UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

DEC 20 2013

CERTIFIED MAIL: RETURN RECEIPT REQUESTED
GENERAL NOTICE LETTER and 104(e) INFORMATION REQUEST
URGENT LEGAL MATTER - PROMPT REPLY NECESSARY

Ashland Inc.
50 E. River Center Boulevard
Covington, Kentucky 41011

696534

Ref: Explo Systems Site, Camp Minden, Webster Parrish, Louisiana

Dear Sir:

The purpose of this letter is to notify you of Ashland's potential liability at the EXPLO System Inc., Site (Site). Currently there are ongoing removal investigation activities designed to address explosives at the Site, and the threats presented by the explosives.

The Site consists of 132 acres on Camp Minden, owned by the Louisiana National Guard/Louisiana Military Department (LNG/LMD). Camp Minden was formerly the Louisiana Army Ammunition Plant. In December 2004, DOD transferred the property to the LNG/LMD. EXPLO Systems, Inc., under contract with the DOD, conducted demilitarization of explosive powders and/or explosives from military munitions (cartridges for Howitzers) for commercial use starting in November 2006.

On October 15, 2012, the explosion of a magazine containing black powder and M6 Propellant at Explo Systems resulted in the complete destruction of the storage magazine containing the material, damage to 10 railcars, and the release of unconsumed M6 Propellant over ¼ mile from the site of the explosion requiring remediation.

On November 27, 2012, the Louisiana State Police (LSP) identified approximately 10 million lbs. of unsecured M6 Propellant and other explosives at the Site. M6 Propellant was stored throughout the buildings, hallways, and outside the facility where it was exposed to the elements.

From November 30, 2012, until May 17, 2013, LSP and Explo employees secured approximately 10 million lbs. of M6 Propellant and other explosive materials within 97 magazines at Camp Minden. From November 30, 2012, through December 7, 2012, the town of Doyline, (approximately 400 homes) was evacuated during operational hours. Also, the Youth Challenge Program (school) at Camp Minden was evacuated as well as all non-essential personnel and operations at Camp Minden while the volume of unsecured M6 Propellant required a minimum of a 4,000-foot safe distance, due to risk of explosion.

Other explosives currently stored at the Site exist in smaller quantities but are also a threat due the reactive, explosive, and shock sensitive nature of the material. Overall, approximately 18,000,000 pounds of M6 Propellant and other explosives are stored within 97 magazines at Camp Minden that require removal and disposal.

A Superfund Site constitutes an area that is contaminated with hazardous substances at levels that may present a threat to human health or the environment. Under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, potentially responsible parties (PRPs) may be required to perform cleanup actions to protect the public health and welfare or the environment. PRPs include current and former owners and operators of the Site, as well as persons who sent or transported hazardous substances to the Site for disposal or treatment, or who arranged for the disposal or treatment of hazardous substances at the Site.

Based on the information collected, the U.S. Environmental Protection Agency (EPA) believes that Ashland Inc., (through its merger with Hercules Inc.) may be liable under Section 107(a) of CERCLA with respect to the Site, as a person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged transport for disposal or treatment, of hazardous substances owned or possessed by such person. Enclosure A explains the General Notice and Removal Action, and offers you the opportunity to enter into an Administrative Order on Consent (AOC) as a Settling Party concerning the cleanup of the Site. Enclosure B explains the basis for the EPA's determination that Ashland is a PRP. The draft AOC and draft Statement of Work (SOW) are included as Enclosure C. A list of the other parties who are currently negotiating with the EPA is included as Enclosure D. Also included in this letter as Enclosure E is the Small Business Resource Fact Sheet, and Enclosure F which is the 104(e) Information Request.

The EPA invites you to participate in negotiations for the performance of removal work needed at the Site. You should also contact the representatives of the PRPs identified in Enclosure D to join in discussions among the PRPs. Should Ashland decline to participate in negotiations offered under CERCLA, the Agency may use other available enforcement authorities in order to ensure cleanup of the Site.

Upon reviewing the enclosed Notice (Enclosure A), please provide an oral response to Ms. Cynthia Brown, Removal Enforcement Coordinator, at 214-665-7480 within 3 days after receipt of this letter to let her know whether you will enter into AOC negotiations to address the current response at the Site. In addition, please provide a written response to Ms. Brown, at the address included in the Information Request. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Section 104(e), 42 U.S.C. § 9604(e), gives the EPA the authority to require PRPs to respond to the Information Request included in this correspondence. We encourage your company to give this matter its full attention and we respectfully request that you respond to this Information Request for information in writing, within ten (10) working days of receipt of this letter. You may designate another official of this facility with the requisite authority to respond on behalf of the company. However, failure to respond to this information request may result in the EPA seeking penalties of up to $37,500 per day of violation. In addition, furnishing false, fictitious or fraudulent statements or representations is subject to criminal penalty under 18 U.S.C. § 1001.

If you have questions regarding the notice or any of the other documentation included, please contact Ms. Brown at 214-665-7480, or at brown.cynthia@epa.gov. Questions concerning legal matters should be directed to EPA attorney Mr. George Malone at 214-665-8030, or malone.george@epa.gov. Thank you for your attention to this matter.

Sincerely yours,

Pamela Phillips Stoling

Carl Edlund, P.E.
Director
Superfund Division

Enclosures (6)

EXPLO SYSTEMS INC.
ENCLOSURE A
GENERAL NOTICE
REMOVAL ACTION

This Notice is from the U.S. Environmental Protection Agency (EPA). This Notice is directed to you, the Potentially Responsible Party (PRP) of the EXPLO Systems Inc., (Explo) Superfund Site. This Notice does two things:

1. This Notice tells you that this entity may be responsible for the presence of hazardous substances found at the Site. When we say "Site" or "property" in this Notice, we mean the EXPLO Systems Inc., Superfund Site which is the "property" located at Camp Minden, Webster Parrish, Louisiana. This Notice is issued under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund).

2. This Notice provides background information leading up to the EPA's investigation of the Site and the EPA's activities to determine the source of the contamination.

NOTICE THAT YOU MAY BE LIABLE

Under Section 107 of CERCLA, 42 U.S.C. § 9607, responsible parties are those who are current owners or operators of a facility, past owners or operators who owned or operated the facility at the time hazardous substances were released or disposed of at the facility, persons who arranged for disposal or treatment at the facility (usually the person(s) who generated the hazardous substance), or persons who selected that facility and transported the hazardous substances to the facility. Section 107 of CERCLA, 42 U.S.C. § 9607, states that responsible parties are liable to the United States for the costs it has incurred or will incur conducting a response action such as that proposed for the Explo Superfund Site. A PRP is therefore responsible for performing the cleanup action in accordance with the EPA requirements, paying for the cleanup by the EPA, and reimbursing the Federal Government for past and future costs of the cleanup activities.

The EPA encourages Ashland to participate in negotiations offered under this CERCLA notice letter. If this action does not result in an expedited resolution under CERCLA, the Agency may use other available enforcement authorities, in order to ensure cleanup of the Explo Site located in Camp Minden, Louisiana.

BACKGROUND

Previous Actions

On October 15, 2012, the explosion of a magazine containing black powder and M6 Propellant at Explo Systems shattered windows in Minden, (approximately 4 miles northeast) and generated a 7,000-foot mushroom cloud. The explosion was detected by Doppler Radar in Shreveport and satellite images were captured of the blast from space. The explosion resulted in the complete destruction of the storage magazine containing the material, damage to 10 railcars, and the release of unconsumed M6 Propellant requiring remediation over ¼ mile from the site of the explosion.

The ensuing LSP investigation of the explosion revealed the improper and unsafe storage of explosives and propellants at the Site. On November 27, 2012, LSP served a warrant to Explo Systems and began the assessment and relocation of unsecured explosives (primarily M6 Propellant) to magazines at Camp Minden.

From November 30, 2012, through May 17, 2013, LSP and Explo employees secured all M6 Propellant (approximately 10 million lbs.) and other explosive materials within the magazines at Camp Minden.

On February 5, 2013, the LNG/LMD Adjutant General formally requested assistance with the transportation and storage of the explosives associated with Explo Systems from the Secretary of Defense. That request was denied by the Secretary of the Army on May 12, 2013, citing the prohibitions for the storage, treatment, or disposal of any hazardous materials not owned by DOD in 10 USC§ 2692. The Army did offer the continued technical assistance of the DOD Explosives Safety Board and the U.S. Army Technical Center for Explosives Safety.

- On April 2 and 3, 2013, at the request of the LNG/LMD, a team from the DOD (US ARMY) Explosives Safety Board (ESB) conducted a safety assessment of the hazards associated with the M6 Propellant at Explo Systems at Camp Minden. On May 7 through May 9, 2013, a team from the DOD (US ARMY) ESB conducted a safety assessment of all the explosive hazards associated with Explo Systems, including the Explo facility at "S-Line" and the storage magazines at Camp Minden. Reports included concerns about the stability of the M6 Propellant and other explosives due to loss of lot integrity, improper storage conditions, and lack of a stability monitoring program. The ESB recommended the disposal of the explosives by open burn/open detonation (OBOD) at Camp Minden. During a meeting on August 1, 2013, the ESB indicated the likelihood of a magazine explosion increasing within the next 2 years due to instability concerns associated with this material.

- The DOD ESB provided an inventory of the explosives stored in the magazines at Camp Minden (associated with Explo Systems) and at S-Line:

    - 128 lbs. of black powder
    - 200 lbs. of Composition H6
    - Four 50-gallon drums of ammonium perchlorate
    - Two 50-gallon drums and 3-50 lb. boxes of Explosive D (ammonium picrate)
    - 109,000 lbs. of M30 propellant
    - 320,000 lbs. of Clean Burning Incendiary (CBI)
    - 661,000 lbs. of Nitrocellulose
    - 1.817 million lbs. of Tritonal (aluminum/TNT) mixture
    - Unknown volume of Red Water (water contaminated with TNT)
    - Effluent associated with the Super Critical Water Oxidation Unit (SCWO)

- On June 18, 2013, LSP arrested Explo Systems' managers and employees who were indicted by the Webster Parish Grand Jury for reckless handling of explosives, failure to properly mark explosives, unlawful storage of explosives, failure to obtain magazine license, failure to keep a proper inventory of explosives, and conspiracy on all counts. After the arrest and indictment of Explo Systems' employees, their explosive handling licenses with the State of Louisiana were revoked.

- On August 5, 2013, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) revoked

EXPLO Systems Inc., explosives licenses as a result of the indictments of Explo's management and employees by the State of Louisiana.

Current Actions

The previously unsecured explosives at S-Line are currently secured within 97 explosive storage magazines at Camp Minden. A stability monitoring program is not in place for the explosives stored at Camp Minden. The deterioration of the stability of the explosives continually increases the risk of auto-detonation of the explosives and a magazine explosion similar to the October 2012 explosion.

On August 13, 2013, EXPLO Systems, Inc., filed for Chapter 11 Bankruptcy and the proceedings for the liquidation of assets and reconciliation of debts is proceeding with the assistance of a U.S. Trustee assigned to the case.

