second Currency"), then the conversion shall be made at the Conversion Rate on the first Business Day prior to the day on which payment is received.

(c) If the conversion in connection with any action is not able to be made in the manner contemplated by the preceding paragraph in the jurisdiction in which the action is brought, then the conversion shall be made at the Conversion Rate on the day on which the judgment is given.

(d) If the Conversion Rate on the date of payment is different from the Conversion Rate on such first Business Day or on the date of judgment or such other date upon which a court may order the conversion made, as the case may be, the Issuers shall pay such additional amount (if any) in the second Currency as may be necessary to ensure that the amount paid on such payment date is the aggregate amount in the second Currency which, when converted at the Conversion Rate on the date of payment, is the amount due in the first Currency, together with all costs and expenses of conversion.

(e) Any additional amount owing by the Issuers pursuant to the provisions of this section shall be due as a separate debt and shall give rise to a separate cause of action and shall not be affected by or merged into any judgment obtained for any other amounts due under or in respect of this Agreement.

## ARTICLE VI

## CONDITIONS TO ISSUANCE

Section 6.01 Conditions Precedent to Effectiveness. This Agreement shall become effective as of the Business Day (the "Closing Date") following which this Agreement shall have been fully executed by the parties and each of the conditions precedent set forth in this Section 6.01, shall have been satisfied in a manner satisfactory to the Required Purchasers, or expressly waived by the Required Purchasers, which must, in any event, occur on or before September 15, 2007:

(a) The Administrative Agent shall have received on or before the Closing Date the following, each in form and substance satisfactory to the Required Purchasers and, unless indicated otherwise, dated the Closing Date:

(i) this Agreement, the other Note Documents, and the Fee Letters and all certificates, documents, instruments or agreements executed and delivered by the Issuers and Guarantors for the benefit of the Agents or any Purchaser in connection therewith;

(ii) certified copies of request for copies of information on Form UCC-11 listing all effective financing statements which name as debtor any Issuer or Guarantor and which are filed in the jurisdictions in which such Issuer or Guarantor is organized, has assets or property or maintains its chief executive office, together with copies of such financing statements, none of which, except as permitted herein or otherwise agreed in writing by the Required Purchasers, shall cover any of the Collateral;

(iii) evidence of the authority of the Guarantors to effect (A) the granting of the Guaranties by the Guarantors hereunder and the transactions contemplated by the Note Documents, (B) the execution, delivery and performance by the Guarantors of each Note Document to which it is or will be a party and the execution and delivery of the other documents to be delivered by the Guarantors in connection herewith and therewith and (C) the execution, delivery and performance by the Guarantors of each Note Document to which it is or will be a party and the execution and delivery of the other documents to be delivered by the Guarantors in connection herewith and therewith;

(iv) a certificate of an Authorized Officer of each Issuer, certifying the names and true signatures of the representatives of each Issuer authorized to sign each Note Document to which such Issuer is or will be a party and the other documents to be executed and delivered by such Issuer in connection herewith and therewith, together with evidence of the incumbency of such authorized officers;

(v) [reserved]

(vi) [reserved]

(vii) evidence of the insurance coverage required by Section 9.07 and such other insurance coverage with respect to the business and operations of the Issuers as the Required Noteholders may reasonably request, in each case, where requested by the Required Noteholders, with such endorsements as to the named insureds or loss payees thereunder as the Required Noteholders may request and providing that such policy may be terminated or canceled (by the insurer or the insured thereunder) only upon thirty (30) days' prior written notice to the Collateral Agent and each such named insured or loss payee, together with evidence of the payment of all premiums due in respect thereof for such period as the Required Noteholders may request;

(b) Organizational Documents; Incumbency. Administrative Agent shall have received (i) sufficient copies of the Organizational Documents of each Note Party, as applicable, and, to the extent applicable, certified as of a recent date by the appropriate governmental official, each dated the Closing Date or a recent date prior thereto; (ii) signature and incumbency certificates of the officers of such Person executing the Note Documents to which it is a party; (iii) resolutions of the board of directors or similar governing body of each Note Party approving and authorizing the execution, delivery and performance of this Agreement and the other Note Documents to which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; (iv) a good standing certificate from the applicable Governmental Authority of each Note Party's jurisdiction of incorporation, organization or

formation and in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business, each dated a recent date prior to the Closing Date; and (v) such other documents as Administrative Agent may reasonably request.

(c) Confirmation of Plan of Reorganization. Administrative Agent shall have received a certified copy of the final order (the "Confirmation Order"), which shall be in form and substance satisfactory to the Agents, entered by the Bankruptcy Court after due notice to all creditors and other parties-in-interest and as entered on the docket of the Clerk of the Bankruptcy Court confirming the Plan of Reorganization and authorizing the Note Parties to enter into the Note Documents. The Confirmation Order shall be in full force and effect, shall not have been modified, reversed, stayed or vacated, and shall be final, valid, subsisting and continuing. The Plan of Reorganization, any amendments thereto and the related conclusions of law and findings of fact shall be in form and substance satisfactory to Administrative Agent and its counsel. The Plan of Reorganization shall be effective and all agreements and undertakings of the parties thereunder to be performed by such time shall have been satisfied and performed. The Note Parties shall have emerged (or be simultaneously emerging) from the Chapter 11 Cases and shall have consummated (or shall be simultaneously consummating) the Plan of Reorganization in accordance with the terms thereof (including the payment of all fees, costs and expenses of the DIP Lenders and their agents and advisors pursuant to Section [__] thereof), and all conditions precedent to the effectiveness of the Plan of Reorganization shall have been (or are simultaneously being) fulfilled (or waived in accordance with the terms of the Plan of Reorganization). Administrative Agent shall have received evidence, in form and substance satisfactory to Agent, that all consents, approvals or withholding of objections appropriate or necessary to consummate the Plan of Reorganization and the Note Documents have been obtained.

(d) Other Transaction Documents. Administrative Agent shall have received a fully executed copy of the Equity Documents, Revolving Loan Documents and Intercreditor Agreement, all of which shall be in form and substance satisfactory to the Agents, and all conditions precedent to the effectiveness of the Equity Documents, Revolving Loan Documents and Intercreditor Agreement shall have been (or are simultaneously being) fulfilled (or waived in accordance with the terms thereof).

(e) Minimum Availability. As of the Closing Date, after giving effect to the consummation of the transactions contemplated by this Agreement, the Equity Documents, Revolving Loan Documents and all payments associated therewith (including, without limitation, payment of all costs, fees and expenses), the Issuers shall have "Availability" (as such term is defined in the Revolving Loan Agreement) of at least [$30,000,000] under the Revolving Loan Agreement readily available and subject to no unsatisfied borrowing conditions (other than the delivery of a borrowing notice).

(f) Repayment of Obligations Under DIP Financing Agreement. Administrative Agent shall have received a customary payoff letter with respect to the amounts owing under the DIP Financing Agreement and all related documents, duly executed by the DIP Agent.

(g) Governmental Authorizations, Consents and Approvals. Each Note Party shall have obtained all Governmental Authorizations, consents of other Persons and approvals, in each case that are necessary or advisable in connection with the transactions contemplated by the Note Documents and the Plan of Reorganization, and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to Administrative Agent. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority which would restrain, prevent or otherwise impose adverse conditions on the transactions contemplated by the Note Documents or the Plan of Reorganization or the financing thereof and no action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable agency to take action to set aside its consent on its own motion shall have expired.

(h) Real Estate Assets. In order to create in favor of Collateral Agent, for the benefit of the Noteholders, a valid and, subject to any filing and/or recording referred to herein, perfected security interest in certain Real Estate Assets, Administrative Agent and Collateral Agent shall have received from Company and each applicable Note Party:

(i) fully executed and notarized Mortgages, in proper form for recording in all appropriate places in all applicable jurisdictions, encumbering each Real Estate Asset listed in Schedule 6.01(h)(i) (each, a "Closing Date Mortgaged Property");

(ii) an opinion of counsel (which counsel shall be reasonably satisfactory to Collateral Agent) in each state in which a Closing Date Mortgaged Property is located with respect to the enforceability of the form(s) of Mortgages to be recorded in such state and such other matters as Collateral Agent may reasonably request, in each case in form and substance reasonably satisfactory to Collateral Agent;

(iii) in the case of each Leasehold Property listed on Schedule 6.01(h)(i), (1) a Landlord Consent and Estoppel and (2) evidence that such Leasehold Property is a Recorded Leasehold Interest, in each case to the extent reasonably obtainable on or prior to the Closing Date;

(iv) (A) ALTA mortgagee title insurance policies or unconditional commitments therefor issued by Land America Financial Group, Inc./Lawyer's Title Insurance Corporation with respect to each Closing Date Mortgaged Property (each, a "Title Policy"), in amounts not less than the amounts set forth on Schedule 6.01(h)(iv), dated not more than thirty (30) days prior to the Closing Date together with copies of all recorded documents referred to therein, each in form and substance reasonably satisfactory to Collateral Agent and (B) evidence reasonably satisfactory to Collateral Agent that such Note Party has paid to the title company or to the appropriate governmental authorities all expenses and premiums of the title company and all other sums required in connection with the issuance of each Title Policy and all recording and stamp taxes (including mortgage recording and intangible taxes) payable in connection with recording the Mortgages for each Closing Date Mortgaged Property in the appropriate real estate records; and

(v) evidence (which may be certificates) of flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the

National Flood Insurance Program, in each case in compliance with any applicable regulations of the Board, in form and substance reasonably satisfactory to Collateral Agent.

(i) Personal Property Collateral. In order to create in favor of Collateral Agent, for the benefit of the Noteholders, a valid, perfected security interest in the personal property Collateral, Collateral Agent shall have received:

(i) evidence satisfactory to Collateral Agent of the compliance by each Note Party of their obligations under the Security and Pledge Agreement and the other Note Documents (including their obligations to execute and deliver UCC financing statements, originals of securities, instruments and chattel paper and any agreements governing deposit and/or securities accounts as provided therein);

(ii) opinions of counsel (which counsel shall be reasonably satisfactory to Collateral Agent) with respect to the creation and perfection of the security interests in favor of Collateral Agent in such Collateral and such other matters governed by the laws of each jurisdiction in which any Note Party or any Collateral is located as Collateral Agent may reasonably request, in each case in form and substance reasonably satisfactory to Collateral Agent; and

(iii) evidence that each Note Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument and made or caused to be made any other filing and recording (other than as set forth herein) reasonably required by Collateral Agent.

(j) Financial Statements. Purchasers shall have received from Company (i) the Financial Statements and (ii) Pro Forma Financial Statements which shall be in form and substance satisfactory to the Required Noteholders.

(k) Evidence of Insurance. Collateral Agent shall have received a certificate from Company's insurance broker evidencing that all insurance required to be maintained pursuant to Section 9.07 is in full force and effect, together with endorsements naming the Collateral Agent, for the benefit of Noteholders, as additional insured and loss payee thereunder to the extent required under Section 9.07.

(l) Opinions of Counsel to Note Parties. The Administrative Agent shall have received originally executed copies of the favorable written opinions of Kirkland & Ellis LLP and Goodmans LLP, counsel for Note Parties, and the favorable written opinions of local counsel for Note Parties in each jurisdiction in which any Note Party is a registered organization under the Uniform Commercial Code and in each jurisdiction in which the Company or other credit party is required to grant a Mortgage, each dated as of the Closing Date and covering such matters as Administrative Agent may reasonably request and otherwise in form and substance reasonably satisfactory to Administrative Agent (and each Note Party hereby instructs such counsel to deliver such opinions to Agents and Purchasers).

(m) Fees and Expenses. Company shall have paid to the Administrative Agent (i) the fees and expenses payable on the Closing Date referred to in the Fee Letters and (ii) all amounts payable under the Exit Facility Commitment Letter, including the Standby Commitment

Fee and the fees and expenses of the Backstop Parties (each as defined therein) shall have been paid in full (or, at the option of each Purchaser, applied to reduce the purchase price of the Securities to be acquired by such Purchaser).

(n) No Litigation. No motion, action, suit, investigation, litigation or proceeding or other legal or regulatory developments shall be pending or threatened against any Note Party by any creditor or other party-in-interest in the Bankruptcy Court or any other court of competent jurisdiction or before any arbitrator or Governmental Authority that, in the reasonable opinion of the Required Noteholders, singly or in the aggregate, adversely affects or may reasonably be expected to adversely affect in any material respect (i) the Plan of Reorganization, (ii) the post-consummation business of the Note Parties or (iii) the validity and enforceability of the Note Documents against the Note Parties.

(o) No Material Adverse Change. There shall not have occurred any event, development or circumstance since the Filing Date which has had, or would reasonably be expected to have, a material adverse change to (i) the operations, business, assets, properties, condition (financial or otherwise) or prospects of the Issuers and Guarantors, taken as a whole, since the Filing Date, excluding any such material adverse effect of which the Purchasers have actual knowledge of as of June 20, 2007 (it being understood and agreed that the failure of the Issuers and the Guarantors and any of their Subsidiaries to operate, or the likelihood that the Issuers and Guarantors will fail to continue to operate, in accordance with the projections previously provided to the Purchasers and dated as of June 15, 2007, shall be deemed to be a material adverse change under this clause (i)), (ii) the ability of any Note Party to perform any of its obligations under any Note Document to which it is a party, (iii) the legality, validity or enforceability of this Agreement or any other Note Document, or (iv) the rights and remedies of any Agent or any Purchaser under any Note Document.

(p) Officer's Certificate. The Administrative Agent shall have received a certificate signed by the President, Vice President or a Financial Officer of Company, dated as of the Closing Date, confirming compliance with the conditions set forth in clauses (m) and (n) above.

(q) Satisfaction of Prepetition Debt Obligations. The satisfaction of the Prepetition Debt Obligations in the manner contemplated by the Plan of Reorganization, together with a termination and release agreement with respect to the Prepetition Debt Obligations and all related documents, duly executed by the Prepetition Agents, together with a release of mortgage for each mortgage filed by the Prepetition Agents, a termination of security interest in intellectual property for each assignment for security recorded by the Prepetition Agents at the United States Patent and Trademark Office and covering any intellectual property of the secured parties under the Prepetition Debt Obligations, and UCC-3 termination statements for all UCC-1 financing statements filed by the Prepetition Agents on behalf of the Prepetition Indebtedness Holders and covering any portion of the Collateral.

Section 6.02 Conditions Precedent to Additional Issuance. The obligation of each Noteholder to purchase and pay for the Additional Issuance on the Supplemental Closing Date is subject to the satisfaction of the following conditions precedent:

(a) Consent. The Required Noteholders shall have consented to the Additional Issuance.

(b) Richmond Lease Transaction. The Richmond Lease Transaction shall have been consummated and the Net Cash Proceeds thereof applied to redeem the Series A Preferred.

(c) Representation and Warranties. The representations and warranties contained in ARTICLE VII hereof and in the other Note Documents shall be true and correct as of the Supplemental Closing Date in all material respects after giving effect to the Additional Issuance on such Supplemental Closing Date as though made on and as of such date (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), provided that, (i) to the extent that such representations and warranties relate to a specific earlier date, such representations and warranties shall be true and correct as of such earlier date and (ii) to the extent exceptions to such representations and warranties (or changes to schedules, as applicable) result from transactions that are permitted hereunder such warranties may be qualified by such exceptions.

(d) No Event of Default. Immediately before and after such Additional Issuance, no Default or Event of Default shall have occurred and be continuing.

(e) Payment of Fees, Etc. The Note Parties shall have paid all fees, costs, expenses and taxes then payable pursuant to the Fee Letters.

(f) Delivery of Documents. The Administrative Agent shall have received on or before the Supplemental Closing Date the following, each in form and substance satisfactory to the Required Noteholders and, unless indicated otherwise, dated as of such proposed Supplemental Closing Date:

(i) a certificate of the chief executive officer and chief restructuring officer of the Issuers, certifying as to the matters set forth in subsection (b) through (f) of this Section 6.02; and

(ii) such other agreements, instruments, approvals, opinions and other documents, each satisfactory to the Agent and Required Noteholders in form and substance, as the Agent or Required Noteholders may reasonably request.

(g) Litigation. Except as set forth in Schedule 8.07, (i) there shall be no pending or, to the best knowledge of the Note Parties, threatened action, suit or proceeding affecting any Note Party before any court or other Governmental Authority or any arbitrator that (A) if adversely determined, would reasonably be expected to have a Material Adverse Effect or (B) relates to this Agreement or any other Note Document or any transaction contemplated hereby or thereby.

## ARTICLE VII

## REPRESENTATIONS AND WARRANTIES OF PURCHASERS

In order to induce the Issuers to enter into this Agreement, each Purchaser individually (but not on behalf of any other Purchaser) represents, warrants and agrees for the benefit of the Issuers that:

Section 7.01 Legal Capacity; Due Authorization. Such Purchaser has full legal capacity, power and authority to execute and deliver this Agreement and to perform its obligations hereunder and that this Agreement has been duly executed and delivered by such Purchaser and is the legal, valid and binding obligation of such Purchaser enforceable against it in accordance with the terms hereof.

Section 7.02 Accredited Investor, etc. Such Purchaser has such knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of such investment, is able to incur a complete loss of such investment and to bear the economic risk of such investment for an indefinite period of time. Such Purchaser (i) is an "accredited investor" as that term is defined in Regulation D under the Securities Act and (ii) has been represented by counsel in the purchase of the Securities to be purchased by it and is aware of the limitations of state and federal securities laws with respect to the disposition of the Securities. Such Purchaser acknowledges that such Purchaser has had an opportunity to examine the financial and business affairs of the Parent and its Subsidiaries and an opportunity to ask questions of and receive answers from the Parent's and its Subsidiaries' management.

Section 7.03 Restrictions on Transfer. Each Purchaser hereby represents that it is acquiring the Securities for its own account and for investment and not with a view to any resale or distribution thereof. Each Purchaser understands that the Securities have not been registered under the Securities Act or any state securities laws and may not be assigned, sold or otherwise transferred without registration under the Securities Act or any relevant state securities laws or exemption therefrom; that the Issuers have no obligation or intention to register any of the Securities under the Securities Act or state securities laws; and that each Purchaser must therefore bear the economic risk of holding its Securities for an indefinite period of time.

Section 7.04 Brokerage Fees. Each Purchaser represents and warrants to each other party to this Agreement that, no broker's, finder's or placement fee or commission will be payable to any Person alleged to have been retained by such representing and warranting party with respect to any of the transactions contemplated by this Agreement. Each Purchaser hereby indemnifies each such other party against and agrees that it will hold each such party harmless from any claim, demand or liability, including reasonable attorneys' fees, for any broker's, finder's or placement fee or commission alleged to have been incurred by such indemnifying party.

## ARTICLE VIII
## REPRESENTATIONS AND WARRANTIES OF NOTE PARTIES

In order to induce each Purchaser to enter into this Agreement and to purchase the Securities to be purchased by such Purchaser hereunder, each Note Party jointly and severally represents, warrants and agrees for the benefit of each Purchaser that, as of the Closing Date, and unless otherwise stated, as of any Supplemental Closing Date, (unless otherwise stated, both before and after giving effect to the issuance of the Securities and the other transactions contemplated hereby or in connection with the foregoing):

Section 8.01 Organization, Good Standing and Qualification.

(a) Each Issuer and each Guarantor is a legal entity organized, validly existing and in good standing under the laws of the jurisdiction set forth in the preamble hereto. Each Note Party has all requisite corporate or, with respect to non corporate entities, other applicable power and authority to conduct its business as now conducted or contemplated to be conducted. Each Note Party is qualified as a foreign entity and in good standing in all states or other jurisdictions where the nature and extent of the business transacted by it or the ownership of assets makes such qualification necessary except where the failure to be so qualified would not reasonably be expected to result in a Material Adverse Effect.

(b) Schedule 8.01 sets forth, as of the date hereof, (i) the name, jurisdiction of organization, the organizational identification number issued by such jurisdiction (if applicable) and the federal taxpayer identification number of each Note Party, (ii) the address of each location owned or leased by each such Person and whether owned or leased, (iii) each name under which each such Person conducts its business, and (iv) with respect to each Subsidiary of any Note Party, the number of authorized and issued Equity Interests and ownership of each such Subsidiary.

Section 8.02 Capitalization.

(a) Schedule 8.02(a) sets forth all outstanding shares of capital stock of the Parent, warrants issued by the Parent and options granted by the Parent (vested and unvested) or set aside for grant by the Parent after giving effect to the Closing, and the holders of any such equity or rights to acquire the same, whether from the Parent or any holders of such equity and their respective holdings. Except as set forth on Schedule 8.02(a), after giving effect to the Closing, there will be no other outstanding options, warrants, rights (including conversion or preemptive rights) to acquire any units, capital stock or other equity securities of the Parent (whether from the Parent or from any holder of equity securities) or voting agreements with respect to equity of the Parent, nor has the Parent authorized any such right, nor is the Parent obligated in any other manner to issue units, shares of its capital stock or other equity securities.

(b) Schedule 8.02(b) sets forth the capital structure of the Company, after giving effect to the Closing. The authorized capital of Company will consist of [ ] shares of common stock, $.01 par value per share, all of which will be owned by the Parent. There will be no other equity of the Company after giving effect to the Closing. The Parent has no Subsidiaries other than the Company, PTPC and the Guarantors and has no equity investments in

any other Person, each of which is a Wholly-Owned Subsidiary, and has no equity investments in any other Person.

Section 8.03 Authorization. Each Note Party has the requisite power and authority to execute, deliver and perform its obligations under this Agreement and each Note Document to which it is a party. All action on the part of each Note Party and each of their officers, directors or partners necessary for the authorization, execution and delivery of the Note Documents to which each is a party, the performance of all obligations of each Note Party under such agreements and the authorization, issuance and delivery of the Notes being sold hereunder, has been taken, and the Note Documents to which each Note Party is a party constitute valid and legally binding obligations of each such Person, as applicable, enforceable in accordance with their terms.

Section 8.04 Valid Issuance of the Securities. The Securities, which are being purchased by the Purchasers hereunder, when issued, sold and delivered in accordance with the terms hereof for the consideration expressed herein, will be duly and validly issued and free of restrictions on transfer, other than restrictions imposed under this Agreement, the Stockholders Agreement and applicable United States state or federal securities laws.

Section 8.05 Financial Statements and Other Information.

(a) The pro forma balance sheet of the Parent and its Subsidiaries on a Consolidated basis (the "Pro Forma Balance Sheet") furnished to the Purchasers on the Closing Date reflects the consummation of the transactions contemplated by the Plan of Reorganization, the Stockholders Agreement, the Revolving Loan Agreement, and the Note Documents (collectively, the "Transactions") and is accurate, complete, and correct and fairly reflects the financial condition of Parent and its Subsidiaries on a Consolidated basis as of the Closing Date after giving effect to the Transactions, and has been certified as accurate, complete and correct in all material respects by the president and treasurer of Parent. The Pro Forma Balance Sheet, including the related schedules and notes thereto, have been prepared in accordance with GAAP, except as may be disclosed in such financial statements.

(b) The cash flow projections of Parent and its Subsidiaries on a Consolidated basis and their projected balance sheets as of the Closing Date previously furnished to the Purchasers (the "Projections") were prepared by the chief financial officer of the Company, are based on underlying assumptions which provide a reasonable basis for the projections contained therein and reflect the Company's judgment based on reasonable material assumptions existing at the time the Projections were prepared. The Projections together with the Pro Forma Balance Sheet are referred to as the "Pro Forma Financial Statements."

(c) The Consolidated and Consolidating balance sheets of the Company and its Subsidiaries and such other Persons described therein (including the accounts of all their Subsidiaries for the respective periods during which a subsidiary relationship existed) as of [ ], 2006, and the related statements of income, changes in stockholder's equity, and changes in cash flow for the period ended on such date (the "Unaudited Financial Statements"), have been prepared in accordance with GAAP, consistently applied and present fairly the

financial position of the Company and its Subsidiaries at such date and the results of their operations for such period.

(d) As of the date hereof, the Parent has no liabilities for borrowed money other than liabilities incurred by it as a borrower under the Revolving Loan Agreement and this Agreement.

Section 8.06 Consents. The execution, delivery and performance of this Agreement and the other Note Documents by each Note Party a party hereto or thereto, including without limitation the issuance of the Notes, (a) are not in contravention of any material agreement or undertaking to which such Note Party is a party or by which such Note Party is bound, (b) after entry of the Confirmation Order, will not conflict with or violate any law or regulation, or any judgment order or decree of any Governmental Authority or any other Person, except those consents set forth on Schedule 8.06, all of which will have been duly obtained, made or compiled prior to the Closing Date and which are in full force and effect and (c) will not conflict with, nor result in any breach in any of the provisions of or constitute a default under or result in the creation of any Lien except Permitted Liens upon any asset of such Note Party under the provisions of any agreement, Organizational Document, material agreement or instrument to which such Note Party is a party or by which it or its property is a party or by which it may be bound.

Section 8.07 Litigation. Except as disclosed in Schedule 8.07, no Note Party has any pending or threatened litigation, arbitration, actions or proceedings which would reasonably be expected to have a Material Adverse Effect.

Section 8.08 Operations in Conformity With Law, Etc. Except as set forth on Schedule 8.08, the operations of the Note Parties are not in material violation of any Legal Requirement presently in effect. Except as set forth on Schedule 8.08, none of the Note Parties has received notice of any such violation or default and none of the Note Parties has any knowledge of any reasonable basis on which the operations of its business would be expected to materially violate any Legal Requirement or to give rise to any such violation or default.

Section 8.09 Intellectual Property. All material Intellectual Property owned or utilized by any Note Party that is registrable is set forth on Schedule 8.09, is valid and has been duly registered or filed with all appropriate Governmental Authorities except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect. All such material Intellectual Property constitutes all of the material registrable intellectual property rights which are necessary for the operation of its business; to the knowledge of the Note Party, there is no objection to or pending challenge to the validity of any such Intellectual Properties and no Note Party is aware of any grounds for any challenge, except as set forth on Schedule 8.09 hereto. The Intellectual Property has been maintained so as to preserve the value thereof from the date of creation or acquisition thereof except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

Section 8.10 Compliance with Other Instruments. None of the Note Parties is in violation or default of (i) its Organizational Documents, (ii) any material instrument, judgment, order, writ, decree or contract to which it is a party or by which it is bound, or (iii) in any

material respects any provision of any federal or state statute, rule or regulation applicable to it. The execution, delivery and performance of this Agreement, the Note Documents and the consummation of the transactions contemplated hereby and thereby will not after entry of the Confirmation Order, result in any such material violation or be in conflict with or constitute, with or without the passage of applicable cure periods and giving of notice, either a material default under any such Organizational Documents, provision of any statute, rule or regulation, instrument, judgment, order, writ, decree or contract or an event which results in the creation of any Lien, charge or encumbrance upon any material assets of any Note Party.

Section 8.11 Agreements; Action. Except as set forth on Schedule 8.11, none of the Note Parties are a party to or bound by (a) any contract or agreement relating to the purchase, sale or lease of products, material, supplies, Equipment or services requiring payments to or from such Note Party (i) in an amount in excess of $[100,000] or which is not terminable upon thirty (30) days or less notice without penalty (excluding purchase orders with customers or suppliers), or (ii) any contract pursuant to which a Note Party has granted or received most favored nation pricing provisions or exclusive marketing or other rights relating to any product, group of products or services; (b) any distributorship, dealer, sales, agency, broker, representative, franchise, independent contractor, management services or similar contract or agreement requiring payments to or from a Note Party in excess of $[100,000] in any fiscal year or which is otherwise material to the business of a Note Party or which is not terminable upon thirty (30) days or less notice without penalty; (c) any other contract or agreement relating to the payment of a commission or other fee calculated as or by reference to a percentage of the profits or revenues of a Note Party or of any business segment of a Note Party, in any case which is reasonably likely to result in the payment to or from a Note Party in excess of $[100,000] in any fiscal year; (d) any license agreement involving a Note Party's use of any Intellectual Property or granting another the right to use any Intellectual Property owned by a Note Party, except licenses for non-exclusive, off-the-shelf software licensed by a third-party to a Note Party or its Subsidiaries with an aggregate cost of less than $25,000; (e) any contract or agreement for the sale or purchase of any material assets, properties or rights, including any the assets or stock of any Person; or (f) any contract or agreement which restricts a Note Party from engaging in any aspect of its business or competing in any line of business in any geographic area.

Section 8.12 Disclosure. To the knowledge of each Note Party, after reasonable investigation, the representations and warranties of such Note Party herein and in the other Note Documents, and all certificates and documents heretofore or contemporaneously furnished by or on behalf of such Person to the Purchasers for purposes of or, in connection with, this Agreement, or in the other Note Documents are, and to the knowledge of such Person, after reasonable investigation, all other such representations and warranties or certificates and documents hereafter furnished by or on behalf of any Note Party to the Purchasers hereunder will be, true and accurate in all material respects on the date as of which such written information is dated or certified and not incomplete, taken as a whole, by omitting to state any material fact necessary to make such information not misleading in any material respect at such time in light of the circumstances under which such information was provided.

Section 8.13 Title to Property and Assets. All real estate owned or leased by any Note Party is set forth on Schedule 8.13. As of the Closing Date, each Note Party owns, or has the right to use pursuant to valid leases or other agreements, all of the real and personal

property required to conduct their respective businesses as currently conducted or contemplated to be conducted. As of the Closing Date, with respect to the real property and other assets owned or leased by any Note Party, such Note Party is in compliance with any such leases in all material respects and, holds a valid ownership or leasehold interest, as applicable. All ownership interests are free of any Liens other than Permitted Liens.

With respect to any Real Estate Asset for which no survey has been prepared or updated in connection with transaction contemplated herein, to the actual knowledge of the Note Parties after diligent inquiry (which shall not generally include site visits except where deemed necessary to confirm or investigate issues raised in reviewing company files or interviews with property managers):

(a) there are no easements, encroachments or other title defects that would be disclosed by an accurate survey as of this date that could interfere in any material respect with the continued use and operation of such Real Estate Asset as used as of this date or result in a material loss or diminution in the value of such Real Estate Asset or the improvements located thereon; and

(ii) the improvements and parking at such Real Estate Asset and purported to be owned by the Note Parties are wholly located on the land related to such Real Estate Asset.

Section 8.14 Tax Returns, Payments and Elections. To the extent applicable, each Note Party has filed all tax returns and reports as required by law relating to any material tax liability of such Note Party. These returns and reports are true and correct in all material respects and such Note Party has paid all material taxes and other assessments due, except where the validity or amount thereof is being contested in good faith by appropriate proceedings and adequate reserves have been set aside on its books. Except as set forth on Schedule 8.14, there are no pending, or to the best knowledge, information and belief of any Note Party, contemplated reviews, audits or proceedings with respect to any tax return, report or other tax liability of any Note Party, which, in either case, relates to any material tax liability of any Note Party.

Section 8.15 Labor Agreements and Actions. No Note Party is involved in any labor dispute with its employees which would reasonably be expected to have a Material Adverse Effect; there are no strikes, walkouts or union organization being conducted or to any Note Party's knowledge, threatened by the employees of any Note Party or in existence and no labor contract is scheduled to expire during the term of the Notes other than as set forth on Schedule 8.15.

Section 8.16 Changes in Business. Except as set forth on Schedule 8.16, since the Filing Date, the Note Parties have conducted their business only in the Ordinary Course of Business and there has not been any change, event, development, damage or circumstance affecting any Note Party which, individually or in the aggregate, has had or would reasonably be expected to have, a Material Adverse Effect. As amplification and not in limitation of the foregoing, since the Filing Date, except as set forth on Schedule 8.16, there has not been:

(a) any Lien imposed or created on any of the assets or properties of any Note Party, other than Permitted Liens;

(b) any damage, destruction or loss of any of the material assets or properties of any Note Party by fire or other casualty, whether or not covered by insurance;

(c) any assignment, termination, modification or amendment of any contract or agreement to which any Note Party was or is a party, except for any termination, modification or amendment which would not, either individually or in the aggregate, be material;

(d) any written notice to any Note Party, or to the knowledge of any Note Party, after reasonable investigation, oral notice that any contract or agreement to which such Note Party was or is a party has been breached, repudiated or terminated or will be breached, repudiated or terminated;

(e) any increase in the salary, benefit or other compensation of any employee, officer or director of any Note Party (or any promise to effect such an increase in the future), or any increase in or any addition to other benefits to which any such employee, officer or director may be entitled (or any promise to effect such and increase in the future), other than in the Ordinary Course of Business;

(f) any failure to pay or discharge when due (after the application of any applicable grace periods) any liabilities or obligations of any nature of any Note Party, except for any such liabilities contested in good faith by any Note Party, which are fully reflected and reserved for in the Unaudited Financial Statements;

(g) any change in any of the accounting principles adopted by any Note Party, or any material change in any Note Party's accounting procedures, practices or methods with respect to applying such principles, other than as required by GAAP or by applicable law;

(h) any transaction, contract or agreement (other than purchase orders in the Ordinary Course of Business) entered into, or liability or obligation created, assumed, guaranteed or incurred, by any Note Party outside the Ordinary Course of Business or involving an amount in excess of $[100,000];

(i) the termination of any officer of any Note Party;

(j) any Restricted Payment;

(k) any cancellation or forfeiture of any material debts or claims of any Note Party or any waiver of any rights of material value to any Note Party;

(l) except as contemplated by this Agreement, the Plan of Reorganization and Confirmation Order, any issuance by any Note Party of any shares of its Capital Stock or other equity or debt security or any security, right, option or warrant convertible into or exercisable or exchangeable for any shares of its capital stock or other equity or debt security;

(m) any write-off of any accounts receivable or notes receivable of any Note Party or any portion thereof in excess of $[25,000] individually or $[75,000] in the aggregate, or any sale, assignment or disposition of any account or note receivable (including, without limitation, by means of any factoring agreement);

(n) any loan, advance or capital contribution to or investment in any Person by any Note Party or the engagement by any Note Party in any transaction with any employee, officer, director or security holder of any Note Party, other than the payment of normal wages and salaries to employees in the Ordinary Course of Business and advances to employees in the Ordinary Course of Business for travel and similar business expenses;

(o) any material change in the manner in which any Note Party extends or receives discounts or credit from customers or suppliers;

(p) the commencement of any action, suit, proceeding or investigation by or against any Note Party, or to the knowledge of any Note Party, any threat thereof;

(q) any amendment to the Organizational Documents of any Note Party;

(r) any Capital Expenditure or commitment by any Note Party in excess of $[100,000];

(s) any payment, discharge or satisfaction of any liabilities, other than in the Ordinary Course of Business; or

(t) any agreement, understanding, authorization or proposal, whether in writing or otherwise, for any Note Party to take any of the actions specified in this Section 8.16.

Section 8.17 Affiliate Arrangements. Except for obligations reflected in Schedule 8.17, there are no contractual arrangements or obligations owed to or by any Note Party by or to any officer, director, partner or Affiliate thereof or any member of the immediate family of any of the foregoing Persons other than obligations to (a) employees and officers (i) for payment of salary for services rendered, (ii) reimbursement for reasonable expenses incurred on its behalf and (iii) for other standard employee benefits made generally available to all employees or (b) directors for (i) directors fees or options and (ii) reimbursement of reasonable expenses of attendance at board meetings.

Section 8.18 Insurance. Schedule 8.18 lists all insurance policies of any nature maintained, as of the Closing Date, for current occurrences by each Note Party, as well as a summary of the terms of each such policy. Each Note Party shall have in full force and effect fire, casualty and general liability insurance policies with coverage customary for companies in their respective businesses and owning similar Properties.

Section 8.19 Reserved.

Section 8.20 Private Placement. The offer, sale and issuance of the Securities as contemplated by this Agreement is exempt from the registration requirements of the Securities Act. None of the Note Parties nor any authorized agent acting on behalf of a Note Party has

taken or will take any action hereafter that would cause the loss of such exemption, including without limitation, by means of general solicitation or publicly disseminated advertisements or sales literature.

Section 8.21 Employee Benefit Plans.

(a) No Note Party nor any member of the Controlled Group maintains or contributes to any Plan other than those listed on Schedule 8.21 hereto. No Plan has incurred any "accumulated funding deficiency," as defined in Section 302(a)(2) of ERISA and Section 412(a) of the Code, whether or not waived, and each Note Party and each member of the Controlled Group has met all applicable minimum funding requirements under Section 302 of ERISA in respect of each Plan.

(b) Each Plan which is intended to be qualified under Section 401(a) of the Code has either received a favorable determination letter that the Plan is qualified and the trust related to the Plan is exempt from federal income tax under Section 501(a) of the Code and no event has occurred since the date of such determination letter where the cost of corrective measures required to maintain the Plan's tax-qualified status would have a Material Adverse Effect.

(c) Neither any Note Party nor any member of the Controlled Group has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due which are unpaid. No Pension Benefit Plan has been terminated by the plan administrator thereof nor by the PBGC, and there is no occurrence which would cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Plan.

(d) All contributions required under the minimum funding requirements of the Code and ERISA have been made, no funding waivers have been approved or requested for any Pension Benefit Plan, and there are no known facts or circumstances that would result in an increase in the Pension Benefit Plan's benefit liabilities or a reduction in Pension Benefit Plan assets that would materially change the amount of contributions required to satisfy the minimum funding requirements, as projected by the Pension Benefit Plan's actuary. Neither any Note Party nor any member of the Controlled Group has materially breached any of the responsibilities, obligations or duties imposed on it by ERISA with respect to any Plan.

(e) Neither any Note Party nor any member of a Controlled Group has incurred any liability for excise taxes under Section 4971 or a material amount of excise taxes under Section 4980B of the Code, and there are no known facts or circumstances that would result in any such liability.

(f) Neither any Note Party nor any member of the Controlled Group has engaged in a "prohibited transaction" described in Section 406 of the ERISA or Section 4975 of the Code that would have a Material Adverse Effect, nor taken any action which would constitute or result in a Termination Event with respect to any Plan which is subject to ERISA.

(g) Each Note Party and each member of the Controlled Group has made all contributions due and payable with respect to each Pension Benefit Plan. There exists no event

described in Section 4043(b) of ERISA, for which the thirty (30) day notice period has not been waived.

(h) Neither any Note Party nor any member of the Controlled Group has any fiduciary responsibility for investments with respect to any plan existing for the benefit of persons other than employees or former employees of any Note Party and any member of the Controlled Group. Other than as listed on Schedule 8.21(h) hereto, neither any Note Party nor any member of the Controlled Group maintains or contributes to any Plan which provides health, accident or life insurance benefits to former employees, their spouses or dependents, other than in accordance with Section 4980B of the Code.

(i) Neither any Note Party nor any member of the Controlled Group has withdrawn, completely or partially, from any Multiemployer Plan so as to incur liability under the Multiemployer Pension Plan Amendments Act of 1980 and there exists no fact which would reasonably be expected to result in any such liability. No Plan fiduciary (as defined in Section 3(21) of ERISA) has any material liability for breach of fiduciary duty or for any failure in connection with the administration or investment of the assets of a Plan. No event has occurred under Section 4069 of ERISA which may reasonably be expected to result in liability under Subtitle D of Title IV of ERISA to any Note Party or any member of the Controlled Group, and no notice seeking to impose liability under Subtitle D of Title IV of ERISA on any Note Party or any member of the Controlled Group on the basis of Section 4069 of ERISA has been received.

Section 8.22 O.S.H.A. and Environmental Compliance.

(a) Except as set forth on Schedule 8.22(a), each Note Party has complied in all material respects with, and its facilities, business, assets, property, leaseholds, Real Property and Equipment are in compliance in all material respects with, the provisions of the Federal Occupational Safety and Health Act, the Environmental Protection Act, RCRA and all other Environmental Laws; except as set forth on Schedule 8.22(a), there have been no outstanding citations, notices or orders of non-compliance issued to any Note Party or relating to its business, assets, property, leaseholds or Equipment under any such laws, rules or regulations.

(b) Except as set forth on Schedule 8.22(b), each Note Party has been issued all required federal, state and local licenses, certificates or permits relating to all applicable Environmental Laws except to the extent the failure to obtain such licenses, certificates or permits would not reasonably be expected to have a Material Adverse Effect.

(c) Except as set forth on Schedule 8.22(c), (i) there are no visible signs of releases, spills, discharges, leaks or disposal (collectively referred to as "Releases") of Hazardous Materials at, upon, under or within any Real Property; (ii) there are no underground storage tanks or polychlorinated biphenyls on the Real Property; (iii) the Real Property has never been used as a treatment, storage or disposal facility of Hazardous Materials; and (iv) no Hazardous Substances are present on the Real Property, excepting such quantities as are handled in accordance with all applicable manufacturer's instructions and governmental regulations and in proper storage containers and as are necessary for the operation of the commercial business of any Note Party or of its tenants.

Section 8.23 Security Interest. The Security and Pledge Agreement and Mortgages create and grant to the Collateral Agent, for its own benefit and for the benefit of the Noteholders, a legal, valid and binding Lien in the Collateral identified therein, and such Lien is a perfected priority interest (superior and prior to the rights of all other Persons other than, with respect to certain working capital assets, the lenders under the Revolving Loan Documents) in all such Collateral that can be perfected by the filing of a financing statement. Such Collateral is not subject to any other Liens whatsoever, except Permitted Liens.

Section 8.24 Permits; Laws. Each Note Party has all material franchises, permits, licenses and any similar authority necessary for the conduct of its business as now conducted and believes that it can obtain, without undue burden or expense, any similar authority for the conduct of its business as planned to be conducted. Each Note Party is not in default in any material respect under any of such material franchises, permits, licenses or other similar authority.

Section 8.25 Revolving Loan Documents. True and correct copies of all Revolving Loan Documents, as in effect on the Closing Date, have been provided to the Purchasers. The Revolving Loan Documents to which any Note Party is party are valid and binding contracts as to such Person. After giving effect to the execution of the Revolving Loan Agreement on the Closing Date, none of the Note Parties is in default of its obligations under any Revolving Loan Document, nor does any default under any Revolving Loan Document exist that would permit a lender under the Revolving Loan Document to accelerate the Indebtedness thereunder.

Section 8.26 Government Regulation; Margin Stock. None of the Note Parties is subject to any statute or regulation which limits the incurring by any Note Party of debt as contemplated by this Agreement. None of the Note Parties, nor any Person controlling the Note Parties is an "investment company" within the meaning of the Investment Company Act of 1940 which is required to be registered thereunder.

Section 8.27 Brokerage Fees, Etc. Except as set forth on Schedule 8.27, no broker's, finders' or placement fee or commission will be payable to any Person retained by or on behalf of any Note Party with respect to any of the transactions contemplated by this Agreement or any of the other Note Documents. Each Note Party hereby jointly and severally indemnifies each Purchaser against and agrees that such Note Party will hold each such party harmless from any claim, demand or liability, including reasonable attorneys' fees, for any broker's, finder's or placement fee or commission incurred by such indemnifying party.

Section 8.28 Solvency. After giving effect to the Closing (and to any Additional Issuance), the Parent and its Subsidiaries, on a Consolidated basis, are, or will be, Solvent.

Section 8.29 Anti-Terrorism Laws.

(a) General. None of the Note Parties nor any of their respective Affiliates is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(b) Executive Order No. 13224. None of the Note Parties nor any of their respective Affiliates or their respective agents acting or benefiting in any capacity in connection with the Notes or other transactions hereunder, is any of the following (each a "Blocked Person"):

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as the same has been, or shall hereafter be, renewed, extended, amended or replaced ("Executive Order No. 13224");

(ii) a Person owned or controlled by or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224;

(iii) a Person with which any Purchaser is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order No. 13224;

(v) a Person that is named as a "specially designated national" on the most recent list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list; or

(vi) a Person who is affiliated or associated with a Person listed above.

None of the Note Parties, nor, to the knowledge of any of the foregoing, any of their respective agents acting in any capacity in connection with the Notes or other transactions hereunder (a) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (b) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224.

(c) None of the Note Parties has engaged, and none of the foregoing intends to engage, in any business or activity prohibited by the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any enabling legislation or executive order relating thereto (Trading with the Enemy Act).

## ARTICLE IX
## AFFIRMATIVE COVENANTS

The Note Parties covenant and agree, for the benefit of the Purchasers, that so long as any Notes remain outstanding:

Section 9.01 Payment of Note Obligations. The Issuers will duly and punctually pay the principal, any Prepayment Premium or other premium (if any), interest and

any other amounts owing under this Agreement and the Notes with respect to the Notes, in each case when due under the terms of this Agreement and the Notes.

Section 9.02 Financial Statements. The Note Parties shall maintain a system of accounting established and administered in accordance with sound business practices to permit the preparation of financial statements in conformity with GAAP. The Note Parties shall deliver to the Administrative Agent:

(a) as soon as available, but not later than ninety (90) days after the end of each fiscal year, a copy of the audited Consolidated balance sheets of Parent and each of its Subsidiaries as at the end of such year and the related Consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, and accompanied by the unqualified opinion of any nationally recognized independent public accounting firm reasonably acceptable to the Collateral Agent, which report shall state that such Consolidated financial statements present fairly in all material respects the financial position as at the dates and for the periods indicated in conformity with GAAP applied on a basis consistent with prior years.

(b) as soon as available, but not later than forty-five (45) days after the end of each fiscal quarter of each year, a copy of the unaudited Consolidated and Consolidating balance sheets of the Parent and each of its Subsidiaries, and the related Consolidated and Consolidating statements of income, shareholders' equity and cash flows as of the end of such quarter and for the portion of the fiscal year then ended, all certified on behalf of the Parent by an appropriate Responsible Officer as being complete and correct in all material respects and fairly presenting, in accordance with GAAP, the financial position and the results of operations of the Parent and its Subsidiaries; provided, however, that such financial statements are subject to normal year-end adjustments and may lack footnotes and other presentations items.

(c) as soon as available, but not later than thirty (30) days after the end of each fiscal month of each year, a copy of the unaudited Consolidated and Consolidating balance sheets of the Parent and each of its Subsidiaries, and the related Consolidated and Consolidating statements of income, shareholders' equity and cash flows as of the end of such month and for the portion of the fiscal year then ended, all certified on behalf of the Parent by an appropriate Responsible Officer as being complete and correct in all material respects and fairly presenting, in accordance with GAAP, the financial position and the results of operations of the Parent and its Subsidiaries; provided, however, that such financial statements are subject to normal year-end adjustments and may lack footnotes and other presentations items.