On September 30, 2013, the Bankruptcy Court approved an EXPLO and Louisiana Department of Military transfer and settlement agreement transferring title of all materials and inventory it owned to the Louisiana Department of Military.

YOUR RESPONSE TO THE EPA

In additional to oral notification, please notify Ms. Brown in **writing** at the address indicated below ***within seven (7) calendar days of the date of receipt of this letter*** to indicate your willingness to negotiate in good faith **to pay for the cleanup by the EPA, or reimburse the Federal Government for past and future costs of the cleanup activities. If the EPA does not receive your response within seven (7) calendar days, the EPA may assume you do not wish to negotiate, and the EPA will then take whatever actions are necessary to abate the potential threat to human health and the environment posed by explosives or hazardous materials on the property.**

Your response to this letter and questions regarding the matters in this letter should be directed to:

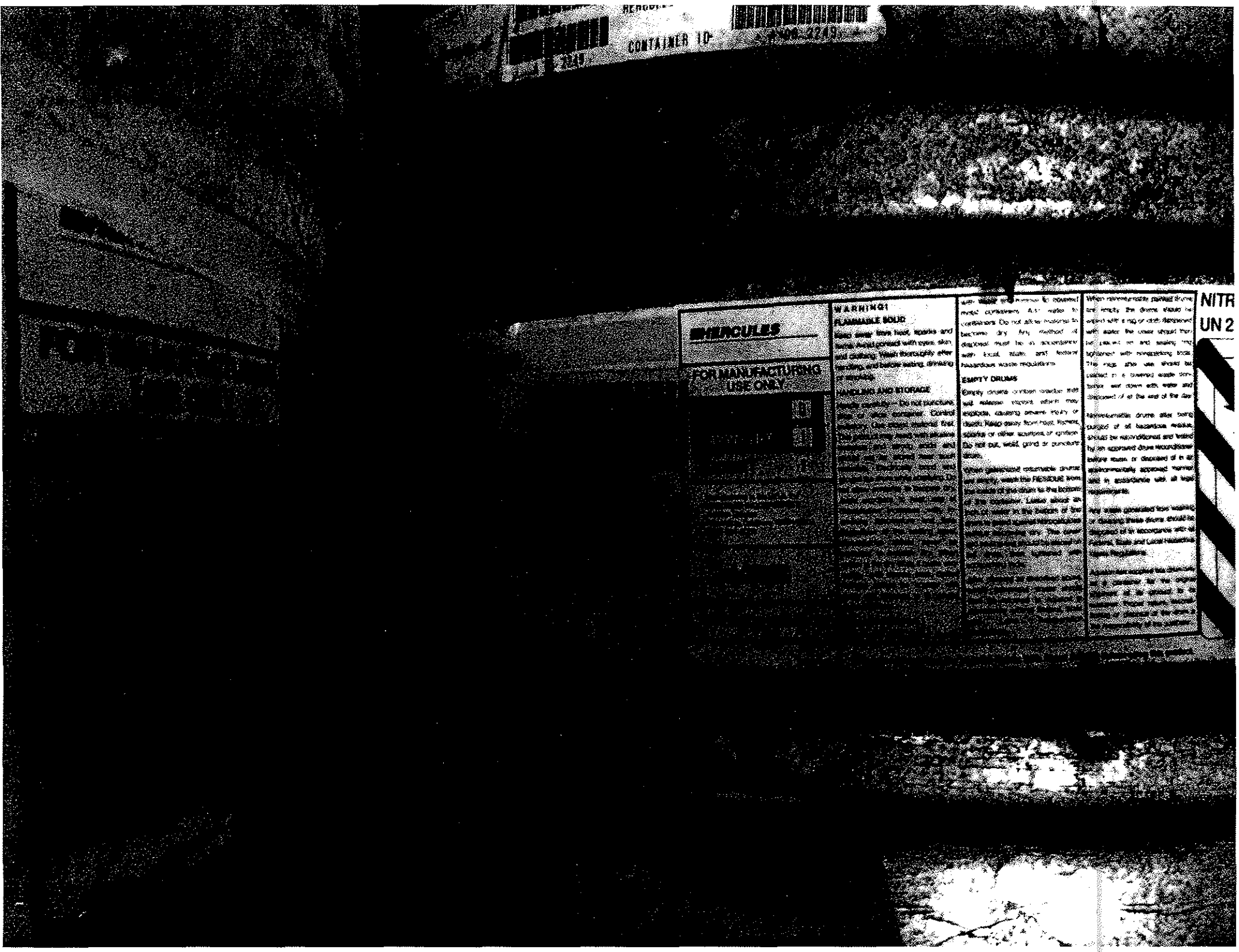
Ms. Cynthia Brown
Removal Enforcement Coordinator (6SF-TE)
United States Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202
Telephone: 214-665-7480
Fax: 214-665-6660
Brown.cynthia@epa.gov

If you or your attorney have legal questions pertaining to this matter, please direct them to:

Mr. George Malone
Assistant Regional Counsel (6RC-S)
United States Environmental Protection Agency
Region 6
1445 Ross Avenue
Dallas, Texas 75202
Telephone: 214-665-8030
Fax: 214-665-6460
Malone.george@epa.gov

The discussions of fact or law in this Notice are meant to help you understand CERCLA and the EPA's actions at the Site. The discussions of fact and law are not final positions on any matter discussed in this Notice.

EXPLO SYSTEMS INC.
ENCLOSURE B
EVIDENCE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EMPTY DRUMS
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Full-Text Search Company

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): July 10, 2008

ASHLAND INC.
(Exact name of registrant as specified in its charter)

Kentucky	1-32532	20-0865835
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

50 E. RiverCenter Boulevard, Covington, Kentucky (Address of principal executive offices)	**41011** (Zip Code)
P.O. Box 391, Covington, Kentucky (Mailing Address)	**41012-0391** (Zip Code)

Registrant's telephone number, including area code: (859) 815-3333

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☒ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry into a Material Definitive Agreement.

Merger Agreement

On July 10, 2008, Ashland Inc. ("Ashland"), entered into an Agreement and Plan of Merger (the "Merger Agreement") with Hercules Incorporated, a Delaware corporation ("Hercules") and Ashland Sub One, Inc., a Delaware corporation and wholly owned subsidiary of Ashland ("Merger Sub"), pursuant to which, on the terms set forth in the Merger Agreement, Merger Sub will be merged with and into Hercules, with Hercules surviving as a wholly owned subsidiary of Ashland (the "Merger").

At the effective time of the Merger, each share of Hercules common stock will be converted into the right to receive 0.093 of an Ashland share of common stock, par value $0.01 per share, and $18.60 in cash, without interest. In addition, all of the Hercules equity awards will vest immediately prior to the effective time of the Merger. Holders of Hercules stock options will be entitled to elect to convert their options into stock options to acquire shares of Ashland common stock based on an exchange ratio derived from the merger consideration or to cash out their options based on the cash equivalent of the merger consideration (less the applicable option strike price), subject to pro ration if the conversion election is oversubscribed. The restrictions on Hercules restricted shares will lapse immediately prior to the Merger and those shares will be entitled to the merger consideration on the same terms as other shares of Hercules common stock. Hercules restricted stock units will be converted into a vested right to receive cash for a per share amount equal to the cash equivalent of the merger consideration.

Ashland and Hercules have made representations, warranties and covenants in the Merger Agreement and the completion of the Merger is subject to the satisfaction or waiver of customary closing conditions, including (i) the effectiveness of a registration statement on Form S-4, (ii) the approval of Hercules' stockholders of the Merger, (iii) receipt of all applicable approvals under antitrust laws, and (iv) the absence of a material adverse effect with respect to Hercules.

The respective boards of directors of Ashland and Hercules have unanimously approved the Merger, and the Hercules board of directors has agreed to recommend that Hercules' stockholders approve the Merger. Hercules has agreed, with certain exceptions, not to directly or indirectly solicit, initiate or knowingly encourage proposals relating to alternative business combination transactions. However, the Hercules board of directors may, subject to payment of the termination fee described below, change its recommendation in favor of the Merger if it determines in good faith that such a change in recommendation is required by its fiduciary duties.

The Merger Agreement is subject to termination by either Ashland or Hercules for various reasons, including their mutual written consent, the failure of the Merger to be consummated on or before March 31, 2009, or the failure of Hercules stockholders to approve the Merger. Ashland may terminate the Merger Agreement if, prior to receiving Hercules' stockholder approval, the Hercules board of directors recommends or approves any alternative transaction or the Hercules board of directors fails to timely affirm its recommendation of the Merger Agreement upon request from Ashland. Hercules may terminate the Merger Agreement if (i) after Hercules' stockholder approval, both the average Ashland closing stock price declines by more than 20% for any five-trading-day period compared to the Ashland closing stock price on the day prior to the Hercules stockholder meeting; and Ashland's closing stock price during the same five-trading-day period also declines by 20% or more than Standard & Poor's 500 Index, or (ii) prior to receiving Hercules' stockholder approval, the Hercules board of directors approves a superior proposal for an alternative business combination transaction and concurrently authorizes Hercules to enter into a definitive agreement regarding such an alternative transaction. Upon a termination of the Merger Agreement as a result of certain alternative business combination situations or a Hercules board recommendation adverse to the Merger, Hercules will be obligated to pay a termination fee to Ashland in the amount of $77.5 million, whereas upon a termination of the Merger Agreement due to Ashland's inability to receive the necessary financing for the transaction or a breach of Ashland's covenants related to financing, Ashland will be obligated to pay a termination fee to Hercules in the amount of $77.5 million.

The foregoing summary of the Merger Agreement is qualified in its entirety by the terms and conditions of the Merger Agreement, which is filed as Exhibit 2.1 hereto and is incorporated herein by reference.

Finance Commitment Letter

Also on July 10, 2008, Ashland accepted a finance commitment letter (the "Commitment Letter") with Bank of America, N.A., The Bank of Nova Scotia, Banc of America Bridge LLC, and Banc of America Securities LLC (collectively, the "Commitment Parties"). Pursuant to the Commitment Letter, certain of the Commitment Parties will act as the initial lenders, lead arrangers and book running managers under senior secured credit facilities (collectively, the "Senior Credit Facilities") in the aggregate of $1.950 billion, consisting of term loan A facilities and term loan B facilities aggregating up to $1,450.0 million and a revolving credit facility of up to $500.0 million. Certain of the Commitment Parties will also act as underwriters, initial purchasers, arrangers and placement agents with respect to $750.0 million of senior unsecured notes (the "Senior Notes"), or alternatively, as initial lenders under a $750.0 million bridge facility that will provide interim financing as the Senior Notes are being marketed and sold (the "Bridge Facility"). The Commitment Parties have committed to provide the financing described in the Commitment Letter through December 31, 2008.

Proceeds from the Senior Credit Facilities and, as the case may be, the Senior Notes or the Bridge Facility will be used, together with cash on hand at Ashland and the common stock of Ashland, to finance the Merger, the costs and expenses related to the Merger, the repayment of certain existing indebtedness of Ashland and Hercules, and the ongoing working capital and other general corporate purposes of Ashland after consummation of the Merger.

The Senior Credit Facilities and Bridge Facility are subject to the negotiation of mutually acceptable credit or loan agreements and other mutually acceptable definitive documentation, which will include customary representations and warranties, affirmative and negative covenants, financial covenants, and events of default. Additionally, the Commitment Parties' obligations to provide the financing are subject to the satisfaction of specified conditions, including consummation of the Merger in accordance with the terms of the Merger Agreement, the accuracy of specified representations, and the absence of specified defaults.

The foregoing summary of the Commitment Letter is qualified in its entirety by the terms and conditions of the Commitment Letter, which is filed as Exhibit 10.1 hereto and is incorporated herein by reference.

Additional Information

In connection with the proposed transaction, Ashland and Hercules will be filing documents with the SEC, including the filing by Ashland of a registration statement on Form S-4, and the filing by Hercules of a related preliminary and definitive proxy statement/prospectus. Investors and security holders are urged to read the registration statement on Form S-4 and the related preliminary and definitive proxy/prospectus when they become available because they will contain important information about the proposed transaction. Investors and security holders may obtain free copies of these documents (when they are available) and other documents filed with the SEC at the SEC's web site at www.sec.gov and by contacting Ashland Investor Relations at (859) 815-4454 or Hercules Investor Relations at (302) 594-7151. Investors and security holders may obtain free copies of the documents filed with the SEC on Ashland's Investor Relations website at www.ashland.com/investors or Hercules' website at www.herc.com or the SEC's website at www.sec.gov.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit	Description
2.1	Agreement and Plan of Merger dated as of July 10, 2008 among Ashland Inc., Ashland Sub One, Inc. and Hercules Incorporated
10.1	Commitment Letter with Bank of America, N.A., The Bank of Nova Scotia, Banc of America Bridge LLC, and Banc of America Securities LLC dated July 10, 2008

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: July 14, 2008

ASHLAND INC.

By: /s/ David L. Hausrath
David L. Hausrath
Senior Vice President and
General Counsel

Exhibit Index

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Exhibit 2.1

AGREEMENT AND PLAN OF MERGER

Dated as of July 10, 2008

among

ASHLAND INC.,

ASHLAND SUB ONE, INC.

and

HERCULES INCORPORATED

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SCHEDULES AND EXHIBITS

Exhibit A Restated Certificate of Incorporation of the Surviving Corporation

Exhibit B Amended and Restated Bylaws of the Surviving Corporation

AGREEMENT AND PLAN OF MERGER dated as of July 10, 2008 among ASHLAND INC., a Kentucky corporation ("Parent"), ASHLAND SUB ONE, INC., a Delaware corporation ("Sub") and a wholly owned subsidiary of Parent, and HERCULES INCORPORATED, a Delaware corporation (the "Company" and, together with Parent and Sub, the "parties").

WHEREAS, the Board of Directors of Parent has determined that this Agreement and the transactions contemplated by this Agreement, including the merger (the "Merger") of Sub with and into the Company, taken together, are advisable for, fair to and in the best interests of Parent and its stockholders and, by resolutions duly adopted, has approved and adopted this Agreement;

WHEREAS, the Board of Directors of the Company (the "Company Board") has determined that this Agreement and the transactions contemplated by this Agreement, including the Merger, taken together, are advisable for, fair to and in the best interests of the Company and its stockholders and, by resolutions duly adopted, has approved and adopted this Agreement and resolved to recommend that the Company's stockholders approve and adopt this Agreement; and

WHEREAS, the Board of Directors of Sub has approved and adopted this Agreement and Parent, as the sole stockholder of Sub, has approved and adopted this Agreement.

NOW, THEREFORE, in consideration for the various representations, warranties, covenants and agreements contained in this Agreement, the parties agree as follows:

ARTICLE I

The Merger

SECTION 1.01. The Merger. On the terms and subject to the conditions set forth in this Agreement, and in accordance with the General Corporation Law of the State of Delaware (the "DGCL"), Sub shall be merged with and into the Company at the Effective Time. At the Effective Time, the separate corporate existence of Sub shall cease and the Company shall continue as the surviving corporation. The Company, as the surviving corporation in the Merger, is sometimes referred to in this Agreement as the "Surviving Corporation." The Merger and the other transactions contemplated by this Agreement (excluding the Financing) are referred to in this Agreement collectively as the "Transactions."

SECTION 1.02. Closing. The closing (the "Closing") of the Merger shall take place at the offices of Squire, Sanders & Dempsey L.L.P., 350 Park Avenue, New York, New York 10022 at 9:00 a.m. as soon as practicable but in any event no later than the fifth Business Day (or by January 26, 2009 if the Company Stockholder Approval is obtained between December 19, 2008 and January 19, 2009) following the date upon which all of the conditions set forth in Article VII are satisfied or waived (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or (to the extent permitted by Law) waiver of those conditions), or at such other place, time and date as shall be agreed in writing between Parent and the Company; provided, however, that if all the conditions set forth in Article VII shall not have been satisfied or (to the extent permitted by Law) waived on such fifth Business Day, then the Closing shall take place on the first Business Day on which all such conditions shall have been satisfied or (to the extent permitted by Law) waived. The date on which the Closing occurs is referred to in this Agreement as the "Closing Date."

SECTION 1.03. Effective Time. Subject to the provisions of this Agreement, as soon as practicable on the Closing Date, the parties shall file with the Secretary of State of the State of Delaware, a certificate of merger (the "Certificate of Merger") in such form as is required by and executed in accordance with Section 251 of the DGCL, and as soon as practicable on or after the Closing Date, shall make all other filings or recordings required under the DGCL. The Merger shall become effective upon the filing of the Certificate of Merger with the Secretary of State of the State of Delaware, or at such later time as Parent and the Company shall agree and specify in the Certificate of Merger (the time the Merger becomes effective being the "Effective Time").

SECTION 1.04. Effects of the Merger. From and after the Effective Time, the Merger shall have the effects set forth in Section 259 of the DGCL. Without limiting the generality of the foregoing and subject thereto, at the Effective Time, all the property, rights, privileges, immunities, powers and franchises of the Company and Sub shall vest in the Surviving Corporation and all debts, liabilities and duties of the Company and Sub shall become the debts, liabilities and duties of the Surviving Corporation.

SECTION 1.05. Certificate of Incorporation and Bylaws. At the Effective Time, without any further action on the part of Parent, the Company or Sub, (a) the Restated Certificate of Incorporation of the Company (the "Company Certificate") shall be amended and restated so as to read in its entirety as set forth on Exhibit A to this Agreement and, as amended, such Company Certificate shall be the Certificate of Incorporation of the Surviving Corporation and (b) the Amended and Restated Bylaws of the Company shall be amended and restated so as to read in their entirety as set forth on Exhibit B to this Agreement and, as so amended, shall be the Bylaws of the Surviving Corporation, in each case until amended in accordance with (i) the DGCL, (ii) the provisions of such Certificate of Incorporation and Bylaws and (iii) the terms of this Agreement, including the obligations set forth in Section 6.08.

SECTION 1.06. Directors and Officers. From and after the Effective Time, (i) the directors of Sub shall be the directors of the Surviving Corporation and (ii) the officers of Sub shall be the officers of the Surviving Corporation, in each case until the earlier of their resignation or removal, or until their respective successors are duly elected or appointed and qualified.

ARTICLE II

Effect on the Capital Stock of the Constituent Corporations; Exchange of Certificates

SECTION 2.01. Effect on Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of the holder of any shares of Company Common Stock or any shares of capital stock of Parent or Sub:

(a) Capital Stock of Sub. Each share of common stock, no par value per share, of Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one fully paid and nonassessable share of common stock, no par value per share, of the Surviving Corporation.

(b) Cancellation of Treasury Stock and Parent-Owned Stock. Each share of common stock, no par value, of the Company (the "Company Common Stock") that is held by the Company as treasury stock and each share of Company Common Stock that is owned directly or indirectly by Parent or Sub immediately prior to the Effective Time shall no longer be outstanding and shall automatically be cancelled and shall cease to exist, and no consideration shall be delivered in exchange for such shares.

(c) Conversion of Company Common Stock. Subject to Section 2.02(e), each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (including any shares of Company Common Stock that are owned by a wholly owned Subsidiary of the Company, but excluding shares to be cancelled in accordance with Section 2.01 (b) and any Appraisal Shares (as defined below)) shall be converted into the right to receive (i) 0.0930 (the "Exchange Ratio") of a validly issued, fully paid and nonassessable share of common stock, par value $0.01 per share (the "Parent Common Stock"), of Parent (the "Stock Consideration") and (ii) $18.60 in cash, without interest (the "Cash Consideration" and, together with the Stock Consideration, the "Merger Consideration"). From and after the Effective Time, all shares of Company Common Stock converted into the right to receive the Merger Consideration pursuant to this Section 2.01(c) shall no longer be outstanding and shall automatically be cancelled and shall cease to exist, and each holder of a certificate which immediately prior to the Effective Time represented any such shares of Company Common Stock (each, a "Certificate") shall cease to have any rights with respect to such shares, except the right to receive the Merger Consideration, any dividends or other distributions payable pursuant to Section 2.02(c) and cash in lieu of any fractional shares payable pursuant to Section 2.02(e), in each case to be issued or paid in consideration therefor upon surrender of such Certificate in accordance with Section 2.02(b), without interest. Notwithstanding the foregoing, if between the date of this Agreement and the Effective Time, the outstanding shares of Parent Common Stock or Company Common Stock shall have been changed into a different number of shares or a different class, by reason of any stock dividend, subdivision, reclassification, recapitalization, split, combination or exchange of shares, or any similar event shall have occurred, then any number or amount contained in this Agreement that is based upon the number of shares of Parent Common Stock or Company Common Stock, as the case may be, will be appropriately adjusted to provide to Parent and the holders of Company Common Stock the same economic effect as contemplated by this Agreement prior to such event.