Section 9.03 Certificates; Other Information. The Company shall furnish to the Administrative Agent:

(a) concurrently with the delivery of the financial statements referred to in Sections 9.02(a), 9.02(b) and 9.02(c) above, a fully and properly completed Compliance Certificate in the form of Exhibit G, certified on behalf of the Company by a Responsible Officer;

(b) within five days the same are filed, copies of all financial statements and regular, periodic or special reports which Parent may make to, or file with, the Securities and Exchange Commission or any successor or similar Governmental Authority;

(c) together with each delivery of financial statements pursuant to Section 9.03(a) and Section 9.03(b) for the last calendar month of each fiscal quarter (i) a management report, in reasonable detail, signed by a Responsible Officer of the Company, describing the operations and financial condition of the Company and its Subsidiaries for the month and the portion of the fiscal year then ended (or for the fiscal year then ended in the case of annual financial statements), and (ii) a report setting forth in comparative form the corresponding figures for the corresponding periods of the previous fiscal year and the corresponding figures from the most recent projections for the current fiscal year delivered pursuant to Section 9.03(d) and discussing the reasons for any significant variations;

(d) as soon as available and in any event no later than thirty (30) days after the beginning of each fiscal year of the Company commencing with fiscal year 2007, a month by month projected operating budget and cash flow of the Company and its Subsidiaries on a Consolidated basis for such fiscal year (including an income statement for each month and a balance sheet as at the end of the last month in each fiscal quarter), such projections to be accompanied by a certificate signed by a Responsible Officer of the Company to the effect that such projections have been prepared on the basis of sound financial planning practice consistent with past budgets and financial statements of the Company and its Subsidiaries on a Consolidated basis based on the reasonable material assumptions on which such projections were prepared;

(e) promptly upon receipt thereof, copies of any reports submitted by the Company's certified public accountants in connection with each annual, interim or special audit or review of any type of the financial statements or internal control systems of the Company made by such accountants, including any comment letters submitted by such accountants to management of the Company in connection with their services; and

(f) promptly, such additional business, financial, corporate affairs, perfection certificates and other information as the Noteholders may from time to time reasonably request.

Section 9.04 Notices. Company shall notify promptly the Administrative Agent of each of the following (and in no event later than ten (10) Business Days after a Responsible Officer becoming aware thereof):

(a) the occurrence or existence of any Event of Default under the Revolving Loan Agreement (as defined therein) or any Default or Event of Default under this Agreement;

(b) any breach or non performance of, or any default under, any Contractual Obligation of the Parent or any of its Subsidiaries, or any violation of, or non-compliance with, any Requirement of Law, each of which would reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect, including a description of such breach, non-performance, default, violation or non-compliance and the steps, if any, the Parent or such Subsidiary has taken, is taking or proposes to take in respect thereof;

(c) any dispute, litigation, investigation, proceeding or suspension which may exist at any time between the Parent or any of its Subsidiaries and any Governmental Authority which would reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect;

(d) the commencement of, or any material development in, any litigation or proceeding affecting the Parent or of its Subsidiaries (i) in which the amount of damages claimed is $[500,000] (or its equivalent in another currency or currencies) or more, (ii) in which injunctive or similar relief is sought and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect, or (iii) in which the relief sought is an injunction or other legal stay of the performance of this Agreement or any Document;

(e) any of the following if the same would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect: (i) any enforcement actions or other Governmental Authority, judicial or administrative actions instituted against the Parent or any of its Subsidiaries pursuant to any applicable Environmental Laws, (ii) any other Environmental Actions, and (iii) any notice of any Environmental Action relating to any real property adjoining the Property of the Parent or any of its Subsidiaries that would reasonably be anticipated to cause the Parent's or any of its Subsidiaries' Property or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use of such Property under any Environmental Laws;

(f) any of the following if the same would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, together with a copy of any notice with respect to such event that may be required to be filed with a Governmental Authority and any notice delivered by a Governmental Authority to the Company or any member or its Controlled Group with respect to such event:

(i) an ERISA Event;

(ii) the adoption of any new Qualified Plan that is subject to Title IV of ERISA or Section 412 of the Code by any member of the Controlled Group;

(iii) the adoption of any amendment to a Qualified Plan that is subject to Title IV of ERISA or Section 412 of the Code, if such amendment results in a material increase in benefits or unfunded liabilities; or

(iv) the commencement of contributions by any member of the Controlled Group to any Multiemployer Plan or any Qualified Plan that is subject to Title IV of ERISA or Section 412 of the Code;

(g) any material change in accounting policies or financial reporting practices by Parent, the Company or any of its Subsidiaries; provided that no notice shall be required of any such changes in accounting policies or practices that are required by changes in GAAP or by changes in other applicable law unless such changes give rise to a change in the calculation of the financial covenants or in the interpretation of related provisions, as contemplated under Section 1.03, in which event such notice shall be required as soon as reasonably practicable after

the Company becomes aware of the need for such a change in calculation or interpretation and in any event prior to the delivery of any financial statements or certificates reflecting such change;

(h) any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other labor disruption against or involving the Parent or any of its Subsidiaries if the same would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect; and

(i) the creation, establishment or acquisition of any new Subsidiary or the issuance by the Company or such Subsidiary of any capital stock or warrant option or similar agreement in respect thereof.

Each notice pursuant to this Section shall be accompanied by a written statement by a Responsible Officer on behalf of such entity setting forth details of the occurrence referred to therein, and stating what action the Company proposes to take with respect thereto and at what time. Each notice under Section 9.04(a) shall describe with particularity any and all clauses or provisions of this Agreement or other Note Document that have been breached or violated.

Section 9.05 Preservation of Corporate Existence, Etc. Each Note Party shall, and shall cause each of its Subsidiaries to:

(a) preserve and maintain in full force and effect its organizational existence and good standing under the laws of its state or jurisdiction of incorporation and in such foreign jurisdictions in which the failure to maintain such good standing would reasonably be expected to have a Material Adverse Effect, except, with respect to the Company's Subsidiaries, in connection with transactions permitted by Section 10.03;

(b) preserve and maintain in full force and effect all material rights, privileges, qualifications, permits, licenses and franchises necessary in the normal conduct of its business except in connection with transactions permitted by Section 10.03 and sales of assets permitted by Section 10.02 and except as would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect;

(c) use its reasonable efforts, in the Ordinary Course of Business and in the reasonable business judgment of the Company, to preserve its business organization and preserve the goodwill and business of the customers, suppliers and others having material business relations with it; and

(d) preserve or renew all of its registered patents, copyrights, trademarks, trade names, service marks and domain names, the non preservation of which would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

Section 9.06 Maintenance of Property. Each Note Party shall maintain, and shall cause each of its Subsidiaries to maintain, and preserve all its Property which is necessary in its business in good working order and condition, ordinary wear and tear and casualty excepted and shall make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

Section 9.07 Insurance. Each Note Party shall maintain, and shall cause each of its Subsidiaries to maintain, with reputable independent insurers, insurance with respect to its Properties and business against loss or damage of the kinds customarily insured against by similarly situated Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons, including workers' compensation insurance, public liability and Property and casualty insurance, and business interruption insurance as is customary in the case of similarly situated Persons engaged in the same or similar business as such Note Party, including business interruption insurance. Upon request of any Noteholder, each Note Party shall furnish to the Noteholders, at reasonable intervals (but not more than once per calendar year) a certificate of a Responsible Officer on behalf of such Note Party (and, if requested by such Noteholder, any insurance broker of such Note Party) setting forth the nature and extent of all insurance maintained by such Note Party in accordance with this Section 9.07.

Section 9.08 Payment of Obligations. Each Note Party shall, and shall cause its Subsidiaries to, pay, discharge and perform as the same shall become due and payable or required to be performed, all their respective obligations and liabilities, including:

(a) all material tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently prosecuted which stay the enforcement of any Lien and for which adequate reserves in accordance with GAAP are being maintained by such Note Party;

(b) all lawful claims which, if unpaid, would by law become a Lien (other than a Permitted Lien) upon its Property unless the same are being contested in good faith by appropriate proceedings diligently prosecuted which stay the imposition or enforcement of the Lien and for which adequate reserves in accordance with GAAP are being maintained by such Note Party;

(c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained herein and/or in any instrument or agreement evidencing such Indebtedness, except to the extent such non-payment would not result in an Event of Default under Section 13.01(h); and

(d) the performance of all obligations under any Contractual Obligation to which the Company or any of its Subsidiaries is bound, or to which it or any of its properties is subject, including the Note Documents, except where the failure to perform would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

Section 9.09 Compliance with Laws. Each Note Party shall comply, and shall cause each of its Subsidiaries to comply, in all material respects, with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business (including, without limitation, all Environmental Laws), except (a)(i) such as may be contested in good faith by appropriate proceedings diligently prosecuted, (ii) as to which a bona fide dispute exists, and (iii) for which appropriate reserves have been established on the Company's financial statements or

(b) where the failure to comply would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

Section 9.10 Inspection of Property and Books and Records. Each Note Party shall maintain, and shall cause each of its Subsidiaries to maintain, proper books of record and account, in which true and correct entries, in all material respects, in conformity with GAAP consistently applied shall be made of all material financial transactions and matters involving the assets and business of the Note Parties. At any time, the Required Noteholders and the Collateral Agent may (at the expense of the Note Parties) visit and inspect any of the Note Parties' respective Properties, to examine their respective corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss their respective affairs, finances and accounts with their respective directors, officers, and independent public accountants, at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the applicable entity; provided, however, a Responsible Officer of such entity shall be afforded the opportunity to attend any discussions with any independent public accountants and, provided, further, any Noteholder may do any of the foregoing at the expense of the Note Parties at any time during normal business hours and without advance notice.

Section 9.11 Use of Proceeds. The Issuers shall use the proceeds of the Securities only for the purposes set forth in Section 2.07 hereof.

Section 9.12 Further Assurances.

(a) The Note Parties shall ensure that all written information, exhibits and reports furnished to the Noteholders, when taken as a whole, do not and will not contain any untrue statement of a material fact and do not and will not omit to state any material fact or any fact necessary to make the statements contained therein not materially misleading in light of the circumstances in which made, and will promptly disclose to the Noteholders and correct any defect or error that may be discovered therein or in any Note Document or in the execution, acknowledgement or recordation thereof to the extent necessary to disclose new or changed facts or circumstances of a material nature, or to correct a defect or error of a material nature, the non-disclosure of which would result in the representations and warranties set forth in ARTICLE VII not being true and correct; provided that delivery or receipt of such subsequent disclosure shall not constitute a waiver by the Noteholders or a cure of any Default or Event of Default resulting in connection with the matters disclosed.

(b) The Note Parties shall promptly inform the Collateral Agent and each Noteholder of the creation or acquisition of any direct or indirect Subsidiary and cause each such direct or indirect Subsidiary to execute a joinder to the guarantee provided under ARTICLE XIV below. From and after the Closing, the Company shall, and shall cause each Note Party to, take such action as is reasonably required by the Collateral Agent to grant or perfect a Security Interest in any assets of such Person. Subject to the terms of the Intercreditor Agreement and subject to Permitted Liens, such Lien in favor of the Collateral Agent shall be senior and prior in right to all other Persons.

Section 9.13 Observer Rights. The Required Noteholders and, upon request, the holders of a majority of the Notes not held by the Required Noteholders, will each have the right to appoint an observer to the boards of directors or other governing bodies of each Issuer and its Subsidiaries, and each committee of the boards of directors or other governing bodies of each Issuer and its Subsidiaries (other than the compensation and audit committees), who shall be entitled to attend all meetings of the boards of directors and each committee of the boards of directors (other than the compensation and audit committees) of the Issuer and its Subsidiaries, and who shall receive all reports, meeting materials, notices and other materials as and when provided to the board members. All of the reasonable expenses of any such observers shall be paid by the applicable Issuers. The Issuers agree that their boards of directors or other governing bodies will meet at least quarterly. Notwithstanding the foregoing, upon advance notice, such observer(s) may be excluded from having access to (a) any materials produced by counsel to Parent or the Company in connection with pending or threatened litigation against, or by, Parent or the Company and may be excluded from the portions of any meetings at which such pending or threatened litigation is considered so long as Parent or the Company, as applicable, reasonably believes, on advice of counsel, that such exclusion is reasonably necessary to preserve the attorney-client privilege of Parent or the Company and (b) the portions of any board or committee meetings during which proposed material modifications to the terms of the Notes are considered. As a condition of participating in any meeting or receiving any materials or notices, such observers may be required to execute a written acknowledgement that such observer is subject to the confidentiality requirements set forth in Section 16.18; provided, for the avoidance of doubt, that such observer shall not be prohibited from sharing information with the Agents or the Noteholders.

## ARTICLE X
## NEGATIVE COVENANTS

Each Note Party covenants and agrees, for the benefit of the Purchasers, that so long as any Notes remain outstanding:

Section 10.01 Limitation on Liens. Neither Parent nor any of its Subsidiaries that is an Issuer or Guarantor shall mortgage, assign, pledge, transfer or otherwise permit any Lien, to exist on, or to become enforceable against, any of the property, assets or undertaking of the Parent or any of its Subsidiaries that is an Issuer or a Guarantor, including, without limitation, the Collateral, whether now owned or hereafter acquired, except for Permitted Liens.

Section 10.02 Disposition of Assets. Neither the Parent nor any of its Subsidiaries, including any Issuer, shall directly or indirectly: (a) sell, lease, transfer, assign, abandon or otherwise dispose of any part of the Collateral or any material portion of its other assets (other than a Permitted Disposition) or (b) consolidate with or merge with or into any other entity, or permit any other entity to consolidate with or merge with or into any Issuer or the Guarantors or (c) except as expressly permitted pursuant to Section 10.03.

Section 10.03 Consolidations and Mergers. Each Note Party shall not, and shall not suffer or permit any of its Subsidiaries to, merge, consolidate with or into, or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of

any Person, except, upon not less than twenty (20) Business Days prior written notice to the Noteholders, (a) any Note Party may merge with, or dissolve or liquidate into another Note Party, and (b) any Subsidiary of the Company may merge with, or dissolve or liquidate into, the Company or a Wholly-Owned Subsidiary of the Company, provided that the Company or such Wholly-Owned Subsidiary shall be the continuing or surviving entity.

Section 10.04 Loans and Investments. Neither Parent nor any of its Subsidiaries that is an Issuer or a Guarantor shall: (i) create any new Subsidiary, (ii) make or suffer to exist any advance or loan to, or any investment in, or capital contribution to, any Person (other than a Permitted Investment), or (iii) acquire all or substantially all of the assets of, or any Capital Stock or any debt or Equity Interests in (including without limitation, through merger or consolidation), any Person, except for the creation or acquisition of one or more Wholly-Owned Subsidiaries that become Guarantors of the Notes.

Section 10.05 Limitation on Indebtedness. Neither Parent nor any of its Subsidiaries that is an Issuer or a Guarantor shall assume, incur or otherwise become liable upon or with respect to any Indebtedness or Contingent Obligation at any time after the Closing Date; provided, that, Parent and its Subsidiaries that is an Issuer or a Guarantor may become liable with respect to any Permitted Indebtedness.

Section 10.06 Transactions with Affiliates. Each Note Party shall not, and shall not suffer or permit any of its Subsidiaries to, enter into any transaction with any Affiliate of the Company or of any such Subsidiary, except (a) as expressly permitted by this Agreement, (b) in the Ordinary Course of Business, on terms no less favorable to the Note Parties than would be reasonably expected to apply in a third party transaction, and pursuant to the reasonable requirements of the business of such Note Party or such Subsidiary, and (c) transactions entered into on or prior to the Closing Date and disclosed on Schedule 8.17.

Section 10.07 Reserved.

Section 10.08 Margin Stock. The Company shall not and shall not suffer or permit any of its Subsidiaries to use any portion of the proceeds of the Notes, directly or indirectly, to purchase or carry Margin Stock or repay or otherwise refinance Indebtedness of the Company or others incurred to purchase or carry Margin Stock, or otherwise in any manner which is in contravention of any Requirement of Law or in violation of this Agreement.

Section 10.09 Contingent Obligations. Each Note Party shall not, and shall not suffer or permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Contingent Obligations except in respect of the Note Obligations and except:

(a) endorsements for collection or deposit and standard contractual indemnities entered into in the Ordinary Course of Business;

(b) Contingent Obligations of the Company and its Subsidiaries existing as of the Closing Date and listed in Schedule 10.09, including extensions and renewals thereof which do not increase the amount of such Contingent Obligations as of the date of such extension or renewal;

(c) Contingent Obligations incurred in the Ordinary Course of Business with respect to surety and appeal bonds, performance bonds and other similar obligations;

(d) Contingent Obligations arising under indemnity agreements to title insurers to cause such title insurers to issue to the Collateral Agent title insurance policies;

(e) Contingent Obligations arising with respect to customary indemnification obligations in favor of purchasers in connection with dispositions permitted under Section 10.02(b);

(f) Contingent Obligations incurred for the benefit of the Company or any of its Wholly-Owned Subsidiaries if the primary obligation is expressly permitted by this Agreement; and

(g) Contingent Obligations constituting guarantees of obligations under the Revolving Loan Documents and this Agreement and the Notes.

Section 10.10 Compliance with ERISA. Each Note Party shall not, and shall not suffer or permit any of its Subsidiaries to:

(a) terminate any Plan subject to Title IV of ERISA so as to result in any material liability to such Note Party which would reasonably be expected to have a Material Adverse Effect;

(b) permit to exist any ERISA Event or any other event or condition, which would reasonably be expected to have a Material Adverse Effect;

(c) make a complete or partial withdrawal (within the meaning of ERISA Section 4201) from any Multiemployer Plan so as to result in any material liability to any Note Party which would reasonably be expected to have a Material Adverse Effect;

(d) enter into any new Plan or modify any existing Plan so as to increase its obligations thereunder which would reasonably be expected to have a Material Adverse Effect; or

(e) permit the present value of all nonforfeitable accrued benefits under any Plan (using the reasonable actuarial assumptions in accordance with the Code and ERISA) materially to exceed the fair market value of Plan assets allocable to such benefits, all determined as of the most recent valuation date for each such Plan.

Section 10.11 Restricted Payments. Each Note Party shall not, and shall not suffer or permit any of its Subsidiaries to, (i) declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on account of any shares of any class of its capital stock, partnership interests, membership interests or other equity securities; (ii) purchase, redeem or otherwise acquire for value any shares of its capital stock, partnership interests, membership interests or other equity securities or any warrants, rights or options to acquire such shares, interests or securities now or hereafter outstanding; or (iii) make any payment or prepayment of principal of, premium, if any, interest, fees, redemption,

exchange, purchase, retirement, defeasance, sinking fund or similar payment with respect to, Subordinated Indebtedness (the items described in clauses (i), (ii) and (iii) above are referred to as "Restricted Payments"); except that:

(a) any Wholly-Owned Subsidiary of the Company may declare and pay dividends to the Company or any Wholly-Owned Subsidiary of the Company,

(b) Parent may declare and make dividend payments or other distributions payable solely in its common stock,

(c) Note Parties may make distributions to Parent to permit Parent to pay (and Parent may pay) (i) compensation and directors fees and to reimburse expenses of officers, directors and employees in the Ordinary Course of Business, (ii) federal and state income taxes then due and owing, franchise taxes and other similar licensing expenses, operating costs and audit expenses incurred in the Ordinary Course of Business, and (iii) payments in connection with the repurchase its capital stock in connection with the exercise of stock options (including for purposes of paying tax withholding applicable to stock option exercises) granted to officers, directors or employees of Company and (y) payments to repurchase shares of its capital stock sold to members of management of Company, upon the termination of their employment, in an aggregate amount which shall not exceed $1,000,000 per year; and

(d) the Note Parties may distribute to Parent, and Parent may use, Net Cash Proceeds of the Richmond Lease Transaction, and to the extent available and subject to Section 6.02, the proceeds of any Additional Issuance, to redeem any outstanding Series A Preferred or the Notes.

Section 10.12 Change in Business. Each Note Party shall not, and shall not permit any of its Subsidiaries to, engage in any material line of business substantially different from those lines of business carried on by it on the date hereof or any business similarly related to, complementary to or which constitutes a reasonable extension thereof.

Section 10.13 Change in Structure. Except as expressly permitted under Section 10.03, each Note Party shall not and shall not permit any of its Subsidiaries to, make any material changes in its equity capital structure (including in the terms of its outstanding stock) in any material respect or in any respect adverse to the Noteholders in their capacity as such.

Section 10.14 Accounting Changes. Except as otherwise provided for in this Agreement, the Note Parties shall not, and shall not suffer or permit any of their Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required by GAAP, or change the fiscal year of a Note Party or of any of their Consolidated Subsidiaries.

Section 10.15 No Negative Pledges. Each Note Party will not, and will not permit any of its Subsidiaries, directly or indirectly, to create or otherwise cause or suffer to exist or become effective any consensual restriction or encumbrance of any kind on the ability of any such Subsidiary to pay dividends or make any other distribution on any of such Subsidiary's equity securities or to pay fees, including management fees, make other payments and distributions or extend loans or advances to the Note Parties or any of their Subsidiaries, or transfer any of its properties or assets to the Note Parties or any of their Subsidiaries other than

restrictions contained in the Revolving Loan Agreement or this Agreement. Each Note Party will not, and will not permit any of its Subsidiaries, directly or indirectly, to enter into, assume or become subject to any Contractual Obligation (other than the Revolving Loan Documents and the Note Documents) prohibiting or otherwise restricting the existence of any Lien upon any of its assets in favor of the Noteholders, whether now owned or hereafter acquired except in connection with any document or instrument governing Liens permitted pursuant to Section 10.01 provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Liens or licenses and contracts providing that the granting of such Lien in the right, title or interest of the Note Parties or their Subsidiaries therein would be prohibited and would, in and of itself, cause or result in a default thereunder enabling another Person party to such license or contract to enforce any remedy with respect thereto.

Section 10.16 Security Interests. The Company shall, and shall cause each Note Party to, at all times take, or cause to be taken, all actions necessary to maintain the Security Interests as valid and perfected Liens, subject only to Liens permitted under Section 11.01, and supply all information to the Purchasers and the Collateral Agent reasonably requested by the Purchasers or the Collateral Agent and necessary for such maintenance.

Section 10.17 OFAC. No Note Party or any Subsidiary of any Note Party (i) will become a person whose property or interests in property are blocked or subject to blocking pursuant to Section 1 of Executive Order 13224, (ii) will engage in any dealings or transactions prohibited by Section 2 of such executive order, or be otherwise, to the knowledge of a Responsible Officer of the Company, associated with any such person in any manner violative of Section 2, or (iii) will otherwise become a person on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other Anti-terrorism Laws.

Section 10.18 Limitation on Activities of Parent. The Parent shall not engage in any business activity other than (i) its ownership of the equity securities of the Company and activities incidental thereto, (ii) activities incidental to maintenance of its corporate existence and (iii) performance of its obligations under the Note Documents and the Revolving Loan Documents to which it is a party.

Section 10.19 Reserved.

Section 10.20 Amendment of Material Documents.

(a) Each Note Party will not, and will not permit any of its Subsidiaries to, consent to any amendment, modification or supplement to or waiver of any provision of any Equity Document applicable to such Note Party or Subsidiary in a manner that would reasonably be expected to affect the interests of the Noteholders (in their capacities as such) materially and adversely without in each case having obtained the specific prior written consent of the Required Noteholders.

(b) Without the consent of the Required Noteholders, the Note Parties will not, and will not permit any of their Subsidiaries to, consent to or request any amendment, modification or supplement to or waiver of any provision of the Revolving Loan Documents to

the extent such consent, amendment, modification, supplement or waiver is otherwise not permitted under the Intercreditor Agreement.

Section 10.21 Leases. Each Note Party will not, and will not permit any of its Subsidiaries to, enter as lessee into any lease arrangement for real or personal property (unless capitalized and permitted under Section 11.01) if after giving effect thereto, aggregate annual rental payments for all leased property would exceed $ [ ] in any one fiscal year in the aggregate for the Parent and its Subsidiaries.

Section 10.22 Reserved.

Section 10.23 Asbestos Remediation. The Issuers shall not, without the written consent of the Required Noteholders, except under requirement of law after prompt notice to the Required Noteholders, knowingly take any action that would be reasonably expected to create any material asbestos remediation liability.

## ARTICLE XI
## FINANCIAL COVENANTS

The Issuers and their Subsidiaries covenant and agree, for the benefit of the Purchasers, that so long as any Notes remain outstanding:

Section 11.01 Capital Expenditures. The Issuers and their Subsidiaries shall not make or commit to make Capital Expenditures for any Fiscal Year to exceed in the aggregate the amount set forth below for such Fiscal Year; provided, however, that to the extent that the amount made or incurred in any Fiscal Year is less than such limitation, the amount by which the amount of such limitation exceeds the amount of Capital Expenditures made or incurred in any such Fiscal Year may be carried over and expended in the immediately following fiscal year in addition to the annual permitted amount for Capital Expenditures in such immediately following Fiscal Year; provided that the carryover amount shall be the first amount deemed used in the subsequent Fiscal Year:

| Fiscal Year | Maximum Capital Expenditures |
|---|---|
| 2008 | $ 12,886,943 |
| 2009 | $ 12,423,400 |
| 2010 | $ 8,390,000 |
| 2011 | $ 8,555,000 |

Section 11.02 Leverage Ratio. The Issuers and their Subsidiaries shall not permit the ratio of (x) funded Indebtedness as of the end of each fiscal quarter below to (y) Consolidated EBITDA for the twelve fiscal month period then ended; to be greater than the maximum ratio set forth in the table below opposite such period; provided that for purposes of this Section 11.02, Consolidated EBITDA for the twelve fiscal month period ended June 30, 2008, Consolidated EBITDA shall be deemed to equal the product of (x) Consolidated EBITDA for the period September 1, 2008 through June 30, 2008 multiplied by (y) 4/3:

| Fiscal Quarters Ending on: | Maximum Leverage Ratio |
|---|---|
| June 30, 2008 | 5.0 to 1.0 |
| September 30, 2008 | 5.0 to 1.0 |
| December 31, 2008 | 4.5 to 1.0 |
| March 31, 2009 | 4.5 to 1.0 |
| June 30, 2009 | 4.5 to 1.0 |
| September 30, 2009 | 4.0 to 1.0 |
| December 31, 2009 | 4.0 to 1.0 |
| March 31, 2010 | 4.0 to 1.0 |
| June 30, 2010 and each fiscal quarter thereafter | 3.5 to 1.0 |

Section 11.03 Interest Coverage Ratio. The Note Parties shall not permit the ratio of (x) their Consolidated EBITDA for any four fiscal quarter period, commencing with the four fiscal quarter period ended June 30, 2008 to (y) the sum of Consolidated Interest Expense for the same period to the extent paid, or required to be paid, in cash to be less than 1.2 to 1.0; provided that notwithstanding the foregoing such calculation for the four fiscal quarter period ended June 30, 2008 shall be calculated based on the three fiscal quarter period ended June 30, 2008.

Section 11.04 Minimum Consolidated EBITDA. The Note Parties shall not permit their Consolidated EBITDA for any twelve fiscal month period ended on a date set forth below to be less than the amount set forth opposite such date:

| Period | Minimum Consolidated EBITDA |
|---|---|
| September 1, 2007 through January 31, 2008 | $2,400,000 |
| September 1, 2007 through February 29, 2008 | $2,600,000 |
| September 1, 2007 through March 31, 2008 | $3,600,000 |
| September 1, 2007 through April 30, 2008 | $4,800,000 |
| September 1, 2007 through May 31, 2008 | $6,500,000 |
| September 1, 2007 through June 30, 2008 | $8,100,000 |
| September 1, 2007 through July 31, 2008 | $10,000,000 |
| September 1, 2007 through August 31, 2008 | $11,700,000 |
| October 1, 2007 through September 30, 2008 | $12,600,000 |

## ARTICLE XII

## MANAGEMENT OF COLLATERAL

Section 12.01 Status of Collateral. At the time the Collateral becomes subject to the Collateral Agent's Lien, the Issuers covenant, represent and warrant: (a) the Issuers shall be the owner, free and clear of all Liens (except for the Liens granted in the favor of the Collateral Agent for the benefit of the Agents and the Noteholders and Permitted Liens), and shall be fully authorized to sell, transfer, pledge and/or grant a security interest in each and every item of said Collateral; (b) the Issuers shall maintain books and records pertaining to said Collateral in such detail, form and scope as the Required Noteholders shall reasonably require; and (c) the Issuers

will, immediately upon learning thereof, report to the Agents and the Noteholders any material loss or destruction of, or substantial damage to, any of the material Collateral, and any other matters affecting the value, enforceability or collectibility of any of the material Collateral.

Section 12.02 Collateral Custodian. Subject to the terms of the Intercreditor Agreement, upon the occurrence and during the continuance of any Default or Event of Default, the Collateral Agent may at any time and from time to time employ and maintain on the premises of the Issuers a custodian selected by the Required Noteholders and acceptable to the Collateral Agent who shall have full authority to do all acts necessary to protect the Agents' and the Noteholders' interests. The Issuers hereby agree to cooperate with any such custodian and to do whatever the Collateral Agent may reasonably request to preserve the Collateral. All costs and expenses incurred by the Collateral Agent by reason of the employment of the custodian shall be the responsibility of the Issuers and shall be payable on demand.

## ARTICLE XIII

## EVENTS OF DEFAULT

Section 13.01 Events of Default. If any of the following Events of Default shall occur and be continuing:

(a) the Note Parties shall fail to pay when due (i) any principal on any Note (whether by scheduled maturity, required redemption, acceleration, demand or otherwise) or (ii) any interest, fee, indemnity or other amount payable under this Agreement, any Note or any other Note Document when due (whether by scheduled maturity, required redemption, acceleration, demand or otherwise) and in the case of this clause (ii) such failure remains uncured for a period of three (3) days;

(b) any representation or warranty made or deemed made by or on behalf of any Note Party or by any officer of such Note Party under or in connection with any Note Document or under or in connection with any report, certificate, or other document delivered to any Agent or any Purchaser pursuant to any Note Document shall have been incorrect or misleading in any material respect when made or deemed made;

(c) the Note Parties shall fail to perform or comply with any covenant under ARTICLE X or ARTICLE XI;

(d) the Note Parties shall fail to perform or comply with any other term, covenant or agreement contained in any Note Document to be performed or observed by it and, except as set forth in subsections (a), (b) and (c) of this Section 12.01, such failure, if capable of being remedied, shall remain unremedied for fifteen (15) days after the earlier of the date an Authorized Officer of the Note Parties becomes aware of such failure and the date written notice of such default shall have been given by any Agent or the Required Noteholders to the Issuers;

(e) any Guarantor revokes, terminates or fails to perform any of the terms of any Note Document or other related agreement of such party in favor of the Noteholders or any Affiliate of the Noteholders;

(f) a Change of Control occurs;

(g) any default or event of default occurs, on the part of any Note Parties under any agreement, document or instrument to which such Note Party is a party or by which the Note Party or any of its property is bound and which could reasonably be expected to result in liability in excess of [$500,000];

(h) any Note Party, fails to pay the principal of, or premium or interest on, any of its indebtedness (excluding debt under this Agreement) which is outstanding in an aggregate principal amount exceeding [$500,000] (or the equivalent amount in any other currency) when such amount becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure continues after the applicable grace period, if any, specified in the agreement or instrument relating to the debt or any other event occurs or condition exists and continues after the applicable grace period, if any, specified in any agreement or instrument relating to any such indebtedness, if its effect is to accelerate, or permit the acceleration of the debt; or any such indebtedness shall be declared to be due and payable prior to its stated maturity;

(i) the determination of the Note Parties, whether by vote of any Note Party's board of directors or otherwise, to suspend the operation of any Note Party's business in the ordinary course or to liquidate all or substantially all of any Note Party's assets;

(j) any provision of any Note Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against any Note Party intended to be a party thereto, or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by any Note Party or any Governmental Authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or any Note Party shall deny in writing that it has any liability or obligation purported to be created under any Note Document;

(k) any security and pledge agreement related to this Agreement, or mortgages related to this Agreement or any other security document related to this Agreement, shall for any reason fail or cease to create a valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien in favor of the Collateral Agent for the benefit of the Agents and the Noteholders on any material Collateral purported to be covered thereby;

(l) one or more judgments, orders or awards (or any settlement of any claim that, if breached, could result in a judgment, order or award) for the payment of money exceeding [$100,000] in the aggregate in excess of any applicable insurance coverage (but only to the extent the insurer has not denied in writing its liability therefor) shall be rendered against any Note Party and remain unsatisfied and either (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order, award or settlement, or (ii) there shall be a period of ten (10) consecutive days after entry thereof during which a stay of enforcement of any such judgment, order, award or settlement, by reason of a pending appeal or otherwise, shall not be in effect; provided, however, that any such judgment, order, award or settlement shall not give rise to an Event of Default under this subsection (l) if and for so long as (A) the amount of such judgment, order, award or settlement is covered by a valid and binding

policy of insurance between the Note Party and the insurer covering full payment thereof and (B) such insurer has been notified, and has not disputed the claim made for payment, of the amount of such judgment, order, award or settlement;

(m) any Note Party is enjoined, restrained or in any way prevented by the order of any court or any Governmental Authority from conducting all or any material part of its business for more than fifteen (15) days;

(n) any material damage to, or loss, theft or destruction of, any Collateral, that is not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty which causes, for more than fifteen (15) consecutive days, the cessation or substantial curtailment of revenue producing activities at any facility of any Note Party;

(o) any cessation of a substantial part of the business of any Note Party for a period which materially and adversely affects the ability of such Note Party to continue its business on a profitable basis;

(p) the loss, suspension or revocation of, or failure to renew, any license or permit now held or hereafter acquired by any Note Party, if such loss, suspension, revocation or failure to renew would reasonably be expected to have a Material Adverse Effect;

(q) the conviction or entry of judgment against any Note Party under any criminal or civil statute, pursuant to which statute the penalties or remedies (determined or, if not determined, sought or available) include forfeiture to any Governmental Authority of any material portion of the property of such Person;

(r) any Note Party or any of its ERISA Affiliates shall have made a complete or partial withdrawal from a Multiemployer Plan, and, as a result of such complete or partial withdrawal, such Note Party or any of its ERISA Affiliates incurs a withdrawal liability in a material amount; or a Multiemployer Plan enters reorganization status under Section 4241 of ERISA, and, as a result thereof such Note Party's or any of its ERISA Affiliates' annual contribution requirements with respect to such Multiemployer Plan increases to a material extent;

(s) any Termination Event with respect to any Employee Plan shall have occurred, and, thirty (30) days after notice thereof shall have been given to the Note Parties by any Agent at the written direction of the Required Noteholders, (i) such Termination Event (if correctable) shall not have been corrected, and (ii) the then current value of such Employee Plan's vested benefits exceeds the then current value of assets allocable to such benefits in such Employee Plan (or, in the case of a Termination Event involving liability under Section 409, 502(i), 502(l), 515, 4062, 4063, 4064, 4069, 4201, 4204 or 4212 of ERISA or Section 4971 or 4975 of the Code, the liability is in excess of the amount the then current value of such Employee Plan's assets allocable to its vested benefits exceeds the then current value of such benefits);

(t) any Note Party shall be liable for any Environmental Liabilities and Costs the payment of which would reasonably be expected to have a Material Adverse Effect; or

(u) (i) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of any Note Party or any of their Subsidiaries in an involuntary case under the Bankruptcy Code or any applicable bankruptcy, insolvency or other similar law now or hereafter in effect in the United States or any other jurisdiction, which decree or order is not stayed; or any other similar relief shall be granted and remain unstayed under any applicable law; or (ii) an involuntary case is commenced against any Note Party or any of their Subsidiaries under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over any Note Party or any of their Subsidiaries or over all or a substantial part of any of their respective properties, shall have been entered, or an interim receiver, trustee or other custodian of any Note Party or any of their Subsidiaries for all or a substantial part of their respective properties is involuntarily appointed; or a warrant of attachment, execution or similar process is issued against any substantial part of the property of any Note Party or any of their Subsidiaries, and the continuance of any such events in this clause (ii) for 60 days unless dismissed, bonded, stayed, vacated or discharged; or

(v) any Note Party or any of their Subsidiaries shall have an order for relief entered with respect to it or commence a voluntary case under the Bankruptcy Code or any applicable bankruptcy, insolvency or other similar law now or hereafter in effect in the United States or any other jurisdiction, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; the making by any Note Party or any of their Subsidiaries of any general assignment for the benefit of creditors; or the board of directors of any Note Party or any of their Subsidiaries (or any committee thereof) adopts any resolution or otherwise authorizes any action to approve any of the foregoing; or

(w) the voluntary or involuntary liquidation or dissolution of any Note Party or any of their Subsidiaries (other than permitted by Section 10.03 hereof);

THEN, (i) upon the occurrence and during the continuance of any Event of Default described in the forgoing subsections (u) or (v) with respect to any Note Party or any of their Subsidiaries, the unpaid principal amount of all Notes, together with accrued interest thereon, all other amounts payable under this Agreement and the other Note Documents and, as liquidated damages and not as a penalty, an amount equal to the Prepayment Premium shall automatically become immediately due and payable, without presentment, demand, protest or other requirement of any kind, all of which are hereby expressly waived by the Note Parties, and (ii) and upon the occurrence and during the continuance of any other Event of Default, the Collateral Agent at the written request of the Required Noteholders, by notice to the Issuers, may declare the Notes to be due and payable, whereupon the principal amount of all Notes, together with accrued interest thereon, all other amounts payable under this Agreement and the other Note Documents, and as liquidated damages and not as a penalty, an amount equal to the Prepayment Premium, shall automatically become immediately due and payable, such without any other notice of any kind, and without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by the Company and (iii) the Collateral Agent at the written request of the Required Noteholders, may exercise any and all of its other rights and remedies under

applicable law (including, but not limited to, the Uniform Commercial Code), hereunder and under the other Note Documents.

## ARTICLE XIV

## GUARANTEE

Section 14.01 Guarantee of Note Obligations. Each Guarantor unconditionally guarantees that the Note Obligations will be performed and paid in full in cash when due and payable, whether at the stated or accelerated maturity thereof or otherwise, this guarantee being a guarantee of payment and not of collectability and being absolute and in no way conditional or contingent (the "Guarantee"). In the event any part of the Note Obligations shall not have been so paid in full when due and payable, each Guarantor will, immediately upon notice by the Collateral Agent or, without notice, immediately upon the occurrence of an Event of Default under Section 13.01(v) or Section 13.01(w), pay or cause to be paid to the Collateral Agent for the account of each Noteholder in accordance with such Noteholder's proportionate share of such Note Obligations which are then due and payable and unpaid. The obligations of each Guarantor hereunder shall not be affected by the invalidity, unenforceability or irrecoverability of any of the Note Obligations as against the Issuers, any other guarantor thereof or any other Person. For purposes hereof, the Note Obligations shall be due and payable when and as the same shall be due and payable under the terms of this Agreement or any other Note Document notwithstanding the fact that the collection or enforcement thereof may be stayed or enjoined under the Bankruptcy Code or other applicable law. The guarantees provided for in this ARTICLE XIV are subject to the lien priority set forth in the Intercreditor Agreement.

Section 14.02 Continuing Obligation. Each Guarantor acknowledges that the Purchasers have entered into this Agreement (and, to the extent that the Purchasers, the Noteholders or the Collateral Agent may enter into any future Note Document, will have entered into such agreement) in reliance on this ARTICLE XIV being a continuing irrevocable agreement, and such Guarantor agrees that its guarantee may not be revoked in whole or in part. The obligations of the Guarantors hereunder shall terminate when all of the Note Obligations have been paid in full in cash and discharged; provided, however, that:

(a) if a claim is made upon one or more Noteholders at any time for repayment or recovery of any amounts or any property received by such Noteholders from any source on account of any of the Note Obligations and such Noteholders repay or return any amounts or property so received (including interest thereon to the extent required to be paid by such Noteholders), or

(b) if one or more Noteholders become liable for any part of such claim by reason of (i) any judgment or order of any court or administrative authority having competent jurisdiction, or (ii) any settlement or compromise of any such claim,

then the Guarantors shall remain liable under this Agreement for the amounts so repaid or property so returned or the amounts for which the Noteholders become liable (such amounts being deemed part of the Note Obligations) to the same extent as if such amounts or property had never been received by the Noteholders, notwithstanding any termination hereof or the

cancellation of any instrument or agreement evidencing any of the Note Obligations. Not later than five days after receipt of notice from the Collateral Agent, the Guarantors shall pay to the Collateral Agent for the benefit of the Noteholders, an amount equal to the amount of such repayment or return for which each such Noteholder has so become liable. Payments hereunder by a Guarantor may be required by the Collateral Agent on any number of occasions.

Section 14.03 Waivers with Respect to Note Obligations. Except to the extent expressly required by this Agreement or any other Note Document, each Guarantor waives, to the fullest extent permitted by the provisions of applicable law, all of the following (including all defenses, counterclaims and other rights of any nature based upon any of the following):

(a) presentment, demand for payment and protest of nonpayment of any of the Note Obligations, and notice of protest, dishonor or nonperformance;

(b) notice of acceptance of this guarantee and notice that the Notes have been sold by the Issuer hereunder in reliance on such Guarantor's guarantee of the Note Obligations;

(c) notice of any Default or of any inability to enforce performance of the obligations of the Issuer or any other Person with respect to any Note Document or notice of any acceleration of maturity of any Note Obligations;

(d) demand for performance or observance of, and any enforcement of any provision of this Agreement, the Note Obligations or any other Note Document or any pursuit or exhaustion of rights or remedies against the Issuer or any other Person in respect of the Note Obligations or any requirement of diligence or promptness on the part of the Collateral Agent or any Noteholder in connection with any of the foregoing;

(e) any act or omission on the part of the Collateral Agent or any Noteholder which may impair or prejudice the rights of such Guarantor, including rights to obtain subrogation, exoneration, contribution, indemnification or any other reimbursement from the any Issuers or any other Person, or otherwise operate as a deemed release or discharge;

(f) any statute of limitations or any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than the obligation of the principal;

(g) any "single action" or "antideficiency" law which would otherwise prevent any Noteholder from bringing any action;

(h) all demands and notices of every kind with respect to the foregoing; and

(i) to the extent not referred to above, all defenses (other than payment) which the Issuers may now or hereafter have to the payment of the Note Obligations, together with all suretyship defenses, which could otherwise be asserted by such Guarantor.

Each Guarantor represents that it has obtained the advice of counsel as to the extent to which suretyship and other defenses may be available to it with respect to its obligations hereunder in the absence of the waivers contained in this Section 14.03.

No delay or omission on the part of the Collateral Agent or any of the Noteholders in exercising any right under any Note Document or under any other guarantee of the Note Obligations shall operate as a waiver or relinquishment of such right. No action which the Collateral Agent or Noteholders or an Issuer or any Guarantor may take or refrain from taking with respect to the Note Obligations shall affect the provisions of this Agreement or the obligations of each Guarantor hereunder. None of the Collateral Agent's or the Noteholders' rights shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of any Issuer or any Guarantor, or by any noncompliance by any Issuer or any Guarantor with any Note Document, regardless of any knowledge thereof which the Collateral Agent or any Noteholder may have or otherwise be charged with.

Section 14.04 Noteholders' Power to Waive, Etc. Notwithstanding anything to the contrary herein, with respect to this ARTICLE XIV, each Guarantor grants to the Collateral Agent and each of the Noteholders full power in their discretion, without notice to or consent of such Guarantor, such notice and consent being expressly waived to the fullest extent permitted by applicable law, and without in any way affecting the liability of such Guarantor under its guarantee hereunder:

(a) To waive compliance with, and any Default under, and to consent to any amendment to or modification or termination of any provision of, or to give any waiver in respect of, this Agreement, any other Note Document, the Note Obligations or any guarantee thereof (each as from time to time in effect);

(b) To grant any extensions of the Note Obligations (for any duration), and any other indulgence with respect thereto, and to effect any total or partial release (by operation of law or otherwise), discharge, compromise or settlement with respect to the obligations of the Issuers or any other Person in respect of the Note Obligations, whether or not rights against such Guarantor under this Agreement are reserved in connection therewith;

(c) To collect or liquidate or realize upon any of the Note Obligations in any manner or to refrain from collecting or liquidating or realizing upon any of the Note Obligations; and

(d) To extend additional credit, if any, under this Agreement, any other Note Document or otherwise in such amount as the Noteholders may determine, including increasing the amount of credit and the interest rate and fees with respect thereto, even though the condition of the Company may have deteriorated since the date hereof.

Section 14.05 Information Regarding the Issuers, Etc. Each Guarantor has made such investigation as it deems desirable of the risks undertaken by it in entering into this Agreement and is fully satisfied that it understands all such risks. Each Guarantor waives any obligation which may now or hereafter exist on the part of the Collateral Agent or any Noteholder to inform it of the risks being undertaken by entering into this Agreement or of any changes in such risks and, from and after the date hereof, each Guarantor undertakes to keep itself informed of such risks and any changes therein. Each Guarantor expressly waives any duty which may now or hereafter exist on the part of the Collateral Agent or any Noteholder to disclose to such Guarantor any matter related to the business, operations, character, collateral,

credit, condition (financial or otherwise), income or prospects of the Company and its Affiliates or their properties or management, whether now or hereafter known by the Collateral Agent or any Noteholder. Each Guarantor represents, warrants and agrees that it assumes sole responsibility for obtaining from the Issuers all information concerning this Agreement and all other Note Documents and all other information as to the Issuers and their Affiliates or their properties or management as such Guarantor deems necessary or desirable.

Section 14.06 Certain Guarantor Representations. Each Guarantor represents that:

(a) it is in its best interest and in pursuit of the purposes for which it was organized as an integral part of the business conducted and proposed to be conducted by the Issuers and their Subsidiaries, and reasonably necessary and convenient in connection with the conduct of the business conducted and proposed to be conducted by them, to induce the Purchasers to enter into this Agreement and to purchase the Notes from the Issuers by making the Guarantee contemplated by this ARTICLE XIII.

(b) the proceeds from the sale of the Notes will directly or indirectly inure to its benefit;

(c) by virtue of the foregoing it is receiving at least reasonably equivalent value from the Purchasers for its Guarantee;

(d) it will not be rendered insolvent as a result of entering into this Agreement after taking into account its respective contribution rights under Section 14.09;

(e) after giving effect to the transactions contemplated by this Agreement and the other Note Documents, it will have assets having a fair saleable value in excess of the amount required to pay its probable liability on its existing debts as such debts become absolute and matured;

(f) it has, and will have, access to adequate capital for the conduct of its business;

(g) it has the ability to pay its debts from time to time incurred in connection therewith as such debts mature; and

(h) it has been advised by the Collateral Agent that the Purchasers are unwilling to enter into this Agreement unless the Guarantee contemplated by this ARTICLE XIV is given by it.