(d) Appraisal Rights. Notwithstanding anything in this Agreement to the contrary, shares of Company Common Stock issued and outstanding immediately prior to the Effective Time as to which the holder of such shares shall have (i) not voted in favor of the Merger nor consented thereto in writing, (ii) properly complied with the provisions of Section 262 of the DGCL ("Section 262") as to appraisal rights and (iii) not effectively withdrawn or lost their rights to appraisal (each, an "Appraisal Share"), if any, shall not be converted into the Merger Consideration as provided in this Section 2.01, but rather the holders of Appraisal Shares shall be entitled to payment, solely from the Surviving Corporation, of the appraisal value of such Appraisal Shares to the extent permitted by and in accordance with Section 262. At the Effective Time, all Appraisal Shares shall no longer be outstanding, shall automatically be

cancelled and shall cease to exist, and each holder of Appraisal Shares shall cease to have any rights with respect thereto, except the right to receive the appraisal value of such Appraisal Shares in accordance with the provisions of Section 262. Notwithstanding the foregoing, if (A) any holder of Appraisal Shares (1) under the circumstances permitted by and in accordance with the DGCL, fails to perfect or otherwise shall waive, withdraw or lose (through failure to perfect or otherwise) the right to dissent or its right to appraisal under Section 262, (2) fails to establish his entitlement to appraisal rights as provided in the DGCL or (3) fails to take any action the consequence of which is that such holder is not entitled to payment for his shares under the DGCL or (B) a court of competent jurisdiction shall determine that such holder is not entitled to appraisal under Section 262, then such holder shall forfeit the right to appraisal of such shares of Company Common Stock and such shares of Company Common Stock shall thereupon cease to constitute Appraisal Shares and such shares of Company Common Stock shall be deemed to have been converted as of the Effective Time into, and to have become, the right to receive the Merger Consideration as provided in this Section 2.01. The Company shall give reasonably prompt notice to Parent of any demands received by the Company for appraisal of any shares of Company Common Stock, withdrawals of such demands and any other notices pursuant to Section 262 received by the Company. Parent shall have the right to participate with the Company in and, prior to the Effective Time, in consultation with the Company, direct all negotiations and proceedings with respect to such demands. Prior to the Effective Time, the Company shall not, without the prior written consent of Parent (which shall not be unreasonably withheld, delayed or conditioned), voluntarily make any payment with respect to, or settle or offer to settle, any such demands, or agree to do any of the foregoing.

SECTION 2.02. Exchange of Certificates; Exchange Procedures.

(a) Exchange Agent. Prior to the Effective Time, Parent shall appoint a bank or trust company designated by Parent and reasonably acceptable to the Company (the "Exchange Agent") for the payment of the Merger Consideration. At or prior to the Effective Time, Parent shall deposit with the Exchange Agent, in trust for the benefit of the holders of Certificates, for exchange in accordance with this Article II through the Exchange Agent, certificates representing the shares of Parent Common Stock to be issued as Stock Consideration and cash in U.S. dollars an aggregate amount sufficient to pay the Cash Consideration. In addition, Parent shall deposit with the Exchange Agent, from time to time as needed, cash in U.S. dollars sufficient to pay any dividend or other distributions to which such holders may become entitled pursuant to Section 2.02(c). All such Parent Common Stock and cash deposited with the Exchange Agent is hereinafter referred to as the "Exchange Fund." The Exchange Fund shall not be used for any other purpose than as set forth in this Section 2.02.

(b) Exchange Procedures. As soon as reasonably practicable after the Effective Time, Parent shall cause the Exchange Agent to mail to each holder of record of a Certificate whose shares of Company Common Stock were converted into the right to receive the Merger Consideration, any dividends or other distributions payable pursuant to Section 2.02(c) and cash in lieu of any fractional shares payable pursuant to Section 2.02(e), the following: (i) a form of letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon proper delivery of the Certificates to the Exchange Agent and which shall be in customary form and contain customary provisions as reasonably agreed by the Company and Parent); and (ii) instructions for use in effecting the

surrender of the Certificates in exchange for the Merger Consideration, any dividends or other distributions payable pursuant to Section 2.02(c) and cash in lieu of any fractional shares payable pursuant to Section 2.02(e). Each holder of record of one or more Certificates shall, upon surrender to the Exchange Agent of such Certificate or Certificates, together with such letter of transmittal, duly executed, and such other documents as may reasonably be required by the Exchange Agent, be entitled to receive in exchange therefor (i) the amount of cash to which such holder is entitled pursuant to Section 2.01(c), (ii) a certificate or certificates representing that number of whole shares of Parent Common Stock (after taking into account all Certificates surrendered by such holder) to which such holder is entitled pursuant to Section 2.01(c), (iii) any dividends or distributions payable pursuant to Section 2.02(c) and (iv) cash in lieu of any fractional shares payable pursuant to Section 2.02(e), and the Certificates so surrendered shall forthwith be cancelled. In the event of a transfer of ownership of Company Common Stock which is not registered in the transfer records of the Company, payment of the Merger Consideration in accordance with this Section 2.02(b) may be made to a person other than the person in whose name the Certificate so surrendered is registered if such Certificate shall be properly endorsed or otherwise be in proper form for transfer and the person requesting such payment shall pay any transfer Taxes required by reason of the transfer, or establish to the reasonable satisfaction of Parent that such Taxes have been paid or are not applicable. Until surrendered as contemplated by this Section 2.02(b), each Certificate shall be deemed at any time after the Effective Time to represent only the right to receive upon such surrender the Merger Consideration, any dividends or other distributions payable pursuant to Section 2.02(c) and cash in lieu of any fractional shares payable pursuant to Section 2.02(e). No interest shall be paid or will accrue on any payment to holders of Certificates pursuant to the provisions of this Article II.

(c) Treatment of Unexchanged Shares. No dividends or other distributions declared or made with respect to Parent Common Stock with a record date on or after the Effective Time shall be paid to the holder of any unsurrendered Certificate with respect to the shares of Parent Common Stock issuable upon surrender thereof, and no cash payment in lieu of fractional shares shall be paid to any such holder pursuant to Section 2.02(e), until the surrender of such Certificate in accordance with this Article II. Subject to escheat, Tax or other applicable Law, following surrender of any such Certificate, there shall be paid to the holder of the Certificate representing whole shares of Parent Common Stock issued in exchange therefor, without interest, (i) at the time of such surrender, the amount of any cash payable in lieu of a fractional share of Parent Common Stock to which such holder is entitled pursuant to Section 2.02(e) and the amount of dividends or other distributions with a record date after the Effective Time theretofore paid with respect to such whole shares of Parent Common Stock and (ii) at the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time but prior to such surrender and a payment date subsequent to such surrender payable with respect to such whole shares of Parent Common Stock.

(d) No Further Ownership Rights in Company Common Stock. The shares of Parent Common Stock issued and cash paid in accordance with the terms of this Article II upon conversion of any shares of Company Common Stock (including any cash paid pursuant to subsection (c) or (e) of this Section 2.02) shall be deemed to have been issued and paid in full satisfaction of all rights pertaining to such shares of Company Common Stock. From and after the Effective Time, there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of shares of Company Common Stock that were outstanding

immediately prior to the Effective Time. If, after the Effective Time, any certificates formerly representing shares of Company Common Stock are presented to the Surviving Corporation or the Exchange Agent for any reason, they shall be cancelled and exchanged as provided in this Article II.

(e) No Fractional Shares. No certificates or scrip representing fractional shares of Parent Common Stock shall be issued upon the conversion of Company Common Stock pursuant to Section 2.01. Notwithstanding any other provision of this Agreement, each holder of shares of Company Common Stock converted pursuant to the Merger who would otherwise have been entitled to receive a fraction of a share of Parent Common Stock (after taking into account all Certificates delivered by such holder) shall be entitled to receive, from the Exchange Agent in accordance with the provisions of this Section 2.02(e), a cash payment in lieu of such fractional shares representing such holder's proportionate interest, if any, in the proceeds from the sale by the Exchange Agent (reduced by any fees of the Exchange Agent attributable to such sale) (as so reduced, the "proceeds") in one or more transactions of Parent Common Stock equal to the excess of (i) the aggregate number of shares of Parent Common Stock to be delivered to the Exchange Agent by Parent pursuant to Section 2.02(a) over (ii) the aggregate number of whole shares of Parent Common Stock to be distributed to the holders of Certificates pursuant to Section 2.02(b) (such excess being, the "Excess Shares"). The parties acknowledge that payment of the cash proceeds in lieu of issuing certificates or scrip for fractional shares was not separately bargained-for consideration but merely represents a mechanical rounding off for purposes of avoiding the expense and inconvenience to Parent that would otherwise be caused by the issuance of fractional shares. As soon as practicable after the Effective Time, the Exchange Agent, as agent for the holders of the Certificates representing Parent Common Stock, shall sell the Excess Shares at then-prevailing prices on the New York Stock Exchange ("NYSE") in the manner provided in this Section 2.02(e). The sale of the Excess Shares by the Exchange Agent, for the benefit of the holders that would otherwise receive fractional shares, shall be executed on the NYSE at then-prevailing market prices and shall be executed in round lots to the extent practicable. Until the proceeds of such sale or sales have been distributed to the holders of shares of Company Common Stock, or the Exchange Fund is terminated, the Exchange Agent shall hold such proceeds in trust for the benefit of the holders of shares of Company Common Stock (the "Fractional Share Proceeds"). The Exchange Agent shall determine the portion of the Fractional Share Proceeds to which each holder of shares of Company Common Stock shall be entitled, if any, by multiplying the amount of the aggregate proceeds comprising the Fractional Share Proceeds by a fraction, the numerator of which is the amount of the fractional share interest to which such holder of shares of Company Common Stock would otherwise be entitled and the denominator of which is the aggregate amount of fractional share interests to which all holders of shares of Company Common Stock would otherwise be entitled.

(f) Termination of Exchange Fund. Any portion of the Exchange Fund (including the Fractional Share Proceeds) that remains undistributed to the holders of Company Common Stock for 12 months after the Effective Time shall be delivered to Parent, upon demand, and any holder of Company Common Stock who has not exchanged his shares of Company Common Stock in accordance with this Article II prior to that time shall thereafter look only to Parent for delivery of the Merger Consideration, any cash in lieu of fractional shares and any dividends and distributions to which such holder is entitled pursuant to this Article II.

(g) No Liability. None of Parent, Sub, the Company or the Exchange Agent shall be liable to any Person in respect of any portion of the Exchange Fund delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law. Any portion of the Exchange Fund which remains undistributed to the holders of Certificates immediately prior to such date on which the Exchange Fund would otherwise escheat to or become the property of any Governmental Entity shall, to the extent permitted by applicable Law, become the property of Parent, free and clear of all claims or interest of any Person previously entitled thereto.

(h) Investment of Exchange Fund. The Exchange Agent shall invest any cash in the Exchange Fund as directed by Parent in obligations of the United States. Any interest and other income resulting from such investments shall be paid to Parent.

(i) Withholding Rights. Each of Parent, the Surviving Corporation and the Exchange Agent (without duplication) shall be entitled to deduct and withhold from the consideration otherwise payable to any holder of Company Common Stock pursuant to this Agreement such amounts as may be required to be deducted and withheld with respect to the making of such payment under the Internal Revenue Code of 1986, as amended (the "Code"), or under any provision of federal, state, local or foreign Tax Law. To the extent that amounts are so withheld and paid over to the appropriate taxing authority, such amounts shall be treated for all purposes of this Agreement as having been paid to the holder of Certificates in respect of which Parent, the Surviving Corporation or the Exchange Agent, as the case may be, made such deduction or withholding.

(j) Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by the Surviving Corporation, the posting by such Person of a bond, in such reasonable amount as Parent may direct, as indemnity against any claim that may be made against it with respect to such Certificate, the Exchange Agent shall issue, in exchange for such lost, stolen or destroyed Certificate, the Merger Consideration, any cash in lieu of fractional shares and any dividends and distributions on the Certificate deliverable in respect thereof pursuant to this Agreement.

ARTICLE III

Representations and Warranties of the Company

Except as disclosed in the Company SEC Documents filed prior to the date of this Agreement or in the disclosure letter delivered by the Company to Parent concurrently with the execution of this Agreement (the "Company Disclosure Letter") (which shall be arranged to correspond to the sections contained in this Article III and the disclosure in any section of the Company Disclosure Letter shall qualify other sections in this Article III to the extent that it is reasonably apparent that such disclosure also qualifies or applies to such other sections), the Company represents and warrants to Parent and Sub as follows:

SECTION 3.01. Organization, Standing and Corporate Power. The Company and each of its Subsidiaries (the "Company Subsidiaries") are duly organized, validly existing and in good standing under the laws of the jurisdiction in which each is organized and have all requisite

power and authority and possess all governmental franchises, licenses, permits, authorizations and approvals (collectively, "Permits") necessary to enable each to own, lease or otherwise hold its properties and assets and to conduct its businesses as presently conducted (the "Company Permits"), except where the failure to have such Company Permits, individually or in the aggregate, is not having or would not reasonably be expected to have a Material Adverse Effect on the Company. The Company and each Company Subsidiary is duly qualified or licensed to do business in each jurisdiction where the nature of its business or the ownership or leasing of its properties make such qualification necessary, other than in such jurisdictions where the failure to be so qualified or licensed, individually or in the aggregate, is not having or would not reasonably be expected to have, a Material Adverse Effect on the Company. The Company has delivered or made available to Parent, prior to the execution of this Agreement, complete and accurate copies of the certificate of incorporation of the Company, as amended to the date of this Agreement (as so amended, the "Company Charter"), and the bylaws of the Company, as amended to the date of this Agreement (as so amended, the "Company Bylaws").

SECTION 3.02. Company Subsidiaries; Equity Interests.

(a) The Company Disclosure Letter lists each Company Subsidiary and its form and jurisdiction of organization and, for each Company Subsidiary that constitutes a significant subsidiary within the meaning of Rule 1-02 of Regulation S-X of the SEC (a "Significant Company Subsidiary") as of the date of this Agreement, each jurisdiction in which such Significant Company Subsidiary is qualified or licensed to do business. All the outstanding shares of capital stock of, or other voting securities or ownership interests in, each Company Subsidiary have been validly issued and are fully paid and nonassessable and are owned by the Company, by another Company Subsidiary or by the Company and another Company Subsidiary, free and clear of all pledges, liens, charges, mortgages, encumbrances and security interests of any kind or nature whatsoever (collectively, "Liens") except for Liens for Taxes that are not yet due and payable or for Liens of an immaterial amount for which the amount or validity is being contested in good faith and free of any other restriction (including any restriction on the right to vote, sell or otherwise dispose of such capital stock or other ownership interests), except for restrictions imposed by applicable securities laws.

(b) Except for its interests in the Company Subsidiaries, neither the Company nor any Company Subsidiary owns, directly or indirectly, any equity or similar interest in, or any interest convertible into or exchangeable or exercisable for, any corporation, partnership, joint venture or other business association or entity, excluding equities or similar interests in any publicly-traded entity held for investment by the Company or the Company Subsidiaries and comprising less than 5% of the outstanding equities or similar interests of such entity.

SECTION 3.03. Capital Structure.

(a) The authorized capital stock of the Company consists of 300,000,000 shares of Company Common Stock and 2,000,000 shares of preferred stock, no par value (the "Company Preferred Stock" and, together with the Company Common Stock, the "Company Capital Stock"), of which 125,000 shares have been designated as Series A Junior Participating Preferred Stock (the "Company Series A Preferred Stock"). At the close of business on July 8, 2008, (i) 112,663,180 shares of Company Common Stock were issued and outstanding, of which

1,712,546 were Company Restricted Shares and 483,563 shares were held by an employee stock ownership plan trust under the Company's Savings and Investment Plan, Plan No. 020, (ii) no shares of Company Preferred Stock were issued or outstanding, (iii) 47,236,293 shares of Company Common Stock were held by the Company in its treasury, (iv) 8,954,274 shares of Company Common Stock were reserved and available for issuance pursuant to the Company Stock Plans, of which 3,880,914 shares were subject to issuance in payment of outstanding Company Stock Options and 151,905 shares were subject to issuance in payment of outstanding Company RSUs, (v) 6,604,214 shares of Company Common Stock were reserved for issuance upon exercise of warrants to purchase shares of Company Common Stock (the "Warrants") issued pursuant to the Warrant Agreement, dated as of July 27, 1999, between the Company and The Chase Manhattan Bank, as warrant agent (the "Warrant Agreement"), and (vi) 148,732 shares of Company Common Stock were reserved for issuance upon conversion of the Company's 8% Convertible Subordinated Debentures due 2010 (the "Convertible Debentures") issued pursuant to the Indenture, dated as of August 15, 1985, between the Company and Bankers Trust Company, as trustee, (the "Convertible Debentures Indenture"). Except as set forth in this Section 3.03(a), at the close of business on July 8, 2008, no shares of capital stock or other voting securities or equity interests of the Company were issued, reserved for issuance or outstanding. After July 8, 2008, there have been no issuances by the Company of shares of capital stock of, or other equity or voting interests in, the Company, other than the issuance of Company Common Stock upon the exercise of Company Stock Options or pursuant to Company RSUs, in each case outstanding at the close of business on July 8, 2008 and in accordance with their terms on July 8, 2008, or upon the exercise of the Warrants or the conversion of the Convertible Debentures, in each case in accordance with their terms on July 8, 2008. Except as set forth in Section 3.03 of the Company Disclosure Letter, there are no outstanding stock appreciation, "phantom" stock, profit participation or dividend equivalent rights or similar rights with respect to the Company or any Company Subsidiary.

(b) All outstanding shares of Company Capital Stock are, and all such shares that may be issued upon the exercise of Company Stock Options or Warrants, pursuant to Company RSUs or upon conversion of Convertible Debentures will be when issued, duly authorized, validly issued, fully paid and nonassessable and not subject to or issued in violation of any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of the DGCL, the Company Charter, the Company Bylaws or any Contract to which the Company is a party or otherwise bound. Except for the Convertible Debentures, there are not any bonds, debentures, notes or other indebtedness of the Company having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which holders of Company Common Stock may vote ("Voting Company Debt"). Except for the Company Stock Options, the Company RSUs, the Warrants and the Convertible Debentures, there are not issued, reserved for issuance or outstanding (x) any securities of the Company convertible into or exchangeable or exercisable for shares of capital stock or other voting securities or equity interests of the Company or (y) any warrants, calls, options or other rights to acquire from the Company or any Company Subsidiary or Affiliate, or any obligation of the Company or any Company Subsidiary or Affiliate to issue any capital stock, voting securities, equity interests or securities convertible into or exchangeable or exercisable for capital stock or voting securities of the Company. Except for the Company Stock Options, the Company RSUs, the Warrants and the Convertible Debentures, there are not any outstanding obligations of the Company or any of the Company Subsidiaries or Affiliates to

repurchase, redeem or otherwise acquire any capital stock of the Company or any securities referred to in clauses (x) or (y) of the immediately preceding sentence or to issue, deliver or sell, or cause to be issued, delivered or sold, any capital stock of the Company or any such securities. Neither the Company nor any of the Company Subsidiaries or Affiliates is a party to any voting agreement with respect to the voting of any capital stock of the Company or any such securities. Except under the Company Benefit Plans and except for the Company Stock Options, the Company RSUs, the Warrants and the Convertible Debentures, there are no outstanding (1) securities of the Company or any of the Company Subsidiaries or Affiliates convertible into or exchangeable or exercisable for shares of capital stock or voting securities or equity interests of any Company Subsidiary, (2) warrants, calls, options or other rights to acquire from the Company or any Company Subsidiary, or any obligation of the Company or any Company Subsidiary to issue, any capital stock, voting securities, equity interests or securities convertible into or exchangeable or exercisable for capital stock or voting securities of any Company Subsidiary or (3) obligations of the Company or any of the Company Subsidiaries or Affiliates to repurchase, redeem or otherwise acquire any securities of any Company Subsidiary or to issue, deliver or sell, or cause to be issued, delivered or sold, any securities of any Company Subsidiary. The Warrant Agreement and the Convertible Debentures Indenture have not been amended or supplemented from adoption through the date of this Agreement. The Company has delivered to Parent a complete and correct copy of the Warrant Agreement and the Convertible Debentures Indenture.

SECTION 3.04. Authority; Execution and Delivery; Enforceability.

(a) The Company has all requisite corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and, subject to receipt of the Company Stockholder Approval, to consummate the Transactions. The execution and delivery by the Company of this Agreement and the consummation by the Company of the Transactions have been duly authorized by the Company Board, by unanimous vote of those present at a meeting duly called and determined that the terms of this Agreement are advisable for, fair to, and in the best interests of, the Company and its stockholders. The Company Board at such meeting also unanimously resolved to recommend that the Company's stockholders approve and adopt this Agreement, and has directed that this Agreement be submitted to the Company's stockholders for adoption at a duly held meeting of such stockholders (the "Company Stockholder Meeting"). Except for the Company Stockholder Approval, no other corporate proceedings on the part of the Company are necessary to authorize or adopt this Agreement or to consummate the Transactions. The Company has duly executed and delivered this Agreement, and, assuming the due authorization, execution and delivery by Parent and Sub, this Agreement constitutes the Company's legal, valid and binding obligation, enforceable against it in accordance with its terms.

(b) No "fair price," "moratorium," "control share acquisition" or other similar anti-takeover statute or regulation or any anti-takeover provision in the Company Charter (including Article Ninth) or the Company Bylaws is, or at the Effective Time will be, applicable to the Merger or the other Transactions. The Company Board has taken or caused to be taken all action so that Parent and Sub will not be prohibited from entering into a "business combination" with the Company or any of its Affiliates as an "interested stockholder" (in each case as such term is used in Section 203 of the DGCL) as a result of the execution of this Agreement or the consummation of the Merger or the other Transactions.

SECTION 3.05. No Conflicts; Consents.

(a) The execution and delivery by the Company of this Agreement do not, and the consummation of the Merger and the other Transactions and compliance with the terms of this Agreement will not, conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation, to make an offer to purchase any indebtedness, or to loss of a material benefit under, or result in the creation of any Lien upon any of the properties or assets of the Company or any Company Subsidiary under, any provision of (i) assuming the Company Stockholder Approval is obtained, the Company Charter, the Company Bylaws or the comparable charter or organizational documents of any Significant Company Subsidiary, (ii) any contract, lease, license, indenture, note, bond, agreement, permit, concession, franchise or other instrument (a "Contract") to which the Company or any Company Subsidiary is a party or by which any of their respective properties or assets is bound or (iii) subject to the filings and other matters referred to in Section 3.05(b), and assuming the Company Stockholder Approval is obtained, any judgment, order or decree ("Judgment") or statute, law (including common law), ordinance, rule or regulation ("Law"), in each case, applicable to the Company or any Company Subsidiary or their respective properties or assets, other than, in the case of clauses (ii) and (iii) above, any such matters that, individually or in the aggregate, are not having or would not reasonably be expected to have a Material Adverse Effect on the Company.