Section 14.07 Subrogation. Each Guarantor agrees that, until the Note Obligations are paid in full, it will not exercise any right of reimbursement, subrogation, contribution, offset or other claims against the Issuers or any other Guarantor arising by contract or operation of law in connection with any payment made or required to be made by such Guarantor under this Agreement or any other Note Document. After the payment in full of the Note Obligations (other than contingent indemnity obligations), each Guarantor shall be entitled to exercise against the Issuers and the other Guarantors all such rights of reimbursement,

subrogation, contribution and offset, and all such other claims, to the fullest extent permitted by law, provided that, any of the foregoing to the contrary notwithstanding, effective upon any sale, registration, assignment or transfer of or foreclosure on, or any other disposition or remedial action in respect of, any Equity Interests of the Issuers or any other Subsidiary of the Issuers by the Collateral Agent or any lender pursuant to the Revolving Loan Documents and/or applicable law, all such rights and claims of reimbursement, subrogation, contribution, and offset and other such claims against the Issuers and its Subsidiaries shall be, and hereby are, forever extinguished and indefeasibly waived (except as such waiver is prohibited by applicable law) and released by the Guarantor. In the event of the bankruptcy or insolvency of the Issuers, the Noteholders shall be entitled notwithstanding the foregoing, to file in the name of the Guarantor or in its own name a claim for any and all indebtedness owing to the Guarantor by such Issuer and to apply the proceeds of any such claim to the Note Obligations.

Section 14.08 Subordination. Each Guarantor covenants and agrees that all Indebtedness, claims and liabilities now or hereafter owing by any Issuer or any other Guarantor to such Guarantor, whether arising hereunder or otherwise, are subordinated to the prior payment in full of the Note Obligations and are so subordinated as a claim against such Issuer or such Guarantor or any of its assets, whether such claim be in the Ordinary Course of Business or in the event of voluntary or involuntary liquidation, dissolution, insolvency or bankruptcy, so that no payment with respect to any such Indebtedness, claim or liability will be made or received while any Event of Default exists. If, notwithstanding the foregoing, any payment with respect to any such Indebtedness, claim or liability is received by any Guarantor in contravention of this Agreement, such payment shall be held in trust for the benefit of the Collateral Agent and promptly turned over to it in the original form received by such Guarantor.

Section 14.09 Contribution Among Guarantors. The Guarantors agree that, as among themselves in their capacity as guarantors of the Note Obligations, the ultimate responsibility for repayment of the Note Obligations, in the event that the Issuers fail to pay when due their Note Obligations, shall be equitably apportioned, to the extent consistent with the Note Documents, among the respective Guarantors (a) in the proportion that each, in its capacity as a guarantor, has benefited from the proceeds resulting from the sale of the Notes by the Issuers under this Agreement, or (b) if such equitable apportionment cannot reasonably be determined or agreed upon among the affected Guarantors, in proportion to their respective net worths determined on or about the date hereof (or such later date as such Guarantor becomes party hereto). In the event that any Guarantor, in its capacity as a guarantor, pays an amount with respect to the Note Obligations in excess of its proportionate share as set forth in this Section 14.09 each other Guarantor shall, to the extent consistent with the Note Documents, make a contribution payment to such Guarantor in an amount such that the aggregate amount paid by each Guarantor reflects its proportionate share of the Note Obligations. In the event of any default by any Guarantor under this Section 14.09 each other Guarantor will bear, to the extent consistent with the Note Documents, its proportionate share of the defaulting Guarantor's obligation under this Section 14.09. This Section 14.09 is intended to set forth only the rights and obligations of the Guarantors among themselves and shall not in any way affect the obligations of any Guarantor to the Collateral Agent or any Noteholder under the Note Documents (which obligations shall at all times constitute the joint and several obligations of all the Guarantors).

## ARTICLE XV

## AGENTS

Section 15.01 Appointment. Each Noteholder hereby irrevocably appoints and authorizes the Administrative Agent and the Collateral Agent to perform the duties of each such Agent as set forth in this Agreement including: (i) to receive on behalf of each Noteholder any payment of principal of or interest on the Notes and all other amounts accrued hereunder for the account of the Noteholders and paid to such Agent, and to distribute promptly to each Noteholder its Pro Rata Share of all payments so received; (ii) to distribute to each Noteholder copies of all material notices and agreements received by such Agent and not required to be delivered to each Noteholder pursuant to the terms of this Agreement, provided that the Agents shall not have any liability to the Noteholders for any Agent's inadvertent failure to distribute any such notices or agreements to the Noteholders; (iii) to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Note Obligations and related matters and to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Collateral and related matters; (iv) to execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to this Agreement or any other Note Document; (v) to perform, exercise, and enforce any and all other rights and remedies of such Agent, on behalf of the Agents and the Noteholders with respect to the Note Parties, the Note Obligations, or otherwise related to any of same to the extent, in such Agent's reasonable discretion, reasonably incidental to the exercise by such Agent of the rights and remedies specifically authorized to be exercised by such Agent by the terms of this Agreement or any other Note Document; (vi) to incur and pay such fees necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to this Agreement or any other Note Document, subject to such Agent's rights to advancement and reimbursement thereof provided herein; and (vii) subject to Section 15.03 of this Agreement, to take such action as such Agent deems appropriate on its behalf to administer the Notes and the Note Documents and to exercise such other powers expressly delegated to such Agent by the terms hereof or the other Note Documents (including, without limitation, the power to give or to refuse to give notices, waivers, consents, approvals and instructions and the power to make or to refuse to make determinations and calculations) together with such powers as are in such Agent's reasonable discretion, reasonably incidental thereto to carry out the purposes hereof and thereof. As to any matters, regardless of whether or not expressly provided for by this Agreement and the other Note Documents (including, without limitation, enforcement or collection of the Note Obligations), the Agents shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the written instructions of the Required Noteholders, and such written instructions of the Required Noteholders shall be binding upon all Noteholders; provided, however, that the Agents shall not be required to take any action which, in the reasonable opinion of any Agent, exposes such Agent to liability or which is contrary to this Agreement or any other Note Document or applicable law.

Section 15.02 Nature of Duties. The Agents shall have no duties or responsibilities except those expressly set forth in this Agreement or in the other Note Documents. The duties of the Agents shall be mechanical, ministerial and administrative in

nature. The Agents shall not have by reason of this Agreement or any other Note Document a fiduciary relationship in respect of any Noteholder. Nothing in this Agreement or any other Note Document, express or implied, is intended to or shall be construed to impose upon the Agents any obligations in respect of this Agreement or any other Note Document except as expressly set forth herein or therein. Each Noteholder has made and shall make its own independent investigation of the financial condition and affairs of the Note Parties in connection with the issuance, funding or maintaining its Notes hereunder and has made and shall make its own appraisal of the creditworthiness of the Note Parties and the value of the Collateral, and the Agents shall have no duty or responsibility, either initially or on a continuing basis, to provide any Noteholder with any credit or other information with respect thereto, whether coming into their possession before the issuance of the Notes hereunder or at any time or times thereafter, provided that, upon the reasonable request of a Noteholder, each Agent shall provide to such Noteholder any documents or reports delivered to such Agent by the Note Parties pursuant to the terms of this Agreement or any other Note Document. If any Agent seeks the consent or approval of the Required Noteholders to the taking or refraining from taking any action hereunder, such Agent shall send notice thereof to each Noteholder. Each Agent shall promptly notify each Noteholder any time that the Required Noteholders have instructed such Agent to act or refrain from acting pursuant hereto.

Section 15.03 Rights, Exculpation, Etc. (a) The Agents and their directors, officers, agents or employees shall not be liable for any action taken or omitted to be taken by them under or in connection with this Agreement or the other Note Documents, except for their own gross negligence or willful misconduct (which shall not include action taken or omitted to be taken in accordance with any direction, instruction or certificate of the Required Noteholders, for which the Agents shall have no liability) as determined by a final judgment of a court of competent jurisdiction no longer subject to appeal. Without limiting the generality of the foregoing, the Agents (i) may treat the payee of any Note as the owner thereof until the Agents receive written notice of the assignment or transfer thereof, pursuant to Section 16.07 hereof, signed by such payee and in form satisfactory to the Administrative Agent; (ii) may consult with legal counsel (including, without limitation, counsel to any Agent or counsel to the Issuers), independent public accountants, and other experts selected by any of them and shall not be liable for any action taken or omitted to be taken in good faith by any of them in accordance with the advice of such counsel or experts; (iii) may execute any of the powers herein and perform any duty hereunder either directly or by or through agents, nominees or attorneys-in-fact and shall not be responsible for the actions or omissions of such agents, nominees or attorneys-in-fact selected by them without gross negligence or willful misconduct, as determined by a final order of a court of competent jurisdiction no longer subject to appeal; (iv) make no warranty or representation to any Noteholder and shall not be responsible to any Noteholder for any statements, certificates, warranties or representations made in or in connection with this Agreement, the Notes or the other Note Documents; (v) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement, the Notes or the other Note Documents on the part of any Person, the existence or possible existence of any Default or Event of Default, or to inspect the Collateral or other property (including, without limitation, the books and records) of any Person; (vi) shall not be responsible to any Noteholder for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, the Notes or the other Note Documents or any other instrument or document furnished pursuant hereto or thereto; and (vii) shall not be

deemed to have made any representation or warranty regarding the existence, sufficiency, value or collectibility of the Notes or the Collateral, the condition of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by the Issuers in connection therewith, nor shall the Agents be responsible or liable to the Noteholders for any failure to monitor or maintain any portion of the Collateral. The Agents shall not be liable for any apportionment or distribution of payments made in good faith pursuant to Section 5.04, and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Noteholder to whom payment was due but not made, shall be to recover from other Noteholders any payment in excess of the amount which they are determined to be entitled. The Agents may at any time request written instructions and advancement of fees and expenses (including the fees and expenses of counsel, consultants, appraisers and other experts and advisors) from the Noteholders with respect to any actions or approvals which by the terms of this Agreement or of any of the other Note Documents the Agents are permitted or required to take or to grant, and the Agents shall be absolutely entitled to refrain from taking any action or to withhold any approval under any of the Note Documents until they shall have received such instructions and such advancements of fees and expenses from the Required Noteholders. Without limiting the foregoing, no Noteholder shall have any right of action whatsoever against any Agent as a result of such Agent acting or refraining from acting under this Agreement or any of the other Note Documents in accordance with the instructions of the Required Noteholders and/or such advancement of fees and expenses, or from acting, omitting or refraining to act in the absence thereof.

(b) The Agents may consult with independent counsel, independent public accountants and other experts selected by them, and any opinion or advice of such counsel, any such accountant, and any such other expert shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in accordance therewith. The Agents shall have the right at any time to seek instructions concerning the administration of the Collateral from any court of competent jurisdiction.

(c) Notwithstanding anything set forth herein to the contrary, the Agents shall have a duty of ordinary care with respect to any Collateral delivered to the Agents or their designated representatives that is in the Agents' or their designated representatives' possession and control. The Agents shall not be responsible for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral, the Agents shall, subject to Section 15.11, preserve the part of the Collateral in their possession.

(d) The Agents shall be obligated to perform such duties and only such duties as are specifically set forth in this Agreement or in any Note Document, and no implied covenants or obligations shall be read into this Agreement or any Note Document against the Agents. The Agents shall not be under any obligation to take any action which is discretionary under the provisions hereof. The Agents shall be under no obligation to exercise any of the rights or powers vested in them by this Agreement at the request or direction of the Required Noteholders pursuant to this Agreement, unless (i) the Agents shall have been provided adequate security and indemnity as determined by the Agents in their sole discretion (including without limitation from the Noteholders and/or the Note Parties) against any and all costs, expenses and liabilities which might be incurred by them in compliance with such request or direction,

including reasonable advances as may be requested by the Agents and (ii) the Agents shall receive such written instructions as the Agents deem appropriate.

(e) Whenever in the administration of this Agreement, or pursuant to any of the Note Documents, the Agents shall deem it necessary or desirable that a matter be proved or established with respect to the Note Parties in connection with the taking, suffering or omitting of any action hereunder by the Agents, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively provided or established by a certificate of the chief executive officer and chief restructuring officer of the Note Parties delivered to the Agents and such certificate shall be full warranty to the Agents for any action taken, suffered or omitted in reliance thereon.

Section 15.04 Reliance. The Agents may rely, and shall be fully protected in acting, upon any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order, bond or other paper or document which they believe to be genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties. In the absence of its gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction no longer subject to appeal, each Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to it and conforming to the requirements of this Agreement or any Note Document.

Section 15.05 Indemnification. To the extent that any Agent is not promptly reimbursed and indemnified by the Note Parties, the Noteholders will reimburse and indemnify such Agent from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against such Agent in any way relating to or arising out of this Agreement, the Notes or any of the other Note Documents or any action taken or omitted by such Agent under this Agreement or any of the other Note Documents, in proportion to each Noteholder's Pro Rata Share, including, without limitation, advances and disbursements made pursuant to Section 15.08; provided, however, that, as among the Noteholders, no Noteholder shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements for which there has been a final judgment of a court of competent jurisdiction no longer subject to appeal that such liability resulted from such Agent's gross negligence or willful misconduct.

Section 15.06 Agents Individually. With respect to any Notes held by it, if any, each Person acting as an Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Noteholder. The terms "Noteholders" or "Required Noteholders" or any similar terms shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity as a Noteholder. Each Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with the Noteholder as if it were not acting as an Agent pursuant hereto without any duty to account to the Noteholders.

Section 15.07 Successor Agent. (a) Each Agent may resign from the performance of all its functions and duties hereunder and under the other Note Documents at any time by giving at least thirty (30) Business Days' prior written notice to the Note Parties and each Noteholder. Such resignation shall take effect upon the acceptance by a successor Agent of appointment pursuant to clauses (b) and (c) below or as otherwise provided below.

(b) Upon any such notice of resignation, the Required Noteholders shall appoint a successor Agent. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations under this Agreement and the other Note Documents. After any Agent's resignation hereunder as an Agent, the provisions of this ARTICLE XV shall inure to its benefit as to any actions taken or omitted to be taken by it while it was an Agent under this Agreement and the other Note Documents.

(c) If a successor Agent shall not have been so appointed within said thirty (30) Business Day period, the retiring Agent, with the consent of the other Agent, shall then appoint a successor Agent who shall serve as an Agent until such time, if any, as the Required Purchasers, with the consent of the other Agent, appoint a successor Agent as provided above.

Section 15.08 Collateral Matters.

(a) Without limiting its right to demand and receive advances of fees and expenses pursuant to Section 15.03 and to refrain from or omit taking any action until and unless such amounts have been advanced and subject to the terms of any separate written agreement which may exist among the Agents and the Noteholders, the Collateral Agent may from time to time make such disbursements and advances which the Collateral Agent, in its sole discretion, deems necessary or desirable to preserve, protect, prepare for sale or lease or dispose of the Collateral or any portion thereof, to enhance the likelihood or maximize the amount of repayment by the Note Parties of the Note Obligations or to pay any other amount chargeable to the Note Parties pursuant to the terms of this Agreement. Such disbursements and advances shall be repayable by the Note Parties on demand and shall constitute Note Obligations hereunder secured by the Collateral. The Collateral Agent shall notify each Noteholder and the Note Parties in writing of each such advance, which notice shall include a description of the purpose of such advance. Without limiting its obligations pursuant to Section 15.05, each Noteholder agrees that it shall make available to the Collateral Agent, upon the Collateral Agent's demand, in Dollars in immediately available funds, the amount equal to such Noteholder's Pro Rata Share of each such advance. If such funds are not made available to the Collateral Agent by such Noteholder, the Collateral Agent shall be entitled to recover such funds on demand from such Purchaser, together with interest thereon for each day from the date such payment was due until the date such amount is paid to the Collateral Agent, at the Federal Funds Rate.

(b) The Noteholders hereby irrevocably authorize the Collateral Agent, at its option and in its discretion, to release any Lien granted to or held by the Collateral Agent upon any Collateral upon payment and satisfaction of all Note Obligations which have matured and which the Collateral Agent has been notified in writing are then due and payable; or constituting property being sold or disposed of in compliance with the terms of this Agreement and the other

Note Documents; or constituting property in which the Note Parties owned no interest at the time the Lien was granted or at any time thereafter; or if approved, authorized or ratified in writing by the Required Noteholders. Upon request by the Collateral Agent at any time, the Noteholders will confirm in writing the Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section 15.08(b).

(c) Without in any manner limiting the Collateral Agent's authority to act without any specific or further authorization or consent by the Noteholders (as set forth in Section 15.08(b)), each Noteholder agrees to confirm in writing, upon request by the Collateral Agent, the authority to release Collateral conferred upon the Collateral Agent under Section 15.08(b). Upon receipt by the Collateral Agent of confirmation from the Noteholders of its authority to release any particular item or types of Collateral, and upon prior written request by the Note Parties, the Collateral Agent shall (and is hereby irrevocably authorized by the Noteholder to) execute such documents as may be necessary to evidence the release of the Liens granted to the Collateral Agent for the benefit of the Agents and the Noteholders upon such Collateral; provided, however, that (i) the Collateral Agent shall not be required to execute any such document on terms which, in the Collateral Agent's opinion, would expose the Collateral Agent to liability or create any obligations or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Note Obligations or any Lien upon (or obligations of the Note Parties in respect of) all interests in the Collateral retained by the Note Parties.

(d) The Agents shall have no obligations whatsoever to any Noteholder to confirm or assure that the Collateral exists or is owned by the Note Parties or is cared for, protected or insured or has been encumbered or that the Lien granted to the Collateral Agent pursuant to this Agreement or any other Note Document has been properly or sufficiently or lawfully created, perfected, protected or enforced or is entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Agents in this Section 15.08 or in any other Note Document, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Agents may act in any manner they may deem appropriate, in their sole discretion, and that the Agents shall have no duty or liability whatsoever to any Noteholders, except as otherwise provided herein.

Section 15.09 Agency for Perfection. Each Agent and each Noteholder hereby appoints the Collateral Agent as agent and bailee for the purpose of perfecting the security interests in and Liens upon the Collateral in assets which, in accordance with Article 9 of the Uniform Commercial Code, can be perfected only by possession or control (or where the security interest of a secured party with possession or control has priority over the security interest of another secured party) and each Agent and each Noteholder hereby acknowledges that the Collateral Agent holds possession of or otherwise controls any such Collateral for the benefit of the Agents and the Noteholders as secured parties. Should the Administrative Agent or any Noteholder obtain possession or control of any such Collateral, the Administrative Agent or such Noteholder shall notify the Collateral Agent thereof, and, promptly upon the Collateral Agent's request therefor shall deliver such Collateral to the Collateral Agent or in accordance with the Collateral Agent's instructions. In addition, the Collateral Agent shall also have the power and authority hereunder to appoint such other sub-agents as may be necessary or required under

THIS WARRANT AND THE SHARES OF COMMON STOCK PURCHASABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE SOLD OR OFFERED FOR SALE UNLESS REGISTERED UNDER SAID ACT AND ANY APPLICABLE STATE SECURITIES LAWS OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

Dated: [_____], 2007

# WARRANT

To Purchase Shares of Common Stock of

PT HOLDINGS COMPANY, INC.

Expiring [_____], 20[__]

THIS IS TO CERTIFY THAT, for value received, [_____], a [_____], or its registered assigns (the "Holder"), is entitled pursuant to this Warrant (this "Warrant") (i) to purchase from PT HOLDINGS COMPANY, INC., a Delaware corporation (the "Company"), at any time or from time to time on or after the date hereof and prior to 5:00 p.m., New York City time, on the tenth (10th) anniversary of the date hereof, at the offices of the Company, at the Exercise Price, all or a portion of the then-exercisable Exercise Shares on or after the applicable Warrant Exercise Date, all subject to adjustment and upon the terms and conditions hereinafter provided, and (ii) to exercise the other appurtenant rights, powers and privileges hereinafter described.

This Warrant is one of one or more warrants (collectively, the "Warrants"), of the same form and having the same terms as this Warrant, entitling the holders initially to purchase shares of the Company's common stock, par value $[___] per share ("Common Stock"), issued pursuant to the Securities Purchase Agreement.

Certain capitalized terms used in this Warrant are defined in Article VI.

## ARTICLE I

## EXERCISE OF WARRANTS

SECTION 1.1 Method of Exercise.

(a) The Holder may exercise this Warrant (which may, in the sole discretion of Holder, be effected in whole or in part), (i) with respect to the First Warrant Exercise Shares, on or after the First Warrant Exercise Date, (ii) with respect to the Second Warrant Exercise Shares, on or after the Second Warrant Exercise Date and (iii) with respect to the Third Warrant Exercise Shares, on or after the Third Warrant Exercise Date. On or after the applicable Warrant Exercise



EXHIBIT G

Date, the Holder shall deliver, on any Business Day subsequent to the applicable Warrant Exercise Date, to the Company: (i) this Warrant, (ii) a written notice of such Holder's election to exercise this Warrant for the applicable Exercise Shares, which notice shall specify the number of shares of Common Stock to be purchased and, the denominations of the certificate or certificates desired and the name or names in which such underlying shares of Common Stock are to be registered, and (iii) payment of the Exercise Price with respect to such shares of Common Stock.

(b) Payment of the Exercise Price may be made, at the option of the Holder, either (i) by cash, certified or bank cashier's check or wire transfer in an amount equal to the product of (x) the Exercise Price times (y) the number of shares of Common Stock as to which this Warrant is being exercised or (ii) by receiving from the Company the number of shares of Common Stock equal to (x) the number of shares of Common Stock as to which this Warrant is being exercised minus (y) the number of shares of Common Stock having a Fair Market Value equal to the product of (1) the Exercise Price times (2) the number of shares of Common Stock as to which this Warrant is being exercised.

(c) The Company shall, as promptly as practicable and in any event within five days after receipt of such notice and payment, execute and deliver the certificate or certificates representing the number of shares of Common Stock purchased upon exercise of this Warrant. This Warrant shall be deemed to have been exercised, and the Holder or any other Person designated by the Holder shall be deemed for all purposes to have become a holder of record of the shares of Common Stock, as of the date the aforementioned notice and payment is received by the Company.

(d) If this Warrant shall have been exercised only in part, the Company shall, at the time of such exercise, deliver to the Holder a new Warrant evidencing the rights to purchase the remaining shares of Common Stock called for by this Warrant, which new Warrant shall in all other respects be identical to this Warrant, or, at the request of the Holder, appropriate notation may be made on this Warrant which shall then be returned to the Holder.

(e) The Company shall pay all taxes imposed on it, and all expenses and other charges payable in connection with the preparation, execution and delivery of new Warrants and the issuance of the shares of Common Stock as called for hereby. If shares of Common Stock or new Warrants are, at the request of the Holder, to be issued in a name or names other than that of the Holder, funds sufficient to pay all transfer taxes payable as a result of such transfer shall be paid by the Holder at the time of delivery of the aforementioned notice of exercise or promptly upon receipt of a written request of the Company for payment.

## ARTICLE II

## TRANSFER, EXCHANGE AND REPLACEMENT OF WARRANTS

SECTION 2.1 Ownership of Warrant. The Company may deem and treat the person in whose name this Warrant is registered as the holder and owner hereof (notwithstanding any notations of ownership or writing hereon made by any person other than the Company) for

all purposes and shall not be affected by any notice to the contrary, until due presentment of this Warrant for registration of transfer as provided in this Article II.

SECTION 2.2 Transfer of Warrant.

(a) Subject to compliance with applicable laws, and except as otherwise provided in the Stockholders' Agreement, which imposes certain restrictions on transfer, this Warrant may be freely transferred, in whole or in part, by the Holder. No transfer of any Warrant other than pursuant to a Public Sale may be made to any Person unless such Person shall have agreed in writing that such Person, as a holder of a Warrant, and the Warrant it acquires, shall be bound by and be entitled to the benefits of all the provisions of the Stockholders' Agreement (and upon such agreement such Person shall be entitled to such benefits and the transferor shall be released from all future obligations thereunder respecting such Warrants). Each Warrant issued in exchange upon transfer of any thereof (other than a transfer pursuant to a Public Sale) shall be stamped or otherwise imprinted with a legend in substantially the following form:

> THIS WARRANT AND THE SHARES OF COMMON STOCK PURCHASABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE SOLD OR OFFERED FOR SALE UNLESS REGISTERED UNDER SAID ACT AND ANY APPLICABLE STATE SECURITIES LAWS OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

(b) The Company shall maintain a registry of transfers of the Warrants. Transfer of this Warrant in whole or in part, and all related rights hereunder shall be registered in such registry upon surrender of this Warrant, together with a written assignment of this Warrant duly executed by the Holder or its duly authorized agent or attorney and funds sufficient to pay any transfer taxes payable upon such transfer. Any such transfer shall be in compliance with all applicable federal and state securities laws. Upon surrender and, if required, such payment, (i) the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees and in the denominations specified in the instrument of assignment, (ii) the Company shall issue to the assignor a new Warrant evidencing the portion of this Warrant, if any, not so assigned and (iii) this Warrant shall promptly be canceled.

SECTION 2.3 Division or Combination of Warrants. This Warrant may be divided or combined with other Warrants upon presentment to the Company of this Warrant and any Warrant or Warrants with which this Warrant is to be combined, together with a written notice specifying the names and denominations in which the new Warrant or Warrants are to be issued, signed by the holders hereof and thereof or their respective duly authorized agents or attorneys. Subject to Section 2.2 as to any transfer or assignment that may be involved in the division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice.

SECTION 2.4 Loss, Theft, Destruction of Warrants. Upon receipt of evidence satisfactory to the Company of the ownership of and the loss, theft, destruction or mutilation of any Warrant and, in the case of any such loss, theft or destruction, upon receipt of documentation

satisfactory to the Company (it being understood and agreed that if the holder of such Warrant is the original Holder, then an affidavit of loss and an undertaking to indemnify the Company, the amount of which shall be limited to the fair market value of the shares of Common Stock for which such Warrant is exercisable, given by such Person shall without more be satisfactory to the Company) or, in the case of any such mutilation, upon surrender and cancellation of such Warrant, the Company will make and deliver, in lieu of such lost, stolen, destroyed or mutilated Warrant, a new Warrant of like tenor and representing the right to purchase the same number of shares of Common Stock.

SECTION 2.5 Expenses of Delivery of Warrants. The Company shall pay all taxes (other than transfer taxes) imposed upon it, and all expenses and other charges payable in connection with the preparation, issuance and delivery of Warrants hereunder.

## ARTICLE III

## CERTAIN RIGHTS

SECTION 3.1 Rights and Obligations under the Stockholders' Agreement. This Warrant is entitled to the benefits and subject to the terms of the Stockholders' Agreement dated as of [_____], 2007 among the Company and the stockholders party thereto (as the same has been and may be amended from time to time, the "Stockholders' Agreement"). The Company shall keep or cause to be kept a copy of the Stockholders' Agreement and any amendments thereto at its offices and shall furnish, without charge, copies thereof to the Holder upon request.

SECTION 3.2 Determination of Fair Market Value. Subject to Section 3.3, each determination of Fair Market Value required hereunder shall be made in good faith by the Board of the Company. Upon each such determination of Fair Market Value, the Company shall promptly give notice thereof to all Warrantholders, setting forth in reasonable detail the calculation of such Fair Market Value and the method and basis of determination thereof (each, a "Company Determination"). Upon Holder's request in connection with any contemplated exercise (partial or full) of this Warrant (it being understood and agreed that such request shall not obligate Holder to proceed with any such exercise), and at such other times as Holder may request, the Board of the Company shall promptly make a determination of the Fair Market Value of the Company and its subsidiaries and shall notify the Warrantholders of the resulting Company Determination.

SECTION 3.3 Contest and Appraisal Rights.

(a) If the holders of Warrants entitling such holders to purchase at least fifty percent (50%) of the shares of Common Stock subject to purchase upon exercise of all Warrants issued pursuant to the Securities Purchase Agreement, exclusive of Warrants held by the Company or any affiliate thereof (for purposes of this Warrant, the Holder shall not be considered to be an affiliate of the Company), shall disagree with any Company Determination made hereunder and shall, by notice to the Company given within 30 days after receipt of the Company's notice of such Company Determination (an "Appraisal Notice"), elect to dispute such the Company Determination, such dispute shall be resolved as set forth in Section 3.3(b).

(b) The Company shall, as soon as practicable and in any event within 30 days after receipt of an Appraisal Notice given pursuant to Section 3.3(a), engage an independent investment bank or other qualified independent appraisal firm selected by the holders of at least fifty percent (50%) of the shares of Common Stock subject to purchase upon exercise of the Warrants that elected to dispute the applicable the Company Determination and reasonably acceptable to the Company (the "Appraiser") to make an independent determination of Fair Market Value (the "Appraiser Determination"). The Appraiser Determination shall be final and binding on the Company and all Warrantholders, but only in respect of the matter in connection with which the applicable Appraisal Notice was given, and such Appraiser Determination shall not be binding for any other purpose. The costs of conducting the appraisal shall be borne entirely by the Company; provided that in each case costs separately incurred by the Company and any Warrantholders shall be separately borne by them.

## ARTICLE IV

## ANTIDILUTION PROVISIONS

SECTION 4.1 Adjustment Generally. The Exercise Price and the number of shares of Common Stock (or other securities or property) issuable upon exercise of this Warrant shall be subject to adjustment from time to time upon the occurrence of certain events as provided in this Article IV.

SECTION 4.2 Common Stock Reorganization. If the Company shall subdivide or consolidate its outstanding shares of Common Stock (or other common equity) (any such event, a "Common Stock Reorganization"), then:

(a) the Exercise Price per share of Common Stock shall be adjusted, effective as of the effective date of such Common Stock Reorganization, to a price determined by multiplying the Exercise Price per share of Common Stock in effect immediately prior to such effective date by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately before giving effect to such Common Stock Reorganization and the denominator of which shall be the number of shares of Common Stock outstanding immediately after giving effect to such Common Stock Reorganization, and

(b) the number of shares of Common Stock subject to purchase upon exercise of this Warrant shall be adjusted, effective as of the date of such Common Stock Reorganization, to a number determined by multiplying the number of shares of Common Stock subject to purchase immediately before such Common Stock Reorganization by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding after giving effect to such Common Stock Reorganization and the denominator of which shall be the number of shares of Common Stock outstanding immediately before such Common Stock Reorganization.

SECTION 4.3 Common Stock Distribution.

(a) If, after the date hereof, the Company shall issue, sell or otherwise distribute any shares of Common Stock (any such event, a "Common Stock Distribution"), other than pursuant

to a Common Stock Reorganization, for a consideration per share of Common Stock less than (1) the Exercise Price then in effect or (2) the Fair Market Value of a share of Common Stock (on a Fully Diluted Basis) before giving effect to such Common Stock Distribution, then, effective upon such Common Stock Distribution, the Exercise Price shall be reduced to the lower of:

(i) the amount generated by dividing (A) an amount equal to the sum of (1) the number of shares of Common Stock outstanding immediately prior to such Common Stock Distribution multiplied by the then existing Exercise Price, plus (2) the consideration, if any, received by the Company upon such Common Stock Distribution by (B) the total number of shares of Common Stock outstanding immediately after such Common Stock Distribution; and

(ii) the amount generated by multiplying the Exercise Price in effect immediately prior to such Common Stock Distribution by a fraction, the numerator of which shall be the sum of (A) the number of shares of Common Stock outstanding immediately prior to such Common Stock Distribution multiplied by such Fair Market Value per share of Common Stock on the date of such Common Stock Distribution, plus (B) the consideration, if any, received by the Company upon such Common Stock Distribution, and the denominator of which shall be the product of (1) the total number of shares of Common Stock outstanding immediately after such Common Stock Distribution multiplied by (2) such Fair Market Value per share of Common Stock on the date of such Common Stock Distribution.

(b) If any Common Stock Distribution shall require an adjustment to the Exercise Price pursuant to Section 4.3(a), including by operation of Sections 4.3(d) or (e), then, effective at the time such adjustment is made, the number of shares of Common Stock subject to purchase upon exercise of this Warrant shall be increased to a number determined by multiplying the number of shares of Common Stock subject to purchase immediately before such Common Stock Distribution by a fraction, the numerator of which shall be the Exercise Price in effect immediately prior to such Common Stock Distribution and the denominator of which shall be the Exercise Price in effect immediately subsequent to such Common Stock Distribution (calculated pursuant to Section 4.3(a)). In computing adjustments under this paragraph, fractional interests in shares of Common Stock shall be taken into account to the nearest one-thousandth of a share of Common Stock.

(c) The provisions of this Section 4.3, including by operation of Sections 4.3(d) or (e), shall not operate to increase the Exercise Price or reduce the number of shares of Common Stock subject to purchase upon exercise of this Warrant.

(d) If, after the date hereof, the Company shall issue, sell, distribute or otherwise grant in any manner (including by assumption) any rights to subscribe for or to purchase or any warrants or options for the purchase of shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock (all such rights, warrants or options "Options" and all such convertible or exchangeable equity or securities, "Convertible Securities"), whether or not such Options or the rights to convert or exchange any such Convertible Securities are immediately exercisable, and the price per share of Common Stock issuable upon the exercise of

such Options or upon conversion or exchange of such Convertible Securities (determined by dividing (i) the aggregate amount, if any, received or receivable by the Company as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable to the Company upon the exercise of all such Options, plus, in the case of Options to acquire Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable upon the issuance or sale of such Convertible Securities and upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities) shall be less than the Exercise Price then in effect or less than the Fair Market Value of the Company per share of Common Stock on a Fully Diluted Basis on the date of granting such Options (before giving effect to such grant), then, for purposes of Section 4.3(a), the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities shall be deemed to have been issued as of the date of granting of such Options and thereafter shall be deemed to be outstanding and the Company shall be deemed to have received as consideration such price per share of Common Stock, determined as provided above, therefor. No additional adjustment of the Exercise Price shall be made upon the actual exercise of such Options or upon conversion or exchange of such Convertible Securities. Without limiting the foregoing and for the avoidance of doubt, the provisions of this Subsection shall apply in the case of any Options issued to management of the Company or the Company.

(e) If, after the date hereof, the Company shall issue, sell or otherwise distribute (including by assumption) any Convertible Securities (other than upon the exercise of Options with respect to which an adjustment has previously been made pursuant to Section 4.3(d), whether or not the rights to exchange or convert thereunder are immediately exercisable, and the price per share of Common Stock issuable upon such conversion or exchange (determined by dividing (i) the aggregate amount received or receivable by the Company as consideration for the issuance, sale or distribution of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Company upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the Exercise Price then in effect or less than the Fair Market Value of the Company per share of Common Stock on a Fully Diluted Basis on the date of such issuance, sale or distribution (before giving effect to such issuance, sale or distribution), then, for purposes of Section 4.3(a), the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall be deemed to have been issued as of the date of the issuance, sale or distribution of such Convertible Securities and thereafter shall be deemed to be outstanding and the Company shall be deemed to have received as consideration such price per share of Common Stock, determined as provided above, therefor. No additional adjustment of the Exercise Price shall be made upon the actual conversion or exchange of such Convertible Securities.

(f) If (i) the purchase price provided for in any Option referred to in Section 4.3(d) or the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in Sections 4.3(d) or 4.3(e) or the rate at which any Convertible Securities referred to in Sections 4.3(d) or 4.3(e) are convertible into or exchangeable for shares of Common Stock shall change at any time (other than under or by reason of provisions designed to

protect against dilution upon an event which results in a related adjustment pursuant to this Article IV), or (ii) any of such Options or Convertible Securities shall have terminated, lapsed or expired, the Exercise Price then in effect and the number of shares of Common Stock issuable under the Warrants shall forthwith be readjusted (effective only with respect to any exercise of this Warrant after such readjustment; any prior exercise being unaffected by the provisions of this Section 4.4(f)) to, respectively, the Exercise Price and number of shares of Common Stock which would then be in effect had the adjustment made upon the issuance, sale, distribution or grant of such Options or Convertible Securities been made based upon such changed purchase price, additional consideration or conversion rate, as the case may be (in the case of any event referred to in clause (i) of this paragraph) or had such adjustment not been made (in the case of any event referred to in clause (ii) of this paragraph).

(g) If the Company shall pay a dividend or make any other distribution upon any common equity of the Company payable in shares of Common Stock, Options or Convertible Securities, then, for purposes of Section 4.3(a), such shares of Common Stock, Options or Convertible Securities shall be deemed to have been issued or sold without consideration.

(h) If any shares of Common Stock, Options or Convertible Securities shall be issued, sold or distributed, the consideration received therefor shall be deemed to be the cash amount received, or the Fair Market Value of any non-cash consideration received, by the Company therefor, after deduction of all expenses incurred by it in connection therewith. If any shares of Common Stock, Options or Convertible Securities shall be issued in connection with any merger in which the Company is the surviving entity, the amount of consideration therefor shall be deemed to be the Fair Market Value of such portion of the assets and business of the non-surviving entity as shall be attributable to such shares of Common Stock, Options or Convertible Securities. If any Options shall be issued in connection with the issuance and sale of other securities of the Company, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued without consideration.

SECTION 4.4 Dividends and Redemptions. If the Company shall issue or distribute to any holder or holders of shares of Common Stock evidences of indebtedness, any other securities of the Company or any cash, property or other assets, but excluding a Common Stock Reorganization or a Common Stock Distribution or any purchase, redemption or other acquisition of shares of Common Stock) (any such event, a "Dividend"), then the Holder shall be treated as if it then held the shares of Common Stock for which the Warrants are exercisable and the Company shall distribute to the Holder its pro rata portion of such issuance or distribution in the same form as provided to the holders of shares of Common Stock. In the event that the Company shall issue or distribute to any holder or holders of shares of Common Stock any evidences of indebtedness, any other securities of the Company or any cash, property or other assets (excluding a Common Stock Reorganization or a Common Stock Distribution) accompanied by a purchase, redemption of other acquisition of shares of Common Stock (any such event, a "Redemption"), Holder shall be given at least as much notice of such Redemption as any stockholder of the Company and shall be permitted, at its election, to participate in such Redemption on a pro rata basis and with all of the rights respecting such Redemption as any holder of shares of Common Stock (assuming for all such purposes that the Warrants were fully

exercised). Upon receipt of the related issuance or distribution from the Company the number of shares of Common Stock subject to purchase hereunder shall be reduced by the number of shares of Common Stock so treated as being redeemed in exchange therefor, and an appropriate notation shall be made on this Warrant. Other than as permitted by the following sentence, no Redemption may be made that is not offered to all holders of shares of Common Stock on a pro rata basis. The provisions of this Section shall not apply to Redemptions of options issued to management of the Company or of the Company or of shares of Common Stock acquired upon the exercise of such options. If any such Dividend or Redemption shall be made, no adjustment to the Exercise Price or the number of shares of Common Stock for which the Warrants shall be exercisable shall be made as a result thereof.

SECTION 4.5 Capital Reorganizations.

(a) Subject to the Stockholders' Agreement, if there shall be (i) any consolidation or merger to which the Company is a party, other than a consolidation or a merger of which the Company is the surviving entity and which does not result in any reclassification of, or change (other than a Common Stock Reorganization) in, outstanding shares of Common Stock, (ii) any sale or conveyance of the property of the Company as an entirety or substantially as an entirety or (iii) any recapitalization or corporate conversion of the Company (any such event a "Capital Reorganization"), then, effective upon the effective date of such Capital Reorganization, the Holder shall no longer have the right to purchase shares of Common Stock, but shall have instead the right to purchase, upon exercise of this Warrant, the kind and amount of securities and property (including cash) that the Holder would have owned or have been entitled to receive pursuant to such Capital Reorganization if this Warrant had been exercised immediately prior to the effective date of such Capital Reorganization.

(b) As a condition to effecting any Capital Reorganization, the Company or the successor or surviving entity, as the case may be, shall execute and deliver to each Warrantholder an agreement as to the Warrantholders' rights in accordance with this Section 4.5, providing, to the extent of any right to purchase equity securities thereunder, for subsequent adjustments as nearly equivalent as may be practicable to the adjustments provided for in this Article IV. The provisions of this Section 4.5 shall similarly apply to successive Capital Reorganizations.

SECTION 4.6 Adjustment Rules.

(a) Any adjustments pursuant to this Article IV shall be made successively whenever an event referred to herein shall occur, except that, except as provided below in this sentence, notwithstanding any other provision of this Article IV, no adjustment shall be made to the number of shares of Common Stock to be delivered to each Holder (or to the Exercise Price) if such adjustment represents less than 1% of the number of shares of Common Stock previously required to be so delivered, but any lesser adjustment shall be carried forward and shall be made at the time and together with the next subsequent adjustment which, together with any adjustments so carried forward, shall amount to 1% or more of the number of shares of Common Stock to be so delivered, or upon any earlier date upon which this Warrant is exercised in whole or in part.

(b) No adjustment shall be made pursuant to this Article IV in respect of the issuance from time to time of shares of Common Stock upon the exercise of any of the Warrants.

(c) If the Company shall take a record of the holders of its shares of Common Stock for any purpose referred to in this Article IV, then (i) such record date shall be deemed to be the date of the issuance, sale, distribution or grant in question and (ii) if the Company shall legally abandon such action prior to effecting such action, no adjustment shall be made pursuant to this Article IV in respect of such action.

SECTION 4.7 Proceedings Prior to Any Action Requiring Adjustment. As a condition precedent to the taking of any action which would require an adjustment pursuant to this Article IV, the Company shall take any action that may be necessary, including obtaining regulatory approvals or exemptions, in order that the Company may thereafter validly and legally issue as fully paid and nonassessable all shares of Common Stock that the holders of Warrants are entitled to receive upon exercise thereof.

SECTION 4.8 Notice of Adjustment. Not less than 10 nor more than 30 days prior to the record date or effective date, as the case may be, of any action which requires or might require an adjustment or readjustment pursuant to this Article IV, the Company shall give notice to each Warrantholder of such event, describing such event in reasonable detail and specifying the record date or effective date, as the case may be, and, if determinable, the required adjustment and the computation thereof. If the required adjustment is not determinable at the time of such notice, the Company shall give notice to each Warrantholder of such adjustment and computation promptly after such adjustment becomes determinable.

SECTION 4.9 Non-Circumvention. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation, Bylaws or through any reorganization, transfer of assets, consolidation, merger, amalgamation, scheme or plan of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith carry out all the provisions of this Warrant and take all action as may be required to protect the rights of the Holder. Without limiting the generality of the foregoing, the Company (i) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant, and (ii) shall, so long as any of the Warrants are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the exercise of the Warrants, the number of shares of Common Stock as shall from time to time be necessary to effect the exercise of the Warrants then outstanding (without regard to any limitations on exercise).

## ARTICLE V

## CANCELLATION OF WARRANTS

SECTION 5.1 Cancellation of Warrants. All Warrants redeemed or otherwise acquired by the Company shall thereupon be marked canceled and deemed retired.

SECTION 5.2 Redemption of Series A Preferred Stock.

(a) In the event that all of the Company's Series A Preferred Stock has been redeemed prior to the First Warrant Exercise Date in accordance with the terms and conditions of the Company's Certificate of Incorporation and the Stockholders' Agreement, this Warrant shall be cancelled and of no further force or effect.

(b) In the event that all of the Company's Series A Preferred Stock has been redeemed prior to the Second Warrant Exercise Date in accordance with the terms and conditions of the Company's Certificate of Incorporation and the Stockholders' Agreement, then with respect to only the Second Warrant Exercise Shares and Third Warrant Exercise Shares, this Warrant shall be cancelled and of no further force or effect.

(c) In the event that all of the Company's Series A Preferred Stock has been redeemed prior to the Third Warrant Exercise Date in accordance with the terms and conditions of the Company's Certificate of Incorporation and the Stockholders' Agreement, then with respect to only the Third Warrant Exercise Shares, this Warrant shall be cancelled and of no further force or effect.

## ARTICLE VI

## DEFINITIONS

The following terms, as used in this Warrant, have the following meanings:

"Appraisal Notice" has the meaning set forth in Section 3.3(a).

"Appraiser" has the meaning set forth in Section 3.3(b).

"Appraiser Determination" has the meaning set forth in Section 3.3(b).

"Board" means the Board of Directors of the Company.

"Business Day" means any day excluding Saturday, Sunday and any day on which banking institutions located in New York, New York are authorized by law or other governmental action to be closed.

"Capital Reorganization" has the meaning set forth in Section 4.5.

"Common Stock Distribution" has the meaning set forth in Section 4.3(a).

"Common Stock Reorganization" has the meaning set forth in Section 4.2.

"Company" has the meaning set forth in the first paragraph of this Warrant.

"Company Determination" has the meaning set forth in Section 3.2.

"Conversion Securities" means (i) any shares of Common Stock acquired upon the exercise of Warrants, (ii) any securities other than shares of Common Stock issued upon the exercise of any Warrants, (iii) any securities issued with respect to any securities referred to in clauses (i) or (ii) above upon the conversion thereof into other securities or by way of equity dividend or split or in connection with a combination of shares of Common Stock, recapitalization, merger, consolidation or other reorganization or otherwise, and (iv) following any conversion of the Company into a corporate entity, any shares of common stock or other securities of the Company issued in exchange for the shares of Common Stock and other securities contemplated by clauses (i), (ii) and (iii) above; provided that any of the foregoing securities shall cease to be Conversion Securities when such securities shall have (x) been disposed of pursuant to a Public Sale or (y) ceased to be outstanding.

"Convertible Securities" has the meaning set forth in Section 4.3(d).

"Determination Notice" has the meaning set forth in Section 5.1(a).

"Dividend" has the meaning set forth in Section 4.4.

"Exercise Price" means $[____][the price of 1 share of Common Stock based on a valuation $40,000,000 for all outstanding shares of Common Stock], subject to adjustment pursuant to Article IV.

"Exercise Shares" means, collectively, the First Warrant Exercise Shares, Second Warrant Exercise Shares and the Third Warrant Exercise Shares.

"Fair Market Value" as at any date of determination means the fair market value of the business or property or services in question as of such date, as initially determined in good faith by the Board of the Company and subject to revision in accordance with Section 3.3. The Fair Market Value of the Company as at any date of determination shall be the Fair Market Value at such date of the Company, the Company and their respective Subsidiaries as a going concern, or their aggregate liquidation value, whichever is greater. The Fair Market Value of the Company shall be the greater of: (i) the fair market value (assuming a willing buyer) at such date of the enterprise value of the Company, the Company and their Subsidiaries on a going concern basis, and (ii) the liquidation value at such date of the Company and its respective Subsidiaries. Notwithstanding the foregoing, if, at any date of determination of the Fair Market Value of the Company on or after a sale of shares of Common Stock to the public pursuant to an underwritten public offering under the Securities Act of 1933 with net proceeds to the Company exceeding $15,000,000 (a "Qualified Public Offering"), the shares of Common Stock shall then be publicly traded and shall then have been publicly traded for at least six months, the Fair Market Value of the Company on such date shall be the Market Price on such date multiplied by the number of shares of Common Stock then outstanding. Determinations of the Fair Market Value of one or more shares of Common Stock shall be made based upon the amount receivable on account of such shares if the Company (including the Company and their respective Subsidiaries) were valued at its Fair Market Value (determined as set forth above) and liquidated as at the date of such determination and any securities then convertible into shares of Common Stock were deemed converted prior to such liquidation if it would be in their economic interest to do so (and

such Fair Market Value shall not give effect to any discount for (i) minority interest, (ii) any lack of liquidity of any shares of Common Stock, (iii) the voting status of the shares of Common Stock, or (iv) any other factor not applicable to all of the shares of Common Stock as a whole).