(b) No consent, approval, license, permit, order or authorization ("Consent") of, or registration, declaration or filing with, or permit from, any federal, state, local or foreign government or any court of competent jurisdiction, administrative agency or commission or other governmental authority or instrumentality, domestic or foreign (a "Governmental Entity") is required to be obtained or made by or with respect to the Company or any Company Subsidiary in connection with the execution, delivery and performance of this Agreement or the consummation of the Transactions, other than (i) (A) the filing with the Securities and Exchange Commission (the "SEC") of the Proxy Statement/Prospectus in definitive form, (B) the filing with the SEC, and declaration of effectiveness, of the Form S-4 in which the Proxy Statement will be included, (C) the filing with the SEC of such reports under, and such other compliance with, the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the Securities Act of 1933, as amended (the "Securities Act"), and the rules and regulations thereunder, as may be required in connection with this Agreement, the Merger and the other Transactions and (D) the filing of such applications with, and compliance with requirements of, the NYSE, (ii) (A) compliance with and filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations thereunder (the "HSR Act") and the termination of the waiting period required thereunder, (B) compliance with any applicable requirements under Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (published in the Official Journal of the European Union on January 29, 2004 at L 24/1) (the "EC Merger Regulation") and (C) filings and approvals that to the Company's Knowledge are required to be made under any foreign antitrust, competition or similar Laws ("Foreign Antitrust Laws"), (iii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware and appropriate documents with the relevant

authorities of the other jurisdictions in which the Company is qualified to do business, (iv) such filings and approvals as are required to be made or obtained under the securities or "blue sky" laws of various states in connection with the issuance of Parent Common Stock pursuant to this Agreement and (v) such other items that, individually or in the aggregate, are not having or would not reasonably be expected to have a Material Adverse Effect on the Company.

SECTION 3.06. SEC Documents; Undisclosed Liabilities.

(a) The Company has furnished or filed all reports, schedules, forms, statements and other documents (including exhibits and other information incorporated therein) required to be furnished or filed by the Company with the SEC since January 1, 2006 (such documents, together with any documents filed with the SEC during such period by the Company on a voluntary basis on a Current Report on Form 8-K, but excluding the Proxy Statement/Prospectus, as supplemented and amended since the time of filing, being collectively referred to as the "Company SEC Documents").

(b) Each Company SEC Document (i) at the time filed (and if amended or superseded by a filing or amendment prior to the date of this Agreement, then at the time of such filing and in the case of registration statements and proxy statements, on the dates of effectiveness and the dates of mailing, respectively), complied as to form in all material respects with the requirements of the Sarbanes-Oxley Act of 2002 ("SOX") and the Exchange Act or the Securities Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to such Company SEC Document and (ii) did not at the time it was filed (or if amended or superseded by a filing or amendment prior to the date of this Agreement, then at the time of such filing, or in the case of registration statements and proxy statements, then on the dates of effectiveness and the dates of mailing, respectively) contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Each of the consolidated financial statements of the Company included in the Company SEC Documents complied at the time it was filed (and if amended or superseded by a filing or amendment prior to the date of this Agreement, then at the time of such filing and in the case of registration statements and proxy statements, on the dates of effectiveness and the dates of mailing, respectively) as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, has been prepared in accordance with applicable generally accepted accounting principles ("GAAP") (except, in the case of unaudited statements, as permitted by Form 10-Q of the SEC or otherwise by applicable Law) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly presented in all material respects (except, in the case of unaudited statements, as permitted by the rules and regulations of the SEC or otherwise by applicable Law) the consolidated financial position of the Company and its consolidated Subsidiaries as of the date thereof and the consolidated results of their operations and cash flows for the periods shown (subject, in the case of unaudited statements, to normal year-end audit adjustments).

(c) Neither the Company nor any Company Subsidiary has any material liabilities or obligations of any nature, whether or not accrued, contingent or otherwise, that would be required by GAAP to be reflected on a consolidated balance sheet of the Company and

its Subsidiaries (or in the notes thereto), other than those liabilities or obligations (i) incurred after December 31, 2007 in the ordinary course of business consistent with prior practice and not prohibited by this Agreement, (ii) permitted or contemplated by this Agreement or (iii) that have been discharged or paid in full in the ordinary course of business.

(d) Each of the principal executive officer of the Company and the principal financial officer of the Company (or each former principal executive officer of the Company and each former principal financial officer of the Company, as applicable), or persons performing similar functions, has made all applicable certifications required by Rule 13a-14 or 15d-14 under the Exchange Act and Sections 302 and 906 of SOX with respect to the Company SEC Documents, and the statements contained in such certifications adhere to the requirements of SOX. None of the Company or any of the Company Subsidiaries or Affiliates has outstanding, or has arranged since the effectiveness of Section 402 of SOX any outstanding, "extensions of credit" to directors or executive officers within the meaning of Section 402 of SOX. To the Knowledge of the Company, the Company's outside auditors and its principal executive officer and principal financial officer will be able to give, without qualification, the certifications and attestations required pursuant to SOX when next due.

(e) The Company maintains a system of "internal control over financial reporting" (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) sufficient to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in conformity with GAAP, together with the other reasonable assurances included in the above-referenced definition.

(f) The "disclosure controls and procedures" (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) utilized by the Company are reasonably designed to ensure that all information (both financial and non-financial) required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that all such information required to be disclosed is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure and to enable the principal executive officer and principal financial officer of the Company to make the certifications required under the Exchange Act with respect to such reports.

(g) Neither the Company nor any of the Company Subsidiaries or Affiliates is a party to, or has any commitment to become a party to, any joint venture, off-balance sheet partnership or any similar Contract (including any Contract or arrangement relating to any transaction or relationship between or among the Company and any of the Company Subsidiaries or Affiliates, on the one hand, and any unconsolidated Affiliate, including any structured finance, special purpose or limited purpose entity or Person, on the other hand or any "off-balance sheet arrangements" (as defined in Item 303(a) of Regulation S-K under the Exchange Act)), where the result, purpose or intended effect of such Contract is to avoid disclosure of any material transaction involving, or material liabilities of, the Company or any of the Company Subsidiaries in the Company's or such Company Subsidiary's published financial statements or other Company SEC Documents.

(h) Since January 1, 2006, the Company has not received any oral or written notification of any (x) "significant deficiency" or (y) "material weakness" in the Company's internal control over financial reporting. There is no outstanding "significant deficiency" or "material weakness" that has not been appropriately and adequately remedied by the Company, as certified by the Company's independent accountants. For purposes of this Agreement, the terms "significant deficiency" and "material weakness" shall have the meanings assigned to them in Exchange Act Rule 12b-2, as in effect on the date of this Agreement.

(i) Since January 1, 2006, (i) neither the Company nor any of its Subsidiaries, nor, to the Knowledge of the Company, any director, officer, employee, auditor, accountant or representative of the Company or any of its Subsidiaries, has received any material written (or, to the Knowledge of the Company, oral) complaint, allegation, assertion or claim, alleging that the Company or any of its Subsidiaries has engaged in illegal accounting or auditing practices and (ii) no attorney representing the Company or any of its Subsidiaries, whether or not employed by the Company or any of its Subsidiaries, has reported evidence of a material violation of securities laws, breach of fiduciary duty or similar violation by the Company or any of its Subsidiaries or their respective officers, directors, employees or agents to the Board of Directors of the Company or any committee thereof or to any director or officer of the Company.

(j) The Company has no unresolved comments from the staff of the SEC relating to the Company's filings with the SEC.

(k) None of the Company Subsidiaries is, or has at any time since January 1, 2006 been, individually subject to the reporting requirements of Sections 13(a) and 15(d) of the Exchange Act.

SECTION 3.07. Information Supplied. None of the information supplied or to be supplied by the Company for inclusion or incorporation by reference in (i) the registration statement on Form S-4 to be filed with the SEC by Parent in connection with the Share Issuance (the "Form S-4") will, at the time the Form S-4 is filed with the SEC, at any time it is amended or supplemented or at the time it becomes effective under the Securities Act, 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, or (ii) the Proxy Statement/Prospectus will, at the date it is first mailed to each of the Company's stockholders or at the time of the Company Stockholder Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Proxy Statement/Prospectus will comply as to form in all material respects with the requirements of the Exchange Act and the rules and regulations thereunder, except that no representation is made by the Company with respect to statements made or incorporated by reference therein based on information supplied by Parent or Sub in writing for inclusion or incorporation by reference in the Proxy Statement/Prospectus.

SECTION 3.08. Absence of Certain Changes or Events. From January 1, 2008 through the date of this Agreement, the Company and each of the Company Subsidiaries has conducted its respective business only in the ordinary course, and during such period there has not been any:

(a) Event that is having or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company;

(b) declaration, setting aside or payment of any dividend or other distribution (whether in cash, stock or property) with respect to any Company Capital Stock (other than regular quarterly cash dividends not in excess of $0.05 per share, with usual declaration, record and payment dates and in accordance with the Company's current dividend policy) or the capital stock of any of the Company Subsidiaries (other than dividends or other distributions by a direct or indirect wholly owned Company Subsidiary to its parent) or any repurchase for value by the Company of any Company Capital Stock or the capital stock of any of the Company Subsidiaries;

(c) split, combination, subdivision or reclassification of any Company Capital Stock, other equity interests, securities convertible into or exercisable or exchangeable for Company Capital Stock or other equity interests or any issuance or the authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares of Company Capital Stock; or

(d) change in financial accounting methods, principles or practices, except insofar as may be required by applicable Law, SEC rule or policy or a change in GAAP.