"First Warrant Exercise Date" means [_____], 200[8][1].

"First Warrant Exercise Shares" means the number of shares of Common Stock equal to the Percentage Amount multiplied by five percent (5%) of the Company's issued and outstanding Common Stock outstanding on the First Warrant Exercise Date on a Fully Diluted Basis (including all outstanding Options and Convertible Securities); provided, however, that First Warrant Exercise Shares shall only be issuable upon exercise of this Warrant if any shares of Series A Preferred Stock of the Company are outstanding on the First Warrant Exercise Date.

"Fully Diluted Basis" means, with respect to any determination or calculation, that such determination or calculation is performed on a fully diluted basis determined in accordance with generally accepted United States accounting principles as in effect from time to time.

"Holder" has the meaning set forth in the first paragraph of this Warrant.

"Initial Public Offering" means the first registration of an offering of the shares of Common Stock under the Securities Act that becomes effective (other than by a registration on Form S-4 or S-8 or any successor or similar forms).

"Market Price" as at any date of determination means the average of the daily closing prices of a share of Common Stock for the 20 consecutive Business Days ending on the most recent Business Day prior to such date of determination.

"Options" has the meaning set forth in Section 4.3(d).

"Percentage Amount" means [___] percent ([__]%)[2].

"Person" means any natural person, corporation, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any government agency or political subdivision thereof.

"Public Sale" means any sale of shares of Common Stock to the public pursuant to an offering registered under the Securities Act or to the public through a broker, dealer or market maker pursuant to the provisions of Rule 144 (or any successor provision then in effect) adopted under the Securities Act.

"Second Warrant Exercise Date" means [_____], 200[8][3].

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1 Insert 6 month anniversary of the Closing Date.
2 Holder's percentage of Series A Preferred Stock.
3 Insert 18 month anniversary of the Closing Date.

"Second Warrant Exercise Shares" means the number of shares of Common Stock equal to the Percentage Amount multiplied by five percent (5%) of the Company's issued and outstanding Common Stock outstanding on the Second Warrant Exercise Date on a Fully Diluted Basis (including all outstanding Options and Convertible Securities); provided, however, that Second Warrant Exercise Shares shall only be issuable upon exercise of this Warrant if any shares of Series A Preferred Stock of the Company are outstanding on the Second Warrant Exercise Date.

"Securities Purchase Agreement" means that certain Securities Purchase Agreement, dated as of [_____], 2007, among the Company, Port Townsend Paper Corporation, PTPC Packaging Co., Inc., PTPC Corrugated Company, Crown Packaging Properties Ltd, the Purchasers a party thereto and Wells Fargo Bank, N.A., as Administrative Agent and Collateral Agent.

"Stockholders' Agreement" has the meaning set forth in Section 3.1.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, limited partnership or other entity of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned by such Person. Unless otherwise specified, the term Subsidiary shall refer to a Subsidiary of the Company.

"Third Warrant Exercise Date" means [_____], 200[9][4].

"Third Warrant Exercise Shares" means the number of shares of Common Stock equal to the Percentage Amount multiplied by five percent (5%) of the Company's issued and outstanding Common Stock outstanding on the Third Warrant Exercise Date on a Fully Diluted Basis (including all outstanding Options and Convertible Securities); provided, however, that Third Warrant Exercise Shares shall only be issuable upon exercise of this Warrant if any shares of Series A Preferred Stock of the Company are outstanding on the Third Warrant Exercise Date.

"Warrantholder" means a holder of a Warrant.

"Warrant Exercise Date" means, collectively, the First Warrant Exercise Date, the Second Warrant Exercise Date and the Third Warrant Exercise Date.

"Warrants" has the meaning set forth in the second paragraph of this Warrant.

References in this Warrant to "Articles", "Sections", "Schedules" or "Exhibits" shall be to Articles, Sections, Schedules or Exhibits of or to this Warrant unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. "Include", "includes" and "including" shall be deemed to be followed by "without limitation" or an appropriate phrase of the same import. References to any agreement or contract are to such agreement or contract as amended, modified or supplemented from time to time. References to any Person include the

4 Insert 30 month anniversary of the Closing Date.

successors and assigns of such Person. References "from" or "through" any date mean, unless otherwise specified, "from and including" or "through and including", respectively. References to any statute or act shall include all related current rules and regulations and all amendments and any successor statutes, acts and rules and regulations. In the event an ambiguity or question of intent or interpretation arises, this Warrant shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Warrant.

## ARTICLE VII

## MISCELLANEOUS

SECTION 7.1 Notices. All notices, requests and other communications provided for herein shall be in writing and may be given in person, by mail or courier and shall be effective when received at the address specified in this Section or when delivery at such address is refused. Such notices, requests and other communications shall, in the case of Holder, be addressed to its address as shown on the books maintained by the Company, and in the case of the Company, to 100 Paper Mill Hill Road, Port Townsend, WA 98368, Attention: Chief Financial Officer, facsimile: [_____], telephone: [_____], (with a copy to [_____]) in each case as such addresses may be changed by such notice.

SECTION 7.2 Waivers; Amendments.

(a) No failure or delay of the Holder in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. No notice or demand on the Company in any case shall entitle the Company to any other or future notice or demand in similar or other circumstances.

(b) The rights and remedies of the Holder are cumulative and not exclusive of any rights or remedies which it would otherwise have. The provisions of this Warrant may be amended, modified or waived with (and only with) the written consent of the Company and the holders of Warrants entitling such holders to purchase at least fifty percent (50%) of the shares of Common Stock subject to purchase upon exercise of all Warrants, exclusive of Warrants held by the Company or any affiliate thereof (again, for the avoidance of doubt, the Holder shall not be considered to be an affiliate of the Company), so long as all Warrantholders are treated equally. Any such amendment, modification or waiver effected pursuant to and in accordance with the provisions of this Section 8.2 shall be binding upon each future holder hereof and upon the Company

SECTION 7.3 Governing Law. This Warrant shall be construed in accordance with and governed by the internal laws of the State of New York applicable to contracts executed and to be fully performed in the State of New York.

SECTION 7.4 Transfer; Covenants to Bind Successor and Assigns. All covenants, stipulations, promises and agreements in this Warrant contained by or on behalf of either of the Company or the Holder, as applicable, shall bind its successors and assigns, whether so expressed or not. This Warrant shall be transferable and assignable by the Holder hereof in whole or from time to time in part to any other Person and the provisions of this Warrant shall be binding upon and inure to the benefit of the Holder hereof and its successors and assigns.

SECTION 7.5 Severability. In case any one or more of the provisions contained in this Warrant shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 7.6 Section Headings. The section headings used herein are for convenience of reference only, are not part of this Warrant and are not to affect the construction of or be taken into consideration in interpreting this Warrant.

SECTION 7.7 Tax Basis. The Company agrees that, for Federal income tax purposes, the aggregate issue price for all of the Warrants issued pursuant to the Securities Purchase Agreement is [$_____]. The Company shall not voluntarily take (nor shall the Company permit the Company voluntarily to take) any action inconsistent with this Section 7.7.

SECTION 7.8. SUBMISSION TO JURISDICTION; SERVICE OF PROCESS. **EACH OF HOLDINGS AND HOLDER HEREBY SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND OF ANY NEW YORK STATE COURT SITTING IN NEW YORK COUNTY FOR PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS WARRANT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. HOLDINGS HEREBY IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 7.1. NOTHING CONTAINED HEREIN WILL AFFECT THE RIGHT OF ANY PERSON TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.**

SECTION 7.9 WAIVER OF JURY TRIAL. **EACH OF HOLDINGS AND THE HOLDER HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS WARRANT OR THE TRANSACTIONS CONTEMPLATED HEREBY AND TO THE FULLEST EXTENT PERMITTED BY LAW WAIVES ANY RIGHTS THAT IT MAY HAVE TO CLAIM OR RECEIVE CONSEQUENTIAL OR SPECIAL DAMAGES IN**

**CONNECTION WITH ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS WARRANT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

[*The following page is the signature page.*]

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by one of its officers, thereunto duly authorized, as of the day and year first above written.

PT HOLDINGS COMPANY, INC.

By: _____
Name:
Title:

# SECURITIES PURCHASE AGREEMENT

**dated as of August [_], 2007[1]**

**among**

**PORT TOWNSEND PAPER CORPORATION,**
**PT HOLDINGS COMPANY, INC.,**
**PTPC PACKAGING CO., INC.,**
**PTPC CORRUGATED COMPANY,**
**CROWN PACKAGING PROPERTIES LTD,**

**THE PURCHASERS IDENTIFIED HEREIN,**

**and**

**WELLS FARGO BANK, N.A.,**
**as Administrative Agent and Collateral Agent**

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**Up to $45,000,000 Senior Secured Notes due 2012**

**[ ] Shares of Series A Preferred Stock of PT Holdings Company, Inc.[2]**

**Warrants for up to [ ] Shares of Common Stock of PT Holdings Company, Inc.**

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[1] This Securities Purchase Agreement is a draft and remains subject to negotiation.

[2] In the event that the Richmond Lease Transaction is consummated on or before the Effective Date of the Plan of Reorganization, and the proceeds of such are sufficient to make the issuance of the Preferred Stock unnecessary, the Securities Purchase Agreement will be modified to eliminate references to the Series A Preferred Stock, the Warrants and the Additional Issuance and may be further modified to increase the initial issuance of the Notes from $35 million to up to $45 million to replace the balance of the contemplated proceeds of the Series A Preferred Stock to the extent the net proceeds of the Richmond Lease Transaction are less than $25 million.

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SCHEDULES AND EXHIBITS

# SECURITIES PURCHASE AGREEMENT

This **SECURITIES PURCHASE AGREEMENT**, dated as of August [ ], 2007 is entered into by and among **PORT TOWNSEND PAPER CORPORATION**, a Washington corporation (the "Company"), **PT HOLDINGS COMPANY, INC.,** a Delaware corporation ("Parent"), **PTPC PACKAGING CO., INC.,** a Washington corporation ("Packaging" and collectively with the Company and Parent, the "Issuers"), **PTPC CORRUGATED COMPANY,** a Nova Scotia Unlimited Liability Company ("PTPC"), **CROWN PACKAGING PROPERTIES LTD.**, a British Columbia Corporation ("Crown" and together with PTPC, the "Guarantors"), the Purchasers party hereto from time to time, and **WELLS FARGO BANK, N.A.**, as Administrative Agent (in such capacity, "Administrative Agent") and Collateral Agent (in such capacity, "Collateral Agent" and together with the Administrative Agent, the "Agents").

## RECITALS:

**WHEREAS**, capitalized terms used but not defined in these Recitals shall have the respective meanings set forth for such terms in Section 1.01 hereof;

**WHEREAS**, the Company and certain of its Affiliates have commenced voluntary cases (the "Chapter 11 Cases") under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Washington (the "Bankruptcy Court"), and the Company and such Affiliates have continued to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code;

**WHEREAS**, the Company and its Affiliates, certain purchasers party thereto (the "DIP Lenders") and Wells Fargo Bank, N.A., as administrative agent and collateral agent (in such capacity, the "DIP Agent"), are parties to a Senior Secured Post-Petition Note Purchase Agreement, dated as of March 30, 2007 (the "DIP Financing Agreement"), pursuant to which the DIP Lenders provided financing in an aggregate principal amount of $50,000,000;

**WHEREAS**, by Order, dated August [ ], 2007, the Bankruptcy Court confirmed the Debtors' First Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, Jointly Proposed by the Debtors and the Informal Committee of Senior Secured Noteholders (as amended, supplemented or otherwise modified from time to time, the "Plan of Reorganization"), in accordance with section 1129 of the Bankruptcy Code;

**WHEREAS**, pursuant to the Plan of Reorganization, the Company and its Affiliates are herewith entering into this Agreement and other documents to provide funding for payments required under and in connection with the Plan of Reorganization, to fund the ongoing working capital requirements and general corporate purposes of Company and its Affiliates, to pay certain fees, costs and expenses, to repay all of the obligations under the DIP Financing Agreement and to consummate the Plan of Reorganization and, in connection therewith, the Purchasers will initially purchase an aggregate principal amount of $35,000,000 of Senior Secured Notes due 2012 (the "Notes") in the form of Exhibit A, [ ] shares of Series A Preferred Stock (the "Series A Preferred") in the form of Exhibit B, and Warrants to purchase up to [ ] shares of the common stock of the Parent in the form of Exhibit C (subject to adjustment

and vesting, pursuant to the Warrant) (the "Warrants" and, collectively with the Notes and Series A Preferred, the "Securities");

**WHEREAS**, the Issuers have agreed to secure all of their Note Obligations by granting to Collateral Agent, for the benefit of the Purchasers, a fully perfected security interest in substantially all of their respective assets; and

**WHEREAS**, Guarantors have agreed to guarantee the Note Obligations of the Issuers hereunder and to secure their guarantee of the Note Obligations by granting to the Collateral Agent, for the benefit of the Purchasers, a fully perfected security interest in substantially all of their respective assets (except for their interest in the Richmond Lease).

**NOW, THEREFORE**, in consideration of the promises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

## ARTICLE I

## DEFINITIONS; CERTAIN TERMS

Section 1.01 Definitions. As used in this Agreement, the following terms shall have the respective meanings indicated below, such meanings to be applicable equally to both the singular and plural forms of such terms:

"Account Debtor" means each debtor, customer or obligor in any way obligated on or in connection with any Account Receivable.

"Account Receivable" means, with respect to any Person, any and all rights of such Person to payment for goods sold and/or services rendered, including accounts, general intangibles and any and all such rights evidenced by chattel paper, instruments or documents, whether due or to become due and whether or not earned by performance, and whether now or hereafter acquired or arising in the future, and any proceeds arising therefrom or relating thereto.

"Action" has the meaning specified in Section 16.12.

"Additional Issuance" has the meaning specified in Section 2.05.

"Administrative Agent" has the meaning specified in the preamble hereto.

"Administrative Agent's Account" means an account at a bank designated by the Administrative Agent from time to time as the account into which the Issuers shall make all payments to the Administrative Agent for the benefit of the Agents and the Purchasers under this Agreement and the other Note Documents.

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, either to (i) vote 10% or more of the Capital Stock having ordinary voting power for the election of directors of such Person or (ii) direct or cause the direction of

the management and policies of such Person whether by contract or otherwise. Notwithstanding anything herein to the contrary, in no event shall any Agent be considered an "Affiliate" of any Issuer.

"Agent" has the meaning specified in the preamble hereto.

"Agreement" means this Securities Purchase Agreement, including all amendments, modifications and supplements and any exhibits or schedules to any of the foregoing, and shall refer to the Agreement as the same may be in effect at the time such reference becomes operative.

"Authorized Officer" means, with respect to any Person, the chief executive officer, chief restructuring officer, chief financial officer, president, treasurer, comptroller or executive vice president of such Person.

"Bankruptcy Code" means chapter 11 of title 11 of the United States Code.

"Bankruptcy Court" means the United States Bankruptcy Court for the Western District of Washington.

"Board" means the Board of Governors of the Federal Reserve System of the United States.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in New York City, Minneapolis, Minnesota or Seattle, Washington are authorized or required to close.

"Capital Expenditures" means, with respect to any Person for any period, the sum of (i) the aggregate of all expenditures by such Person and its Subsidiaries during such period that in accordance with GAAP are or should be included in "property, plant and equipment" or in a similar fixed asset account on its balance sheet, whether such expenditures are paid in cash or financed and including all Capitalized Lease Obligations paid or payable during such period, and (ii) to the extent not covered by clause (i) above, the aggregate of all expenditures by such Person and its Subsidiaries during such period to acquire by purchase or otherwise the business or fixed assets of, or the Capital Stock of, any other Person.

"Capital Stock" means (i) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock, and (ii) with respect to any Person that is not a corporation, any and all partnership, membership or other Equity Interests of such Person.

"Capitalized Lease Obligations" means, with respect to any Person, obligations of such Person and its Subsidiaries under capitalized leases, and, for purposes hereof, the amount of any such obligation shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Equivalents" means: (a) securities issued or fully guaranteed or insured by the United States Government or any agency thereof having maturities of not more than twelve

(12) months from the date of acquisition; (b) certificates of deposit, time deposits, repurchase agreements, reverse repurchase agreements, or bankers' acceptances, having in each case a tenor of not more than twelve (12) months, issued by any Lender under the Senior Credit Agreement, or by any U.S. commercial bank or any branch or agency of a non-U.S. bank licensed to conduct business in the U.S. having combined capital and surplus of not less than $250,000,000; (c) commercial paper of an issuer rated at least A-1 by Standard & Poor's Corporation or P-1 by Moody's Investors Service Inc. and in either case having a tenor of not more than six (6) months and (d) money market funds and mutual funds provided that substantially all of the assets of such fund are comprised of securities of the type described in clauses (a) through (c).

"Change in Law" has the meaning specified in Section 5.05(a).

"Change of Control" means each occurrence of any of the following:

(a) the acquisition by any person or group (within the meaning of Section 13(d)(3) of the Exchange Act), other than Permitted Holders, of beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of the aggregate outstanding voting power of the Capital Stock of Parent,

(b) Parent ceases to own and control, directly or indirectly, 100% of the shares of the Capital Stock of the Company,

(c) the Company ceases to own and control, directly or indirectly, 100% of the shares of the Capital Stock of its Subsidiaries extant as of the Closing Date, unless otherwise permitted hereunder, or

(d) (i) Parent consolidates with or merges into another entity or conveys, transfers or leases all or substantially all of its property and assets to any Person, or (ii) any entity consolidates with or merges into Parent, which in either event (i) or (ii) is pursuant to a transaction in which the outstanding voting Capital Stock of Parent is reclassified or changed into or exchanged for cash, securities or other property.

"Chapter 11 Cases" has the meaning specified in the recitals hereto.

"Closing Date" has the meaning specified in Section 6.01.

"Closing Date Mortgaged Property" has the meaning specified in Section 6.01(h)(i).

"Code" means the Internal Revenue Code of 1986, as amended (or any successor statute thereto) and the regulations thereunder.

"Collateral" means all collateral on which a lien is granted pursuant to any Note Document.

"Collateral Agent" has the meaning specified in the preamble hereto.

"Confirmation Order" has the meaning specified in Section 6.01(c).

"Consolidated" and "Consolidating", when used with reference to any term, mean that term as applied to the accounts of a specified Person and all of its Subsidiaries (or other specified group of Persons), or such of its Subsidiaries as may be specified, Consolidated (or combined) or Consolidating (or combining), as the case may be, in accordance with GAAP and with appropriate deductions for minority interests in Subsidiaries.

"Consolidated EBITDA" means, with respect to any Person for any period, the Consolidated Net Income of such Person and its Subsidiaries for such period, plus without duplication, the sum of the following amounts of such Person and its Subsidiaries for such period and to the extent deducted in determining Consolidated Net Income of such Person and its Subsidiaries for such period: (a) Consolidated Net Interest Expense, (b) net income tax expense, (c) depreciation expense, (d) amortization expense (e) any extraordinary or non-recurring non-cash charges for such period and (f) Reorganization Expenses, minus, without duplication, (g) any cash expenditures with respect to any extraordinary or non-recurring non cash charges (including restructuring charges) that were added back to Consolidated EBITDA or excluded in the calculation of Consolidated Net Income for a prior period (or would pursuant to this Agreement have been so added back or excluded had this Agreement been in effect during such prior period).

"Consolidated Net Income" means, with respect to any Person for any period, the net income (loss) of such Person and its Subsidiaries for such period, determined on a consolidated basis and in accordance with GAAP, but excluding from the determination of Consolidated Net Income (without duplication) (a) any non-cash extraordinary or non-recurring gains or losses or non-cash gains or losses from Dispositions, (b) any extraordinary cash gains, including any gains from dispositions, (c) non-cash restructuring charges, (d) non-cash effects of discontinued operations, (e) dividends that are paid-in-kind, and (f) any tax refunds, net operating losses or other net tax benefits received during such period on account of any prior period.

"Consolidated Net Interest Expense" means, with respect to any Person for any period, gross cash interest expense of such Person and its Subsidiaries for such period determined on a consolidated basis and in accordance with GAAP (including interest expense paid to Affiliates of such Person), less (i) the sum of (a) interest income for such period and (b) gains for such period on Hedging Agreements (to the extent not included in interest income above and to the extent not deducted in the calculation of gross cash interest expense), plus (ii) the sum of (a) losses for such period on Hedging Agreements (to the extent not included in such gross cash interest expense) and (b) the upfront costs or fees for such period associated with Hedging Agreements (to the extent not included in such gross cash interest expense), in each case, determined on a consolidated basis and in accordance with GAAP.

"Contingent Obligation" means, with respect to any Person, any obligation of such Person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, (i) the direct or indirect guarantee, endorsement (other than for collection or deposit in the Ordinary Course of Business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of a primary obligor, (ii) the obligation to make take-or-pay or similar payments, if required,

regardless of nonperformance by any other party or parties to an agreement, (iii) any obligation of such Person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (b) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase property, assets, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (d) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term "Contingent Obligation" shall not include any product warranties extended in the Ordinary Course of Business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation with respect to which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto at the date of determination, as determined by such Person in good faith.

"Conversion Rate" means, in relation to the conversion of one currency to another on a particular day, the rate of exchange quoted by Wells Fargo Bank, N.A. as its spot rate of exchange for the conversion of one currency to the other at approximately 9:00 a.m. (Minneapolis time) on such day;

"Controlled Group" means each Note Party and all members of a controlled group of corporations and all members of a controlled group of trades or businesses (whether or not incorporated) under common control and all other entities which, together with any Note Party, are treated as a single employer under Section 414 of the Code.

"Default" means an event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Defaulting Noteholder" shall mean any Noteholder that has failed to fund its allocable share of any Additional Issuance of Notes.

"DIP Agent" has the meaning specified in the recitals hereto.

"DIP Financing Agreement" has the meaning specified in the recitals hereto.

"DIP Lenders" has the meaning specified in the recitals hereto.

"Disposition" means any transaction, or series of related transactions, pursuant to which any Issuer or any Subsidiary of an Issuer sells, assigns, transfers or otherwise disposes of any property or assets (whether now owned or hereafter acquired) to any other Person, in each case, whether or not the consideration therefor consists of cash, securities or other assets owned by the acquiring Person, excluding any sales of Inventory in the Ordinary Course of Business on ordinary business terms.

"Dollar," "Dollars" and the symbol "$" each means lawful money of the United States of America.

"Employee Plan" means an employee benefit plan (other than a Multiemployer Plan) covered by Title IV of ERISA and maintained (or that was maintained at any time during the six (6) calendar years preceding the date of any borrowing hereunder) for employees of the Issuers or any of its ERISA Affiliates.

"Environmental Actions" means any complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter or other communication from any Person or Governmental Authority involving violations of Environmental Laws or Releases of Hazardous Materials (i) from any assets, properties or businesses owned or operated by the Issuers or any predecessor in interest thereof; (ii) from adjoining properties or businesses; or (iii) onto any facilities which received Hazardous Materials generated by the Issuers or any predecessor in interest thereof.

"Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), the Federal Clean Water Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.) and the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), *Canadian Environmental Protection Act*, S.C. 1999, c. 33, the Canadian *Fisheries Act*, R.S. 1985, c. F-14, the Canadian *Transportation of Dangerous Goods Act*, S.C. 1992, c. 34, the *Canada Water Act*, R.S. 1985, c. C-11 and the Canadian *Environmental Management Act*, S.B.C. 2003, c. 53, as such laws may be amended or otherwise modified from time to time, and any other present or future federal, state, local or foreign statute, ordinance, rule, regulation, order, judgment, decree, permit, license or other binding determination of any Governmental Authority imposing liability or establishing standards of conduct for protection of the environment or other government restrictions relating to the protection of the environment, environmental assessment, plant, animal or human health, including occupational health, management of waste and safety and transportation of dangerous goods or the Release, deposit or migration of any Hazardous Materials into the environment.

"Environmental Liabilities and Costs" means all liabilities, monetary obligations, Remedial Actions, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants and costs of investigations and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim or demand by any Governmental Authority or any third party, and which relate to any environmental condition or a Release of Hazardous Materials from or onto (i) any property presently or formerly owned by the Issuers or (ii) any facility which received Hazardous Materials generated by the Issuers.

"Equipment" means and include as to each Note Party all of such Note Party's goods (other than Inventory) whether now owned or hereafter acquired and wherever located including all equipment, machinery, apparatus, motor vehicles, fittings, furniture, furnishings, fixtures, parts, accessories and all replacements and substitutions therefor or accessions thereto.

"Equity Documents" means the Certificate of Incorporation, the Warrants, the Series A Preferred Share certificates and the Stockholders Agreement, as the same may be amended, modified, supplemented or restated in accordance with the terms thereof or hereof.

"Equity Interests" of any Person shall mean any and all shares, rights to purchase, options, warrants, general, limited or limited liability partnership interests, member interests, participation or other equivalents of or interest in (regardless of how designated) equity of such Person, whether voting or nonvoting, including common stock, preferred stock, convertible securities or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

"Equity Securities" has the meaning set forth in the recitals hereto.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and regulations thereunder, in each case, as in effect from time to time. References to sections of ERISA shall be construed also to refer to any successor sections.

"ERISA Affiliate" means, with respect to any Person, any trade or business (whether or not incorporated) which is a member of a group of which such Person is a member and which would be deemed to be a "controlled group" within the meaning of Sections 414(b), (c), (m) and (o) of the Code.

"Event of Default" means any of the events set forth in Section 13.01.

"Event of Loss" means, with respect to any Property, any of the following: (a) any loss, destruction or damage of such Property; or (b) any actual condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, of such Property, or confiscation of such Property or the requisition of the use of such Property.

"Excess Cash Flow Amount" has the meaning set forth in Section 3.02(e).

"Excess Cash Flow" means, with respect to any Person for any period, on a Consolidated basis, without duplication: (i) Consolidated EBITDA of such Person and its Subsidiaries for such period, minus (ii) the sum of (a) all principal payments made on the Notes made during such period (excluding any principal payments that were previously deducted in the calculation of the Excess Cash Flow Amount or made pursuant to Section 3.02(e)), (b) all principal payments made on other Indebtedness (other than the Revolving Loan Obligation) of such Person or any of its Subsidiaries during such period to the extent such other Indebtedness is permitted to be incurred, and such payments are permitted to be made, under this Agreement, (c) the cash portion of Capital Expenditures (net of (y) any proceeds reinvested in accordance with Section 3.02(d)(i)), and (z) any proceeds of related financings (other than Revolving Loan Obligation) with respect to such expenditures) made by such Person and its Subsidiaries during such period to the extent permitted to be made under this Agreement, (d) interest paid in cash during such period and (e) cash Taxes paid with respect to such period (or paid in such period with respect to a prior period to the extent not previously deducted in the calculation of Excess Cash Flow) plus (iii) (x) any extraordinary cash gains that were deducted in the calculation of

Consolidated Net Income for such period and (y) any cash tax refunds received during such period (but excluding any such applied as a credit against future Taxes).

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

"Exit Facility Commitment Letter" means that certain agreement dated June 20 2007, among the Issuers, Thales Holdings, Ltd. and GoldenTree Asset Management, LP.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"Fee Letters" means the letters dated August [ ], 2007 executed by the Issuers related to the fees, expenses and disbursements of the Agents.

"Filing Date" means January 29, 2007, the date on which the Issuers commenced the Chapter 11 Cases.

"Financial Statements" means the unaudited consolidated balance sheet of the Issuers and their Subsidiaries for the Fiscal Year ended December 31, 2006 and the related statement of operations and cash flows and the statement of shareholders' equity for the Fiscal Year then ended.

"Fiscal Year" means the fiscal year of the Issuers ending on the 31st of December of each year.

"GAAP" means generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis.

"Governmental Authority" means any nation or government, any Federal, state, city, town, municipality, county, local or other political subdivision thereof or thereto and any department, commission, board, bureau, instrumentality, agency or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Guarantees" means those guaranties and security agreements provided by the Guarantors as surety for the Note Obligations of the Issuers hereunder, and the other cross-guaranties provided under ARTICLE XIV hereof.

"Guarantor" means each entity that has guarantied the Note Obligations pursuant to the Guaranties.

"Hazardous Material" means (a) any element, compound or chemical that is defined, listed or otherwise classified as a contaminant, pollutant, toxic pollutant, toxic or hazardous substance, extremely hazardous substance or chemical, hazardous waste, special waste, or solid waste under Environmental Laws; (b) petroleum and its refined products; (c) polychlorinated biphenyls; (d) any substance exhibiting a hazardous waste characteristic, including, without limitation, corrosivity, ignitability, toxicity or reactivity as well as any radioactive or explosive materials; and (e) any raw materials, building components (including, without limitation, asbestos-containing materials) and manufactured products containing Hazardous Materials.

"Hedging Agreement" means any interest rate, foreign currency, commodity or equity swap, collar, cap, floor or forward rate agreement, or other agreement or arrangement designed to protect against fluctuations in interest rates or currency, commodity or equity values (including, without limitation, any option with respect to any of the foregoing and any combination of the foregoing agreements or arrangements), and any confirmation executed in connection with any such agreement or arrangement.

"Indebtedness" means, with respect to any Person, without duplication, (i) all indebtedness of such Person for borrowed money; (ii) all obligations of such Person for the deferred purchase price of property or services (other than trade payables or other accounts payable incurred in the ordinary course of such Person's business and not outstanding for (A) more than 90 days after the date such payable was created (with the exception of up to [$2,000,000] in advance payments for purchases of Inventory in the Ordinary Course of Business) or (B) a longer period if such payable is being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted, and a reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made therefor); (iii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments or upon which interest payments are customarily made; (iv) all obligations and liabilities of such Person created or arising under any conditional sales or other title retention agreement with respect to property used and/or acquired by such Person, even though the rights and remedies of the lessor, seller and/or lender thereunder may be limited to repossession or sale of such property; (v) all Capitalized Lease Obligations of such Person; (vi) all obligations and liabilities, contingent or otherwise, of such Person, in respect of letters of credit, acceptances and similar facilities; (vii) all obligations and liabilities, calculated on a basis satisfactory to the Required Purchasers and in accordance with accepted practice, of such Person under Hedging Agreements; (viii) all Contingent Obligations of such Person; (ix) liabilities incurred under Title IV of ERISA with respect to any Plan (other than a Multiemployer Plan) covered by Title IV of ERISA and maintained for employees of such Person or any of its ERISA Affiliates; (x) withdrawal liability incurred under ERISA by such Person or any of its ERISA Affiliates with respect to any Multiemployer Plan; (xi) all other items which, in accordance with GAAP, would be included as indebtedness on the balance sheet of such Person; and (xii) all obligations referred to in clauses (i) through (xi) of this definition of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien upon property owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness. The Indebtedness of any Person shall include the Indebtedness of any partnership of or joint venture in which such Person is a general partner or a joint venturer.

"Indemnified Matters" has the meaning specified in Section 16.15.

"Indemnitees" has the meaning specified in Section 16.15.

"Intellectual Property" means any and all property constituting under any applicable law, a patent, patent application, copyright, copyright application, trademark, trademark application, service mark, trade license, design right, trade secret or license or other right to use any of the foregoing.

"Intercreditor Agreement" means that certain Intercreditor Agreement of even date herewith between the Collateral Agent and the Revolving Loan Collateral Agent as the same may be amended, modified, supplemented or restated.

"Interest Payment Date" has the meaning specified in Section 3.01(c).

"Interest Period" means a period commencing on the Closing Date, or with respect to any Interest Period commencing thereafter, commencing on the day following the last day of a prior Interest Period, and ending one, three or six months thereafter; provided, however, that (a) if any Interest Period would end on a day that is not a Business Day, such Interest Period shall be extended (subject to clauses (c)-(e) below) to the next succeeding Business Day, (b) interest shall accrue at the applicable rate based upon the LIBOR Rate from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (c) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (d) with respect to an Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is one, three or six months after the date on which the Interest Period began, as applicable, and (e) the Issuers may not elect an Interest Period which will end after the Maturity Date.

"Inventory" means, with respect to any Person, all goods and merchandise of such Person, including, without limitation, all raw materials, work-in-process, packaging, supplies, materials and finished goods of every nature used or usable in connection with the shipping, storing, advertising or sale of such goods and merchandise, whether now owned or hereafter acquired.

"Issuer" has the meaning specified in the preamble hereto.

"Issuers" has the meaning specified in the preamble hereto.

"Landlord Collateral Access Agreement" means a Landlord Waiver and Consent Agreement substantially in a form approved by Collateral Agent.

"Landlord Consent and Estoppel" means, with respect to any Leasehold Property, a letter, certificate or other instrument in writing from the lessor under the related lease, pursuant to which, among other things, the landlord consents to the granting of a Mortgage on form and

substance acceptable to Collateral Agent in its reasonable discretion, but in any event sufficient for Collateral Agent to obtain a Title Policy with respect to such Mortgage.

"Lease" means any lease of real property to which a Issuer or Guarantor is a party as lessor or lessee.

"Leasehold Property" means any leasehold interest of any Note Party as lessee under any lease of real property, other than any such leasehold interest designated from time to time by Collateral Agent in its sole discretion as not being required to be included in the Collateral.

"Legal Requirement" means any present or future requirement imposed upon any of the Parent and its Subsidiaries by any law, statute, rule, regulation, directive, order, decree or guideline (or any interpretation thereof by courts or of administrative bodies) of the United States of America, or any state, or other political subdivision thereof, or by any board, Governmental Authority of the United States of America or any other jurisdiction in which the Parent or any of its Subsidiaries owns property or conducts its business, or any political subdivision of any of the foregoing.

"LIBOR Notice" means the officer's certificate delivered to the Administrative Agent setting forth Company's election of the applicable LIBOR Rate.

"LIBOR Rate" means the applicable British Bankers' Association LIBOR Rate for deposits in U.S. dollars for a period of one, three or six months, as the Company may elect pursuant to a LIBOR Notice, as reported by any generally recognized financial information service as of 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period; provided, that, if no such British Bankers' Association LIBOR Rate is available to the Company, the LIBOR Rate for the relevant Interest Period shall instead be the rate at which [ ] or one of its affiliate banks offers to place deposits in U.S. dollars with first-class banks in the London interbank market for a period of one, three or six months (as applicable) as of approximately 11:00 a.m. (London time) two business days prior to the first day of such Interest Period, in amounts equal to $1.0 million.

"Lien" means any mortgage, deed of trust, pledge, lien (statutory or otherwise), security interest, charge or other encumbrance or security or preferential arrangement of any nature, including, without limitation, any conditional sale or title retention arrangement, any Capitalized Lease and any assignment, deposit arrangement or financing lease intended as, or having the effect of, security.

"Margin Stock" means "margin stock" within the meaning of Regulations T, U or X of the Board.

"Material Adverse Effect" means, since any specified date or from the circumstances existing immediately prior to the happening of any specified event, a material adverse change in (a) the business, assets, financial condition or income of the Parent and its Subsidiaries, taken as a whole, (b) the ability of any Issuer to perform its obligations under this Agreement or the Securities or the ability of any Subsidiary of any Issuer to perform any of its obligations under any guarantee of the Notes, in each case, taken as a whole or (c) the rights and

remedies of any Agent or any Purchaser under any Note Document; provided, that where no date is specified, the measurement date shall be from and include the Closing Date.

"Maturity Date" means August __, 2012.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Mortgage" means a Mortgage substantially in the form of Exhibit D, as it may be amended, supplemented or otherwise modified from time to time.

"Multiemployer Plan" means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA to which the Issuers or any of their ERISA Affiliates has contributed to, or has been obligated to contribute, at any time during the preceding six (6) years.

"Net Cash Proceeds" means, with respect to any Disposition by any Issuer or any of its Subsidiaries, the amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment of deferred consideration) by or on behalf of such Issuer or such Subsidiary, in connection therewith after deducting therefrom only (A) the principal amount of any Indebtedness secured by any Lien on the applicable asset disposed of (other than Indebtedness assumed by the purchaser of such asset) which Lien is permitted hereunder to be senior to the Liens securing the Notes and which Indebtedness is required to be, and is, repaid in connection with such Disposition (other than Indebtedness under this Agreement), (B) reasonable expenses related thereto incurred by such Issuer or such Subsidiary in connection therewith, (C) transfer taxes paid to any taxing authorities by such Issuer or such Subsidiary in connection therewith, and (D) net income taxes payable in connection with, and during the 12 month period following, any such Disposition (after taking into account any tax credits or deductions and any tax sharing arrangements).

"Note" has the meaning specified in the recitals hereto, and shall mean and include any Notes issued upon an assignment or replacement of any Notes.

"Note Documents" means this Agreement, the Notes, the Intercreditor Agreement, the Mortgages, the Security and Pledge Agreement and any other document pursuant to which any Note Party grants security for the Note Obligations, as the same may be amended, modified, supplemented, restated, replaced, refinanced or substituted in accordance with the terms thereof or hereof.

"Noteholders" shall mean the holders of the Notes. "Noteholder" shall mean any of the Noteholders, individually.

"Note Obligations" means all present and future indebtedness, obligations, and liabilities of the Note Parties to the Agents and the Noteholders relating to or under the Note Documents, whether or not the right of payment in respect of such claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured, unsecured, and whether or not such claim is discharged, stayed or otherwise affected by any proceeding referred to in Section 13.01. Without limiting the generality of the foregoing, the Note Obligations include (a) the obligation to pay principal, interest, the Prepayment Premium, charges, expenses, fees, attorneys' fees and disbursements, indemnities and other amounts

payable by the Note Parties under the Note Documents, and (b) the obligation of the Issuers to reimburse any amount in respect of any of the foregoing that any Agent may elect to pay or advance on behalf of the Issuers.

"Note Parties" means the Issuers, the Guarantors and each other Person guaranteeing or providing Collateral to secure the Note Obligations.

"Ordinary Course of Business" means, in respect of any transaction involving Parent, the Company or any Subsidiary of the Company, the ordinary course of such Person's business, as conducted by any such Person in accordance with past practice and undertaken by such Person in good faith and not for purposes of evading any covenant or restriction in the Agreement.

"Organizational Documents" means (i) with respect to any corporation, its certificate or articles of incorporation or organization, as amended, and its by laws, as amended, (ii) with respect to any limited partnership, its certificate of limited partnership, as amended, and its partnership agreement, as amended, (iii) with respect to any general partnership, its partnership agreement, as amended, and (iv) with respect to any limited liability company, its articles of organization, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement or any other Note Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such "Organizational Document" shall only be to a document of a type customarily certified by such governmental official.

"Other Taxes" has the meaning specified in Section 4.02.

"Outstanding" means, as of the date of determination, all Notes delivered under this Agreement, except:

(i) Notes theretofore canceled by the Administrative Agent or delivered to the Administrative Agent for cancellation; or

(ii) Notes, or portions thereof, for whose payment or redemption immediately available funds in the necessary amount have been theretofore deposited with the Administrative Agent (other than the Issuers) in trust or set aside and segregated in trust by the Issuers (if the Issuers shall act as their own Administrative Agent) for the Noteholders of such Notes; provided that, if the Notes are to be redeemed, notice of such redemption has been duly given pursuant to this Agreement;

provided, however, that in determining whether the Noteholders of the requisite principal amount of the outstanding Notes have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Notes owned by the Issuers or any Subsidiary thereof shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Administrative Agent or the Issuers, as the case may be, shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes which a Responsible Officer of the Administrative Agent actually knows to be so owned shall be so disregarded.

"Parent" has the meaning specified in the preamble hereto.

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereto.

"Permitted Disposition" means:

(a) the sale of Inventory in the Ordinary Course of Business;

(b) the sale, transfer or disposition of any assets of any Issuer that are (i) worn-out or obsolete, (ii) replaced in the Ordinary Course of Business of such Issuer, or (iii) no longer used in the business of such Issuer;

(c) the termination of leases, surrender or sublease of real or personal property in the Ordinary Course of Business of the Issuers;

(d) the incurrence of any Permitted Lien;

(e) the liquidation, sale or disposition of Cash Equivalents in the Ordinary Course of Business;

(f) the discount or write-off of Accounts Receivable overdue by more than ninety (90) days or the sale of any such accounts receivable for the purpose of collection, in each case in the Ordinary Course of Business; and

(g) sales, transfers or dispositions of assets for aggregate consideration not exceeding $1,000,000 in the aggregate during any Fiscal Year.

"Permitted Holder" means (i) any holder of 5% or more of the Capital Stock of the Parent immediately following consummation of the Plan (and after giving effect to distributions thereunder) and (ii) any current Affiliates of such holders.

"Permitted Indebtedness" means:

(a) any Indebtedness owing to any Agent or any Purchaser under this Agreement and the other Note Documents;

(b) any Indebtedness owing to any agent or lender under the Revolving Loan Documents as such amount may be increased in accordance with the Intercreditor Agreement so long as any Liens securing such Indebtedness are subject to the terms of the Intercreditor Agreement, including that such Liens are subordinate to the Liens securing the Notes on all Collateral other than the "ABL Priority Collateral" (as defined in the Intercreditor Agreement);

(c) any Indebtedness existing on the Closing Date and set forth on Schedule III; and

(d) any Indebtedness with respect to Hedging Agreements entered into in the Ordinary Course of Business and not for speculative purposes.

"Permitted Investment" means (i) marketable direct obligations issued or unconditionally guaranteed by the United States Government or the Canadian Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case, maturing within six (6) months from the date of acquisition thereof; (ii) commercial paper, maturing not more than 270 days after the date of issue rated P-1 by Moody's or A-1 by Standard & Poor's; (iii) certificates of deposit maturing not more than 270 days after the date of issue, issued by commercial banking institutions and money market or demand deposit accounts maintained at commercial banking institutions, each of which is a member of the Federal Reserve System or of an equivalent system in Canada and has a combined capital and surplus and undivided profits of not less than $500,000,000; (iv) repurchase agreements having maturities of not more than ninety (90) days from the date of acquisition which are entered into with major money center banks included in the commercial banking institutions described in clause (iii) above and which are secured by readily marketable direct obligations of the United States Government or the Canadian Government or any agency thereof; (v) money market accounts maintained with mutual funds having assets in excess of $2,500,000,000; (vi) tax exempt securities rated A or higher by Moody's or A+ or higher by Standard & Poor's; (vii) any investment with respect to Hedging Agreements entered into in the Ordinary Course of Business and not for speculative purposes; (viii) investments in Wholly-Owned Subsidiaries that are Guarantors of the Notes; (ix) investments existing on the Closing Date and set forth on Schedule 10.04; and (x) investments in Account Debtors or Affiliates of such distributed to the Note Parties received in consideration of Accounts Receivable of such Account Debtor in a bankruptcy or work-out with respect to such Account Debtor, or otherwise to settle a defaulted Account Receivable.

"Permitted Liens" means:

(a) Liens securing the Note Obligations;

(b) Liens securing the Revolving Loan Obligations; provided such Liens shall have, in accordance with the Intercreditor Agreement, a first priority security interest solely with respect to the working capital assets (i.e., Inventory, Accounts Receivable and proceeds thereof) of the Note Parties;

(c) Liens for taxes, assessments and governmental charges the payment of which is not required under ARTICLE IV;

(d) Liens imposed by law, such as carriers', warehousemen's, mechanics', materialmen's, landlords' and other similar Liens arising in the Ordinary Course of Business and securing obligations (other than Indebtedness for borrowed money) that are not overdue by more than thirty (30) days or are being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted, and a reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made therefor;

(e) Liens existing on the Closing Date, and set forth on Schedule 10.01;

(f) deposits and pledges of cash securing (i) obligations incurred in respect of workers' compensation, unemployment insurance or other forms of governmental insurance or

benefits, (ii) the performance of bids, tenders, leases, contracts (other than for the payment of money) and statutory obligations or (iii) obligations on surety or appeal bonds, but only to the extent such deposits or pledges are made or otherwise arise in the Ordinary Course of Business and secure obligations not past due;

(g) easements, zoning restrictions and similar encumbrances on real property and minor irregularities in the title thereto that do not (i) secure obligations for the payment of money or (ii) materially impair the value of such property or its use by the Issuers in the normal conduct of the Issuers' business;

(h) Liens that are valid and perfected or capable of being perfected on logs, spars, piles, cord wood, shingle bolts, or other timber of the Issuers on lumber pursuant to RCW 60.24.030, on the lot tract, parcel of land, or any other type of real property or real property improvements upon which the type of activities listed in RCW 60.24.020, 60.24.030 or 60.24.035 are to be performed pursuant to RCW 60.24.033, on saw logs, spars, piles, or other timber pursuant to RCW 60.24.035 and,

(i) maritime liens on Inventory or proceeds of Inventory in transit; and

(j) Liens on Inventory securing up to [$2,000,000] of advance payments owing to customers in the Ordinary Course of Business.

"Person" means an individual, corporation, limited liability company, partnership, association, joint-stock company, trust, unincorporated organization, joint venture or other enterprise or entity or Governmental Authority.

"Plan" means any Employee Plan or Multiemployer Plan.

"Plan of Reorganization" has the meaning specified in the recitals hereto

"Post-Default Rate" means a rate of interest per annum equal to the rate of interest otherwise in effect from time to time pursuant to the terms of this Agreement plus 2.0%.

"Prepayment Premium" means the premium to be paid in connection with certain prepayments of the Notes pursuant to the Agreement equal to 2% of the aggregate principal amount of the Notes then prepaid or required to be prepaid.

"Prepetition Agents" means U.S. Bank, N.A. as trustee for Prepetition Indebtedness Holders, and Wells Fargo Bank, N.A., as administrative agent for the DIP Lenders.

"Prepetition Debt Obligations" means the Senior Secured Notes.

"Prepetition Indebtedness Holders" means the holders of the Senior Secured Notes.

"Pro Forma Balance Sheet" has the meaning specified in Section 8.05(a).

"Pro Forma Financial Statements" has the meaning specified in Section 8.05(b).

"Projections" has the meaning specified in Section 8.05(b).

"Pro Rata Share" means, with respect to any Noteholder, the percentage obtained by dividing the aggregate unpaid principal amount of such Noteholder's Notes, by the aggregate unpaid principal amount of all Outstanding Notes.

"Purchaser" has the meaning specified in the preamble hereto and includes each Person that becomes a party hereto pursuant to Section 16.07.

"Qualified Plan" means a Pension Plan intended to be tax-qualified under Section 401(a) of the Code and which any ERISA Group Person sponsors, maintains, or to which it makes, is making or is obligated to make contributions, or in the case of a multiple employer plan (as described in Section 4064(a) of ERISA) has made contributions at any time during the immediately preceding period covering at least five (5) plan years, but excluding any Multiemployer Plan.

"Real Estate Asset" means, at any time of determination, any interest (fee, leasehold or otherwise) then owned by any Note Party in any real property.

"Register" has the meaning specified in Section 16.07(c).

"Registration Rights Agreement" means that certain Registration Rights Agreement dated as of the Closing Date, by and among [_____], as the same may be modified, supplemented, restated or replaced.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping or disposing of any Hazardous Material (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Material) into the indoor or outdoor environment, including, without limitation, the movement of Hazardous Materials through or in the ambient air, soil, surface or ground water, or property.

"Remedial Action" means all actions taken to (i) clean up, remove, remediate, contain, treat, monitor, assess, evaluate or in any other way address Hazardous Materials in the indoor or outdoor environment; (ii) prevent or minimize a Release or threatened Release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; (iii) perform pre-remedial studies and investigations and post-remedial operation and maintenance activities; or (iv) perform any other actions authorized by 42 U.S.C. § 9601.

"Reorganization Expenses" means all professional fees, costs and expenses associated with the Plan of Reorganization to the extent not capitalized, as demonstrated (both as to amount and as to eligibility to be treated as Reorganization Expenses) to the reasonable satisfaction of the Required Noteholders.

"Replaced Noteholder" has the meaning specified in Section 3.06.

"Replacement Noteholder" has the meaning specified in Section 3.06.

"Reportable Event" means an event described in Section 4043 of ERISA (other than the commencement of the Chapter 11 Case and any event not subject to the provision for 30-day notice to the PBGC under the regulations promulgated under such Section).

"Required Noteholders" means the holders of more than 50% of the aggregate principal amount of the Notes then outstanding; provided that for this purpose, the Notes held by any Defaulting Noteholder shall be disregarded.

"Requirement of Law" means, as to any Person, any law (statutory or common), ordinance, treaty, rule, regulation, order, policy, other legal requirement or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

"Responsible Officer" means, when used with respect to an Agent, any officer within the corporate trust department of such Agent, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of such Agent who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject and who shall have responsibility for the administration of this Agreement by such Agent.

"Restricted Payment" has the meaning specified in Section 10.11.

"Revolving Loan Agreement" means that certain Revolving Loan Agreement dated as of August __, 2007, by and among [ ] and Lenders party thereto, as the same may be amended, modified, supplemented, restated, replaced, refinanced or substituted in accordance with the Intercreditor Agreement.

"Revolving Loan Collateral Agent" means [ ], as collateral agent under the Revolving Loan Agreement.

"Revolving Loan Documents" means the Revolving Loan Agreement and the other documents executed from time to time pursuant thereto, as the same may be amended, modified, supplemented, restated, replaced, refinanced or substituted.

"Revolving Loan Obligations" means all present and future indebtedness, obligations, and liabilities of the Note Parties to the agents and the lenders under the Revolving Loan Documents.

"Richmond Lease" means the ground lease made the 9th day of May 1956 and registered in the New Westminster Land Title Office against title to the Lands under No. 199656C, as assigned to Crown under an assignment of lease dated October 1, 1997 and registered under No. BL332071, as modified.

"Richmond Lease Transaction" means any sale-leaseback transaction in connection with the Richmond Lease.

"Securities" has the meaning specified in the recitals hereto.

"Securities Act" means the United States Securities Act of 1933, as amended (and any successor statute).

"Security and Pledge Agreement" means the Security and Pledge Agreement substantially in the form of Exhibit E, as it may be amended, supplemented or otherwise modified from time to time.

"Senior Secured Notes" means the 11% Senior Secured Notes due 2011 in the original aggregate principal amount of $125,000,000 issued by the Company.

"Series A Preferred" has the meaning specified in the recitals hereto.

"Stockholders Agreement" means that certain Stockholders Agreement dated as of the Closing Date, by and among [ ], as the same may be amended, modified, supplemented, restated, or replaced.

"Solvent" means, as to any Person at any time, that (a) the fair value of the Property of such Person is greater than the amount of such Person's liabilities (including disputed, contingent and unliquidated liabilities) as such value is established and liabilities evaluated for purposes of Section 101(32)(A) of the Bankruptcy Code and, in the alternative, for purposes of the Uniform Fraudulent Transfer Act; (b) the present fair saleable value (on a going concern basis) of the Property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured; (c) such Person is able to realize upon its Property and generally pay its debts and other liabilities (including disputed, contingent and unliquidated liabilities) as they mature in the normal course of business; (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to generally pay as such debts and liabilities mature; and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's Property would constitute unreasonably small capital.

"Standard & Poor's" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

"Subordinated Indebtedness" means the Indebtedness of the Parent or any of its Subsidiaries which is subordinated in right of payment to the Notes.

"Subsidiary" means, with respect to any Person at any date, any corporation, limited or general partnership, limited liability company, trust, association or other entity (i) the accounts of which would be consolidated with those of such Person in such Person's consolidated financial statements if such financial statements were prepared in accordance with GAAP or (ii) of which more than 50% of (A) the outstanding Capital Stock having (in the absence of contingencies) ordinary voting power to elect a majority of the board of directors if a corporation, (B) the interest in the capital or profits if a partnership or limited liability company or (C) the beneficial interest in such trust or estate is, at the time of determination, owned or controlled directly or indirectly through one or more intermediaries, by such Person.

"Supplemental Closing Date" shall mean the date on which Notes are issued and sold pursuant to the Additional Issuance.

"Taxes" has the meaning specified in Section 4.01.

"Termination Event" means (i) a Reportable Event with respect to any Employee Plan, (ii) any event that causes any Issuer or any of its ERISA Affiliates to incur liability under Section 409, 502(i), 502(l), 515, 4062, 4063, 4064, 4069, 4201, 4204 or 4212 of ERISA or Section 4971 or 4975 of the Code, (iii) the filing of a notice of intent to terminate an Employee Plan or the treatment of an Employee Plan amendment as a termination under Section 4041 of ERISA, (iv) the institution of proceedings by the PBGC to terminate an Employee Plan, or (v) any other event or condition which might constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Employee Plan; provided, however, that no Termination Event shall be deemed to have occurred as a result of the commencement of the Chapter 11 Case.

"Transactions" has the meaning specified in Section 8.05(a).

"Transfer and Acceptance" means a transfer and acceptance entered into by an assigning Purchaser and an assignee, and accepted by the Administrative Agent, in accordance with Section 16.07 hereof and substantially in the form of Exhibit F hereto or such other form acceptable to the Administrative Agent.

"Unaudited Financial Statements" has the meaning specified in Section 8.05(c).

"Uniform Commercial Code" has the meaning specified in Section 1.03.

"Warrants" has the meaning set forth in the recitals hereto.

"Wholly-Owned Subsidiary" means any Subsidiary in which (other than directors' qualifying shares required by law) one hundred percent (100%) of equity securities, at the time as of which any determination is being made, is owned, beneficially and of record, by the Company, or by one or more of the other Wholly-Owned Subsidiaries, or both.

Section 1.02 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any right or interest in or to assets and properties of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible. References in

this Agreement to "determination" by any Agent include good faith estimates by such Agent (in the case of quantitative determinations) and good faith beliefs by such Agent (in the case of qualitative determinations).

Section 1.03 Accounting and Other Terms. Unless otherwise specifically provided herein, all accounting terms not specifically defined herein shall be construed, all accounting determinations hereunder shall be made, and all financial computations required to be delivered pursuant hereto shall be prepared, in accordance with GAAP consistently applied; provided that notwithstanding any treatment of the Series A Preferred as indebtedness under GAAP, the Series A Preferred shall not be considered indebtedness or "Indebtedness" for purposes of any calculations under Article XI, and any accrual or dividend payment with respect to the Series A Preferred (regardless whether paid in cash) shall be disregarded in any calculation of Consolidated Interest Expense for purposes of any such calculations. All financial tests relating to the Company shall be calculated with respect to the Parent and its Subsidiaries on a Consolidated basis. If any change in GAAP results in a change in the calculation of the financial covenants or interpretation of related provisions of this Agreement, then the Note Parties and the Required Noteholders agree to amend such provisions of this Agreement so as to equitably reflect such changes in GAAP with the desired result that the criteria for evaluating the financial condition of the Parent and its Subsidiaries on a Consolidated basis shall be the same after such change in GAAP as if such change had not been made, provided that, notwithstanding any other provision of this Agreement, the Required Noteholders' agreement to any amendment of such provisions shall be sufficient to bind all Noteholders; and, provided further, until such time as the financial covenants and the related provisions of this Agreement have been amended in accordance with the provisions of this Section 1.03, the calculations of financial covenants and the interpretation of any related provisions shall be calculated and interpreted in accordance with GAAP consistently applied as in effect immediately prior to such change in GAAP. All terms used in this Agreement which are defined in Article 8 or Article 9 of the Uniform Commercial Code as in effect in the State of New York (the "Uniform Commercial Code") and which are not otherwise defined herein shall have the same meanings herein as set forth therein, capitalization notwithstanding.

Section 1.04 Time References. Unless otherwise indicated herein, all references to time of day refer to Eastern Standard Time or Eastern daylight saving time, as in effect in New York City on such day. For purposes of the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding"; provided, however, that with respect to a computation of fees or interest payable to any Agent or any Purchaser, such period shall in any event consist of at least one full day. Any references to dates or days for deliveries or notices shall be deemed to be Business Days and if such calendar day is not a Business Day, shall be deemed to be the next succeeding Business Day.

## ARTICLE II

## AUTHORIZATION; PURCHASE AND SALE OF THE SECURITIES

Section 2.01 Authorization of Securities. The Issuers have authorized the issuance and sale of the Notes to the Purchasers of an aggregate principal amount of up to

$45,000,000 of Notes on the terms and conditions set forth herein. Parent has authorized the issuance and sale to the Purchasers of the Equity Securities on the terms and conditions set forth herein. The Equity Securities shall have the rights, preferences and privileges set forth in the Equity Documents.

Section 2.02 Purchase and Sale of the Securities at Closing. Subject to the terms and conditions of this Agreement, the other Note Documents, the Equity Documents, and on the basis of the representations and warranties set forth herein, the Issuers hereby agree to issue and sell to each Purchaser, and by its acceptance hereof, each such Purchaser agrees to purchase from the Issuers, at the Closing, the principal amount of Notes, the number of shares of Series A Preferred and the Warrants, set forth opposite the name of such Purchaser on Schedule I hereto for the respective purchase prices set forth thereon, which purchase prices shall reflect a 1% purchase discount. The aggregate principal amount of Notes to be purchased at the Closing shall be $35,000,000.

Section 2.03 Purchase Price for Securities; Allocation of Purchase Price. The purchase price to each Purchaser for the Securities purchased at Closing is the amount set forth opposite such Purchaser's name on Schedule I hereto. The Issuers and the Purchasers agree that, for purposes of Sections 305 and 1271 through 1275 of the Code or any other jurisdiction, the aggregate original purchase price of each of the Securities shall be allocated as set forth on Schedule I hereto (as such schedule may be amended), and that such allocation shall be appropriately used by the Issuers and each Purchaser for financial and income tax reporting purposes; provided that the allocation of the purchase price between the Series A Preferred and the Warrants shall be determined following the Closing in a manner mutually agreeable to Parent and to the Purchasers holding a majority of the shares of Series A Preferred and Warrants.

Section 2.04 The Closing. The purchase and sale of the Securities to be acquired by the Purchasers will occur at a closing (the "Closing") to be held on August __, 2007, at 10:00 a.m. (New York time), at the offices of Ropes & Gray LLP, 1211 Avenue of the Americas, New York, New York 10036, or at such other date, time and/or location as may be agreed upon by the parties hereto, subject to the terms and conditions hereof, including, without limitation, the simultaneous execution of the Equity Documents and the Revolving Loan Documents and the occurrence of the effective date of the Plan of Reorganization.

Section 2.05 Additional Issuance of Notes. Subject to the conditions set forth in Section 6.02, the Issuers may sell to each Purchaser in one additional issuance (such issuance, the "Additional Issuance") and each such Purchaser agrees to purchase in their respective Pro Rata Shares from the Issuers, additional Notes in the aggregate principal amount of up to $10,000,000. All purchases and sales of Notes under this Section 2.05 shall be at the purchase price of 99% of the principal amount thereof. All proceeds of any Additional Issuance pursuant to this Section 2.05 shall be used, in conjunction with Net Cash Proceeds of any Richmond Lease Transaction, to redeem the Series A Preferred.

Section 2.06 Payment of Purchase Price; Timing. On the Closing Date and Supplemental Closing Date relating to any Additional Issuance, in consideration of payment to the Issuers by wire transfer of immediately available funds in an amount equal to the purchase price of the Notes, Series A Preferred and Warrants purchased on such Closing Date and

Supplemental Closing Date, the Issuers will deliver Notes, Series A Preferred and/or Warrants registered in the names of any Purchasers that have requested physical delivery of such Note, Series A Preferred and/or Warrant (with the Purchasers' holdings of Notes to be evidenced and reflected by a register to be maintained by the Administrative Agent, regardless whether Notes have been physically delivered).

Section 2.07 Use of Proceeds. The proceeds of the sale by the Issuers of the Securities at the Closing shall be used solely to (i) repay all obligations under the DIP Financing Agreement, (ii) provide funding for payments, fees and expenses required under or in connection with the Plan of Reorganization and (iii) provide working capital and for other general corporate purchases. Proceeds of the sale by the Issuers of the Additional Issuance on the Supplemental Closing Date shall be used solely to redeem the Series A Preferred. No portion of the proceeds of the sale of the Securities hereunder shall be used, directly or indirectly, for the purpose, whether immediate, incidental or ultimate, of buying or carrying any "margin stock" within the meaning of any regulation, interpretation or ruling of the Board, all as from time to time in effect, refunding of any indebtedness incurred for such purpose, or making any investment prohibited by foreign trade regulations. Without limiting the foregoing, the Issuers agree that in no event shall any proceeds of the sale of the Securities hereunder be used in any manner which might cause the Securities or the application of such proceeds to violate any of Regulations T, U or X of the Board or any other regulation of the Board, or to violate the Exchange Act, each as in effect as of the Closing (or the Supplemental Closing Date) and as of such use of proceeds.

## ARTICLE III

## TERMS OF THE NOTES

Section 3.01 Interest on the Notes.

(a) Interest. From and including the Closing Date (or, with respect to any Note issued in the Additional Issuance, the Supplemental Closing Date), the Notes shall bear interest at a rate equal to the LIBOR Rate plus 7% per annum on the unpaid principal amount thereof.

(b) Default Interest. After and during the continuance of any Event of Default, the Notes shall bear interest at the Post-Default Rate, including, in the event of a payment default, on any overdue principal (including any overdue prepayment of principal, and any principal due upon acceleration) and on any overdue installment of interest (to the extent permitted by applicable law).

(c) Interest Payment. Interest on the Notes shall be payable in cash on the first calendar day of each of April, July, October and January (each, an "Interest Payment Date") or if such calendar day is not a Business Day, on the next succeeding Business Day, commencing on the first Business Day of January 2008. Interest shall be paid by wire transfer or other same day funds to the Administrative Agent's Account as set forth on Schedule II hereto.

(d) Interest Computation. Interest on the Notes shall be computed on the basis of for the actual number of days elapsed and a year of 360 days. In computing such

interest, the date or dates of the making of the Notes shall be included and the date of payment shall be excluded.

(e) LIBOR Rate.

(i) The Issuers may, at any time and from time to time, so long as no Event of Default has occurred and is continuing, elect the LIBOR Rate by delivering to the Administrative Agent a LIBOR Notice prior to 2:00 p.m. (Minneapolis time) at least 3 Business Days prior to the commencement of the proposed Interest Period (the "LIBOR Deadline"). Notice of the Issuers' election of the LIBOR Rate for an Interest Period pursuant to this subsection (e) shall be made by delivery to Administrative Agent of a LIBOR Notice received by Administrative Agent before the LIBOR Deadline. Promptly upon its receipt of each such LIBOR Notice, Administrative Agent shall provide a copy thereof to each of the Noteholders. To the extent that, on an applicable LIBOR Deadline, an Event of Default has occurred and is continuing or the Issuers fail to elect the LIBOR Rate on or before the LIBOR Deadline, the applicable LIBOR Rate shall be the LIBOR Rate for deposits in U.S. dollars for a period of one month, as reported by any generally recognized financial information service as of 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period.

(ii) Each LIBOR Notice delivered by the Issuers shall be irrevocable and binding on the Issuers. The Issuers shall indemnify, defend, and hold Administrative Agent and the Noteholders harmless against any loss, cost, or expense incurred by Administrative Agent or any Noteholder as a result of (1) the payment of any principal of the Notes other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default) or (2) the failure to borrow, continue or prepay the Notes on the date specified in any LIBOR Notice delivered pursuant hereto (such losses, costs, and expenses, collectively, "Funding Losses"). Funding Losses shall, with respect to Administrative Agent or any Noteholder, be deemed to equal the amount determined by Administrative Agent or such Noteholder to be the excess, if any, of (x) the amount of interest that would have accrued on the principal amount of such Notes had such event not occurred, at the LIBOR Rate that would have been applicable thereto, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow or continue, for the period that would have been the Interest Period therefor), minus (y) the amount of interest that would accrue on such principal amount for such period at the interest rate which Administrative Agent or such Noteholder would be offered were it to be offered, at the commencement of such period, Dollar deposits of a comparable amount and period in the London interbank market. A certificate of Administrative Agent or a Noteholders delivered to the Issuers setting forth any amount or amounts that Administrative Agent or such Noteholders is entitled to receive pursuant to this Section shall be conclusive absent manifest error.

(iii) The Issuers shall have not more than five Interest Periods in effect at any given time.

(f) Alternate Rate of Interest. If prior to the commencement of any Interest Period:

(i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the LIBOR Rate for such Interest Period; or

(ii) the Administrative Agent is advised in writing by any Noteholder that the LIBOR Rate for such Interest Period will not adequately and fairly reflect the cost to such Noteholder of making or maintaining the Note Obligation included for such Interest Period (other than for reasons related to the identity or creditworthiness of such Noteholder);

then the Administrative Agent shall give notice thereof to the Issuers and the Noteholders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent, upon being so advised in writing by the applicable Noteholders, notifies the Issuers and the Noteholders that the circumstances giving rise to such notice no longer exist, such Noteholder's Note shall accrue interest at such rate as such Noteholder shall determine (in a certificate delivered by such Noteholder to the Administrative Agent setting forth the basis of the computation of such rate, which certificate shall in the absence of manifest error be conclusive on the Issuers) to be necessary to compensate such Noteholder for its cost (rounded upward, if necessary, to the nearest 1/16th of 1%) of obtaining (in good faith and using reasonable efforts to minimize the interest cost to the Issuers) funds for such period in an amount comparable to the aggregate principal amount of such portion of such Noteholder's Notes plus 7% per annum. The Administrative Agent shall notify the Issuers of such determination as promptly as practicable. After the Administrative Agent shall have notified the Issuers of such determination and during the period such interest rate continues to be applicable, the Issuers may elect to prepay that portion of the Notes so affected, but without premium or penalty, in accordance with the provisions of Section 3.02(c); provided that if at any time prior to such prepayment the Administrative Agent determines, upon being so advised in writing by the applicable Noteholders, that the circumstance or circumstances referred to in clauses (a) and (b) that gave rise to the operation of this subsection (f) have ceased to exist and that no other circumstance exists that would give rise to the operation of this subsection (f), the Administrative Agent shall so notify the Issuers, and as promptly as practicable thereafter the rate of interest on that portion of the Notes so affected shall again be determined in accordance with Section 3.01 (and any election to prepay the Notes in accordance with this sentence may be revoked by the Issuers by notice to the Administrative Agent).

(g) Break Funding Payments. In the event of (a) the payment of any principal of any Note other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the failure to borrow, continue or prepay any Note on the date specified in any notice delivered pursuant hereto or (c) the assignment of any Note other than on the last day of the Interest Period applicable thereto as a result of an election by the Issuers pursuant to Section 3.06, then, in any such event, the Issuers shall compensate each Noteholder for the loss, cost and expense attributable to such event. Such loss, cost or expense to any Noteholder shall be deemed to include an amount determined by such Noteholder to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Notes had such event not occurred, at the Reference Rate that would have been applicable to such Notes, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow or continue, for the period that would have been the Interest Period for such Notes), over (ii) the amount of interest which would

accrue on such principal amount for such period at the interest rate which such Noteholder would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Noteholder setting forth any amount or amounts that such Noteholder is entitled to receive pursuant to this Section shall be delivered to the Issuers and shall be conclusive absent manifest error. The Issuers shall pay such Noteholder the amount shown as due on any such certificate within 10 days after receipt thereof.

Section 3.02 Evidence of Debt; Payment of Notes;.

(a) Evidence of Debt. The Administrative Agent shall maintain accounts in which it shall record (i) the amount of the Notes issued hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from the Issuers to each Noteholder hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Noteholders and each Noteholder's share thereof. The entries made in the accounts maintained pursuant to this Section 3.02(a) shall be presumptive evidence of the existence and amounts of the obligations recorded therein absent demonstrable error; provided that the failure of the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Issuers to repay the Notes in accordance with the terms of this Agreement. Any Noteholder may request that the Note Obligations shall be evidenced by a promissory note. In such event, the Issuers shall execute and physically deliver to each such Noteholder a Note payable to the order of such Noteholder (or, if requested by such Noteholder, to such Noteholder and its registered assigns) in the form of Exhibit A. Thereafter, the Note evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 16.07) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

(b) Scheduled Payments. All outstanding principal and all accrued interest then outstanding, and all other amounts then owing hereunder with respect to the Notes shall be paid in full in cash on the Maturity Date.

(c) Voluntary Prepayments. Subject to the terms and conditions herein, the Notes may be prepaid at the Issuers' option, at any time, and from time to time, in whole or in part (in a minimum amount of $1,000,000 and in integral multiples of $500,000, or such lesser amount as is then outstanding), on ten Business Days' prior written notice to the Administrative Agent; provided, that any such voluntary prepayment of the Notes shall include the accrued interest and the Prepayment Premium on the amount so prepaid.

(d) Mandatory Prepayments.

(i) Asset Dispositions. If any of the Issuers or any of their Subsidiaries shall at any time or from time to time:

(1) make a Disposition; or

(2) suffer an Event of Loss;

then such Issuer and/or Subsidiary shall (i) so long as no Event of Default shall have occurred or be continuing and within 180 days of receipt by such Issuer and/or Subsidiary of the Net Cash Proceeds from the Disposition or Event of Loss, reinvest or enter into a binding contract to reinvest the Net Cash Proceeds of such Disposition or Event of Loss in replacement assets or (ii) apply all such Net Cash Proceeds to the prepayment of the Notes, together with the accrued interest and the Prepayment Premium thereon; provided, that in the event that a binding contract to reinvest is entered into, but is subsequently terminated or modified such that all or a portion of the Net Cash Proceeds contemplated to be utilized thereunder are not so utilized, such Net Cash Proceeds shall be immediately applied to the prepayment of the Notes.

(ii) Richmond Lease Transaction. To the extent that any Net Cash Proceeds of the Richmond Lease Transaction are not applied to redeem the Series A Preferred, the Issuers shall promptly apply all such Net Cash Proceeds of the Richmond Lease Transaction not applied to redeem the Series A Preferred to the prepayment of the Notes, together with the accrued interest and the Prepayment Premium thereon.

(iii) Equity and Debt Issuance. Upon the issuance or incurrence by any Note Party or any of its Subsidiaries of any Indebtedness (other than Permitted Indebtedness), or the sale or issuance by any Note Party or any of its Subsidiaries of any shares of its Capital Stock (other than issuances pursuant to a management or employee incentive plan), the Issuers shall prepay the Notes, together with the accrued interest and the Prepayment Premium thereon, in an amount equal to 100% of the Net Cash Proceeds received by such Note Party in connection therewith. The provisions of this subsection (iii) shall not be deemed to be implied consent to any such issuance, incurrence or sale otherwise prohibited by the terms and conditions of this Agreement.

(e) Repurchase Offer with Excess Cash Flow. Within 10 days of delivery to the Administrative Agent of audited annual financial statements pursuant to Section 9.02(a) (or if not timely delivered, within 10 days of the deadline for such delivery), commencing with the financial statements for the Fiscal Year ended December 31, 2008, the Issuers shall (A) notify the Administrative Agent of any Excess Cash Flow Amount (including providing reasonably detailed calculations demonstrating the calculation of such) and (B) make an offer to use the Excess Cash Flow Amount to prepay the Notes, together with accrued interest thereon. The "Excess Cash Flow Amount" for any Fiscal Year shall be an amount equal to (i) 75% of Excess Cash Flow for such Fiscal Year minus (ii) the amount of any voluntary prepayment on the Notes made following the end of applicable Fiscal Year and prior to the offer to prepay the Notes pursuant to this Section 3.02(e). The Noteholders shall have not less than 30 days to accept any offer pursuant to this Section 3.02(e) and, within two Business Days after the expiration of such 30 day period (or, if earlier, the date on which all Noteholders shall have responded to the offer), the Issuers shall apply the Excess Cash Flow Amount to the purchase of Notes of any accepting Noteholders on a pro rata basis in accordance with the principal amount of the Notes of the accepting Noteholders.

Section 3.03 Payment Procedures.

(a) All redemptions of Notes under Section 3.02(c) and Section 3.02(d), shall be made together with any Prepayment Premium on the principal amount redeemed and the

accrued interest to the date of such redemption. Each payment or prepayment of Notes shall be applied to the Outstanding principal amount of the Notes of each Noteholder ratably based on such Noteholder's Pro Rata Share.

(b) Upon surrender of a Note that is paid or prepaid in part, the Issuers shall promptly execute and deliver to the Administrative Agent (at the Issuers' expense) a new Note equal in principal amount to the unpaid portion of the Note surrendered.

(c) Subject to the terms and conditions herein, all payments or prepayments (whether voluntary or mandatory) shall be applied: (i) first, to the payment of Agents' fees and other amounts in accordance with the Fee Letters that are due and payable under this Agreement, (ii) second, to the payment of any accrued and unpaid interest to, but not including, the date of such payment or prepayment, (iii) third, to the payment of any Prepayment Premium on the principal amount of the Notes so paid or prepaid, and (iv) fourth, to the principal amount of the Notes so paid or prepaid. All such payments shall be made by wire transfer or other same day funds to the Administrative Agent's Account as set forth on Schedule II hereto in accordance with Section 5.02.

Section 3.04 Fees. The Issuer shall pay the Agents' fees and other amounts in accordance with the Fee Letters and any other written agreements between an Agent and the Issuers. The Issuers' obligations set forth in this Section 3.04 shall survive the repayment of the Note Obligations and discharge of any Liens granted under the Note Documents.

Section 3.05 Joint and Several Liability of Issuers; Guaranty. Notwithstanding anything in this Agreement or any other Note Document to the contrary, each Issuer, jointly and severally, in consideration of the financial accommodations to be provided by Agent and the Purchasers under this Agreement and the other Note Documents, for the mutual benefit, directly and indirectly, of each Issuer and in consideration of the undertakings of the other Issuers to accept joint and several liability for the Note Obligations, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Issuers, with respect to the payment and performance of all of the Note Obligations (including, without limitation, any Note Obligations arising under this Section 3.05), it being the intention of the parties hereto that all of the Note Obligations shall be joint and several obligations of each Issuer without preference or distinction among them. Without limiting the foregoing, and notwithstanding anything to the contrary contained elsewhere in this Agreement, it is understood and agreed by the various parties to this Agreement that all Note Obligations to repay principal of, interest on, and all other amounts with respect to, outstanding Notes and other obligations of the Issuers shall constitute the joint and several obligations of all of the Issuers, and shall be fully and unconditionally guaranteed, jointly and severally, by the Guarantors, both as to payment and performance, and not merely collectibility. Each Note Party acknowledges and agrees that it is receiving direct benefits as a result of the extensions of credit to each Issuer hereunder, and that the Purchasers and the Agents may proceed against any or all of the Note Parties with respect to any or all of the Note Obligations hereunder.

Section 3.06 Replacement of Noteholders. If any Noteholder (a) demands payment of costs or additional amounts pursuant to ARTICLE V which are materially more than those charged by other Noteholders, other than any withholding or other tax imposed by any

Canadian federal or provincial taxing authority (subject to such Noteholder's right to rescind such demand or assertion within ten days after the notice from the Issuers), or (b) has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to any provision of this Agreement requires the consent of all affected Noteholders and with respect to which Noteholders holding in the aggregate at least two-thirds of the outstanding Notes have granted their consent or (c) becomes a Defaulting Noteholder (any such Noteholder being hereinafter referred to as a "Replaced Noteholder"), then in such case the Issuers, may upon at least five (5) Business Days' prior written notice to such Replaced Noteholder, designate a replacement Noteholder or Noteholders (each a "Replacement Noteholder") to which such Replaced Noteholder shall, subject to its receipt (unless a later date for the remittance thereof shall be agreed upon by the Required Noteholders and the Replaced Noteholder) of (i) the amount that is equal to the principal amount of all Outstanding Notes held by such Replaced Noteholder from the Replacement Noteholder, (ii) all accrued interest thereon to the date of payment from the Replacement Noteholder, and (iii) all amounts owed to such Replaced Noteholder under ARTICLE V, assign (with the assignment fee to be paid by the Issuers, in such instance) all (and not less than all) of its rights, obligations, and interests hereunder and under any Note Document. Upon any assignment by any Noteholder pursuant to this Section 3.06 becoming effective, the Replaced Noteholder shall cease to be a "Noteholder" for all purposes under this Agreement and the Replacement Noteholder shall be substituted therefor upon payment to the Replaced Noteholder by the Replacement Noteholder of all amounts set forth in this Section 3.06 without any further action of the Replaced Noteholder.

## ARTICLE IV

## TAXATION

Section 4.01 Payments Made Free of Taxes. Any and all payments by the Issuers hereunder shall be made, in accordance with Section 5.02, free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding, in the case of each Agent and each Purchaser, income and franchise taxes imposed on or measured by net income of such Person by the United States or by any other jurisdiction in which such Person is organized or in which its principal office is located (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes"). If the Issuers shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder to any Agent or any Purchaser, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 4.01) such Person receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Issuers shall make such deductions and (iii) the Issuers shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law.

Section 4.02 Other Taxes. In addition, the Issuers agree to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made by it hereunder or from the execution, delivery or registration of this Agreement or any Note Document (hereinafter referred to as "Other Taxes").

Section 4.03 Indemnification. The Issuers agree to indemnify each Agent and each Purchaser for the full amount of Taxes or Other Taxes (including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this ARTICLE IV) paid by such Agent or Purchaser and any liability (including penalties, additions to tax, interest and expenses) arising therefrom or with respect thereto, whether or not correctly asserted. This indemnification shall be made within thirty (30) days from the date such Agent or Purchaser makes written demand therefor and such Agent's or such Purchaser's determination that it is liable for such Taxes or Other Taxes shall be conclusive absent manifest error. The indemnities set forth in this Section 4.03 shall survive the repayment of the Note Obligations and discharge of any Liens granted under the Note Documents.

Section 4.04 Evidence of Payments. Within thirty (30) days after the date of any payment of Taxes or Other Taxes, the Issuers will furnish to the Administrative Agent, at its address referred to in Section 16.01, an official receipt or appropriate evidence of payment thereof.

Section 4.05 Certain Obligations of Non-U.S. Purchasers. Each Purchaser organized under the laws of a jurisdiction outside the United States shall, on or prior to the date of its execution and delivery of this Agreement (in the case of each Purchaser) and on the date of the Transfer and Acceptance pursuant to which it became a Purchaser (in the case of each other Purchaser), and from time to time thereafter if requested in writing by the Issuers or the Administrative Agent, at the written direction of the Required Purchasers, or promptly upon the occurrence of any event requiring a change in the last form delivered by such Purchaser (but, in each case, only so long as such Purchaser remains lawfully able to do so after the date such Purchaser becomes a Purchaser hereunder), provide the Administrative Agent and the Issuers with either (i) Internal Revenue Service form W8-BEN or W-8ECI, as appropriate, or any successor form prescribed by the Internal Revenue Service, certifying that such Purchaser is entitled to benefits under an income tax treaty to which the United States is a party that reduces the rate of withholding tax on payments under this Agreement and the Notes or certifying that the income receivable pursuant to this Agreement and the Notes is effectively connected with the conduct of a trade or business in the United States or (ii) Internal Revenue Service form W-8, upon which the Issuers is entitled to rely, pursuant to Sections 881(c)(2)(B) or 871(h)(5) of the Code, or any successor form or statement prescribed by the Internal Revenue Service in order to establish that such Purchaser is entitled to treat the interest payments under this Agreement and the Notes as portfolio interest that is exempt from withholding tax under the Code, together with a certificate stating that such Purchaser is not described in Section 881(c)(3) of the Code. If the form provided by a Purchaser at the time such Purchaser first becomes a party to this Agreement indicates a United States interest withholding tax rate on payments of interest hereunder in excess of zero (or if the Purchaser cannot provide at such time such form because it is not entitled to reduced withholding under a treaty, the payments are not effectively connected income and the payments do not qualify as portfolio interest), withholding tax at such rate (or at the then existing U.S. statutory rate if the Purchaser cannot provide the form) shall be excluded from Taxes unless and until such Purchaser provides the appropriate form certifying that a lesser rate applies, whereupon withholding tax at such lesser rate only shall be excluded from Taxes for periods governed by such form; provided that, if at the date of the Transfer and Acceptance pursuant to which a Purchaser transferee becomes a party to this Agreement, the Purchaser transferor was entitled to payments under Section 4.01 in respect of United States withholding

tax with respect to amounts paid hereunder at such date, then, to the extent such tax results in liability for such payments, the term Taxes shall include (in addition to withholding taxes that may be imposed in the future or other amounts otherwise includable in Taxes) United States interest withholding tax, if any, applicable with respect to the Purchaser transferee on such date.

Section 4.06 Limitation upon Indemnification of Non-U.S. Purchasers. For any period with respect to which a Purchaser has failed to provide the Issuers and the Administrative Agent with the appropriate form described in Section 4.05 (other than if such failure is due to a change in law occurring after the date on which a form originally was required to be provided or if such form otherwise is not required under Section 4.05), such Purchaser shall not be entitled to indemnification under Section 4.01 or Section 4.03 of this Agreement with respect to Taxes imposed by the United States. If any Agent or Purchaser determines that it has received a refund of any Taxes or Other Taxes as to which it has received an additional amount pursuant to Section 4.01 or for which it has been indemnified pursuant to Section 4.05, it shall pay to the Issuers an amount equal to such refund; provided that the Issuers agree to repay the amount paid over to the Issuers to such Agent or Purchaser in the event that such Agent or Purchaser is required to repay such refund to a Governmental Authority.

Section 4.07 Survival. Without prejudice to the survival of any other agreement of the Issuers hereunder, the agreements and obligations of the Issuers contained in this ARTICLE IV shall survive the repayment of the Note Obligations and discharge of any Liens granted under the Note Documents.

## ARTICLE V

## FEES, PAYMENTS AND OTHER COMPENSATION

Section 5.01 Audit and Collateral Monitoring Expenses. The Issuers acknowledge that pursuant to Section 9.10, representatives of the Agents may visit the Issuers and/or conduct audits, inspections, appraisals, valuations and/or field examinations of the Issuers or the Collateral at any time and from time to time in a manner so as to not unduly disrupt the business of the Issuers. The Issuers agree to pay (i) the Agents' out-of-pocket costs and reasonable expenses incurred in connection with all such visits, audits, inspections, appraisals, valuations and field examinations and (ii) the actual cost of all visits, audits, inspections, appraisals, valuations and field examinations conducted by a third party on behalf of the Agents.

Section 5.02 Payments and Computations. The Issuers will make each payment under this Agreement or any other Note Document so as to be received by the Administrative Agent not later than 2:00 p.m. (New York City time) on the day when due, in lawful money of the United States of America and in immediately available funds, to the Administrative Agent's Account, and any payment received by the Administrative Agent after such time shall be deemed to be made on the next Business Day. All payments shall be made by the Issuers without set-off, counterclaim, deduction or other defense to the Agents and/or the Noteholders. After receipt, the Administrative Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal ratably to the Noteholders in accordance with their Pro Rata Shares and like funds relating to the payment of any other amount payable to any Noteholder to such Noteholder, in each case to be applied in accordance with the terms of this Agreement. Whenever any

payment to be made under any Note Document shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall in such case be included in the computation of interest or fees, as the case may be. All computations of fees shall be made by the Administrative Agent on the basis of a year of 360 days for the actual number of days (including the first day but excluding the last day) occurring in the period for which such fees are payable. Each determination by the Administrative Agent of an interest rate or fees hereunder shall be conclusive and binding for all purposes in the absence of manifest error.

Section 5.03 Sharing of Payments, Etc. If any Purchaser shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of any Note Obligation in excess of its ratable share of payments on account of similar obligations obtained by all the Purchasers, such Purchaser shall forthwith purchase from the other Purchasers such participations in such similar obligations held by them as shall be necessary to cause such purchasing Purchaser to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Purchaser, such purchase from each Purchaser shall be rescinded and such Purchaser shall repay to the purchasing Purchaser the purchase price to the extent of such recovery together with an amount equal to such Purchaser's ratable share (according to the proportion of (i) the amount of such Purchaser's required repayment to (ii) the total amount so recovered from the purchasing Purchaser of any interest or other amount paid by the purchasing Purchaser in respect of the total amount so recovered). The Issuers agree that any Purchaser so purchasing a participation from another Purchaser pursuant to this Section 5.03 may, to the fullest extent permitted by law, exercise all of its rights (including the Purchaser's right of set-off) with respect to such participation as fully as if such Purchaser were the direct creditor of the Issuers in the amount of such participation.

Section 5.04 Apportionment of Payments. Subject to any written agreement among the Agents and/or the Purchasers:

(a) all payments of principal and interest in respect of outstanding Notes, all payments of fees other than the audit and collateral monitoring expenses provided for in Section 5.01) and all other payments in respect of any other Note Obligations, shall be allocated by the Administrative Agent among such of the Purchasers as are entitled thereto, in proportion to their respective Pro Rata Shares or otherwise as provided herein or, in respect of payments not made on account of Notes, as designated in writing by the Person making payment when the payment is made.

(b) Either before or after the occurrence and during the continuance of an Event of Default, the Administrative Agent shall apply all payments in respect of any Note Obligations and all proceeds of the Collateral, subject to the provisions of this Agreement, (i) first, ratably to pay the Note Obligations in respect of any fees, expense reimbursements, indemnities and other amounts then due to the Agents until paid in full; (ii) second, ratably to pay the Note Obligations in respect of any fees, expense reimbursements, indemnities and Prepayment Premium, if any, then due to the Purchasers until paid in full; (iii) third, ratably to pay interest due in respect of the Notes until paid in full; (iv) fourth, ratably to pay principal of the Notes until paid in full; and (v) fifth, to the ratable payment of all other Note Obligations

then due and payable (or, to the extent such Note Obligations are contingent, to provide cash collateral in respect of any such Note Obligations as to which demand or claim has been asserted, or otherwise as required by the Agents or the Required Purchasers in the case of any foreseeable claim).

(c) In the event of a direct conflict between the priority provisions of this Section 5.04 and other provisions contained in any other Note Document, it is the intention of the parties hereto that both such priority provisions in such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 5.04 shall control and govern.

Section 5.05 Increased Costs and Reduced Return.

(a) If any Purchaser or any Agent shall have determined that the adoption or implementation of, or any change in, any law, rule, treaty or regulation, or any policy, guideline or directive of, or any change in, the interpretation or administration thereof by, any court, central bank or other administrative or Governmental Authority, or compliance by any Purchaser or any Agent or any Person controlling any such Purchaser or any such Agent with any directive of, or guideline from, any central bank or other Governmental Authority or the introduction of, or change in, any accounting principles applicable to any Purchaser or any Agent or any Person controlling any such Purchaser or any such Agent (in each case, whether or not having the force of law) (each a "Change in Law"), shall (i) subject such Purchaser or such Agent, or any Person controlling such Purchaser or such Agent to any tax, duty or other charge with respect to this Agreement or any Purchaser or such Agent agreeing to accept for transfer, fund or maintain any Notes, or change the basis of taxation of payments to such Purchaser or such Agent or any Person controlling such Purchaser or such Agent of any amounts payable hereunder (except for taxes on the overall net income of such Purchaser or such Agent or any Person controlling such Purchaser or such Agent), (ii) impose, modify or deem applicable any reserve, special deposit or similar requirement against any Purchaser by virtue of such Purchaser's holding of its Notes, or against assets of or held by, or deposits with or for the account of, or credit extended by, such Purchaser or any Person controlling such Purchaser or (iii) impose on such Purchaser or such Agent or any Person controlling such Purchaser or such Agent any other condition regarding this Agreement, any Note Document or any Note, and the result of any event referred to in clauses (i), (ii) or (iii) above shall be to increase the cost to such Purchaser or such Agent of holding its Notes, or agreeing to fund or maintain its Notes, or to reduce any amount received or receivable by such Purchaser or such Agent hereunder or thereunder, then, upon demand by such Purchaser or such Agent, the Issuers shall pay to such Purchaser or such Agent such additional amounts as will compensate such Purchaser or such Agent for such increased costs or reductions in amount.

(b) If any Purchaser or any Agent shall have determined that any Change in Law either (i) affects or would affect the amount of capital required or expected to be maintained by such Purchaser or such Agent or any Person controlling such Purchaser or such Agent, and such Purchaser or such Agent determines that the amount of such capital is increased as a direct or indirect consequence of such Purchaser holding its Notes, such Purchaser's or such Agent's or such other controlling Person's other obligations hereunder, or (ii) has or would have the effect of reducing the rate of return on such Purchaser's or such Agent's or such other controlling

Person's capital to a level below that which such Purchaser or such Agent or such controlling Person could have achieved but for such circumstances as a consequence of such Purchaser holding its Notes or such Purchaser's or such Agent's or such other controlling Person's other obligations hereunder (in each case, taking into consideration, such Purchaser's or such Agent's or such other controlling Person's policies with respect to capital adequacy), then, upon demand by such Purchaser or such Agent, the Issuers shall pay to such Purchaser or such Agent from time to time such additional amounts as will compensate such Purchaser or such Agent for such cost of maintaining such increased capital or such reduction in the rate of return on such Purchaser's or such Agent's or such other controlling Person's capital.

(c) All amounts payable under this Section 5.05 shall bear interest from the date that is ten (10) days after the date of demand by any Purchaser or any Agent until payment in full to such Purchaser or such Agent at the LIBOR Rate. A certificate of such Purchaser or such Agent claiming compensation under this Section 5.05, specifying the event herein above described and the nature of such event shall be submitted by such Purchaser or such Agent to the Issuers, setting forth the additional amount due and an explanation of the calculation thereof, and such Purchaser's or such Agent's reasons for invoking the provisions of this Section 5.05, and shall be final and conclusive absent manifest error.

(d) Mitigation of Increased Costs. Any Purchaser or any Agent, upon determining that any additional amounts will be payable pursuant to this Section 5.05, shall use commercially reasonable efforts to mitigate or avoid, (i) any obligation by the Issuers to pay any amount pursuant to this Section 5.05 or (ii) the occurrence of any circumstances described in this Section 5.05 and, if any Purchaser or any Agent has given notice of any such event described in clause (i) or (ii) above and thereafter such event ceases to exist, such Purchaser or such Agent shall promptly so notify the Issuers. Without limiting the foregoing, Purchaser or Agent will designate a different funding office or source if such designation will avoid (or reduce the costs to the Issuers of any event described in clause (i) or (ii) of the preceding sentence and such designation will not, in such Purchaser's or such Agent's reasonable judgment, be otherwise disadvantageous to Purchaser or Agent. Purchaser or Agent shall give prompt written notice of any circumstance covered by this Section 5.05 to Issuers and if such notice requires payment of additional amounts by Issuers pursuant to this Section 5.05, such notice shall show in reasonable detail the basis for calculation of such additional amounts payable by the Issuers pursuant to this Section 5.05; provided that Issuers shall not be required to compensate Purchaser or Agent pursuant to this Section 5.05 for any increased costs incurred more than 180 days prior to the date that Purchaser or Agent notifies Issuers in writing of the increased costs and of Purchaser's or Agent's intention to claim compensation thereof; provided further that, if the change in law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 5.06 Currency.

(a) The Issuers hereby agree that payments hereunder on account of the Note Obligations shall be made in the currency (the "Agreed Currency") in which each such Note Obligation is payable and if any payment is received in another currency (the "Other Currency"), such payment shall constitute a discharge of the liability of the Issuers hereunder only to the extent of the amount of the Agreed Currency which the Administrative Agent is able to purchase

with the amount of the Other Currency received by it on the Business Day immediately following such receipt in accordance with normal procedures and after deducting any premium and costs of exchange.

(b) If, in connection with any claim or proof made or filed against the Issuers, any action brought in connection with this Agreement or any judgment or order obtained as a result thereof, it becomes necessary to convert any amount due hereunder in one currency (the "first Currency") into another currency (the "second Currency"), then the conversion shall be made at the Conversion Rate on the first Business Day prior to the day on which payment is received.

(c) If the conversion in connection with any action is not able to be made in the manner contemplated by the preceding paragraph in the jurisdiction in which the action is brought, then the conversion shall be made at the Conversion Rate on the day on which the judgment is given.

(d) If the Conversion Rate on the date of payment is different from the Conversion Rate on such first Business Day or on the date of judgment or such other date upon which a court may order the conversion made, as the case may be, the Issuers shall pay such additional amount (if any) in the second Currency as may be necessary to ensure that the amount paid on such payment date is the aggregate amount in the second Currency which, when converted at the Conversion Rate on the date of payment, is the amount due in the first Currency, together with all costs and expenses of conversion.

(e) Any additional amount owing by the Issuers pursuant to the provisions of this section shall be due as a separate debt and shall give rise to a separate cause of action and shall not be affected by or merged into any judgment obtained for any other amounts due under or in respect of this Agreement.