SECTION 3.09. Taxes. Except as is not having or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect:

(a) Except with respect to matters for which adequate reserves have been established in accordance with GAAP and reflected in the Company's financial statements contained in the Company's Quarterly Report on Form 10-Q filed with the SEC for the quarter ended March 31, 2008: (i) each of the Company and each Company Subsidiary has timely filed (taking into account any extension of time within which to file), or has caused to be timely filed on its behalf, all Tax Returns required to be filed by it; and (ii) all such Tax Returns are true, complete and accurate, and all Taxes shown to be due on such Tax Returns and all Taxes otherwise owed have been timely paid;

(b) The most recent financial statements contained in the Company SEC Documents reflect an adequate reserve for all Taxes payable by the Company and the Company Subsidiaries, whether or not yet due (as distinguished from any reserve for deferred Taxes to reflect timing differences between book and Tax items), for all Taxable periods and portions thereof through the date of such financial statements;

(c) (i) The U.S. federal income Tax Returns of the Company and each Company Subsidiary have been examined by and settled with the United States Internal Revenue Service (the "IRS"), or have closed by virtue of the expiration of the relevant statute of limitations, for all years through 1995; and (ii) except with respect to matters for which adequate reserves have been established in accordance with GAAP and included in the Company's financial statements contained in the Company's Quarterly Report on Form 10-Q filed with the SEC for the quarter ended March 31, 2008: (A) all assessments for Taxes due with respect to such completed and settled examinations or any concluded litigation have been fully paid and (B) no deficiency with respect to any Taxes has been proposed, asserted or assessed, in each case, in writing against the Company or any Company Subsidiary and remains unresolved;

(d) Neither the Company nor any Company Subsidiary (i) has been a member of an affiliated group of corporations within the meaning of Section 1504 of the Code filing a consolidated U.S. federal income Tax Return (other than a group the common parent of which is the Company) or (ii) has any liability for Taxes of any Person (other than the Company and each Company Subsidiary or Affiliate) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign Law);

(e) Neither the Company nor any Company Subsidiary has participated in any "listed transaction," as defined in Treasury Regulation Section 1.6011-4(b)(2), except for transactions with respect to which a closing agreement has been entered into with the IRS;

(f) There are no Liens for Taxes (other than for Taxes not yet due and payable or the amount or validity of which is being contested in good faith) on the properties or assets of the Company or any Company Subsidiary;

(g) Each of the Company and each Company Subsidiary has withheld and remitted all Taxes required to have been withheld and remitted under applicable Tax Law in connection with any amounts paid or owing to any employee, independent contractor, creditor, shareholder, member or other third party;

(h) No written notification has been received by the Company or any of its Subsidiaries that any U.S. federal, state, local or foreign audit, examination or similar proceeding is currently pending, proposed or asserted with regard to any Taxes or Tax Returns of the Company or any Company Subsidiary;

(i) There are no currently outstanding written agreements to extend the statutory period of assessment or collection of any U.S. federal, state and foreign Taxes with respect to the Company or any of its Subsidiaries;

(j) No written notice of a claim of a currently pending investigation has been received from any jurisdiction with which the Company or any of its Subsidiaries, as applicable, currently does not file Tax Returns, alleging that the Company or any of its Subsidiaries has a duty to file Tax Returns and pay Taxes;

(k) Neither the Company nor any of its Subsidiaries is a party to any tax sharing agreement or tax indemnity agreement providing for the allocation or sharing of Taxes imposed on or with respect to any Person (other than (i) for the absence of doubt, agreements with customers, vendors, lessors or the like entered into in the ordinary course of business and (ii) agreements solely with and among the Company or any of its Subsidiaries);

(l) No closing agreement pursuant to Section 7121 of the Code (or any similar provision of state, local or foreign law), nor any advance pricing agreement has been entered into by or with respect to the Company or any of its Subsidiaries that has any continuing applicability after the Closing Date;

(m) Neither the Company nor any of the Company Subsidiaries is required, by reason of a change in accounting method for a Tax period beginning on or before the Closing Date, to make any adjustment under Section 481(a) of the Code (or any similar provision of state, local or foreign law) that will affect the liability of the Company or the Company Subsidiaries for any Tax period ending after the Closing Date;

(n) Since January 1, 2008, neither the Company nor any Company Subsidiary has settled or compromised any Tax liability or refund; and

(o) The Company is not and has not been a "controlled corporation" or a "distributing corporation," as each of such terms is defined in Section 355 of the Code, or a "predecessor corporation" or a "successor corporation," as each of such terms is defined in Proposed Treasury Regulation Section 1.355-8 (Nov. 22, 2004), in any distribution occurring during the five-year period ending on the date of this Agreement that was purported or intended to be governed by Section 355 of the Code.

(p) For purposes of this Agreement:

"Taxes" means all taxes, whenever created or imposed, and whether of the United States or another jurisdiction, and whether imposed by a local, municipal, state, foreign, U.S. federal or other Governmental Entity, including all interest, penalties and additions imposed with respect to such amounts.

"Tax Returns" means all U.S. federal, state, local, provincial and foreign Tax returns, declarations, statements, reports, schedules, forms, information returns and amended Tax returns, in each case, required to be filed with respect to Taxes (whether or not a payment is required to be made with respect to such filing), including information returns.

It is agreed and understood that the representations and warranties contained in Sections 3.9 and 3.10 of this Agreement are the only representations and warranties by the Company in this Agreement relating to Taxes.

SECTION 3.10. ERISA Compliance; Excess Parachute Payments.

(a) "Company Benefit Plans" means collectively, whether or not subject to ERISA, (i) all "employee pension benefit plans" (as defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) ("Company Pension Plans"), (ii) all "employee welfare benefit plans" (as defined in Section 3(1) of ERISA) and (iii) all other bonus, pension, profit sharing, deferred compensation, incentive compensation, stock ownership, stock purchase, stock option, phantom stock, retirement, vacation, severance, disability, death benefit, hospitalization, medical or other plans, arrangements or understandings providing benefits to any current or former directors, officers, employees or consultants of the Company or any Company Subsidiary or any employment, consulting, indemnification, severance or termination agreements or arrangements between the Company or any Company Subsidiary and any current or former directors, officers, employees or consultants of the Company or any Company Subsidiary; provided, however, that Company Benefit Plans shall not include any Foreign Benefit Plan or any "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA to which the Company or any Company Subsidiary is contributing to or has contributed

to (a "Company Multiemployer Pension Plan"). For purposes of this Agreement, the term "Foreign Benefit Plan" shall refer to each plan, program or contract that is subject to or governed by the laws of any jurisdiction other than the United States, and that would have been treated as a Company Benefit Plan had it been a United States plan, program or contract. Section 3.10(a) of the Company Disclosure Letter contains a list of each material Company Benefit Plan, each material Company Multiemployer Pension Plan and each material Foreign Benefit Plan. The Company has made available to Parent true, complete and correct copies of (i) each material Company Benefit Plan and material Foreign Benefit Plan (or, in the case of any unwritten material Company Benefit Plan or any unwritten material Foreign Benefit Plan, a description thereof), (ii) the most recent annual report on Form 5500 filed with the IRS with respect to each Company Benefit Plan (if any such report was required) and all schedules and attachments thereto, (iii) the most recent summary plan description for each material Company Benefit Plan for which such summary plan description is required, (iv) each trust agreement and group annuity contract, group insurance contract or single or set of individual insurance contracts relating to any material Company Benefit Plan and (v) the most recent favorable IRS determination letter for each Company Benefit Plan that has had such a determination letter issued.

(b) Section 3.10(b) of the Company Disclosure Letter identifies each Company Pension Plan that is intended to be a "qualified plan" within the meaning of Section 401(a) of the Code ("Qualified Company Plans"). The IRS has issued a favorable determination letter with respect to each Qualified Company Plan and the related trust that has not been revoked, and to the Knowledge of the Company no circumstances exist and no events have occurred that could adversely affect the qualified status of any Company Qualified Plan.

(c) No Company Pension Plan, other than any Company Multiemployer Pension Plan had, as of the respective last annual valuation date for each such Company Pension Plan, an "unfunded benefit liability" (within the meaning of Section 4001(a)(18) of ERISA), based on actuarial assumptions that have been furnished to Parent. None of the Company Pension Plans (other than any Company Multiemployer Pension Plan) has an "accumulated funding deficiency" (as such term is defined in Section 302 of ERISA or Section 412 of the Code), whether or not waived, and for the plan year beginning after December 31, 2007, each such Company Pension Plan meets the requirements for exemption from the shortfall amortization base prescribed in Section 430(c)(5) of the Code and in Section 303(c)(5) of ERISA. None of the Company, any Company Subsidiary, any officer of the Company or any Company Subsidiary or any of the Company Benefit Plans which are subject to ERISA, including the Company Pension Plans (other than any Company Multiemployer Pension Plan), any trusts created thereunder or any trustee or administrator thereof, has engaged in a "prohibited transaction" (as such term is defined in Section 406 of ERISA or Section 4975 of the Code) or any other breach of fiduciary responsibility that could subject the Company, any Company Subsidiary, or any officer of the Company or any Company Subsidiary to the Tax or penalty on prohibited transactions imposed by such Section 4975 or to any liability under Section 502(c), 502(i) or 502(1) of ERISA. No Company Benefit Plan or Company Multiemployer Pension Plan has been terminated, nor has there been any "reportable event" (as that term is defined in Section 4043 of ERISA) with respect to any Company Benefit Plan or Company Multiemployer Pension Plan during the last five years. Neither the Company nor any Company Subsidiary has incurred a "complete withdrawal" or a "partial withdrawal" (as such terms are defined in Sections 4203

and 4205, respectively, of ERISA) with respect to which any material liability remains outstanding. Neither the Company nor any Company Subsidiary has ceased operations at any facility or has withdrawn from any Company Benefit Plan that would subject one or any of them to liability under Sections 4062(e), 4063, 4064 or 4069 of ERISA, and neither the Company nor any Company Subsidiary is subject to a lien under Section 4068 of ERISA.

(d) Except as is not having or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, with respect to any Company Benefit Plan that is an employee welfare benefit plan, (i) no such Company Benefit Plan is funded through a "welfare benefits fund" (as such term is defined in Section 419(e) of the Code) and (ii) each such Company Benefit Plan that is a "group health plan" (as such term is defined in Section 5000 (b)(1) of the Code), complies with the applicable requirements of Section 4980B(f) of the Code.

(e) No Company Benefit Plan provides health, medical or other welfare benefits after retirement or other termination of employment (other than for continuation coverage required under Section 4980(B)(f) of the Code), and no circumstances exist that could result in the Company or any of the Company Subsidiaries becoming obligated to provide any such benefits.

(f) Each Company Benefit Plan, its related trust, insurance contract or other funding vehicle has been administered in all material respects in accordance with its terms and is in compliance in all material respects with ERISA, the Code and all other Laws applicable to the Company Benefit Plans. Each of the Company and the Company Subsidiaries is in compliance in all material respects with ERISA, the Code and all other Laws applicable to the Company Benefit Plans.

(g) There are no pending or, to the Knowledge of the Company, threatened material claims by or on behalf of any participant in any of the Company Benefit Plans, or otherwise involving any such Company Benefit Plan or the assets of any Company Benefit Plan, other than routine claims for benefits.

(h) No deduction by the Company or any Company Subsidiaries in respect of any "applicable employee remuneration" (within the meaning of Section 162(m) of the Code) has been disallowed or would reasonably be expected to be disallowed by reason of Section 162(m) of the Code.

(i) The execution and delivery by the Company of this Agreement do not, and the consummation of the Merger and the other Transactions and compliance with the terms of this Agreement will not, (i) entitle any current or former director, officer, employee or consultant of the Company or any Company Subsidiary to severance, change in control or termination compensation or benefits (including any "excess parachute payment" (within the meaning of Section 280G of the Code)), (ii) accelerate the time of payment or vesting or trigger any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, increase the amount payable or trigger any other material obligation pursuant to, any Company Benefit Plan (except as provided in Section 6.05 of this Agreement) or (iii) result in any breach or violation of, or a default under, any Company Benefit Plan.