## ARTICLE VI

## CONDITIONS TO ISSUANCE

Section 6.01 Conditions Precedent to Effectiveness. This Agreement shall become effective as of the Business Day (the "Closing Date") following which this Agreement shall have been fully executed by the parties and each of the conditions precedent set forth in this Section 6.01, shall have been satisfied in a manner satisfactory to the Required Purchasers, or expressly waived by the Required Purchasers, which must, in any event, occur on or before September 15, 2007:

(a) The Administrative Agent shall have received on or before the Closing Date the following, each in form and substance satisfactory to the Required Purchasers and, unless indicated otherwise, dated the Closing Date:

(i) this Agreement, the other Note Documents, and the Fee Letters and all certificates, documents, instruments or agreements executed and delivered by the Issuers and Guarantors for the benefit of the Agents or any Purchaser in connection therewith;

(ii) certified copies of request for copies of information on Form UCC-11 listing all effective financing statements which name as debtor any Issuer or Guarantor and which are filed in the jurisdictions in which such Issuer or Guarantor is organized, has assets or property or maintains its chief executive office, together with copies of such financing statements, none of which, except as permitted herein or otherwise agreed in writing by the Required Purchasers, shall cover any of the Collateral;

(iii) evidence of the authority of the Guarantors to effect (A) the granting of the Guaranties by the Guarantors hereunder and the transactions contemplated by the Note Documents, (B) the execution, delivery and performance by the Guarantors of each Note Document to which it is or will be a party and the execution and delivery of the other documents to be delivered by the Guarantors in connection herewith and therewith and (C) the execution, delivery and performance by the Guarantors of each Note Document to which it is or will be a party and the execution and delivery of the other documents to be delivered by the Guarantors in connection herewith and therewith;

(iv) a certificate of an Authorized Officer of each Issuer, certifying the names and true signatures of the representatives of each Issuer authorized to sign each Note Document to which such Issuer is or will be a party and the other documents to be executed and delivered by such Issuer in connection herewith and therewith, together with evidence of the incumbency of such authorized officers;

(v) [reserved]

(vi) [reserved]

(vii) evidence of the insurance coverage required by Section 9.07 and such other insurance coverage with respect to the business and operations of the Issuers as the Required Noteholders may reasonably request, in each case, where requested by the Required Noteholders, with such endorsements as to the named insureds or loss payees thereunder as the Required Noteholders may request and providing that such policy may be terminated or canceled (by the insurer or the insured thereunder) only upon thirty (30) days' prior written notice to the Collateral Agent and each such named insured or loss payee, together with evidence of the payment of all premiums due in respect thereof for such period as the Required Noteholders may request;

(b) Organizational Documents; Incumbency. Administrative Agent shall have received (i) sufficient copies of the Organizational Documents of each Note Party, as applicable, and, to the extent applicable, certified as of a recent date by the appropriate governmental official, each dated the Closing Date or a recent date prior thereto; (ii) signature and incumbency certificates of the officers of such Person executing the Note Documents to which it is a party; (iii) resolutions of the board of directors or similar governing body of each Note Party approving and authorizing the execution, delivery and performance of this Agreement and the other Note Documents to which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; (iv) a good standing certificate from the applicable Governmental Authority of each Note Party's jurisdiction of incorporation, organization or

formation and in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business, each dated a recent date prior to the Closing Date; and (v) such other documents as Administrative Agent may reasonably request.

(c) Confirmation of Plan of Reorganization. Administrative Agent shall have received a certified copy of the final order (the "Confirmation Order"), which shall be in form and substance satisfactory to the Agents, entered by the Bankruptcy Court after due notice to all creditors and other parties-in-interest and as entered on the docket of the Clerk of the Bankruptcy Court confirming the Plan of Reorganization and authorizing the Note Parties to enter into the Note Documents. The Confirmation Order shall be in full force and effect, shall not have been modified, reversed, stayed or vacated, and shall be final, valid, subsisting and continuing. The Plan of Reorganization, any amendments thereto and the related conclusions of law and findings of fact shall be in form and substance satisfactory to Administrative Agent and its counsel. The Plan of Reorganization shall be effective and all agreements and undertakings of the parties thereunder to be performed by such time shall have been satisfied and performed. The Note Parties shall have emerged (or be simultaneously emerging) from the Chapter 11 Cases and shall have consummated (or shall be simultaneously consummating) the Plan of Reorganization in accordance with the terms thereof (including the payment of all fees, costs and expenses of the DIP Lenders and their agents and advisors pursuant to Section [__] thereof), and all conditions precedent to the effectiveness of the Plan of Reorganization shall have been (or are simultaneously being) fulfilled (or waived in accordance with the terms of the Plan of Reorganization). Administrative Agent shall have received evidence, in form and substance satisfactory to Agent, that all consents, approvals or withholding of objections appropriate or necessary to consummate the Plan of Reorganization and the Note Documents have been obtained.

(d) Other Transaction Documents. Administrative Agent shall have received a fully executed copy of the Equity Documents, Revolving Loan Documents and Intercreditor Agreement, all of which shall be in form and substance satisfactory to the Agents, and all conditions precedent to the effectiveness of the Equity Documents, Revolving Loan Documents and Intercreditor Agreement shall have been (or are simultaneously being) fulfilled (or waived in accordance with the terms thereof).

(e) Minimum Availability. As of the Closing Date, after giving effect to the consummation of the transactions contemplated by this Agreement, the Equity Documents, Revolving Loan Documents and all payments associated therewith (including, without limitation, payment of all costs, fees and expenses), the Issuers shall have "Availability" (as such term is defined in the Revolving Loan Agreement) of at least [$30,000,000] under the Revolving Loan Agreement readily available and subject to no unsatisfied borrowing conditions (other than the delivery of a borrowing notice).

(f) Repayment of Obligations Under DIP Financing Agreement. Administrative Agent shall have received a customary payoff letter with respect to the amounts owing under the DIP Financing Agreement and all related documents, duly executed by the DIP Agent.

(g) Governmental Authorizations, Consents and Approvals. Each Note Party shall have obtained all Governmental Authorizations, consents of other Persons and approvals, in each case that are necessary or advisable in connection with the transactions contemplated by the Note Documents and the Plan of Reorganization, and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to Administrative Agent. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority which would restrain, prevent or otherwise impose adverse conditions on the transactions contemplated by the Note Documents or the Plan of Reorganization or the financing thereof and no action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable agency to take action to set aside its consent on its own motion shall have expired.

(h) Real Estate Assets. In order to create in favor of Collateral Agent, for the benefit of the Noteholders, a valid and, subject to any filing and/or recording referred to herein, perfected security interest in certain Real Estate Assets, Administrative Agent and Collateral Agent shall have received from Company and each applicable Note Party:

(i) fully executed and notarized Mortgages, in proper form for recording in all appropriate places in all applicable jurisdictions, encumbering each Real Estate Asset listed in Schedule 6.01(h)(i) (each, a "Closing Date Mortgaged Property");

(ii) an opinion of counsel (which counsel shall be reasonably satisfactory to Collateral Agent) in each state in which a Closing Date Mortgaged Property is located with respect to the enforceability of the form(s) of Mortgages to be recorded in such state and such other matters as Collateral Agent may reasonably request, in each case in form and substance reasonably satisfactory to Collateral Agent;

(iii) in the case of each Leasehold Property listed on Schedule 6.01(h)(i), (1) a Landlord Consent and Estoppel and (2) evidence that such Leasehold Property is a Recorded Leasehold Interest, in each case to the extent reasonably obtainable on or prior to the Closing Date;

(iv) (A) ALTA mortgagee title insurance policies or unconditional commitments therefor issued by Land America Financial Group, Inc./Lawyer's Title Insurance Corporation with respect to each Closing Date Mortgaged Property (each, a "Title Policy"), in amounts not less than the amounts set forth on Schedule 6.01(h)(iv), dated not more than thirty (30) days prior to the Closing Date together with copies of all recorded documents referred to therein, each in form and substance reasonably satisfactory to Collateral Agent and (B) evidence reasonably satisfactory to Collateral Agent that such Note Party has paid to the title company or to the appropriate governmental authorities all expenses and premiums of the title company and all other sums required in connection with the issuance of each Title Policy and all recording and stamp taxes (including mortgage recording and intangible taxes) payable in connection with recording the Mortgages for each Closing Date Mortgaged Property in the appropriate real estate records; and

(v) evidence (which may be certificates) of flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the

National Flood Insurance Program, in each case in compliance with any applicable regulations of the Board, in form and substance reasonably satisfactory to Collateral Agent.

(i) Personal Property Collateral. In order to create in favor of Collateral Agent, for the benefit of the Noteholders, a valid, perfected security interest in the personal property Collateral, Collateral Agent shall have received:

(i) evidence satisfactory to Collateral Agent of the compliance by each Note Party of their obligations under the Security and Pledge Agreement and the other Note Documents (including their obligations to execute and deliver UCC financing statements, originals of securities, instruments and chattel paper and any agreements governing deposit and/or securities accounts as provided therein);

(ii) opinions of counsel (which counsel shall be reasonably satisfactory to Collateral Agent) with respect to the creation and perfection of the security interests in favor of Collateral Agent in such Collateral and such other matters governed by the laws of each jurisdiction in which any Note Party or any Collateral is located as Collateral Agent may reasonably request, in each case in form and substance reasonably satisfactory to Collateral Agent; and

(iii) evidence that each Note Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument and made or caused to be made any other filing and recording (other than as set forth herein) reasonably required by Collateral Agent.

(j) Financial Statements. Purchasers shall have received from Company (i) the Financial Statements and (ii) Pro Forma Financial Statements which shall be in form and substance satisfactory to the Required Noteholders.

(k) Evidence of Insurance. Collateral Agent shall have received a certificate from Company's insurance broker evidencing that all insurance required to be maintained pursuant to Section 9.07 is in full force and effect, together with endorsements naming the Collateral Agent, for the benefit of Noteholders, as additional insured and loss payee thereunder to the extent required under Section 9.07.

(l) Opinions of Counsel to Note Parties. The Administrative Agent shall have received originally executed copies of the favorable written opinions of Kirkland & Ellis LLP and Goodmans LLP, counsel for Note Parties, and the favorable written opinions of local counsel for Note Parties in each jurisdiction in which any Note Party is a registered organization under the Uniform Commercial Code and in each jurisdiction in which the Company or other credit party is required to grant a Mortgage, each dated as of the Closing Date and covering such matters as Administrative Agent may reasonably request and otherwise in form and substance reasonably satisfactory to Administrative Agent (and each Note Party hereby instructs such counsel to deliver such opinions to Agents and Purchasers).

(m) Fees and Expenses. Company shall have paid to the Administrative Agent (i) the fees and expenses payable on the Closing Date referred to in the Fee Letters and (ii) all amounts payable under the Exit Facility Commitment Letter, including the Standby Commitment

Fee and the fees and expenses of the Backstop Parties (each as defined therein) shall have been paid in full (or, at the option of each Purchaser, applied to reduce the purchase price of the Securities to be acquired by such Purchaser).

(n) No Litigation. No motion, action, suit, investigation, litigation or proceeding or other legal or regulatory developments shall be pending or threatened against any Note Party by any creditor or other party-in-interest in the Bankruptcy Court or any other court of competent jurisdiction or before any arbitrator or Governmental Authority that, in the reasonable opinion of the Required Noteholders, singly or in the aggregate, adversely affects or may reasonably be expected to adversely affect in any material respect (i) the Plan of Reorganization, (ii) the post-consummation business of the Note Parties or (iii) the validity and enforceability of the Note Documents against the Note Parties.

(o) No Material Adverse Change. There shall not have occurred any event, development or circumstance since the Filing Date which has had, or would reasonably be expected to have, a material adverse change to (i) the operations, business, assets, properties, condition (financial or otherwise) or prospects of the Issuers and Guarantors, taken as a whole, since the Filing Date, excluding any such material adverse effect of which the Purchasers have actual knowledge of as of June 20, 2007 (it being understood and agreed that the failure of the Issuers and the Guarantors and any of their Subsidiaries to operate, or the likelihood that the Issuers and Guarantors will fail to continue to operate, in accordance with the projections previously provided to the Purchasers and dated as of June 15, 2007, shall be deemed to be a material adverse change under this clause (i)), (ii) the ability of any Note Party to perform any of its obligations under any Note Document to which it is a party, (iii) the legality, validity or enforceability of this Agreement or any other Note Document, or (iv) the rights and remedies of any Agent or any Purchaser under any Note Document.

(p) Officer's Certificate. The Administrative Agent shall have received a certificate signed by the President, Vice President or a Financial Officer of Company, dated as of the Closing Date, confirming compliance with the conditions set forth in clauses (m) and (n) above.

(q) Satisfaction of Prepetition Debt Obligations. The satisfaction of the Prepetition Debt Obligations in the manner contemplated by the Plan of Reorganization, together with a termination and release agreement with respect to the Prepetition Debt Obligations and all related documents, duly executed by the Prepetition Agents, together with a release of mortgage for each mortgage filed by the Prepetition Agents, a termination of security interest in intellectual property for each assignment for security recorded by the Prepetition Agents at the United States Patent and Trademark Office and covering any intellectual property of the secured parties under the Prepetition Debt Obligations, and UCC-3 termination statements for all UCC-1 financing statements filed by the Prepetition Agents on behalf of the Prepetition Indebtedness Holders and covering any portion of the Collateral.

Section 6.02 Conditions Precedent to Additional Issuance. The obligation of each Noteholder to purchase and pay for the Additional Issuance on the Supplemental Closing Date is subject to the satisfaction of the following conditions precedent:

(a) Consent. The Required Noteholders shall have consented to the Additional Issuance.

(b) Richmond Lease Transaction. The Richmond Lease Transaction shall have been consummated and the Net Cash Proceeds thereof applied to redeem the Series A Preferred.

(c) Representation and Warranties. The representations and warranties contained in ARTICLE VII hereof and in the other Note Documents shall be true and correct as of the Supplemental Closing Date in all material respects after giving effect to the Additional Issuance on such Supplemental Closing Date as though made on and as of such date (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), provided that, (i) to the extent that such representations and warranties relate to a specific earlier date, such representations and warranties shall be true and correct as of such earlier date and (ii) to the extent exceptions to such representations and warranties (or changes to schedules, as applicable) result from transactions that are permitted hereunder such warranties may be qualified by such exceptions.

(d) No Event of Default. Immediately before and after such Additional Issuance, no Default or Event of Default shall have occurred and be continuing.

(e) Payment of Fees, Etc. The Note Parties shall have paid all fees, costs, expenses and taxes then payable pursuant to the Fee Letters.

(f) Delivery of Documents. The Administrative Agent shall have received on or before the Supplemental Closing Date the following, each in form and substance satisfactory to the Required Noteholders and, unless indicated otherwise, dated as of such proposed Supplemental Closing Date:

(i) a certificate of the chief executive officer and chief restructuring officer of the Issuers, certifying as to the matters set forth in subsection (b) through (f) of this Section 6.02; and

(ii) such other agreements, instruments, approvals, opinions and other documents, each satisfactory to the Agent and Required Noteholders in form and substance, as the Agent or Required Noteholders may reasonably request.

(g) Litigation. Except as set forth in Schedule 8.07, (i) there shall be no pending or, to the best knowledge of the Note Parties, threatened action, suit or proceeding affecting any Note Party before any court or other Governmental Authority or any arbitrator that (A) if adversely determined, would reasonably be expected to have a Material Adverse Effect or (B) relates to this Agreement or any other Note Document or any transaction contemplated hereby or thereby.

## ARTICLE VII

## REPRESENTATIONS AND WARRANTIES OF PURCHASERS

In order to induce the Issuers to enter into this Agreement, each Purchaser individually (but not on behalf of any other Purchaser) represents, warrants and agrees for the benefit of the Issuers that:

Section 7.01 Legal Capacity; Due Authorization. Such Purchaser has full legal capacity, power and authority to execute and deliver this Agreement and to perform its obligations hereunder and that this Agreement has been duly executed and delivered by such Purchaser and is the legal, valid and binding obligation of such Purchaser enforceable against it in accordance with the terms hereof.

Section 7.02 Accredited Investor, etc. Such Purchaser has such knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of such investment, is able to incur a complete loss of such investment and to bear the economic risk of such investment for an indefinite period of time. Such Purchaser (i) is an "accredited investor" as that term is defined in Regulation D under the Securities Act and (ii) has been represented by counsel in the purchase of the Securities to be purchased by it and is aware of the limitations of state and federal securities laws with respect to the disposition of the Securities. Such Purchaser acknowledges that such Purchaser has had an opportunity to examine the financial and business affairs of the Parent and its Subsidiaries and an opportunity to ask questions of and receive answers from the Parent's and its Subsidiaries' management.

Section 7.03 Restrictions on Transfer. Each Purchaser hereby represents that it is acquiring the Securities for its own account and for investment and not with a view to any resale or distribution thereof. Each Purchaser understands that the Securities have not been registered under the Securities Act or any state securities laws and may not be assigned, sold or otherwise transferred without registration under the Securities Act or any relevant state securities laws or exemption therefrom; that the Issuers have no obligation or intention to register any of the Securities under the Securities Act or state securities laws; and that each Purchaser must therefore bear the economic risk of holding its Securities for an indefinite period of time.

Section 7.04 Brokerage Fees. Each Purchaser represents and warrants to each other party to this Agreement that, no broker's, finder's or placement fee or commission will be payable to any Person alleged to have been retained by such representing and warranting party with respect to any of the transactions contemplated by this Agreement. Each Purchaser hereby indemnifies each such other party against and agrees that it will hold each such party harmless from any claim, demand or liability, including reasonable attorneys' fees, for any broker's, finder's or placement fee or commission alleged to have been incurred by such indemnifying party.

## ARTICLE VIII
## REPRESENTATIONS AND WARRANTIES OF NOTE PARTIES

In order to induce each Purchaser to enter into this Agreement and to purchase the Securities to be purchased by such Purchaser hereunder, each Note Party jointly and severally represents, warrants and agrees for the benefit of each Purchaser that, as of the Closing Date, and unless otherwise stated, as of any Supplemental Closing Date, (unless otherwise stated, both before and after giving effect to the issuance of the Securities and the other transactions contemplated hereby or in connection with the foregoing):

Section 8.01 Organization, Good Standing and Qualification.

(a) Each Issuer and each Guarantor is a legal entity organized, validly existing and in good standing under the laws of the jurisdiction set forth in the preamble hereto. Each Note Party has all requisite corporate or, with respect to non corporate entities, other applicable power and authority to conduct its business as now conducted or contemplated to be conducted. Each Note Party is qualified as a foreign entity and in good standing in all states or other jurisdictions where the nature and extent of the business transacted by it or the ownership of assets makes such qualification necessary except where the failure to be so qualified would not reasonably be expected to result in a Material Adverse Effect.

(b) Schedule 8.01 sets forth, as of the date hereof, (i) the name, jurisdiction of organization, the organizational identification number issued by such jurisdiction (if applicable) and the federal taxpayer identification number of each Note Party, (ii) the address of each location owned or leased by each such Person and whether owned or leased, (iii) each name under which each such Person conducts its business, and (iv) with respect to each Subsidiary of any Note Party, the number of authorized and issued Equity Interests and ownership of each such Subsidiary.

Section 8.02 Capitalization.

(a) Schedule 8.02(a) sets forth all outstanding shares of capital stock of the Parent, warrants issued by the Parent and options granted by the Parent (vested and unvested) or set aside for grant by the Parent after giving effect to the Closing, and the holders of any such equity or rights to acquire the same, whether from the Parent or any holders of such equity and their respective holdings. Except as set forth on Schedule 8.02(a), after giving effect to the Closing, there will be no other outstanding options, warrants, rights (including conversion or preemptive rights) to acquire any units, capital stock or other equity securities of the Parent (whether from the Parent or from any holder of equity securities) or voting agreements with respect to equity of the Parent, nor has the Parent authorized any such right, nor is the Parent obligated in any other manner to issue units, shares of its capital stock or other equity securities.

(b) Schedule 8.02(b) sets forth the capital structure of the Company, after giving effect to the Closing. The authorized capital of Company will consist of [ ] shares of common stock, $.01 par value per share, all of which will be owned by the Parent. There will be no other equity of the Company after giving effect to the Closing. The Parent has no Subsidiaries other than the Company, PTPC and the Guarantors and has no equity investments in

any other Person, each of which is a Wholly-Owned Subsidiary, and has no equity investments in any other Person.

Section 8.03 Authorization. Each Note Party has the requisite power and authority to execute, deliver and perform its obligations under this Agreement and each Note Document to which it is a party. All action on the part of each Note Party and each of their officers, directors or partners necessary for the authorization, execution and delivery of the Note Documents to which each is a party, the performance of all obligations of each Note Party under such agreements and the authorization, issuance and delivery of the Notes being sold hereunder, has been taken, and the Note Documents to which each Note Party is a party constitute valid and legally binding obligations of each such Person, as applicable, enforceable in accordance with their terms.

Section 8.04 Valid Issuance of the Securities. The Securities, which are being purchased by the Purchasers hereunder, when issued, sold and delivered in accordance with the terms hereof for the consideration expressed herein, will be duly and validly issued and free of restrictions on transfer, other than restrictions imposed under this Agreement, the Stockholders Agreement and applicable United States state or federal securities laws.

Section 8.05 Financial Statements and Other Information.

(a) The pro forma balance sheet of the Parent and its Subsidiaries on a Consolidated basis (the "Pro Forma Balance Sheet") furnished to the Purchasers on the Closing Date reflects the consummation of the transactions contemplated by the Plan of Reorganization, the Stockholders Agreement, the Revolving Loan Agreement, and the Note Documents (collectively, the "Transactions") and is accurate, complete, and correct and fairly reflects the financial condition of Parent and its Subsidiaries on a Consolidated basis as of the Closing Date after giving effect to the Transactions, and has been certified as accurate, complete and correct in all material respects by the president and treasurer of Parent. The Pro Forma Balance Sheet, including the related schedules and notes thereto, have been prepared in accordance with GAAP, except as may be disclosed in such financial statements.

(b) The cash flow projections of Parent and its Subsidiaries on a Consolidated basis and their projected balance sheets as of the Closing Date previously furnished to the Purchasers (the "Projections") were prepared by the chief financial officer of the Company, are based on underlying assumptions which provide a reasonable basis for the projections contained therein and reflect the Company's judgment based on reasonable material assumptions existing at the time the Projections were prepared. The Projections together with the Pro Forma Balance Sheet are referred to as the "Pro Forma Financial Statements."

(c) The Consolidated and Consolidating balance sheets of the Company and its Subsidiaries and such other Persons described therein (including the accounts of all their Subsidiaries for the respective periods during which a subsidiary relationship existed) as of [ ], 2006, and the related statements of income, changes in stockholder's equity, and changes in cash flow for the period ended on such date (the "Unaudited Financial Statements"), have been prepared in accordance with GAAP, consistently applied and present fairly the

financial position of the Company and its Subsidiaries at such date and the results of their operations for such period.

(d) As of the date hereof, the Parent has no liabilities for borrowed money other than liabilities incurred by it as a borrower under the Revolving Loan Agreement and this Agreement.

Section 8.06 Consents. The execution, delivery and performance of this Agreement and the other Note Documents by each Note Party a party hereto or thereto, including without limitation the issuance of the Notes, (a) are not in contravention of any material agreement or undertaking to which such Note Party is a party or by which such Note Party is bound, (b) after entry of the Confirmation Order, will not conflict with or violate any law or regulation, or any judgment order or decree of any Governmental Authority or any other Person, except those consents set forth on Schedule 8.06, all of which will have been duly obtained, made or compiled prior to the Closing Date and which are in full force and effect and (c) will not conflict with, nor result in any breach in any of the provisions of or constitute a default under or result in the creation of any Lien except Permitted Liens upon any asset of such Note Party under the provisions of any agreement, Organizational Document, material agreement or instrument to which such Note Party is a party or by which it or its property is a party or by which it may be bound.

Section 8.07 Litigation. Except as disclosed in Schedule 8.07, no Note Party has any pending or threatened litigation, arbitration, actions or proceedings which would reasonably be expected to have a Material Adverse Effect.

Section 8.08 Operations in Conformity With Law, Etc. Except as set forth on Schedule 8.08, the operations of the Note Parties are not in material violation of any Legal Requirement presently in effect. Except as set forth on Schedule 8.08, none of the Note Parties has received notice of any such violation or default and none of the Note Parties has any knowledge of any reasonable basis on which the operations of its business would be expected to materially violate any Legal Requirement or to give rise to any such violation or default.

Section 8.09 Intellectual Property. All material Intellectual Property owned or utilized by any Note Party that is registrable is set forth on Schedule 8.09, is valid and has been duly registered or filed with all appropriate Governmental Authorities except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect. All such material Intellectual Property constitutes all of the material registrable intellectual property rights which are necessary for the operation of its business; to the knowledge of the Note Party, there is no objection to or pending challenge to the validity of any such Intellectual Properties and no Note Party is aware of any grounds for any challenge, except as set forth on Schedule 8.09 hereto. The Intellectual Property has been maintained so as to preserve the value thereof from the date of creation or acquisition thereof except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

Section 8.10 Compliance with Other Instruments. None of the Note Parties is in violation or default of (i) its Organizational Documents, (ii) any material instrument, judgment, order, writ, decree or contract to which it is a party or by which it is bound, or (iii) in any

material respects any provision of any federal or state statute, rule or regulation applicable to it. The execution, delivery and performance of this Agreement, the Note Documents and the consummation of the transactions contemplated hereby and thereby will not after entry of the Confirmation Order, result in any such material violation or be in conflict with or constitute, with or without the passage of applicable cure periods and giving of notice, either a material default under any such Organizational Documents, provision of any statute, rule or regulation, instrument, judgment, order, writ, decree or contract or an event which results in the creation of any Lien, charge or encumbrance upon any material assets of any Note Party.

Section 8.11 Agreements; Action. Except as set forth on Schedule 8.11, none of the Note Parties are a party to or bound by (a) any contract or agreement relating to the purchase, sale or lease of products, material, supplies, Equipment or services requiring payments to or from such Note Party (i) in an amount in excess of $[100,000] or which is not terminable upon thirty (30) days or less notice without penalty (excluding purchase orders with customers or suppliers), or (ii) any contract pursuant to which a Note Party has granted or received most favored nation pricing provisions or exclusive marketing or other rights relating to any product, group of products or services; (b) any distributorship, dealer, sales, agency, broker, representative, franchise, independent contractor, management services or similar contract or agreement requiring payments to or from a Note Party in excess of $[100,000] in any fiscal year or which is otherwise material to the business of a Note Party or which is not terminable upon thirty (30) days or less notice without penalty; (c) any other contract or agreement relating to the payment of a commission or other fee calculated as or by reference to a percentage of the profits or revenues of a Note Party or of any business segment of a Note Party, in any case which is reasonably likely to result in the payment to or from a Note Party in excess of $[100,000] in any fiscal year; (d) any license agreement involving a Note Party's use of any Intellectual Property or granting another the right to use any Intellectual Property owned by a Note Party, except licenses for non-exclusive, off-the-shelf software licensed by a third-party to a Note Party or its Subsidiaries with an aggregate cost of less than $25,000; (e) any contract or agreement for the sale or purchase of any material assets, properties or rights, including any the assets or stock of any Person; or (f) any contract or agreement which restricts a Note Party from engaging in any aspect of its business or competing in any line of business in any geographic area.

Section 8.12 Disclosure. To the knowledge of each Note Party, after reasonable investigation, the representations and warranties of such Note Party herein and in the other Note Documents, and all certificates and documents heretofore or contemporaneously furnished by or on behalf of such Person to the Purchasers for purposes of or, in connection with, this Agreement, or in the other Note Documents are, and to the knowledge of such Person, after reasonable investigation, all other such representations and warranties or certificates and documents hereafter furnished by or on behalf of any Note Party to the Purchasers hereunder will be, true and accurate in all material respects on the date as of which such written information is dated or certified and not incomplete, taken as a whole, by omitting to state any material fact necessary to make such information not misleading in any material respect at such time in light of the circumstances under which such information was provided.

Section 8.13 Title to Property and Assets. All real estate owned or leased by any Note Party is set forth on Schedule 8.13. As of the Closing Date, each Note Party owns, or has the right to use pursuant to valid leases or other agreements, all of the real and personal

property required to conduct their respective businesses as currently conducted or contemplated to be conducted. As of the Closing Date, with respect to the real property and other assets owned or leased by any Note Party, such Note Party is in compliance with any such leases in all material respects and, holds a valid ownership or leasehold interest, as applicable. All ownership interests are free of any Liens other than Permitted Liens.

With respect to any Real Estate Asset for which no survey has been prepared or updated in connection with transaction contemplated herein, to the actual knowledge of the Note Parties after diligent inquiry (which shall not generally include site visits except where deemed necessary to confirm or investigate issues raised in reviewing company files or interviews with property managers):

(a) there are no easements, encroachments or other title defects that would be disclosed by an accurate survey as of this date that could interfere in any material respect with the continued use and operation of such Real Estate Asset as used as of this date or result in a material loss or diminution in the value of such Real Estate Asset or the improvements located thereon; and

(ii) the improvements and parking at such Real Estate Asset and purported to be owned by the Note Parties are wholly located on the land related to such Real Estate Asset.

Section 8.14 Tax Returns, Payments and Elections. To the extent applicable, each Note Party has filed all tax returns and reports as required by law relating to any material tax liability of such Note Party. These returns and reports are true and correct in all material respects and such Note Party has paid all material taxes and other assessments due, except where the validity or amount thereof is being contested in good faith by appropriate proceedings and adequate reserves have been set aside on its books. Except as set forth on Schedule 8.14, there are no pending, or to the best knowledge, information and belief of any Note Party, contemplated reviews, audits or proceedings with respect to any tax return, report or other tax liability of any Note Party, which, in either case, relates to any material tax liability of any Note Party.

Section 8.15 Labor Agreements and Actions. No Note Party is involved in any labor dispute with its employees which would reasonably be expected to have a Material Adverse Effect; there are no strikes, walkouts or union organization being conducted or to any Note Party's knowledge, threatened by the employees of any Note Party or in existence and no labor contract is scheduled to expire during the term of the Notes other than as set forth on Schedule 8.15.

Section 8.16 Changes in Business. Except as set forth on Schedule 8.16, since the Filing Date, the Note Parties have conducted their business only in the Ordinary Course of Business and there has not been any change, event, development, damage or circumstance affecting any Note Party which, individually or in the aggregate, has had or would reasonably be expected to have, a Material Adverse Effect. As amplification and not in limitation of the foregoing, since the Filing Date, except as set forth on Schedule 8.16, there has not been:

(a) any Lien imposed or created on any of the assets or properties of any Note Party, other than Permitted Liens;

(b) any damage, destruction or loss of any of the material assets or properties of any Note Party by fire or other casualty, whether or not covered by insurance;

(c) any assignment, termination, modification or amendment of any contract or agreement to which any Note Party was or is a party, except for any termination, modification or amendment which would not, either individually or in the aggregate, be material;

(d) any written notice to any Note Party, or to the knowledge of any Note Party, after reasonable investigation, oral notice that any contract or agreement to which such Note Party was or is a party has been breached, repudiated or terminated or will be breached, repudiated or terminated;

(e) any increase in the salary, benefit or other compensation of any employee, officer or director of any Note Party (or any promise to effect such an increase in the future), or any increase in or any addition to other benefits to which any such employee, officer or director may be entitled (or any promise to effect such and increase in the future), other than in the Ordinary Course of Business;

(f) any failure to pay or discharge when due (after the application of any applicable grace periods) any liabilities or obligations of any nature of any Note Party, except for any such liabilities contested in good faith by any Note Party, which are fully reflected and reserved for in the Unaudited Financial Statements;

(g) any change in any of the accounting principles adopted by any Note Party, or any material change in any Note Party's accounting procedures, practices or methods with respect to applying such principles, other than as required by GAAP or by applicable law;

(h) any transaction, contract or agreement (other than purchase orders in the Ordinary Course of Business) entered into, or liability or obligation created, assumed, guaranteed or incurred, by any Note Party outside the Ordinary Course of Business or involving an amount in excess of $[100,000];

(i) the termination of any officer of any Note Party;

(j) any Restricted Payment;

(k) any cancellation or forfeiture of any material debts or claims of any Note Party or any waiver of any rights of material value to any Note Party;

(l) except as contemplated by this Agreement, the Plan of Reorganization and Confirmation Order, any issuance by any Note Party of any shares of its Capital Stock or other equity or debt security or any security, right, option or warrant convertible into or exercisable or exchangeable for any shares of its capital stock or other equity or debt security;

(m) any write-off of any accounts receivable or notes receivable of any Note Party or any portion thereof in excess of $[25,000] individually or $[75,000] in the aggregate, or any sale, assignment or disposition of any account or note receivable (including, without limitation, by means of any factoring agreement);

(n) any loan, advance or capital contribution to or investment in any Person by any Note Party or the engagement by any Note Party in any transaction with any employee, officer, director or security holder of any Note Party, other than the payment of normal wages and salaries to employees in the Ordinary Course of Business and advances to employees in the Ordinary Course of Business for travel and similar business expenses;

(o) any material change in the manner in which any Note Party extends or receives discounts or credit from customers or suppliers;

(p) the commencement of any action, suit, proceeding or investigation by or against any Note Party, or to the knowledge of any Note Party, any threat thereof;

(q) any amendment to the Organizational Documents of any Note Party;

(r) any Capital Expenditure or commitment by any Note Party in excess of $[100,000];

(s) any payment, discharge or satisfaction of any liabilities, other than in the Ordinary Course of Business; or

(t) any agreement, understanding, authorization or proposal, whether in writing or otherwise, for any Note Party to take any of the actions specified in this Section 8.16.

Section 8.17 Affiliate Arrangements. Except for obligations reflected in Schedule 8.17, there are no contractual arrangements or obligations owed to or by any Note Party by or to any officer, director, partner or Affiliate thereof or any member of the immediate family of any of the foregoing Persons other than obligations to (a) employees and officers (i) for payment of salary for services rendered, (ii) reimbursement for reasonable expenses incurred on its behalf and (iii) for other standard employee benefits made generally available to all employees or (b) directors for (i) directors fees or options and (ii) reimbursement of reasonable expenses of attendance at board meetings.

Section 8.18 Insurance. Schedule 8.18 lists all insurance policies of any nature maintained, as of the Closing Date, for current occurrences by each Note Party, as well as a summary of the terms of each such policy. Each Note Party shall have in full force and effect fire, casualty and general liability insurance policies with coverage customary for companies in their respective businesses and owning similar Properties.

Section 8.19 Reserved.

Section 8.20 Private Placement. The offer, sale and issuance of the Securities as contemplated by this Agreement is exempt from the registration requirements of the Securities Act. None of the Note Parties nor any authorized agent acting on behalf of a Note Party has

taken or will take any action hereafter that would cause the loss of such exemption, including without limitation, by means of general solicitation or publicly disseminated advertisements or sales literature.

Section 8.21 Employee Benefit Plans.

(a) No Note Party nor any member of the Controlled Group maintains or contributes to any Plan other than those listed on Schedule 8.21 hereto. No Plan has incurred any "accumulated funding deficiency," as defined in Section 302(a)(2) of ERISA and Section 412(a) of the Code, whether or not waived, and each Note Party and each member of the Controlled Group has met all applicable minimum funding requirements under Section 302 of ERISA in respect of each Plan.

(b) Each Plan which is intended to be qualified under Section 401(a) of the Code has either received a favorable determination letter that the Plan is qualified and the trust related to the Plan is exempt from federal income tax under Section 501(a) of the Code and no event has occurred since the date of such determination letter where the cost of corrective measures required to maintain the Plan's tax-qualified status would have a Material Adverse Effect.

(c) Neither any Note Party nor any member of the Controlled Group has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due which are unpaid. No Pension Benefit Plan has been terminated by the plan administrator thereof nor by the PBGC, and there is no occurrence which would cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Plan.

(d) All contributions required under the minimum funding requirements of the Code and ERISA have been made, no funding waivers have been approved or requested for any Pension Benefit Plan, and there are no known facts or circumstances that would result in an increase in the Pension Benefit Plan's benefit liabilities or a reduction in Pension Benefit Plan assets that would materially change the amount of contributions required to satisfy the minimum funding requirements, as projected by the Pension Benefit Plan's actuary. Neither any Note Party nor any member of the Controlled Group has materially breached any of the responsibilities, obligations or duties imposed on it by ERISA with respect to any Plan.

(e) Neither any Note Party nor any member of a Controlled Group has incurred any liability for excise taxes under Section 4971 or a material amount of excise taxes under Section 4980B of the Code, and there are no known facts or circumstances that would result in any such liability.

(f) Neither any Note Party nor any member of the Controlled Group has engaged in a "prohibited transaction" described in Section 406 of the ERISA or Section 4975 of the Code that would have a Material Adverse Effect, nor taken any action which would constitute or result in a Termination Event with respect to any Plan which is subject to ERISA.

(g) Each Note Party and each member of the Controlled Group has made all contributions due and payable with respect to each Pension Benefit Plan. There exists no event

described in Section 4043(b) of ERISA, for which the thirty (30) day notice period has not been waived.

(h) Neither any Note Party nor any member of the Controlled Group has any fiduciary responsibility for investments with respect to any plan existing for the benefit of persons other than employees or former employees of any Note Party and any member of the Controlled Group. Other than as listed on Schedule 8.21(h) hereto, neither any Note Party nor any member of the Controlled Group maintains or contributes to any Plan which provides health, accident or life insurance benefits to former employees, their spouses or dependents, other than in accordance with Section 4980B of the Code.

(i) Neither any Note Party nor any member of the Controlled Group has withdrawn, completely or partially, from any Multiemployer Plan so as to incur liability under the Multiemployer Pension Plan Amendments Act of 1980 and there exists no fact which would reasonably be expected to result in any such liability. No Plan fiduciary (as defined in Section 3(21) of ERISA) has any material liability for breach of fiduciary duty or for any failure in connection with the administration or investment of the assets of a Plan. No event has occurred under Section 4069 of ERISA which may reasonably be expected to result in liability under Subtitle D of Title IV of ERISA to any Note Party or any member of the Controlled Group, and no notice seeking to impose liability under Subtitle D of Title IV of ERISA on any Note Party or any member of the Controlled Group on the basis of Section 4069 of ERISA has been received.

Section 8.22 O.S.H.A. and Environmental Compliance.

(a) Except as set forth on Schedule 8.22(a), each Note Party has complied in all material respects with, and its facilities, business, assets, property, leaseholds, Real Property and Equipment are in compliance in all material respects with, the provisions of the Federal Occupational Safety and Health Act, the Environmental Protection Act, RCRA and all other Environmental Laws; except as set forth on Schedule 8.22(a), there have been no outstanding citations, notices or orders of non-compliance issued to any Note Party or relating to its business, assets, property, leaseholds or Equipment under any such laws, rules or regulations.

(b) Except as set forth on Schedule 8.22(b), each Note Party has been issued all required federal, state and local licenses, certificates or permits relating to all applicable Environmental Laws except to the extent the failure to obtain such licenses, certificates or permits would not reasonably be expected to have a Material Adverse Effect.

(c) Except as set forth on Schedule 8.22(c), (i) there are no visible signs of releases, spills, discharges, leaks or disposal (collectively referred to as "Releases") of Hazardous Materials at, upon, under or within any Real Property; (ii) there are no underground storage tanks or polychlorinated biphenyls on the Real Property; (iii) the Real Property has never been used as a treatment, storage or disposal facility of Hazardous Materials; and (iv) no Hazardous Substances are present on the Real Property, excepting such quantities as are handled in accordance with all applicable manufacturer's instructions and governmental regulations and in proper storage containers and as are necessary for the operation of the commercial business of any Note Party or of its tenants.

Section 8.23 Security Interest. The Security and Pledge Agreement and Mortgages create and grant to the Collateral Agent, for its own benefit and for the benefit of the Noteholders, a legal, valid and binding Lien in the Collateral identified therein, and such Lien is a perfected priority interest (superior and prior to the rights of all other Persons other than, with respect to certain working capital assets, the lenders under the Revolving Loan Documents) in all such Collateral that can be perfected by the filing of a financing statement. Such Collateral is not subject to any other Liens whatsoever, except Permitted Liens.

Section 8.24 Permits; Laws. Each Note Party has all material franchises, permits, licenses and any similar authority necessary for the conduct of its business as now conducted and believes that it can obtain, without undue burden or expense, any similar authority for the conduct of its business as planned to be conducted. Each Note Party is not in default in any material respect under any of such material franchises, permits, licenses or other similar authority.

Section 8.25 Revolving Loan Documents. True and correct copies of all Revolving Loan Documents, as in effect on the Closing Date, have been provided to the Purchasers. The Revolving Loan Documents to which any Note Party is party are valid and binding contracts as to such Person. After giving effect to the execution of the Revolving Loan Agreement on the Closing Date, none of the Note Parties is in default of its obligations under any Revolving Loan Document, nor does any default under any Revolving Loan Document exist that would permit a lender under the Revolving Loan Document to accelerate the Indebtedness thereunder.

Section 8.26 Government Regulation; Margin Stock. None of the Note Parties is subject to any statute or regulation which limits the incurring by any Note Party of debt as contemplated by this Agreement. None of the Note Parties, nor any Person controlling the Note Parties is an "investment company" within the meaning of the Investment Company Act of 1940 which is required to be registered thereunder.

Section 8.27 Brokerage Fees, Etc. Except as set forth on Schedule 8.27, no broker's, finders' or placement fee or commission will be payable to any Person retained by or on behalf of any Note Party with respect to any of the transactions contemplated by this Agreement or any of the other Note Documents. Each Note Party hereby jointly and severally indemnifies each Purchaser against and agrees that such Note Party will hold each such party harmless from any claim, demand or liability, including reasonable attorneys' fees, for any broker's, finder's or placement fee or commission incurred by such indemnifying party.

Section 8.28 Solvency. After giving effect to the Closing (and to any Additional Issuance), the Parent and its Subsidiaries, on a Consolidated basis, are, or will be, Solvent.

Section 8.29 Anti-Terrorism Laws.

(a) General. None of the Note Parties nor any of their respective Affiliates is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(b) Executive Order No. 13224. None of the Note Parties nor any of their respective Affiliates or their respective agents acting or benefiting in any capacity in connection with the Notes or other transactions hereunder, is any of the following (each a "Blocked Person"):

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as the same has been, or shall hereafter be, renewed, extended, amended or replaced ("Executive Order No. 13224");

(ii) a Person owned or controlled by or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224;

(iii) a Person with which any Purchaser is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order No. 13224;

(v) a Person that is named as a "specially designated national" on the most recent list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list; or

(vi) a Person who is affiliated or associated with a Person listed above.

None of the Note Parties, nor, to the knowledge of any of the foregoing, any of their respective agents acting in any capacity in connection with the Notes or other transactions hereunder (a) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (b) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224.

(c) None of the Note Parties has engaged, and none of the foregoing intends to engage, in any business or activity prohibited by the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any enabling legislation or executive order relating thereto (Trading with the Enemy Act).

## ARTICLE IX
## AFFIRMATIVE COVENANTS

The Note Parties covenant and agree, for the benefit of the Purchasers, that so long as any Notes remain outstanding:

Section 9.01 Payment of Note Obligations. The Issuers will duly and punctually pay the principal, any Prepayment Premium or other premium (if any), interest and

any other amounts owing under this Agreement and the Notes with respect to the Notes, in each case when due under the terms of this Agreement and the Notes.

Section 9.02 Financial Statements. The Note Parties shall maintain a system of accounting established and administered in accordance with sound business practices to permit the preparation of financial statements in conformity with GAAP. The Note Parties shall deliver to the Administrative Agent:

(a) as soon as available, but not later than ninety (90) days after the end of each fiscal year, a copy of the audited Consolidated balance sheets of Parent and each of its Subsidiaries as at the end of such year and the related Consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, and accompanied by the unqualified opinion of any nationally recognized independent public accounting firm reasonably acceptable to the Collateral Agent, which report shall state that such Consolidated financial statements present fairly in all material respects the financial position as at the dates and for the periods indicated in conformity with GAAP applied on a basis consistent with prior years.

(b) as soon as available, but not later than forty-five (45) days after the end of each fiscal quarter of each year, a copy of the unaudited Consolidated and Consolidating balance sheets of the Parent and each of its Subsidiaries, and the related Consolidated and Consolidating statements of income, shareholders' equity and cash flows as of the end of such quarter and for the portion of the fiscal year then ended, all certified on behalf of the Parent by an appropriate Responsible Officer as being complete and correct in all material respects and fairly presenting, in accordance with GAAP, the financial position and the results of operations of the Parent and its Subsidiaries; provided, however, that such financial statements are subject to normal year-end adjustments and may lack footnotes and other presentations items.

(c) as soon as available, but not later than thirty (30) days after the end of each fiscal month of each year, a copy of the unaudited Consolidated and Consolidating balance sheets of the Parent and each of its Subsidiaries, and the related Consolidated and Consolidating statements of income, shareholders' equity and cash flows as of the end of such month and for the portion of the fiscal year then ended, all certified on behalf of the Parent by an appropriate Responsible Officer as being complete and correct in all material respects and fairly presenting, in accordance with GAAP, the financial position and the results of operations of the Parent and its Subsidiaries; provided, however, that such financial statements are subject to normal year-end adjustments and may lack footnotes and other presentations items.

Section 9.03 Certificates; Other Information. The Company shall furnish to the Administrative Agent:

(a) concurrently with the delivery of the financial statements referred to in Sections 9.02(a), 9.02(b) and 9.02(c) above, a fully and properly completed Compliance Certificate in the form of Exhibit G, certified on behalf of the Company by a Responsible Officer;

(b) within five days the same are filed, copies of all financial statements and regular, periodic or special reports which Parent may make to, or file with, the Securities and Exchange Commission or any successor or similar Governmental Authority;

(c) together with each delivery of financial statements pursuant to Section 9.03(a) and Section 9.03(b) for the last calendar month of each fiscal quarter (i) a management report, in reasonable detail, signed by a Responsible Officer of the Company, describing the operations and financial condition of the Company and its Subsidiaries for the month and the portion of the fiscal year then ended (or for the fiscal year then ended in the case of annual financial statements), and (ii) a report setting forth in comparative form the corresponding figures for the corresponding periods of the previous fiscal year and the corresponding figures from the most recent projections for the current fiscal year delivered pursuant to Section 9.03(d) and discussing the reasons for any significant variations;

(d) as soon as available and in any event no later than thirty (30) days after the beginning of each fiscal year of the Company commencing with fiscal year 2007, a month by month projected operating budget and cash flow of the Company and its Subsidiaries on a Consolidated basis for such fiscal year (including an income statement for each month and a balance sheet as at the end of the last month in each fiscal quarter), such projections to be accompanied by a certificate signed by a Responsible Officer of the Company to the effect that such projections have been prepared on the basis of sound financial planning practice consistent with past budgets and financial statements of the Company and its Subsidiaries on a Consolidated basis based on the reasonable material assumptions on which such projections were prepared;

(e) promptly upon receipt thereof, copies of any reports submitted by the Company's certified public accountants in connection with each annual, interim or special audit or review of any type of the financial statements or internal control systems of the Company made by such accountants, including any comment letters submitted by such accountants to management of the Company in connection with their services; and

(f) promptly, such additional business, financial, corporate affairs, perfection certificates and other information as the Noteholders may from time to time reasonably request.

Section 9.04 Notices. Company shall notify promptly the Administrative Agent of each of the following (and in no event later than ten (10) Business Days after a Responsible Officer becoming aware thereof):

(a) the occurrence or existence of any Event of Default under the Revolving Loan Agreement (as defined therein) or any Default or Event of Default under this Agreement;

(b) any breach or non performance of, or any default under, any Contractual Obligation of the Parent or any of its Subsidiaries, or any violation of, or non-compliance with, any Requirement of Law, each of which would reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect, including a description of such breach, non-performance, default, violation or non-compliance and the steps, if any, the Parent or such Subsidiary has taken, is taking or proposes to take in respect thereof;

(c) any dispute, litigation, investigation, proceeding or suspension which may exist at any time between the Parent or any of its Subsidiaries and any Governmental Authority which would reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect;

(d) the commencement of, or any material development in, any litigation or proceeding affecting the Parent or of its Subsidiaries (i) in which the amount of damages claimed is $[500,000] (or its equivalent in another currency or currencies) or more, (ii) in which injunctive or similar relief is sought and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect, or (iii) in which the relief sought is an injunction or other legal stay of the performance of this Agreement or any Document;

(e) any of the following if the same would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect: (i) any enforcement actions or other Governmental Authority, judicial or administrative actions instituted against the Parent or any of its Subsidiaries pursuant to any applicable Environmental Laws, (ii) any other Environmental Actions, and (iii) any notice of any Environmental Action relating to any real property adjoining the Property of the Parent or any of its Subsidiaries that would reasonably be anticipated to cause the Parent's or any of its Subsidiaries' Property or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use of such Property under any Environmental Laws;

(f) any of the following if the same would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, together with a copy of any notice with respect to such event that may be required to be filed with a Governmental Authority and any notice delivered by a Governmental Authority to the Company or any member or its Controlled Group with respect to such event:

(i) an ERISA Event;

(ii) the adoption of any new Qualified Plan that is subject to Title IV of ERISA or Section 412 of the Code by any member of the Controlled Group;

(iii) the adoption of any amendment to a Qualified Plan that is subject to Title IV of ERISA or Section 412 of the Code, if such amendment results in a material increase in benefits or unfunded liabilities; or

(iv) the commencement of contributions by any member of the Controlled Group to any Multiemployer Plan or any Qualified Plan that is subject to Title IV of ERISA or Section 412 of the Code;

(g) any material change in accounting policies or financial reporting practices by Parent, the Company or any of its Subsidiaries; provided that no notice shall be required of any such changes in accounting policies or practices that are required by changes in GAAP or by changes in other applicable law unless such changes give rise to a change in the calculation of the financial covenants or in the interpretation of related provisions, as contemplated under Section 1.03, in which event such notice shall be required as soon as reasonably practicable after

the Company becomes aware of the need for such a change in calculation or interpretation and in any event prior to the delivery of any financial statements or certificates reflecting such change;

(h) any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other labor disruption against or involving the Parent or any of its Subsidiaries if the same would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect; and

(i) the creation, establishment or acquisition of any new Subsidiary or the issuance by the Company or such Subsidiary of any capital stock or warrant option or similar agreement in respect thereof.

Each notice pursuant to this Section shall be accompanied by a written statement by a Responsible Officer on behalf of such entity setting forth details of the occurrence referred to therein, and stating what action the Company proposes to take with respect thereto and at what time. Each notice under Section 9.04(a) shall describe with particularity any and all clauses or provisions of this Agreement or other Note Document that have been breached or violated.

Section 9.05 Preservation of Corporate Existence, Etc. Each Note Party shall, and shall cause each of its Subsidiaries to:

(a) preserve and maintain in full force and effect its organizational existence and good standing under the laws of its state or jurisdiction of incorporation and in such foreign jurisdictions in which the failure to maintain such good standing would reasonably be expected to have a Material Adverse Effect, except, with respect to the Company's Subsidiaries, in connection with transactions permitted by Section 10.03;

(b) preserve and maintain in full force and effect all material rights, privileges, qualifications, permits, licenses and franchises necessary in the normal conduct of its business except in connection with transactions permitted by Section 10.03 and sales of assets permitted by Section 10.02 and except as would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect;

(c) use its reasonable efforts, in the Ordinary Course of Business and in the reasonable business judgment of the Company, to preserve its business organization and preserve the goodwill and business of the customers, suppliers and others having material business relations with it; and

(d) preserve or renew all of its registered patents, copyrights, trademarks, trade names, service marks and domain names, the non preservation of which would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

Section 9.06 Maintenance of Property. Each Note Party shall maintain, and shall cause each of its Subsidiaries to maintain, and preserve all its Property which is necessary in its business in good working order and condition, ordinary wear and tear and casualty excepted and shall make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

Section 9.07 Insurance. Each Note Party shall maintain, and shall cause each of its Subsidiaries to maintain, with reputable independent insurers, insurance with respect to its Properties and business against loss or damage of the kinds customarily insured against by similarly situated Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons, including workers' compensation insurance, public liability and Property and casualty insurance, and business interruption insurance as is customary in the case of similarly situated Persons engaged in the same or similar business as such Note Party, including business interruption insurance. Upon request of any Noteholder, each Note Party shall furnish to the Noteholders, at reasonable intervals (but not more than once per calendar year) a certificate of a Responsible Officer on behalf of such Note Party (and, if requested by such Noteholder, any insurance broker of such Note Party) setting forth the nature and extent of all insurance maintained by such Note Party in accordance with this Section 9.07.

Section 9.08 Payment of Obligations. Each Note Party shall, and shall cause its Subsidiaries to, pay, discharge and perform as the same shall become due and payable or required to be performed, all their respective obligations and liabilities, including:

(a) all material tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently prosecuted which stay the enforcement of any Lien and for which adequate reserves in accordance with GAAP are being maintained by such Note Party;

(b) all lawful claims which, if unpaid, would by law become a Lien (other than a Permitted Lien) upon its Property unless the same are being contested in good faith by appropriate proceedings diligently prosecuted which stay the imposition or enforcement of the Lien and for which adequate reserves in accordance with GAAP are being maintained by such Note Party;

(c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained herein and/or in any instrument or agreement evidencing such Indebtedness, except to the extent such non-payment would not result in an Event of Default under Section 13.01(h); and

(d) the performance of all obligations under any Contractual Obligation to which the Company or any of its Subsidiaries is bound, or to which it or any of its properties is subject, including the Note Documents, except where the failure to perform would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

Section 9.09 Compliance with Laws. Each Note Party shall comply, and shall cause each of its Subsidiaries to comply, in all material respects, with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business (including, without limitation, all Environmental Laws), except (a)(i) such as may be contested in good faith by appropriate proceedings diligently prosecuted, (ii) as to which a bona fide dispute exists, and (iii) for which appropriate reserves have been established on the Company's financial statements or

(b) where the failure to comply would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

Section 9.10 Inspection of Property and Books and Records. Each Note Party shall maintain, and shall cause each of its Subsidiaries to maintain, proper books of record and account, in which true and correct entries, in all material respects, in conformity with GAAP consistently applied shall be made of all material financial transactions and matters involving the assets and business of the Note Parties. At any time, the Required Noteholders and the Collateral Agent may (at the expense of the Note Parties) visit and inspect any of the Note Parties' respective Properties, to examine their respective corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss their respective affairs, finances and accounts with their respective directors, officers, and independent public accountants, at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the applicable entity; provided, however, a Responsible Officer of such entity shall be afforded the opportunity to attend any discussions with any independent public accountants and, provided, further, any Noteholder may do any of the foregoing at the expense of the Note Parties at any time during normal business hours and without advance notice.

Section 9.11 Use of Proceeds. The Issuers shall use the proceeds of the Securities only for the purposes set forth in Section 2.07 hereof.

Section 9.12 Further Assurances.

(a) The Note Parties shall ensure that all written information, exhibits and reports furnished to the Noteholders, when taken as a whole, do not and will not contain any untrue statement of a material fact and do not and will not omit to state any material fact or any fact necessary to make the statements contained therein not materially misleading in light of the circumstances in which made, and will promptly disclose to the Noteholders and correct any defect or error that may be discovered therein or in any Note Document or in the execution, acknowledgement or recordation thereof to the extent necessary to disclose new or changed facts or circumstances of a material nature, or to correct a defect or error of a material nature, the non-disclosure of which would result in the representations and warranties set forth in ARTICLE VII not being true and correct; provided that delivery or receipt of such subsequent disclosure shall not constitute a waiver by the Noteholders or a cure of any Default or Event of Default resulting in connection with the matters disclosed.

(b) The Note Parties shall promptly inform the Collateral Agent and each Noteholder of the creation or acquisition of any direct or indirect Subsidiary and cause each such direct or indirect Subsidiary to execute a joinder to the guarantee provided under ARTICLE XIV below. From and after the Closing, the Company shall, and shall cause each Note Party to, take such action as is reasonably required by the Collateral Agent to grant or perfect a Security Interest in any assets of such Person. Subject to the terms of the Intercreditor Agreement and subject to Permitted Liens, such Lien in favor of the Collateral Agent shall be senior and prior in right to all other Persons.

Section 9.13 Observer Rights. The Required Noteholders and, upon request, the holders of a majority of the Notes not held by the Required Noteholders, will each have the right to appoint an observer to the boards of directors or other governing bodies of each Issuer and its Subsidiaries, and each committee of the boards of directors or other governing bodies of each Issuer and its Subsidiaries (other than the compensation and audit committees), who shall be entitled to attend all meetings of the boards of directors and each committee of the boards of directors (other than the compensation and audit committees) of the Issuer and its Subsidiaries, and who shall receive all reports, meeting materials, notices and other materials as and when provided to the board members. All of the reasonable expenses of any such observers shall be paid by the applicable Issuers. The Issuers agree that their boards of directors or other governing bodies will meet at least quarterly. Notwithstanding the foregoing, upon advance notice, such observer(s) may be excluded from having access to (a) any materials produced by counsel to Parent or the Company in connection with pending or threatened litigation against, or by, Parent or the Company and may be excluded from the portions of any meetings at which such pending or threatened litigation is considered so long as Parent or the Company, as applicable, reasonably believes, on advice of counsel, that such exclusion is reasonably necessary to preserve the attorney-client privilege of Parent or the Company and (b) the portions of any board or committee meetings during which proposed material modifications to the terms of the Notes are considered. As a condition of participating in any meeting or receiving any materials or notices, such observers may be required to execute a written acknowledgement that such observer is subject to the confidentiality requirements set forth in Section 16.18; provided, for the avoidance of doubt, that such observer shall not be prohibited from sharing information with the Agents or the Noteholders.

## ARTICLE X
## NEGATIVE COVENANTS

Each Note Party covenants and agrees, for the benefit of the Purchasers, that so long as any Notes remain outstanding:

Section 10.01 Limitation on Liens. Neither Parent nor any of its Subsidiaries that is an Issuer or Guarantor shall mortgage, assign, pledge, transfer or otherwise permit any Lien, to exist on, or to become enforceable against, any of the property, assets or undertaking of the Parent or any of its Subsidiaries that is an Issuer or a Guarantor, including, without limitation, the Collateral, whether now owned or hereafter acquired, except for Permitted Liens.

Section 10.02 Disposition of Assets. Neither the Parent nor any of its Subsidiaries, including any Issuer, shall directly or indirectly: (a) sell, lease, transfer, assign, abandon or otherwise dispose of any part of the Collateral or any material portion of its other assets (other than a Permitted Disposition) or (b) consolidate with or merge with or into any other entity, or permit any other entity to consolidate with or merge with or into any Issuer or the Guarantors or (c) except as expressly permitted pursuant to Section 10.03.

Section 10.03 Consolidations and Mergers. Each Note Party shall not, and shall not suffer or permit any of its Subsidiaries to, merge, consolidate with or into, or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of

any Person, except, upon not less than twenty (20) Business Days prior written notice to the Noteholders, (a) any Note Party may merge with, or dissolve or liquidate into another Note Party, and (b) any Subsidiary of the Company may merge with, or dissolve or liquidate into, the Company or a Wholly-Owned Subsidiary of the Company, provided that the Company or such Wholly-Owned Subsidiary shall be the continuing or surviving entity.

Section 10.04 Loans and Investments. Neither Parent nor any of its Subsidiaries that is an Issuer or a Guarantor shall: (i) create any new Subsidiary, (ii) make or suffer to exist any advance or loan to, or any investment in, or capital contribution to, any Person (other than a Permitted Investment), or (iii) acquire all or substantially all of the assets of, or any Capital Stock or any debt or Equity Interests in (including without limitation, through merger or consolidation), any Person, except for the creation or acquisition of one or more Wholly-Owned Subsidiaries that become Guarantors of the Notes.

Section 10.05 Limitation on Indebtedness. Neither Parent nor any of its Subsidiaries that is an Issuer or a Guarantor shall assume, incur or otherwise become liable upon or with respect to any Indebtedness or Contingent Obligation at any time after the Closing Date; provided, that, Parent and its Subsidiaries that is an Issuer or a Guarantor may become liable with respect to any Permitted Indebtedness.

Section 10.06 Transactions with Affiliates. Each Note Party shall not, and shall not suffer or permit any of its Subsidiaries to, enter into any transaction with any Affiliate of the Company or of any such Subsidiary, except (a) as expressly permitted by this Agreement, (b) in the Ordinary Course of Business, on terms no less favorable to the Note Parties than would be reasonably expected to apply in a third party transaction, and pursuant to the reasonable requirements of the business of such Note Party or such Subsidiary, and (c) transactions entered into on or prior to the Closing Date and disclosed on Schedule 8.17.

Section 10.07 Reserved.

Section 10.08 Margin Stock. The Company shall not and shall not suffer or permit any of its Subsidiaries to use any portion of the proceeds of the Notes, directly or indirectly, to purchase or carry Margin Stock or repay or otherwise refinance Indebtedness of the Company or others incurred to purchase or carry Margin Stock, or otherwise in any manner which is in contravention of any Requirement of Law or in violation of this Agreement.

Section 10.09 Contingent Obligations. Each Note Party shall not, and shall not suffer or permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Contingent Obligations except in respect of the Note Obligations and except:

(a) endorsements for collection or deposit and standard contractual indemnities entered into in the Ordinary Course of Business;

(b) Contingent Obligations of the Company and its Subsidiaries existing as of the Closing Date and listed in Schedule 10.09, including extensions and renewals thereof which do not increase the amount of such Contingent Obligations as of the date of such extension or renewal;

(c) Contingent Obligations incurred in the Ordinary Course of Business with respect to surety and appeal bonds, performance bonds and other similar obligations;

(d) Contingent Obligations arising under indemnity agreements to title insurers to cause such title insurers to issue to the Collateral Agent title insurance policies;

(e) Contingent Obligations arising with respect to customary indemnification obligations in favor of purchasers in connection with dispositions permitted under Section 10.02(b);

(f) Contingent Obligations incurred for the benefit of the Company or any of its Wholly-Owned Subsidiaries if the primary obligation is expressly permitted by this Agreement; and

(g) Contingent Obligations constituting guarantees of obligations under the Revolving Loan Documents and this Agreement and the Notes.

Section 10.10 Compliance with ERISA. Each Note Party shall not, and shall not suffer or permit any of its Subsidiaries to:

(a) terminate any Plan subject to Title IV of ERISA so as to result in any material liability to such Note Party which would reasonably be expected to have a Material Adverse Effect;

(b) permit to exist any ERISA Event or any other event or condition, which would reasonably be expected to have a Material Adverse Effect;

(c) make a complete or partial withdrawal (within the meaning of ERISA Section 4201) from any Multiemployer Plan so as to result in any material liability to any Note Party which would reasonably be expected to have a Material Adverse Effect;

(d) enter into any new Plan or modify any existing Plan so as to increase its obligations thereunder which would reasonably be expected to have a Material Adverse Effect; or

(e) permit the present value of all nonforfeitable accrued benefits under any Plan (using the reasonable actuarial assumptions in accordance with the Code and ERISA) materially to exceed the fair market value of Plan assets allocable to such benefits, all determined as of the most recent valuation date for each such Plan.

Section 10.11 Restricted Payments. Each Note Party shall not, and shall not suffer or permit any of its Subsidiaries to, (i) declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on account of any shares of any class of its capital stock, partnership interests, membership interests or other equity securities; (ii) purchase, redeem or otherwise acquire for value any shares of its capital stock, partnership interests, membership interests or other equity securities or any warrants, rights or options to acquire such shares, interests or securities now or hereafter outstanding; or (iii) make any payment or prepayment of principal of, premium, if any, interest, fees, redemption,

exchange, purchase, retirement, defeasance, sinking fund or similar payment with respect to, Subordinated Indebtedness (the items described in clauses (i), (ii) and (iii) above are referred to as "Restricted Payments"); except that:

(a) any Wholly-Owned Subsidiary of the Company may declare and pay dividends to the Company or any Wholly-Owned Subsidiary of the Company,

(b) Parent may declare and make dividend payments or other distributions payable solely in its common stock,

(c) Note Parties may make distributions to Parent to permit Parent to pay (and Parent may pay) (i) compensation and directors fees and to reimburse expenses of officers, directors and employees in the Ordinary Course of Business, (ii) federal and state income taxes then due and owing, franchise taxes and other similar licensing expenses, operating costs and audit expenses incurred in the Ordinary Course of Business, and (iii) payments in connection with the repurchase its capital stock in connection with the exercise of stock options (including for purposes of paying tax withholding applicable to stock option exercises) granted to officers, directors or employees of Company and (y) payments to repurchase shares of its capital stock sold to members of management of Company, upon the termination of their employment, in an aggregate amount which shall not exceed $1,000,000 per year; and

(d) the Note Parties may distribute to Parent, and Parent may use, Net Cash Proceeds of the Richmond Lease Transaction, and to the extent available and subject to Section 6.02, the proceeds of any Additional Issuance, to redeem any outstanding Series A Preferred or the Notes.

Section 10.12 Change in Business. Each Note Party shall not, and shall not permit any of its Subsidiaries to, engage in any material line of business substantially different from those lines of business carried on by it on the date hereof or any business similarly related to, complementary to or which constitutes a reasonable extension thereof.

Section 10.13 Change in Structure. Except as expressly permitted under Section 10.03, each Note Party shall not and shall not permit any of its Subsidiaries to, make any material changes in its equity capital structure (including in the terms of its outstanding stock) in any material respect or in any respect adverse to the Noteholders in their capacity as such.

Section 10.14 Accounting Changes. Except as otherwise provided for in this Agreement, the Note Parties shall not, and shall not suffer or permit any of their Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required by GAAP, or change the fiscal year of a Note Party or of any of their Consolidated Subsidiaries.

Section 10.15 No Negative Pledges. Each Note Party will not, and will not permit any of its Subsidiaries, directly or indirectly, to create or otherwise cause or suffer to exist or become effective any consensual restriction or encumbrance of any kind on the ability of any such Subsidiary to pay dividends or make any other distribution on any of such Subsidiary's equity securities or to pay fees, including management fees, make other payments and distributions or extend loans or advances to the Note Parties or any of their Subsidiaries, or transfer any of its properties or assets to the Note Parties or any of their Subsidiaries other than

restrictions contained in the Revolving Loan Agreement or this Agreement. Each Note Party will not, and will not permit any of its Subsidiaries, directly or indirectly, to enter into, assume or become subject to any Contractual Obligation (other than the Revolving Loan Documents and the Note Documents) prohibiting or otherwise restricting the existence of any Lien upon any of its assets in favor of the Noteholders, whether now owned or hereafter acquired except in connection with any document or instrument governing Liens permitted pursuant to Section 10.01 provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Liens or licenses and contracts providing that the granting of such Lien in the right, title or interest of the Note Parties or their Subsidiaries therein would be prohibited and would, in and of itself, cause or result in a default thereunder enabling another Person party to such license or contract to enforce any remedy with respect thereto.

Section 10.16 Security Interests. The Company shall, and shall cause each Note Party to, at all times take, or cause to be taken, all actions necessary to maintain the Security Interests as valid and perfected Liens, subject only to Liens permitted under Section 11.01, and supply all information to the Purchasers and the Collateral Agent reasonably requested by the Purchasers or the Collateral Agent and necessary for such maintenance.

Section 10.17 OFAC. No Note Party or any Subsidiary of any Note Party (i) will become a person whose property or interests in property are blocked or subject to blocking pursuant to Section 1 of Executive Order 13224, (ii) will engage in any dealings or transactions prohibited by Section 2 of such executive order, or be otherwise, to the knowledge of a Responsible Officer of the Company, associated with any such person in any manner violative of Section 2, or (iii) will otherwise become a person on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other Anti-terrorism Laws.

Section 10.18 Limitation on Activities of Parent. The Parent shall not engage in any business activity other than (i) its ownership of the equity securities of the Company and activities incidental thereto, (ii) activities incidental to maintenance of its corporate existence and (iii) performance of its obligations under the Note Documents and the Revolving Loan Documents to which it is a party.

Section 10.19 Reserved.

Section 10.20 Amendment of Material Documents.

(a) Each Note Party will not, and will not permit any of its Subsidiaries to, consent to any amendment, modification or supplement to or waiver of any provision of any Equity Document applicable to such Note Party or Subsidiary in a manner that would reasonably be expected to affect the interests of the Noteholders (in their capacities as such) materially and adversely without in each case having obtained the specific prior written consent of the Required Noteholders.

(b) Without the consent of the Required Noteholders, the Note Parties will not, and will not permit any of their Subsidiaries to, consent to or request any amendment, modification or supplement to or waiver of any provision of the Revolving Loan Documents to

the extent such consent, amendment, modification, supplement or waiver is otherwise not permitted under the Intercreditor Agreement.

Section 10.21 Leases. Each Note Party will not, and will not permit any of its Subsidiaries to, enter as lessee into any lease arrangement for real or personal property (unless capitalized and permitted under Section 11.01) if after giving effect thereto, aggregate annual rental payments for all leased property would exceed $ [ ] in any one fiscal year in the aggregate for the Parent and its Subsidiaries.

Section 10.22 Reserved.

Section 10.23 Asbestos Remediation. The Issuers shall not, without the written consent of the Required Noteholders, except under requirement of law after prompt notice to the Required Noteholders, knowingly take any action that would be reasonably expected to create any material asbestos remediation liability.

## ARTICLE XI
## FINANCIAL COVENANTS

The Issuers and their Subsidiaries covenant and agree, for the benefit of the Purchasers, that so long as any Notes remain outstanding:

Section 11.01 Capital Expenditures. The Issuers and their Subsidiaries shall not make or commit to make Capital Expenditures for any Fiscal Year to exceed in the aggregate the amount set forth below for such Fiscal Year; provided, however, that to the extent that the amount made or incurred in any Fiscal Year is less than such limitation, the amount by which the amount of such limitation exceeds the amount of Capital Expenditures made or incurred in any such Fiscal Year may be carried over and expended in the immediately following fiscal year in addition to the annual permitted amount for Capital Expenditures in such immediately following Fiscal Year; provided that the carryover amount shall be the first amount deemed used in the subsequent Fiscal Year:

| Fiscal Year | Maximum Capital Expenditures |
|---|---|
| 2008 | $ 12,886,943 |
| 2009 | $ 12,423,400 |
| 2010 | $ 8,390,000 |
| 2011 | $ 8,555,000 |

Section 11.02 Leverage Ratio. The Issuers and their Subsidiaries shall not permit the ratio of (x) funded Indebtedness as of the end of each fiscal quarter below to (y) Consolidated EBITDA for the twelve fiscal month period then ended; to be greater than the maximum ratio set forth in the table below opposite such period; provided that for purposes of this Section 11.02, Consolidated EBITDA for the twelve fiscal month period ended June 30, 2008, Consolidated EBITDA shall be deemed to equal the product of (x) Consolidated EBITDA for the period September 1, 2008 through June 30, 2008 multiplied by (y) 4/3:

| Fiscal Quarters Ending on: | Maximum Leverage Ratio |
|---|---|
| June 30, 2008 | 5.0 to 1.0 |
| September 30, 2008 | 5.0 to 1.0 |
| December 31, 2008 | 4.5 to 1.0 |
| March 31, 2009 | 4.5 to 1.0 |
| June 30, 2009 | 4.5 to 1.0 |
| September 30, 2009 | 4.0 to 1.0 |
| December 31, 2009 | 4.0 to 1.0 |
| March 31, 2010 | 4.0 to 1.0 |
| June 30, 2010 and each fiscal quarter thereafter | 3.5 to 1.0 |

Section 11.03 Interest Coverage Ratio. The Note Parties shall not permit the ratio of (x) their Consolidated EBITDA for any four fiscal quarter period, commencing with the four fiscal quarter period ended June 30, 2008 to (y) the sum of Consolidated Interest Expense for the same period to the extent paid, or required to be paid, in cash to be less than 1.2 to 1.0; provided that notwithstanding the foregoing such calculation for the four fiscal quarter period ended June 30, 2008 shall be calculated based on the three fiscal quarter period ended June 30, 2008.

Section 11.04 Minimum Consolidated EBITDA. The Note Parties shall not permit their Consolidated EBITDA for any twelve fiscal month period ended on a date set forth below to be less than the amount set forth opposite such date:

| Period | Minimum Consolidated EBITDA |
|---|---|
| September 1, 2007 through January 31, 2008 | $2,400,000 |
| September 1, 2007 through February 29, 2008 | $2,600,000 |
| September 1, 2007 through March 31, 2008 | $3,600,000 |
| September 1, 2007 through April 30, 2008 | $4,800,000 |
| September 1, 2007 through May 31, 2008 | $6,500,000 |
| September 1, 2007 through June 30, 2008 | $8,100,000 |
| September 1, 2007 through July 31, 2008 | $10,000,000 |
| September 1, 2007 through August 31, 2008 | $11,700,000 |
| October 1, 2007 through September 30, 2008 | $12,600,000 |

## ARTICLE XII

## MANAGEMENT OF COLLATERAL

Section 12.01 Status of Collateral. At the time the Collateral becomes subject to the Collateral Agent's Lien, the Issuers covenant, represent and warrant: (a) the Issuers shall be the owner, free and clear of all Liens (except for the Liens granted in the favor of the Collateral Agent for the benefit of the Agents and the Noteholders and Permitted Liens), and shall be fully authorized to sell, transfer, pledge and/or grant a security interest in each and every item of said Collateral; (b) the Issuers shall maintain books and records pertaining to said Collateral in such detail, form and scope as the Required Noteholders shall reasonably require; and (c) the Issuers

will, immediately upon learning thereof, report to the Agents and the Noteholders any material loss or destruction of, or substantial damage to, any of the material Collateral, and any other matters affecting the value, enforceability or collectibility of any of the material Collateral.

Section 12.02 Collateral Custodian. Subject to the terms of the Intercreditor Agreement, upon the occurrence and during the continuance of any Default or Event of Default, the Collateral Agent may at any time and from time to time employ and maintain on the premises of the Issuers a custodian selected by the Required Noteholders and acceptable to the Collateral Agent who shall have full authority to do all acts necessary to protect the Agents' and the Noteholders' interests. The Issuers hereby agree to cooperate with any such custodian and to do whatever the Collateral Agent may reasonably request to preserve the Collateral. All costs and expenses incurred by the Collateral Agent by reason of the employment of the custodian shall be the responsibility of the Issuers and shall be payable on demand.

## ARTICLE XIII

## EVENTS OF DEFAULT

Section 13.01 Events of Default. If any of the following Events of Default shall occur and be continuing:

(a) the Note Parties shall fail to pay when due (i) any principal on any Note (whether by scheduled maturity, required redemption, acceleration, demand or otherwise) or (ii) any interest, fee, indemnity or other amount payable under this Agreement, any Note or any other Note Document when due (whether by scheduled maturity, required redemption, acceleration, demand or otherwise) and in the case of this clause (ii) such failure remains uncured for a period of three (3) days;

(b) any representation or warranty made or deemed made by or on behalf of any Note Party or by any officer of such Note Party under or in connection with any Note Document or under or in connection with any report, certificate, or other document delivered to any Agent or any Purchaser pursuant to any Note Document shall have been incorrect or misleading in any material respect when made or deemed made;

(c) the Note Parties shall fail to perform or comply with any covenant under ARTICLE X or ARTICLE XI;

(d) the Note Parties shall fail to perform or comply with any other term, covenant or agreement contained in any Note Document to be performed or observed by it and, except as set forth in subsections (a), (b) and (c) of this Section 12.01, such failure, if capable of being remedied, shall remain unremedied for fifteen (15) days after the earlier of the date an Authorized Officer of the Note Parties becomes aware of such failure and the date written notice of such default shall have been given by any Agent or the Required Noteholders to the Issuers;

(e) any Guarantor revokes, terminates or fails to perform any of the terms of any Note Document or other related agreement of such party in favor of the Noteholders or any Affiliate of the Noteholders;

(f) a Change of Control occurs;

(g) any default or event of default occurs, on the part of any Note Parties under any agreement, document or instrument to which such Note Party is a party or by which the Note Party or any of its property is bound and which could reasonably be expected to result in liability in excess of [$500,000];

(h) any Note Party, fails to pay the principal of, or premium or interest on, any of its indebtedness (excluding debt under this Agreement) which is outstanding in an aggregate principal amount exceeding [$500,000] (or the equivalent amount in any other currency) when such amount becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure continues after the applicable grace period, if any, specified in the agreement or instrument relating to the debt or any other event occurs or condition exists and continues after the applicable grace period, if any, specified in any agreement or instrument relating to any such indebtedness, if its effect is to accelerate, or permit the acceleration of the debt; or any such indebtedness shall be declared to be due and payable prior to its stated maturity;

(i) the determination of the Note Parties, whether by vote of any Note Party's board of directors or otherwise, to suspend the operation of any Note Party's business in the ordinary course or to liquidate all or substantially all of any Note Party's assets;

(j) any provision of any Note Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against any Note Party intended to be a party thereto, or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by any Note Party or any Governmental Authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or any Note Party shall deny in writing that it has any liability or obligation purported to be created under any Note Document;

(k) any security and pledge agreement related to this Agreement, or mortgages related to this Agreement or any other security document related to this Agreement, shall for any reason fail or cease to create a valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien in favor of the Collateral Agent for the benefit of the Agents and the Noteholders on any material Collateral purported to be covered thereby;

(l) one or more judgments, orders or awards (or any settlement of any claim that, if breached, could result in a judgment, order or award) for the payment of money exceeding [$100,000] in the aggregate in excess of any applicable insurance coverage (but only to the extent the insurer has not denied in writing its liability therefor) shall be rendered against any Note Party and remain unsatisfied and either (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order, award or settlement, or (ii) there shall be a period of ten (10) consecutive days after entry thereof during which a stay of enforcement of any such judgment, order, award or settlement, by reason of a pending appeal or otherwise, shall not be in effect; provided, however, that any such judgment, order, award or settlement shall not give rise to an Event of Default under this subsection (l) if and for so long as (A) the amount of such judgment, order, award or settlement is covered by a valid and binding

policy of insurance between the Note Party and the insurer covering full payment thereof and (B) such insurer has been notified, and has not disputed the claim made for payment, of the amount of such judgment, order, award or settlement;

(m) any Note Party is enjoined, restrained or in any way prevented by the order of any court or any Governmental Authority from conducting all or any material part of its business for more than fifteen (15) days;

(n) any material damage to, or loss, theft or destruction of, any Collateral, that is not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty which causes, for more than fifteen (15) consecutive days, the cessation or substantial curtailment of revenue producing activities at any facility of any Note Party;

(o) any cessation of a substantial part of the business of any Note Party for a period which materially and adversely affects the ability of such Note Party to continue its business on a profitable basis;

(p) the loss, suspension or revocation of, or failure to renew, any license or permit now held or hereafter acquired by any Note Party, if such loss, suspension, revocation or failure to renew would reasonably be expected to have a Material Adverse Effect;

(q) the conviction or entry of judgment against any Note Party under any criminal or civil statute, pursuant to which statute the penalties or remedies (determined or, if not determined, sought or available) include forfeiture to any Governmental Authority of any material portion of the property of such Person;

(r) any Note Party or any of its ERISA Affiliates shall have made a complete or partial withdrawal from a Multiemployer Plan, and, as a result of such complete or partial withdrawal, such Note Party or any of its ERISA Affiliates incurs a withdrawal liability in a material amount; or a Multiemployer Plan enters reorganization status under Section 4241 of ERISA, and, as a result thereof such Note Party's or any of its ERISA Affiliates' annual contribution requirements with respect to such Multiemployer Plan increases to a material extent;

(s) any Termination Event with respect to any Employee Plan shall have occurred, and, thirty (30) days after notice thereof shall have been given to the Note Parties by any Agent at the written direction of the Required Noteholders, (i) such Termination Event (if correctable) shall not have been corrected, and (ii) the then current value of such Employee Plan's vested benefits exceeds the then current value of assets allocable to such benefits in such Employee Plan (or, in the case of a Termination Event involving liability under Section 409, 502(i), 502(l), 515, 4062, 4063, 4064, 4069, 4201, 4204 or 4212 of ERISA or Section 4971 or 4975 of the Code, the liability is in excess of the amount the then current value of such Employee Plan's assets allocable to its vested benefits exceeds the then current value of such benefits);

(t) any Note Party shall be liable for any Environmental Liabilities and Costs the payment of which would reasonably be expected to have a Material Adverse Effect; or

(u) (i) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of any Note Party or any of their Subsidiaries in an involuntary case under the Bankruptcy Code or any applicable bankruptcy, insolvency or other similar law now or hereafter in effect in the United States or any other jurisdiction, which decree or order is not stayed; or any other similar relief shall be granted and remain unstayed under any applicable law; or (ii) an involuntary case is commenced against any Note Party or any of their Subsidiaries under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over any Note Party or any of their Subsidiaries or over all or a substantial part of any of their respective properties, shall have been entered, or an interim receiver, trustee or other custodian of any Note Party or any of their Subsidiaries for all or a substantial part of their respective properties is involuntarily appointed; or a warrant of attachment, execution or similar process is issued against any substantial part of the property of any Note Party or any of their Subsidiaries, and the continuance of any such events in this clause (ii) for 60 days unless dismissed, bonded, stayed, vacated or discharged; or

(v) any Note Party or any of their Subsidiaries shall have an order for relief entered with respect to it or commence a voluntary case under the Bankruptcy Code or any applicable bankruptcy, insolvency or other similar law now or hereafter in effect in the United States or any other jurisdiction, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; the making by any Note Party or any of their Subsidiaries of any general assignment for the benefit of creditors; or the board of directors of any Note Party or any of their Subsidiaries (or any committee thereof) adopts any resolution or otherwise authorizes any action to approve any of the foregoing; or

(w) the voluntary or involuntary liquidation or dissolution of any Note Party or any of their Subsidiaries (other than permitted by Section 10.03 hereof);

THEN, (i) upon the occurrence and during the continuance of any Event of Default described in the forgoing subsections (u) or (v) with respect to any Note Party or any of their Subsidiaries, the unpaid principal amount of all Notes, together with accrued interest thereon, all other amounts payable under this Agreement and the other Note Documents and, as liquidated damages and not as a penalty, an amount equal to the Prepayment Premium shall automatically become immediately due and payable, without presentment, demand, protest or other requirement of any kind, all of which are hereby expressly waived by the Note Parties, and (ii) and upon the occurrence and during the continuance of any other Event of Default, the Collateral Agent at the written request of the Required Noteholders, by notice to the Issuers, may declare the Notes to be due and payable, whereupon the principal amount of all Notes, together with accrued interest thereon, all other amounts payable under this Agreement and the other Note Documents, and as liquidated damages and not as a penalty, an amount equal to the Prepayment Premium, shall automatically become immediately due and payable, such without any other notice of any kind, and without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by the Company and (iii) the Collateral Agent at the written request of the Required Noteholders, may exercise any and all of its other rights and remedies under

applicable law (including, but not limited to, the Uniform Commercial Code), hereunder and under the other Note Documents.

## ARTICLE XIV

## GUARANTEE

Section 14.01 Guarantee of Note Obligations. Each Guarantor unconditionally guarantees that the Note Obligations will be performed and paid in full in cash when due and payable, whether at the stated or accelerated maturity thereof or otherwise, this guarantee being a guarantee of payment and not of collectability and being absolute and in no way conditional or contingent (the "Guarantee"). In the event any part of the Note Obligations shall not have been so paid in full when due and payable, each Guarantor will, immediately upon notice by the Collateral Agent or, without notice, immediately upon the occurrence of an Event of Default under Section 13.01(v) or Section 13.01(w), pay or cause to be paid to the Collateral Agent for the account of each Noteholder in accordance with such Noteholder's proportionate share of such Note Obligations which are then due and payable and unpaid. The obligations of each Guarantor hereunder shall not be affected by the invalidity, unenforceability or irrecoverability of any of the Note Obligations as against the Issuers, any other guarantor thereof or any other Person. For purposes hereof, the Note Obligations shall be due and payable when and as the same shall be due and payable under the terms of this Agreement or any other Note Document notwithstanding the fact that the collection or enforcement thereof may be stayed or enjoined under the Bankruptcy Code or other applicable law. The guarantees provided for in this ARTICLE XIV are subject to the lien priority set forth in the Intercreditor Agreement.

Section 14.02 Continuing Obligation. Each Guarantor acknowledges that the Purchasers have entered into this Agreement (and, to the extent that the Purchasers, the Noteholders or the Collateral Agent may enter into any future Note Document, will have entered into such agreement) in reliance on this ARTICLE XIV being a continuing irrevocable agreement, and such Guarantor agrees that its guarantee may not be revoked in whole or in part. The obligations of the Guarantors hereunder shall terminate when all of the Note Obligations have been paid in full in cash and discharged; provided, however, that:

(a) if a claim is made upon one or more Noteholders at any time for repayment or recovery of any amounts or any property received by such Noteholders from any source on account of any of the Note Obligations and such Noteholders repay or return any amounts or property so received (including interest thereon to the extent required to be paid by such Noteholders), or

(b) if one or more Noteholders become liable for any part of such claim by reason of (i) any judgment or order of any court or administrative authority having competent jurisdiction, or (ii) any settlement or compromise of any such claim,

then the Guarantors shall remain liable under this Agreement for the amounts so repaid or property so returned or the amounts for which the Noteholders become liable (such amounts being deemed part of the Note Obligations) to the same extent as if such amounts or property had never been received by the Noteholders, notwithstanding any termination hereof or the

cancellation of any instrument or agreement evidencing any of the Note Obligations. Not later than five days after receipt of notice from the Collateral Agent, the Guarantors shall pay to the Collateral Agent for the benefit of the Noteholders, an amount equal to the amount of such repayment or return for which each such Noteholder has so become liable. Payments hereunder by a Guarantor may be required by the Collateral Agent on any number of occasions.

Section 14.03 Waivers with Respect to Note Obligations. Except to the extent expressly required by this Agreement or any other Note Document, each Guarantor waives, to the fullest extent permitted by the provisions of applicable law, all of the following (including all defenses, counterclaims and other rights of any nature based upon any of the following):

(a) presentment, demand for payment and protest of nonpayment of any of the Note Obligations, and notice of protest, dishonor or nonperformance;

(b) notice of acceptance of this guarantee and notice that the Notes have been sold by the Issuer hereunder in reliance on such Guarantor's guarantee of the Note Obligations;

(c) notice of any Default or of any inability to enforce performance of the obligations of the Issuer or any other Person with respect to any Note Document or notice of any acceleration of maturity of any Note Obligations;

(d) demand for performance or observance of, and any enforcement of any provision of this Agreement, the Note Obligations or any other Note Document or any pursuit or exhaustion of rights or remedies against the Issuer or any other Person in respect of the Note Obligations or any requirement of diligence or promptness on the part of the Collateral Agent or any Noteholder in connection with any of the foregoing;

(e) any act or omission on the part of the Collateral Agent or any Noteholder which may impair or prejudice the rights of such Guarantor, including rights to obtain subrogation, exoneration, contribution, indemnification or any other reimbursement from the any Issuers or any other Person, or otherwise operate as a deemed release or discharge;

(f) any statute of limitations or any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than the obligation of the principal;

(g) any "single action" or "antideficiency" law which would otherwise prevent any Noteholder from bringing any action;

(h) all demands and notices of every kind with respect to the foregoing; and

(i) to the extent not referred to above, all defenses (other than payment) which the Issuers may now or hereafter have to the payment of the Note Obligations, together with all suretyship defenses, which could otherwise be asserted by such Guarantor.

Each Guarantor represents that it has obtained the advice of counsel as to the extent to which suretyship and other defenses may be available to it with respect to its obligations hereunder in the absence of the waivers contained in this Section 14.03.

No delay or omission on the part of the Collateral Agent or any of the Noteholders in exercising any right under any Note Document or under any other guarantee of the Note Obligations shall operate as a waiver or relinquishment of such right. No action which the Collateral Agent or Noteholders or an Issuer or any Guarantor may take or refrain from taking with respect to the Note Obligations shall affect the provisions of this Agreement or the obligations of each Guarantor hereunder. None of the Collateral Agent's or the Noteholders' rights shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of any Issuer or any Guarantor, or by any noncompliance by any Issuer or any Guarantor with any Note Document, regardless of any knowledge thereof which the Collateral Agent or any Noteholder may have or otherwise be charged with.

Section 14.04 Noteholders' Power to Waive, Etc. Notwithstanding anything to the contrary herein, with respect to this ARTICLE XIV, each Guarantor grants to the Collateral Agent and each of the Noteholders full power in their discretion, without notice to or consent of such Guarantor, such notice and consent being expressly waived to the fullest extent permitted by applicable law, and without in any way affecting the liability of such Guarantor under its guarantee hereunder:

(a) To waive compliance with, and any Default under, and to consent to any amendment to or modification or termination of any provision of, or to give any waiver in respect of, this Agreement, any other Note Document, the Note Obligations or any guarantee thereof (each as from time to time in effect);

(b) To grant any extensions of the Note Obligations (for any duration), and any other indulgence with respect thereto, and to effect any total or partial release (by operation of law or otherwise), discharge, compromise or settlement with respect to the obligations of the Issuers or any other Person in respect of the Note Obligations, whether or not rights against such Guarantor under this Agreement are reserved in connection therewith;

(c) To collect or liquidate or realize upon any of the Note Obligations in any manner or to refrain from collecting or liquidating or realizing upon any of the Note Obligations; and

(d) To extend additional credit, if any, under this Agreement, any other Note Document or otherwise in such amount as the Noteholders may determine, including increasing the amount of credit and the interest rate and fees with respect thereto, even though the condition of the Company may have deteriorated since the date hereof.

Section 14.05 Information Regarding the Issuers, Etc. Each Guarantor has made such investigation as it deems desirable of the risks undertaken by it in entering into this Agreement and is fully satisfied that it understands all such risks. Each Guarantor waives any obligation which may now or hereafter exist on the part of the Collateral Agent or any Noteholder to inform it of the risks being undertaken by entering into this Agreement or of any changes in such risks and, from and after the date hereof, each Guarantor undertakes to keep itself informed of such risks and any changes therein. Each Guarantor expressly waives any duty which may now or hereafter exist on the part of the Collateral Agent or any Noteholder to disclose to such Guarantor any matter related to the business, operations, character, collateral,

credit, condition (financial or otherwise), income or prospects of the Company and its Affiliates or their properties or management, whether now or hereafter known by the Collateral Agent or any Noteholder. Each Guarantor represents, warrants and agrees that it assumes sole responsibility for obtaining from the Issuers all information concerning this Agreement and all other Note Documents and all other information as to the Issuers and their Affiliates or their properties or management as such Guarantor deems necessary or desirable.

Section 14.06 Certain Guarantor Representations. Each Guarantor represents that:

(a) it is in its best interest and in pursuit of the purposes for which it was organized as an integral part of the business conducted and proposed to be conducted by the Issuers and their Subsidiaries, and reasonably necessary and convenient in connection with the conduct of the business conducted and proposed to be conducted by them, to induce the Purchasers to enter into this Agreement and to purchase the Notes from the Issuers by making the Guarantee contemplated by this ARTICLE XIII.

(b) the proceeds from the sale of the Notes will directly or indirectly inure to its benefit;

(c) by virtue of the foregoing it is receiving at least reasonably equivalent value from the Purchasers for its Guarantee;

(d) it will not be rendered insolvent as a result of entering into this Agreement after taking into account its respective contribution rights under Section 14.09;

(e) after giving effect to the transactions contemplated by this Agreement and the other Note Documents, it will have assets having a fair saleable value in excess of the amount required to pay its probable liability on its existing debts as such debts become absolute and matured;

(f) it has, and will have, access to adequate capital for the conduct of its business;

(g) it has the ability to pay its debts from time to time incurred in connection therewith as such debts mature; and

(h) it has been advised by the Collateral Agent that the Purchasers are unwilling to enter into this Agreement unless the Guarantee contemplated by this ARTICLE XIV is given by it.

Section 14.07 Subrogation. Each Guarantor agrees that, until the Note Obligations are paid in full, it will not exercise any right of reimbursement, subrogation, contribution, offset or other claims against the Issuers or any other Guarantor arising by contract or operation of law in connection with any payment made or required to be made by such Guarantor under this Agreement or any other Note Document. After the payment in full of the Note Obligations (other than contingent indemnity obligations), each Guarantor shall be entitled to exercise against the Issuers and the other Guarantors all such rights of reimbursement,

subrogation, contribution and offset, and all such other claims, to the fullest extent permitted by law, provided that, any of the foregoing to the contrary notwithstanding, effective upon any sale, registration, assignment or transfer of or foreclosure on, or any other disposition or remedial action in respect of, any Equity Interests of the Issuers or any other Subsidiary of the Issuers by the Collateral Agent or any lender pursuant to the Revolving Loan Documents and/or applicable law, all such rights and claims of reimbursement, subrogation, contribution, and offset and other such claims against the Issuers and its Subsidiaries shall be, and hereby are, forever extinguished and indefeasibly waived (except as such waiver is prohibited by applicable law) and released by the Guarantor. In the event of the bankruptcy or insolvency of the Issuers, the Noteholders shall be entitled notwithstanding the foregoing, to file in the name of the Guarantor or in its own name a claim for any and all indebtedness owing to the Guarantor by such Issuer and to apply the proceeds of any such claim to the Note Obligations.

Section 14.08 Subordination. Each Guarantor covenants and agrees that all Indebtedness, claims and liabilities now or hereafter owing by any Issuer or any other Guarantor to such Guarantor, whether arising hereunder or otherwise, are subordinated to the prior payment in full of the Note Obligations and are so subordinated as a claim against such Issuer or such Guarantor or any of its assets, whether such claim be in the Ordinary Course of Business or in the event of voluntary or involuntary liquidation, dissolution, insolvency or bankruptcy, so that no payment with respect to any such Indebtedness, claim or liability will be made or received while any Event of Default exists. If, notwithstanding the foregoing, any payment with respect to any such Indebtedness, claim or liability is received by any Guarantor in contravention of this Agreement, such payment shall be held in trust for the benefit of the Collateral Agent and promptly turned over to it in the original form received by such Guarantor.

Section 14.09 Contribution Among Guarantors. The Guarantors agree that, as among themselves in their capacity as guarantors of the Note Obligations, the ultimate responsibility for repayment of the Note Obligations, in the event that the Issuers fail to pay when due their Note Obligations, shall be equitably apportioned, to the extent consistent with the Note Documents, among the respective Guarantors (a) in the proportion that each, in its capacity as a guarantor, has benefited from the proceeds resulting from the sale of the Notes by the Issuers under this Agreement, or (b) if such equitable apportionment cannot reasonably be determined or agreed upon among the affected Guarantors, in proportion to their respective net worths determined on or about the date hereof (or such later date as such Guarantor becomes party hereto). In the event that any Guarantor, in its capacity as a guarantor, pays an amount with respect to the Note Obligations in excess of its proportionate share as set forth in this Section 14.09 each other Guarantor shall, to the extent consistent with the Note Documents, make a contribution payment to such Guarantor in an amount such that the aggregate amount paid by each Guarantor reflects its proportionate share of the Note Obligations. In the event of any default by any Guarantor under this Section 14.09 each other Guarantor will bear, to the extent consistent with the Note Documents, its proportionate share of the defaulting Guarantor's obligation under this Section 14.09. This Section 14.09 is intended to set forth only the rights and obligations of the Guarantors among themselves and shall not in any way affect the obligations of any Guarantor to the Collateral Agent or any Noteholder under the Note Documents (which obligations shall at all times constitute the joint and several obligations of all the Guarantors).

## ARTICLE XV

## AGENTS

Section 15.01 Appointment. Each Noteholder hereby irrevocably appoints and authorizes the Administrative Agent and the Collateral Agent to perform the duties of each such Agent as set forth in this Agreement including: (i) to receive on behalf of each Noteholder any payment of principal of or interest on the Notes and all other amounts accrued hereunder for the account of the Noteholders and paid to such Agent, and to distribute promptly to each Noteholder its Pro Rata Share of all payments so received; (ii) to distribute to each Noteholder copies of all material notices and agreements received by such Agent and not required to be delivered to each Noteholder pursuant to the terms of this Agreement, provided that the Agents shall not have any liability to the Noteholders for any Agent's inadvertent failure to distribute any such notices or agreements to the Noteholders; (iii) to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Note Obligations and related matters and to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Collateral and related matters; (iv) to execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to this Agreement or any other Note Document; (v) to perform, exercise, and enforce any and all other rights and remedies of such Agent, on behalf of the Agents and the Noteholders with respect to the Note Parties, the Note Obligations, or otherwise related to any of same to the extent, in such Agent's reasonable discretion, reasonably incidental to the exercise by such Agent of the rights and remedies specifically authorized to be exercised by such Agent by the terms of this Agreement or any other Note Document; (vi) to incur and pay such fees necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to this Agreement or any other Note Document, subject to such Agent's rights to advancement and reimbursement thereof provided herein; and (vii) subject to Section 15.03 of this Agreement, to take such action as such Agent deems appropriate on its behalf to administer the Notes and the Note Documents and to exercise such other powers expressly delegated to such Agent by the terms hereof or the other Note Documents (including, without limitation, the power to give or to refuse to give notices, waivers, consents, approvals and instructions and the power to make or to refuse to make determinations and calculations) together with such powers as are in such Agent's reasonable discretion, reasonably incidental thereto to carry out the purposes hereof and thereof. As to any matters, regardless of whether or not expressly provided for by this Agreement and the other Note Documents (including, without limitation, enforcement or collection of the Note Obligations), the Agents shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the written instructions of the Required Noteholders, and such written instructions of the Required Noteholders shall be binding upon all Noteholders; provided, however, that the Agents shall not be required to take any action which, in the reasonable opinion of any Agent, exposes such Agent to liability or which is contrary to this Agreement or any other Note Document or applicable law.

Section 15.02 Nature of Duties. The Agents shall have no duties or responsibilities except those expressly set forth in this Agreement or in the other Note Documents. The duties of the Agents shall be mechanical, ministerial and administrative in

nature. The Agents shall not have by reason of this Agreement or any other Note Document a fiduciary relationship in respect of any Noteholder. Nothing in this Agreement or any other Note Document, express or implied, is intended to or shall be construed to impose upon the Agents any obligations in respect of this Agreement or any other Note Document except as expressly set forth herein or therein. Each Noteholder has made and shall make its own independent investigation of the financial condition and affairs of the Note Parties in connection with the issuance, funding or maintaining its Notes hereunder and has made and shall make its own appraisal of the creditworthiness of the Note Parties and the value of the Collateral, and the Agents shall have no duty or responsibility, either initially or on a continuing basis, to provide any Noteholder with any credit or other information with respect thereto, whether coming into their possession before the issuance of the Notes hereunder or at any time or times thereafter, provided that, upon the reasonable request of a Noteholder, each Agent shall provide to such Noteholder any documents or reports delivered to such Agent by the Note Parties pursuant to the terms of this Agreement or any other Note Document. If any Agent seeks the consent or approval of the Required Noteholders to the taking or refraining from taking any action hereunder, such Agent shall send notice thereof to each Noteholder. Each Agent shall promptly notify each Noteholder any time that the Required Noteholders have instructed such Agent to act or refrain from acting pursuant hereto.

Section 15.03 Rights, Exculpation, Etc. (a) The Agents and their directors, officers, agents or employees shall not be liable for any action taken or omitted to be taken by them under or in connection with this Agreement or the other Note Documents, except for their own gross negligence or willful misconduct (which shall not include action taken or omitted to be taken in accordance with any direction, instruction or certificate of the Required Noteholders, for which the Agents shall have no liability) as determined by a final judgment of a court of competent jurisdiction no longer subject to appeal. Without limiting the generality of the foregoing, the Agents (i) may treat the payee of any Note as the owner thereof until the Agents receive written notice of the assignment or transfer thereof, pursuant to Section 16.07 hereof, signed by such payee and in form satisfactory to the Administrative Agent; (ii) may consult with legal counsel (including, without limitation, counsel to any Agent or counsel to the Issuers), independent public accountants, and other experts selected by any of them and shall not be liable for any action taken or omitted to be taken in good faith by any of them in accordance with the advice of such counsel or experts; (iii) may execute any of the powers herein and perform any duty hereunder either directly or by or through agents, nominees or attorneys-in-fact and shall not be responsible for the actions or omissions of such agents, nominees or attorneys-in-fact selected by them without gross negligence or willful misconduct, as determined by a final order of a court of competent jurisdiction no longer subject to appeal; (iv) make no warranty or representation to any Noteholder and shall not be responsible to any Noteholder for any statements, certificates, warranties or representations made in or in connection with this Agreement, the Notes or the other Note Documents; (v) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement, the Notes or the other Note Documents on the part of any Person, the existence or possible existence of any Default or Event of Default, or to inspect the Collateral or other property (including, without limitation, the books and records) of any Person; (vi) shall not be responsible to any Noteholder for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, the Notes or the other Note Documents or any other instrument or document furnished pursuant hereto or thereto; and (vii) shall not be

deemed to have made any representation or warranty regarding the existence, sufficiency, value or collectibility of the Notes or the Collateral, the condition of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by the Issuers in connection therewith, nor shall the Agents be responsible or liable to the Noteholders for any failure to monitor or maintain any portion of the Collateral. The Agents shall not be liable for any apportionment or distribution of payments made in good faith pursuant to Section 5.04, and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Noteholder to whom payment was due but not made, shall be to recover from other Noteholders any payment in excess of the amount which they are determined to be entitled. The Agents may at any time request written instructions and advancement of fees and expenses (including the fees and expenses of counsel, consultants, appraisers and other experts and advisors) from the Noteholders with respect to any actions or approvals which by the terms of this Agreement or of any of the other Note Documents the Agents are permitted or required to take or to grant, and the Agents shall be absolutely entitled to refrain from taking any action or to withhold any approval under any of the Note Documents until they shall have received such instructions and such advancements of fees and expenses from the Required Noteholders. Without limiting the foregoing, no Noteholder shall have any right of action whatsoever against any Agent as a result of such Agent acting or refraining from acting under this Agreement or any of the other Note Documents in accordance with the instructions of the Required Noteholders and/or such advancement of fees and expenses, or from acting, omitting or refraining to act in the absence thereof.

(b) The Agents may consult with independent counsel, independent public accountants and other experts selected by them, and any opinion or advice of such counsel, any such accountant, and any such other expert shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in accordance therewith. The Agents shall have the right at any time to seek instructions concerning the administration of the Collateral from any court of competent jurisdiction.

(c) Notwithstanding anything set forth herein to the contrary, the Agents shall have a duty of ordinary care with respect to any Collateral delivered to the Agents or their designated representatives that is in the Agents' or their designated representatives' possession and control. The Agents shall not be responsible for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral, the Agents shall, subject to Section 15.11, preserve the part of the Collateral in their possession.

(d) The Agents shall be obligated to perform such duties and only such duties as are specifically set forth in this Agreement or in any Note Document, and no implied covenants or obligations shall be read into this Agreement or any Note Document against the Agents. The Agents shall not be under any obligation to take any action which is discretionary under the provisions hereof. The Agents shall be under no obligation to exercise any of the rights or powers vested in them by this Agreement at the request or direction of the Required Noteholders pursuant to this Agreement, unless (i) the Agents shall have been provided adequate security and indemnity as determined by the Agents in their sole discretion (including without limitation from the Noteholders and/or the Note Parties) against any and all costs, expenses and liabilities which might be incurred by them in compliance with such request or direction,

including reasonable advances as may be requested by the Agents and (ii) the Agents shall receive such written instructions as the Agents deem appropriate.

(e) Whenever in the administration of this Agreement, or pursuant to any of the Note Documents, the Agents shall deem it necessary or desirable that a matter be proved or established with respect to the Note Parties in connection with the taking, suffering or omitting of any action hereunder by the Agents, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively provided or established by a certificate of the chief executive officer and chief restructuring officer of the Note Parties delivered to the Agents and such certificate shall be full warranty to the Agents for any action taken, suffered or omitted in reliance thereon.

Section 15.04 Reliance. The Agents may rely, and shall be fully protected in acting, upon any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order, bond or other paper or document which they believe to be genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties. In the absence of its gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction no longer subject to appeal, each Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to it and conforming to the requirements of this Agreement or any Note Document.

Section 15.05 Indemnification. To the extent that any Agent is not promptly reimbursed and indemnified by the Note Parties, the Noteholders will reimburse and indemnify such Agent from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against such Agent in any way relating to or arising out of this Agreement, the Notes or any of the other Note Documents or any action taken or omitted by such Agent under this Agreement or any of the other Note Documents, in proportion to each Noteholder's Pro Rata Share, including, without limitation, advances and disbursements made pursuant to Section 15.08; provided, however, that, as among the Noteholders, no Noteholder shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements for which there has been a final judgment of a court of competent jurisdiction no longer subject to appeal that such liability resulted from such Agent's gross negligence or willful misconduct.

Section 15.06 Agents Individually. With respect to any Notes held by it, if any, each Person acting as an Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Noteholder. The terms "Noteholders" or "Required Noteholders" or any similar terms shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity as a Noteholder. Each Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with the Noteholder as if it were not acting as an Agent pursuant hereto without any duty to account to the Noteholders.

Section 15.07 Successor Agent. (a) Each Agent may resign from the performance of all its functions and duties hereunder and under the other Note Documents at any time by giving at least thirty (30) Business Days' prior written notice to the Note Parties and each Noteholder. Such resignation shall take effect upon the acceptance by a successor Agent of appointment pursuant to clauses (b) and (c) below or as otherwise provided below.

(b) Upon any such notice of resignation, the Required Noteholders shall appoint a successor Agent. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations under this Agreement and the other Note Documents. After any Agent's resignation hereunder as an Agent, the provisions of this ARTICLE XV shall inure to its benefit as to any actions taken or omitted to be taken by it while it was an Agent under this Agreement and the other Note Documents.

(c) If a successor Agent shall not have been so appointed within said thirty (30) Business Day period, the retiring Agent, with the consent of the other Agent, shall then appoint a successor Agent who shall serve as an Agent until such time, if any, as the Required Purchasers, with the consent of the other Agent, appoint a successor Agent as provided above.

Section 15.08 Collateral Matters.

(a) Without limiting its right to demand and receive advances of fees and expenses pursuant to Section 15.03 and to refrain from or omit taking any action until and unless such amounts have been advanced and subject to the terms of any separate written agreement which may exist among the Agents and the Noteholders, the Collateral Agent may from time to time make such disbursements and advances which the Collateral Agent, in its sole discretion, deems necessary or desirable to preserve, protect, prepare for sale or lease or dispose of the Collateral or any portion thereof, to enhance the likelihood or maximize the amount of repayment by the Note Parties of the Note Obligations or to pay any other amount chargeable to the Note Parties pursuant to the terms of this Agreement. Such disbursements and advances shall be repayable by the Note Parties on demand and shall constitute Note Obligations hereunder secured by the Collateral. The Collateral Agent shall notify each Noteholder and the Note Parties in writing of each such advance, which notice shall include a description of the purpose of such advance. Without limiting its obligations pursuant to Section 15.05, each Noteholder agrees that it shall make available to the Collateral Agent, upon the Collateral Agent's demand, in Dollars in immediately available funds, the amount equal to such Noteholder's Pro Rata Share of each such advance. If such funds are not made available to the Collateral Agent by such Noteholder, the Collateral Agent shall be entitled to recover such funds on demand from such Purchaser, together with interest thereon for each day from the date such payment was due until the date such amount is paid to the Collateral Agent, at the Federal Funds Rate.

(b) The Noteholders hereby irrevocably authorize the Collateral Agent, at its option and in its discretion, to release any Lien granted to or held by the Collateral Agent upon any Collateral upon payment and satisfaction of all Note Obligations which have matured and which the Collateral Agent has been notified in writing are then due and payable; or constituting property being sold or disposed of in compliance with the terms of this Agreement and the other

Note Documents; or constituting property in which the Note Parties owned no interest at the time the Lien was granted or at any time thereafter; or if approved, authorized or ratified in writing by the Required Noteholders. Upon request by the Collateral Agent at any time, the Noteholders will confirm in writing the Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section 15.08(b).

(c) Without in any manner limiting the Collateral Agent's authority to act without any specific or further authorization or consent by the Noteholders (as set forth in Section 15.08(b)), each Noteholder agrees to confirm in writing, upon request by the Collateral Agent, the authority to release Collateral conferred upon the Collateral Agent under Section 15.08(b). Upon receipt by the Collateral Agent of confirmation from the Noteholders of its authority to release any particular item or types of Collateral, and upon prior written request by the Note Parties, the Collateral Agent shall (and is hereby irrevocably authorized by the Noteholder to) execute such documents as may be necessary to evidence the release of the Liens granted to the Collateral Agent for the benefit of the Agents and the Noteholders upon such Collateral; provided, however, that (i) the Collateral Agent shall not be required to execute any such document on terms which, in the Collateral Agent's opinion, would expose the Collateral Agent to liability or create any obligations or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Note Obligations or any Lien upon (or obligations of the Note Parties in respect of) all interests in the Collateral retained by the Note Parties.

(d) The Agents shall have no obligations whatsoever to any Noteholder to confirm or assure that the Collateral exists or is owned by the Note Parties or is cared for, protected or insured or has been encumbered or that the Lien granted to the Collateral Agent pursuant to this Agreement or any other Note Document has been properly or sufficiently or lawfully created, perfected, protected or enforced or is entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Agents in this Section 15.08 or in any other Note Document, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Agents may act in any manner they may deem appropriate, in their sole discretion, and that the Agents shall have no duty or liability whatsoever to any Noteholders, except as otherwise provided herein.

Section 15.09 Agency for Perfection. Each Agent and each Noteholder hereby appoints the Collateral Agent as agent and bailee for the purpose of perfecting the security interests in and Liens upon the Collateral in assets which, in accordance with Article 9 of the Uniform Commercial Code, can be perfected only by possession or control (or where the security interest of a secured party with possession or control has priority over the security interest of another secured party) and each Agent and each Noteholder hereby acknowledges that the Collateral Agent holds possession of or otherwise controls any such Collateral for the benefit of the Agents and the Noteholders as secured parties. Should the Administrative Agent or any Noteholder obtain possession or control of any such Collateral, the Administrative Agent or such Noteholder shall notify the Collateral Agent thereof, and, promptly upon the Collateral Agent's request therefor shall deliver such Collateral to the Collateral Agent or in accordance with the Collateral Agent's instructions. In addition, the Collateral Agent shall also have the power and authority hereunder to appoint such other sub-agents as may be necessary or required under

applicable state law or otherwise to perform its duties and enforce its rights with respect to the Collateral and under the Note Documents. The Note Parties and each Noteholder by their execution and delivery of this Agreement hereby consent to the foregoing.

Section 15.10 Communications Platform. (a) The Note Parties and the Noteholders agree that the Administrative Agent may distribute routine communications ("Communications") to the Noteholders, including without limitation financial statements and other information as provided in Section 9.02, and Note Documents for execution by the parties thereto (but not for any other purpose) by posting such Communications on Intralinks or a substantially similar electronic transmission system selected by the Administrative Agent (the "Platform").

(b) ANY PLATFORM, IF PROVIDED, IS PROVIDED "AS IS" AND "AS AVAILABLE". NEITHER AGENT WARRANTS THE ACCURACY OR COMPLETENESS OF ANY COMMUNICATION OR THE ADEQUACY OF THE PLATFORM, AND THE AGENTS EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN ANY COMMUNICATION. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE AGENTS IN CONNECTION WITH ANY COMMUNICATION OR THE PLATFORM. IN NO EVENT SHALL THE AGENTS OR ANY ISSUER HAVE ANY LIABILITY TO THE ISSUER, ANY NOTEHOLDER OR ANY OTHER PERSON FOR DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF THE ISSUERS', OR ANY AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT SUCH DAMAGES ARE FOUND IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION NO LONGER SUBJECT TO APPEAL TO HAVE RESULTED FROM SUCH PERSON'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. WITHOUT LIMITING THE FOREGOING, NEITHER THE AGENTS NOR THE ISSUERS SHALL, UNDER ANY CIRCUMSTANCE, BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF THE PLATFORM OR, ANY AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET.

(c) Each Noteholder agrees that notice to it (as provided in the next sentence) specifying that a Communication has been posted to the Platform shall constitute effective delivery of such Communication to such Noteholder for purposes of the Note Documents. Each Noteholder agrees (i) to notify the Agents from time to time of the e-mail address to which the foregoing notice may be sent and (ii) that such notice may be sent to such e-mail address.

Section 15.11 Actions With Respect To Collateral. The Agents shall not have any responsibility for (i) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Collateral, whether or not the Agents have or are deemed to have knowledge of such matters, (ii) taking any necessary steps to preserve the rights against any parties with respect to any Collateral or (iii) taking any action other than as directed in writing by the Required Noteholders, subject to the provisions of this Agreement.

## ARTICLE XVI

## MISCELLANEOUS

Section 16.01 Notices, Etc. All notices and other communications provided for hereunder shall be in writing and shall be mailed, telecopied or delivered, if to the Issuers, at the following address:

If to the Issuers, to the following address:

Port Townsend Paper Corporation
100 Mill Road
Port Townsend, WA 98368
Attention: John Bagley
Telephone: (360) 379-2149
Telecopier: (360) 379-2213

with a copy to (such copy not to constitute notice):

_____
_____
_____
Attention:
Telephone: (202) 887-4000
Telecopier: (202) 887-4288

if to the Administrative Agent, to it at the following address:

Wells Fargo Bank, N.A.
Corporate Trust Services
MAC N9303-120
Sixth Street and Marquette Avenue
Minneapolis, MN 55479
Attention: Jeffery T. Rose
Telephone: (612) 667-0337
Telecopier: (612) 667-9825

with a copy to (such copy not to constitute notice):

Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036
Telephone: (212) 596-9000
Facsimile: (212) 596-9090
Attention: Mark Somerstein, Esq.

if to the Collateral Agent, to it at the following address:

Wells Fargo Bank, N.A.
Corporate Trust Services

MAC N9303-120
Sixth Street and Marquette Avenue
Minneapolis, MN 55479
Attention: Jeffery T. Rose
Telephone: (612) 667-0337
Telecopier: (612) 667-9825

with a copy to (such copy not to constitute notice):

Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036
Telephone: (212) 596-9000
Facsimile: (212) 596-9090
Attention: Mark Somerstein, Esq.

or, as to each party, at such other address as shall be designated by such party in a written notice to the other parties complying as to delivery with the terms of this Section 16.01. All such notices and other communications shall be effective, (i) if mailed (by registered or certified mail, first class postage prepaid and return receipts requested), when received or three Business Days after deposited in the mails, whichever occurs first, (ii) if telecopied, when transmitted and confirmation received, or (iii) if delivered, upon delivery, except that notices to any Agent pursuant to ARTICLE II shall not be effective until received by such Agent.

Section 16.02 Amendments, Etc. No amendment or waiver of any provision of any Note Document, and no consent to any departure by the Note Parties therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Noteholders or by the Agents with the prior written consent of the Required Noteholders, and then, in each case, such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given, provided, that no such amendment or waiver shall change the aggregate principal amount of the Notes authorized hereunder, increase the commitment of any Noteholder, defer or reduce any payment of interest payable hereunder, alter the Maturity Date, permit the release of all or substantially all of the Collateral or the release of any Guarantor, or reduce any percentage required to approve any amendment, waiver or consent without the approval of all the Noteholders. Notwithstanding the foregoing, no amendment, waiver or consent shall, unless in writing and signed by an Agent, affect the rights or duties of such Agent (but not in its capacity as a Noteholder) under this Agreement or the other Note Documents.

Section 16.03 No Waiver; Remedies, Etc. No failure on the part of any Agent or any Purchaser to exercise, and no delay in exercising, any right hereunder or under any other Note Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right under any Note Document preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Agents and the Purchasers provided herein and in the other Note Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Agents and the Noteholders under any Note Document against any party thereto are not conditional or contingent on any attempt by the

Agents and the Noteholders to exercise any of their rights under any other Note Document against such party or against any other Person.

Section 16.04 [Reserved]

Section 16.05 Right of Set-off. Upon the occurrence and during the continuance of any Event of Default, any Agent at the written direction of the Required Noteholders or any Noteholder may, and is hereby authorized to, at any time and from time to time, without notice to the Issuers (any such notice being expressly waived by the Issuers) and to the fullest extent permitted by law, set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Agent or such Noteholder to or for the credit or the account of the Issuers against any and all obligations of the Issuers either now or hereafter existing under any Note Document, irrespective of whether or not such Agent or such Noteholder shall have made any demand hereunder or thereunder and although such obligations may be contingent or unmatured. Each Agent and each Noteholder agrees to notify the Issuers promptly after any such set-off and application made by such Agent or such Noteholder provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Agents and the Noteholders under this Section 16.05 are in addition to the other rights and remedies (including other rights of set-off) which the Agents and the Noteholder may have under this Agreement or any other Note Documents of law or otherwise.

Section 16.06 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 or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 16.07 Register; Transfer, Registration and Substitution of Notes; Successors, Assigns and Transfers.

(a) Transfer by Purchasers. Each Purchaser may transfer to one or more other Persons all or a portion of its rights and obligations under this Agreement (including all or a portion of the Notes owing to it); provided that (i) the Issuers and the Administrative Agent shall receive notice of such transfer; (ii) the parties to each such transfer shall execute and deliver to the Administrative Agent, for its acceptance and recording in the Register, a Transfer and Acceptance; (iii) except in the case of a transfer to a Person that, immediately prior to such transfer, was a Purchaser or an Affiliate of a Purchaser, or a transfer of all of a Purchaser's rights and obligations under this Agreement, the aggregate principal amount of the Notes held by the transferring Purchaser being transferred pursuant to each such transfer (determined as of the date of the Transfer and Acceptance with respect to such transfer) shall in no event be less than $1,000,000; and (iv) such transfer shall be either pursuant to an effective registration statement under the Securities Act or pursuant to an exemption from such registration. Upon such execution, delivery, acceptance and recording, from and after the effective date specified in such Transfer and Acceptance, (x) the transferee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been transferred to it pursuant to such Transfer and Acceptance, have the rights and obligations of a Purchaser hereunder and under the other Note Documents (including, without limitation, the obligation to fund its pro rata share of each

Additional Issuance) and (y) the transferor thereunder shall, to the extent that rights and obligations hereunder have been transferred by it pursuant to such Transfer and Acceptance, relinquish its rights and be released from its obligations under this Agreement (and, in the case of a Transfer and Acceptance covering all or the remaining portion of a transferring Purchaser's rights and obligations under this Agreement, such Purchaser shall cease to be a party hereto).

(b) Undertaking of Transferor and Transferee. By executing and delivering a Transfer and Acceptance, the Purchaser transferor thereunder and the transferee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Transfer and Acceptance, such transferring Purchaser makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other instrument or document furnished pursuant hereto; (ii) such transferring Purchaser makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Issuers or the performance or observance by the Issuers of any of their respective obligations under this Agreement or any other instrument or document furnished pursuant hereto; (iii) such transferee confirms that it has received a copy of this Agreement, together with copies of the Financial Statements and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Transfer and Acceptance; (iv) such transferee will, independently and without reliance upon any Agent, such transferring Purchaser or any other Purchaser and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such transferee appoints and authorizes the Agents to take such action as agents on its behalf and to exercise such powers under this Agreement as are delegated to the Agents by the terms hereof and of the other Note Documents, together with such powers as are reasonably incidental thereto; (vi) such transferee agrees that it will perform in accordance with their terms all of the obligations that by the terms of this Agreement and the other Note Documents are required to be performed by it as a Purchaser; (vii) such transferee has provided the Issuers and the Administrative Agent with the forms and documents with respect to such transferee referred to in Section 4.05; and (viii) such transferee, by its acceptance of a Note registered in its name, as set forth below in paragraph (c), shall be deemed to have made any representations and warranties set forth in ARTICLE VII herein and agrees to promptly provide to the Issuers or to the Issuers' counsel any and all information necessary or advisable to demonstrate compliance with an exemption from the Securities Act and applicable blue sky laws.

(c) Register. The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Issuers, shall maintain at its address referred to in Section 16.01 a copy of each Transfer and Acceptance delivered to and accepted by it and a register for the recordation of the names and addresses of the Noteholders and principal amount of the Notes held by each Purchaser from time to time (the "Register"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Issuers, the Agents and the Noteholders shall treat each Person whose name is recorded in the Register as a Purchaser hereunder for all purposes of this Agreement. No transfer shall be effective until it is recorded in the Register pursuant to this Section 16.07(c). The Register shall be available for inspection by the Issuers at any reasonable time and from time to time upon reasonable prior notice.

(d) Transfer and Acceptance. Upon its receipt of a Transfer and Acceptance executed by a transferring Purchaser and an transferee and the Note or Notes, or the portion of thereof, being surrendered for transfer, the Administrative Agent shall, if such Transfer and Acceptance has been completed and is in the form of Exhibit F hereto, (i) accept such Transfer and Acceptance, (ii) record the information contained therein in the Register, (iii) give prompt notice thereof to the Issuers and request that the Issuers, at its own expense (except as provided below), execute and deliver one or more new Notes (as requested by the Purchaser thereof) in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Notes, or portions thereof. Each such new Note shall be payable to the Person as such Purchaser may request and shall be substantially in the form of Exhibit A. Each such new Note shall be dated and bear interest from the date to which such interest shall have been paid on the surrendered Note, or portion thereof, or dated the date of the surrendered Note, or portion thereof, if no interest shall have been paid thereon. The Issuers may require payment by the transferee of any such Note, or portion thereof, of a sum sufficient to cover any stamp tax, transfer tax or governmental charge imposed in respect of any such transfer of Notes, or portions thereof.

(e) [Reserved]

(f) Disclosure of Information. Any Purchaser may, in connection with any transfer or participation or proposed transfer or participation pursuant to this Section 16.07, disclose to the transferee or participant or proposed transferee or participant, any information relating to the Note Parties furnished to such Purchaser by or on behalf of the Note Parties; provided that, prior to any such disclosure, the transferee or participant or proposed transferee or participant shall agree in writing to preserve the confidentiality of any confidential information received by it from any Purchaser in accordance with Section 16.18.

(g) Other Pledges. Anything in this Section 16.07 to the contrary notwithstanding, each Purchaser shall be permitted to pledge its interest in the Securities in the Ordinary Course of Business.

(h) No Purchase, Transfers or Participations to Note Parties. Anything in this Section 16.07 to the contrary notwithstanding, none of the Note Parties or their Subsidiaries may acquire any Notes (whether by purchase, redemption, redemption, transfer, participation or otherwise), and no Purchaser shall sell, transfer or participate to any Note Party or Subsidiary of a Note Party, directly or indirectly, any Notes. The Note Parties shall promptly cancel all Notes acquired by it pursuant to any payment, redemption or purchase of Notes pursuant to any provision of this Agreement and promptly notify the Administrative Agent thereof, and no Notes may be issued in substitution or exchange for any such Notes.

(i) Replacement of Notes. Upon receipt by the Issuers and the Administrative Agent of notice from any Purchaser of the ownership of and loss, theft, destruction or mutilation of any Note, and (a) in the case of loss, theft or destruction, of such Purchaser's agreement of indemnity with respect thereto, or (b) in the case of mutilation, upon surrender and cancellation thereof, the Issuers at their own expense shall execute and deliver, in lieu thereof, a new Note, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen,

destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

(j) Successors, Assigns and Transfers. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns or transfers, provided that the Issuers may not assign or transfer any of its rights or obligations hereunder or under the other Note Documents without the prior written consent of the Required Noteholders, and any purported assignment or transfer without such consent shall be null and void.

Section 16.08 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telecopier shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telecopier also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Note Document *mutatis mutandis*.

Section 16.09 GOVERNING LAW. THIS AGREEMENT, THE NOTES AND THE OTHER NOTE DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER NOTE DOCUMENT IN RESPECT OF SUCH OTHER NOTE DOCUMENT) SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK.

Section 16.10 CONSENT TO JURISDICTION; SERVICE OF PROCESS AND VENUE. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT, THE NOTES OR ANY OTHER NOTE DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK IN NEW YORK COUNTY OR OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, THE ISSUER AND EACH PURCHASER BY ITS ACCEPTANCE OF A NOTE HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. THE ISSUERS, GUARANTORS, AGENTS, AND EACH PURCHASER HEREBY IRREVOCABLY APPOINTS THE SECRETARY OF STATE OF THE STATE OF NEW YORK AS AGENT FOR SERVICE OF PROCESS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING AND FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS AND IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE ISSUERS, GUARANTORS, AGENTS AND EACH PURCHASER AT ITS ADDRESS FOR NOTICES AS SET FORTH IN SECTION 16.01 AND TO THE SECRETARY OF STATE OF THE STATE OF NEW YORK, SUCH SERVICE TO BECOME EFFECTIVE TEN (10) DAYS AFTER SUCH MAILING. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE AGENTS OR THE NOTEHOLDERS TO SERVICE OF PROCESS IN ANY

OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL ACTIONS OR PROCEEDINGS OR OTHERWISE PROCEED AGAINST THE ISSUERS IN ANY OTHER JURISDICTION. THE ISSUERS, GUARANTORS, AGENTS AND THE PURCHASERS HEREBY EXPRESSLY AND IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH ACTION OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT AN ISSUER, GUARANTOR, THE AGENTS, OR EACH PURCHASER HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, THE ISSUERS, AGENTS AND EACH PURCHASER HEREBY IRREVOCABLY WAIVE SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER NOTE DOCUMENTS.

Section 16.11 WAIVER OF JURY TRIAL, ETC. EACH ISSUER, EACH GUARANTOR, EACH AGENT AND EACH PURCHASER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT, THE NOTES OR THE OTHER NOTE DOCUMENTS, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION THEREWITH, OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION, PROCEEDINGS OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH ISSUER CERTIFIES THAT NO OFFICER, REPRESENTATIVE, AGENT OR ATTORNEY OF ANY AGENT OR ANY PURCHASER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ANY AGENT OR ANY PURCHASER WOULD NOT, IN THE EVENT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM, SEEK TO ENFORCE THE FOREGOING WAIVERS. EACH ISSUER HEREBY ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE AGENTS AND THE PURCHASERS ENTERING INTO THIS AGREEMENT.

Section 16.12 Consent by the Agents and Purchasers. Except as otherwise expressly set forth herein to the contrary, if the consent, approval, satisfaction, determination, judgment, acceptance or similar action (an "Action") of any Agent or any Purchaser shall be permitted or required pursuant to any provision hereof or any provision of any other agreement to which any Issuer is a party and to which any Agent or any Purchaser has succeeded thereto, such Action shall be required to be in writing and may be withheld or denied by such Agent or such Purchaser, in its sole discretion, with or without any reason, and without being subject to question or challenge on the grounds that such Action was not taken in good faith.

Section 16.13 No Party Deemed Drafter. Each of the parties hereto agrees that no party hereto shall be deemed to be the drafter of this Agreement.

Section 16.14 Reinstatement; Certain Payments. If any claim is ever made upon any Agent or any Purchaser for repayment or recovery of any amount or amounts received by such Agent or such Purchaser in payment or on account of any of the Note Obligations, such Agent or such Purchaser shall give prompt notice of such claim to each other Agent and Purchaser and the Issuers, and if such Agent or such Purchaser repays all or part of such amount by reason of (i) any judgment, decree or order of any court or administrative body having jurisdiction over such Agent or such Purchaser or any of its property, or (ii) any good faith settlement or compromise of any such claim effected by such Agent or such Purchaser with any such claimant, then and in such event the Issuers agree that (A) any such judgment, decree, order, settlement or compromise shall be binding upon it notwithstanding the cancellation of any Indebtedness hereunder or under the other Note Documents or the termination of this Agreement or the other Note Documents, and (B) it shall be and remain liable to such Agent or such Purchaser hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by such Agent or such Purchaser.

Section 16.15 Indemnification.

(a) General Indemnity. In addition to the Issuers' other Note Obligations under this Agreement, the Issuers agree to defend, protect, indemnify and hold harmless each Agent and each Purchaser and all of their respective officers, directors, employees, attorneys, consultants and agents (collectively called the "Indemnitees") from and against any and all losses, damages, liabilities, obligations, penalties, fees, reasonable costs and expenses (including, without limitation, reasonable attorneys' fees, costs and expenses) incurred by such Indemnitees, whether prior to or from and after the Effective Date, whether direct, indirect or consequential, as a result of or arising from or relating to or in connection with any of the following: (i) the negotiation, preparation, execution or performance or enforcement of this Agreement, any other Note Document or of any other document executed in connection with the transactions contemplated by this Agreement, (ii) any Agent's or any Purchaser's furnishing of funds to the Issuers under this Agreement or the other Note Documents, (iii) any matter relating to the financing transactions contemplated by this Agreement or the other Note Documents or by any document executed in connection with the transactions contemplated by this Agreement or the other Note Documents, or (iv) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto (collectively, the "Indemnified Matters"); provided, however, that the Issuers shall not have any obligation to any Indemnitee under this subsection (a) for any Indemnified Matter caused by the gross negligence or willful misconduct of such Indemnitee, as determined by a final judgment of a court of competent jurisdiction no longer subject to appeal.

(b) Environmental Indemnity. Without limiting Section 16.15(a) hereof, the Issuers agrees to defend, indemnify, and hold harmless the Indemnitees in their capacity as holders of the Notes or Equity Securities against any and all Environmental Liabilities and Costs and all other claims, demands, penalties, fines, liability (including strict liability), losses, damages, costs and expenses (including without limitation, reasonable legal fees and expenses, consultant fees and laboratory fees), arising out of (i) any Releases or threatened Releases (x) at any property presently or formerly owned or operated by any Issuer, or any predecessor in interest, or (y) of any Hazardous Materials generated and disposed of by the Issuers, or any predecessor in interest; (ii) any violations of Environmental Laws; (iii) any Environmental

Action relating to the Issuers, or any predecessor in interest; (iv) any personal injury (including wrongful death) or property damage (real or personal) arising out of exposure to Hazardous Materials used, handled, generated, transported or disposed by the Issuers, or any predecessor in interest; and (v) any breach of any warranty or representation regarding environmental matters made by the Issuers in Section 8.22. Notwithstanding the foregoing, the Issuers shall not have any obligation to any Indemnitee under this subsection (b) regarding any potential environmental matter covered hereunder which is caused by the gross negligence or willful misconduct of such Indemnitee, as determined by a final judgment of a court of competent jurisdiction no longer subject to appeal.

(c) Contribution. To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section 16.15 may be unenforceable because it is violative of any law or public policy, the Issuers shall contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all Indemnified Matters incurred by the Indemnitees. The indemnities set forth in this Section 16.15 shall the repayment of the Note Obligations and discharge of any Liens granted under the Note Documents.

Section 16.16 Records. The unpaid principal of and interest on the Notes, the interest rate or rates applicable to such unpaid principal and interest, the duration of such applicability, and the accrued and unpaid fees payable herein, shall at all times be ascertained from the records of the Agents, which shall be conclusive and binding absent manifest error.

Section 16.17 Binding Effect. This Agreement shall become effective when it shall have been executed by each Issuer, each Agent and each Purchaser and when the conditions precedent set forth in Section 6.01 hereof have been satisfied or waived in writing by the Required Purchasers, and thereafter shall be binding upon and inure to the benefit of the Issuers, each Agent and each Purchaser, and their respective successors and assigns (including any trustee succeeding to the rights of the Issuers pursuant to Chapter 11 of the Bankruptcy Code or pursuant to any conversion to a case under Chapter 7 of the Bankruptcy Code), except that the Issuers shall not have the right to assign or transfer its rights hereunder or any interest herein without the prior written consent of each Purchaser, and any transfer by any Purchaser shall be governed by Section 16.07 hereof.

Section 16.18 Confidentiality. Each Agent and each Purchaser agrees (on behalf of itself and each of its affiliates, directors, officers, employees and representatives) to keep confidential non-public information supplied to it by the Issuers pursuant to this Agreement or the other Note Documents which is identified in writing by the Issuers as being confidential at the time the same is delivered to such Person (and which at the time is not, and does not thereafter become, publicly available or available to such Person from another source not known to be subject to a confidentiality obligation to such Person not to disclose such information), provided that nothing herein shall limit the disclosure of any such information (i) to such Person's Affiliates or such Person's employees, attorneys, advisors and other experts involved in the transactions contemplated hereby who, in each case, are informed of the confidential nature of such information and agree to maintain the confidentiality thereof, (ii) to the extent required by statute, rule, regulation or judicial process or required in connection with any Bankruptcy Court or other proceeding seeking to enforce the Purchasers or such Agent's rights hereunder (solely to extent believed, in good faith, by the disclosing party to be material to such

enforcement action); provided, that in the case of any disclosure pursuant to this clause (ii), that the party proposing to disclose such information agrees to promptly notify the Issuers thereof; (iii) to counsel for any Agent or any Purchaser, (iv) to examiners, auditors, regulators or accountants on a need to know basis, (v) in connection with any litigation to which any Agent or any Purchaser is a party (solely to extent believed, in good faith, by the disclosing party to be material to such enforcement action); provided, that in the case of any disclosure pursuant to this clause (v), that the party proposing to disclose such information agrees to promptly notify the Issuers thereof), or (vi) to any transferee or participant (or prospective transferee or participant) so long as such transferee or participant (or prospective transferee or participant) first agrees, in writing, to be bound by confidentiality provisions similar in substance to this Section 16.18. Notwithstanding the foregoing, each Agent and each Purchaser may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the financing contemplated by this Agreement, and all materials of any kind (including opinions or other tax analyses) that are provided to any Agent or any Purchaser relating to such tax treatment and tax structure. Each Agent and each Purchaser agrees that, upon receipt of a request or identification of the requirement for disclosure pursuant to clause (ii) or (v) hereof, it will make reasonable efforts to keep the Issuers informed of such request or identification; provided that the Issuers acknowledge that each Agent and each Purchaser may make disclosure as required or requested by any Governmental Authority or representative thereof and that each Agent and each Purchaser may be subject to review by regulatory agencies and may be required to provide to, or otherwise make available for review by, the representatives of such agencies any such non-public information.

Section 16.19 Integration. This Agreement, together with the other Note Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

Section 16.20 Legend. A copy of this Agreement shall be filed with the secretary of the Issuers and kept with the records of the Issuers. Each certificate, note or other document representing the Securities subject to the terms hereof and each certificate, note or other document issued in exchange for or upon the transfer of any such Secuirites shall be stamped or otherwise imprinted with a legend in substantially the following form (unless the transfer of such Securities is being made pursuant to an effective registration statement):

"THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE, AND MAY NOT BE SOLD, TRANSFERRED, ASSIGNED OR HYPOTHECATED UNLESS THERE IS AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACT AND THE SECURITIES LAWS OF ANY STATE COVERING SUCH SECURITIES."

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

ISSUERS:

PORT TOWNSEND PAPER CORPORATION

By: _____
Name:
Title:

PT HOLDINGS COMPANY, INC.

By: _____
Name:
Title:

PTPC PACKAGING CO., INC.

By: _____
Name:
Title:

COLLATERAL AGENT AND
ADMINISTRATIVE AGENT

WELLS FARGO BANK, N.A.
as Collateral Agent and Administrative Agent

By: _____
Name:
Title:

PURCHASERS:

By: _____
Name:
Title:

## SCHEDULE OF DIRECTORS
## AND OFFICERS OF THE REORGANIZED DEBTORS

**The Directors**

The initial board of directors of Reorganized PT Holdings will consist of five (5) directors. The members of the initial boards of directors or equivalent governing bodies for the other Reorganized Debtors shall be selected by the initial board of directors for Reorganized PT Holdings and shall consist of officers or directors of the Reorganized Debtors. Each of the persons on the initial boards of directors of the respective Reorganized Debtors shall serve in accordance with the certificates of incorporation and bylaws of the respective Reorganized Debtor, as the same may be amended from time to time.

The following table sets forth information concerning the initial directors of Reorganized PT Holdings:

| Name | Age |
|---|---|
| Michael Christopher Ranson, Chairman | 34 |
| John P. Begley | 60 |
| Charles Hodges | 55 |
| Stephen Marotta | 45 |
| Eric Seeve | 31 |

**Michael Christopher Ranson** is a Portfolio Manager for GoldenTree Asset Management, L.P. Mr. Ranson formerly served on the board of directors of Confluence Holdings, Inc., NewStarcom, Inc., Decorative Surfaces International, Inc., Patriot Medical Technologies, Inc., and Fulton Bellows, Inc.

**John P. Begley** has been the Debtors' President and Chief Executive Officer since 1997 and will continue to serve in this position as an initial officer of the Reorganized Debtors. Before joining the Company, Mr. Begley was associated with Weyerhaeuser Company from July 1973 to December 1997, most recently as a Director of Strategic Planning. Mr. Begley currently serves on the board of directors of AF&PA, Forest Trends, and the Centrum Foundation for the Arts.

**Charles Hodges** is the current President of The Hodges Group LLC, an operational effectiveness practice specializing in the pulp, paper and allied industries. Mr. Hodges is a retired Senior Vice President – Manufacturing of Georgia Pacific Corp. and was a company officer at the time of retirement. Mr. Hodges currently serves on the board of directors of the Technical Association of Pulp and Paper Industries.

EXHIBIT H

**Stephen Marotta** is a founding principal of the turnaround advisory firm Marotta Gund Budd & Dzera, LLC and has more than 23 years of providing professional accounting and consulting services to major corporations and businesses, including 17 years of consulting to financially troubled companies. Mr. Marotta formerly served on the board of directors of MVE, Inc. and has been chairman of the Board for This End Up Furniture Company, Inc. and International Check Services, Inc.

**Eric Seeve** has been at GoldenTree Asset Management, L.P. since 2001 and currently serves as a Research Analyst. Prior to joining GoldenTree Asset Management, L.P., Mr. Seeve worked in the Natural Resources Group within the Investment Banking Department at Bear, Stearns & Co. Inc.

**The Executive Officers**

The officers of each of the Reorganized Debtors that were officers immediately prior to the Effective Date will continue to serve as initial officers of the Reorganized Debtors on, and subsequent to, the Effective Date. The following table sets forth information concerning the name, age, position, and compensation of each executive officer.

| Name | Age | Position | Compensation |
|---|---|---|---|
| John P. Begley | 60 | President and Chief Executive Officer | $300,000 per year |
| Bruce McComas | 57 | Vice President, Operations and General Manager, PTPC | $206,000 per year |
| Emmett Bergman | 41 | Chief Restructuring Officer and Chief Financial Officer | $500 per hour |
| Joseph M. Beers | 40 | Vice President, Strategic Initiatives | $215,270 per year |
| Ernest A. Conrads | 44 | Corporate Treasurer | $135,960 per year |

**John P. Begley** has been the Debtors' President and Chief Executive Officer since 1997. Before joining the Company, Mr. Begley was associated with Weyerhaeuser Company from July 1973 to December 1997, most recently as a Director of Strategic Planning.

**Bruce McComas** has been PTPC's Vice President of Operations and General Manager since June 2003. From September 2002 to June 2003, Mr. McComas was PTPC's Vice President and Mill Manager. From January 2001 to September 2002, Mr. McComas was PTPC's Vice President and Assistant Mill Manager. From January 1998 to January 2001, Mr. McComas was PTPC's Area Manager - Pulping, Recycling and Power & Recovery.

**Emmett Bergman** is a Senior Director with Alvarez & Marsal, a performance improvement, turnaround management and corporate advisory services firm that is providing financial advisory services to the Company in connection with its efforts to improve financial and operating performance. Mr. Bergman was appointed as Chief Restructuring Officer ("CRO") of the Company pursuant to interim and final orders authorizing the Company's employment of Alvarez & Marsal as financial advisor and CRO entered on March 29, 2007 and April 18, 2007, respectively. Mr. Bergman has also temporarily assumed the former duties of Timothy Leybold as Chief Financial Officer.

**Joseph M. Beers** has been Vice President of Strategic Initiatives since October 2006 and was previously General Manager of Crown Packaging Richmond since rejoining the Company in August 2003. From 1988 to 2001, Mr. Beers held various positions of increasing responsibility with the Company including Technical Director, Assistant Paper Machine and Finishing Manager, and Portland Plant Manager and Vice President, Converting Operations.

**Ernest A. Conrads** has been the Debtors' Corporate Treasurer since April 2005. Before joining the Company, Mr. Conrads was with G.B. Enterprises Inc., a part of the Alpha Group, a Washington-based manufacturer of communication powering equipment from January 1999 to April 2005, where he most recently served as Vice President of Finance and Treasurer.

The executive officers are elected by the board of directors and generally hold office until the next annual meeting of the Company's directors or until their successors are elected and qualified. Executive officers may be removed at any time by the board of directors with or without cause.