(j) Each of the Company Benefit Plans subject to Code Section 409A has been administered in all material respects in good faith compliance with the applicable requirements of Code Section 409A, IRS Notice 2005-1 and the proposed regulations issued thereunder. Each Company Stock Option was granted with an exercise price per share equal to or greater than the per share fair market value (as such term is used in Code Section 409A and the proposed regulations and other Department of Treasury interpretative guidance issued thereunder) of the Company Common Stock underlying such Company Stock Option on the grant date thereof.

(k) Except as individually or in the aggregate is not having or would not reasonably be expected to have a Material Adverse Effect on the Company, (i) all Foreign Benefit Plans have been established, maintained and administered in compliance with their terms and all applicable Laws and orders of any controlling Governmental Entity, (ii) all Foreign Benefit Plans that are required to be funded are fully funded based upon reasonable actuarial assumptions as of the most recent valuation, (iii) with respect to all other Foreign Benefit Plans, adequate reserves therefor have been established on the accounting statements of the Company or the applicable Subsidiary to the extent so required and (iv) no liability or obligation of the Company or the Company Subsidiaries exists with respect to such Foreign Benefit Plans that has not been accrued in the consolidated financial statements of the Company included in the Company SEC Documents to the extent so required.

(l) Section 3.10(l) of the Disclosure Letter contains a list of (i) all grants by the Company or any Company Subsidiary from January 1, 2008 through the date of the Agreement to any current or former director or officer of the Company of any increase in compensation, bonus or fringe or other benefits or any type of compensation or benefit to any such current or former director or officer not previously entitled to receive such type of compensation or benefits, other than for normal increases in compensation in the ordinary course of business consistent with past practice and (ii) of any increase in severance, change in control or termination compensation benefits to any current or former director or officer of the Company made from January 1, 2008 through the date of this Agreement.

(m) To the Knowledge of the Company, the Company Benefit Plans set forth in Section 3.10(m) of the Company Disclosure Letter may be amended or terminated without material liability to the Company and the Company Subsidiaries on or at any time after the Effective Time.

It is agreed and understood that the representations and warranties contained in Sections 3.09, 3.10 and 3.14(b) (solely as it relates to the Contracts specified in clause (ii) of 3.14(a)) are the only representations and warranties by the Company in this Agreement relating to employee benefit matters, including the Company Benefit Plans and the Foreign Benefit Plans.

SECTION 3.11. Litigation. There is no suit, action or proceeding pending or, to the Knowledge of the Company, threatened against the Company or any Company Subsidiary that, individually or in the aggregate, is having or would reasonably be expected to have a Material Adverse Effect on the Company and there is no Judgment outstanding against or, to the Knowledge of the Company, investigation by any Governmental Entity involving, the Company or any Company Subsidiary or any of their respective material properties or assets that, individually or in the aggregate, is having or would reasonably be expected to have a Material Adverse Effect on the Company.

SECTION 3.12. Compliance with Applicable Laws.

(a) The Company and the Significant Company Subsidiaries and, to the Knowledge of the Company, the Company Subsidiaries (other than the Significant Company Subsidiaries) are in compliance in all material respects with all applicable Laws and all Company Permits, in each case that are material to their operations as presently conducted.

(b) To the Knowledge of the Company, no material action, demand or investigation by any Governmental Entity is pending or threatened alleging that the Company or a Company Subsidiary is not in compliance in any material respect with any applicable Law or Company Permit, in each case that are material to their operations as presently conducted.

SECTION 3.13. Environmental Matters.

(a) The operations of the Company and the Significant Company Subsidiaries and, to the Knowledge of Company, the Company Subsidiaries (other than the Significant Company Subsidiaries) are, and since January 1, 2006 have been, in compliance in all material respects with all Environmental Laws, and neither the Company, the Significant Company Subsidiaries or, to the Knowledge of Company, the Company Subsidiaries (other than the Significant Company Subsidiaries) has received any material Notice of Violation or similar communications from a Governmental Entity that alleges that the Company or any of the Company Subsidiaries is in violation of, or has liability under, any Environmental Law.

(b) To the Knowledge of the Company (A) (i) each of the Company and each Company Subsidiary has obtained and is in material compliance with all material permits, licenses and governmental authorizations pursuant to Environmental Law necessary for its operations as presently conducted (collectively, "Environmental Permits"), (ii) all such Environmental Permits are valid and in good standing and (iii) neither the Company nor any Company Subsidiary has been advised by any Governmental Entity of any adverse material change in the status or terms and conditions of any Environmental Permit and (B) no Environmental Law imposes any material obligation upon the Company in connection with the consummation of the Merger, including by requiring the Company to obtain the consent of any Governmental Entity.

(c) There are no material Environmental Claims (i) pending against the Company or any Significant Company Subsidiary or, to the Knowledge of the Company, any Company Subsidiary (other than any Significant Company Subsidiary), (ii) to the Knowledge of the Company, threatened against the Company or any Company Subsidiary or (iii) to the Knowledge of the Company, threatened or pending against any predecessor of the Company or any Company Subsidiary.

(d) Neither the Company nor any Company Subsidiary has entered into or agreed to, or become bound by or subject to, any material agreement, consent decree, consent order or Judgment relating to compliance with any Environmental Law or to the investigation or remediation of Hazardous Materials.

(e) To the Knowledge of the Company, there has been no Release of Hazardous Materials at any location that requires any remediation by the Company or any Company Subsidiary under any Environmental Law.

(f) The Company has delivered or made available to Parent copies of all material environmental reports, studies, assessments, data, insurance policies and contractual indemnities in its possession or control relating to the Company, any Company Subsidiary or any of their respective predecessors or any current or former property of the Company, any Company Subsidiary or any of their respective predecessors.

(g) As used in this Agreement:

(i) "Environmental Claim" means any and all administrative, regulatory or judicial actions, suits, orders, demands, directives, claims, liens, investigations, proceedings or written or oral notices of noncompliance or violation by or from any Person alleging liability of whatever kind of nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, remedial design, operation and maintenance, soil, groundwater, surface water monitoring, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from (y) the presence or Release of, or exposure to, any Hazardous Materials at any location; or (z) the failure to comply with any Environmental Law.

(ii) "Environmental Law" means all applicable federal, state, local and foreign Laws, rules, regulations, orders, decrees, judgments, or legally binding agreements issued, promulgated or entered into by or with any Governmental Entity, relating to pollution, natural resources or protection of endangered or threatened species, human health or the environment (including ambient air, surface water, groundwater, land surface or subsurface strata).

(iii) "Hazardous Materials" means (y) any petroleum or petroleum products, explosive or radioactive materials or wastes, asbestos in any form, dioxin, urea formaldehyde foam insulation and polychlorinated biphenyls; and (z) any other chemical, material, substance or waste that in relevant form or concentration is prohibited, limited or regulated or otherwise creates liability under any Environmental Law.

(iv) "Release" means any active or passive, intentional or unintentional release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into or through the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or within any building, structure, facility or fixture.

It is agreed and understood that the representations and warranties contained in Sections 3.05(b) and 3.13 are the only representations and warranties by the Company in this Agreement relating to environmental matters.

SECTION 3.14. Material Contracts.

(a) For purposes of this Agreement, a "Company Material Contract" shall mean:

(i) each Contract that is a "material contract" pursuant to Item 601(b)(10) of Regulation S-K;

(ii) any employment, severance, consulting or other Contract with an employee or former employee (in each case "Band 21" or higher), officer or director of the Company of any Significant Company Subsidiary which will require the payment of amounts by the Company or of any Significant Company Subsidiary, as applicable, after the date of this Agreement in excess of $250,000 per annum (excluding in each case agreements, arrangements and payments in the ordinary course for expatriate compensation, relocations and transfers, payments under applicable pension and severance plans and collective bargaining agreements and statutory benefit or compensation provisions);

(iii) any Contract pursuant to which the Company or any of its Subsidiaries has entered into a partnership or joint venture with any other person (other than the Company or any of its Subsidiaries) that, as a result of the Transactions, (A) would be terminable by the other party or (B) would allow the other party to acquire the Company's or the Subsidiary's interest in such partnership or joint venture;

(iv) any indenture, mortgage, loan, guarantee or credit Contract under which the Company or any of its Subsidiaries has outstanding indebtedness for borrowed money or any outstanding note, bond, indenture or other evidence of indebtedness for borrowed money or otherwise or any guaranteed indebtedness for money borrowed by others, in each case, for or guaranteeing a principal amount in excess of $10,000,000;

(v) any Contract for capital expenditures or the acquisition or construction of fixed assets which require aggregate future payments in excess of $5,000,000 over the remaining life of such Contract;

(vi) any Contract (other than Contracts entered into in the ordinary course of business that are terminable or cancellable without material penalty on 90 days' notice or less) under which the Company or any of its Subsidiaries is a purchaser or supplier of goods and services which, pursuant to the terms thereof, requires payments after the date of this Agreement by the Company or any of its Subsidiaries in excess of $10,000,000 per annum;

(vii) any Contract entered into on or after January 1, 2007 relating to the acquisition or disposition of any business (whether by merger, sale of stock or assets or otherwise), in an amount in excess of $15,000,000 that has not been consummated or that has been consummated since January 1, 2007, but contains representations, covenants, indemnities or other obligations that are still in effect; and

(viii) any Contract relating to Intellectual Property Rights which requires payments after the date of this Agreement by the Company or any Company Subsidiary in excess of $5,000,000 per annum;

in each case excluding any Contracts among the Company and direct or indirect wholly owned Company Subsidiaries or among direct and indirect wholly owned Company Subsidiaries.

(b) The Company Disclosure Letter sets forth a list of all Company Material Contracts as of the date of this Agreement, except for this Agreement, Contracts filed or incorporated by reference as an Exhibit to the Company's most recent annual report on Form 10-K and Contracts filed as an Exhibit to any of the Company's quarterly reports on Form 10-Q or current reports on Form 8-K filed since the filing of Company's most recent annual report on Form 10-K. Each Company Material Contract is a valid, binding and legally enforceable obligation of the Company or one of the Company Subsidiaries, and, to the Knowledge of the Company, is in full force and effect, except for such failures to be valid, binding and legally enforceable or to be in full force and effect that are not having or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company. Subject to such exceptions as are not having or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, there is no default under any Company Material Contract by the Company or any Company Subsidiary or, to the Knowledge of the Company, by any other party thereto, and no event has occurred that, with the lapse of time or the giving of notice or both, would constitute a default thereunder by the Company or any Company Subsidiary or, to the Knowledge of the Company, by any other party thereto.

(c) Other than (i) distribution agreements, (ii) tolling agreements, (iii) supply agreements, (iv) licenses of Intellectual Property, (v) Contracts that can be terminated by the Company or Company Subsidiary on 90 days or less notice and (vi) agreements entered into in the ordinary course of business, neither the Company nor any Company Subsidiary is a party to or bound by any Company Material Contract that restricts in any material respect the ability of the Company to conduct the business of the Company and the Company Subsidiaries, taken as a whole, as conducted on the date of this Agreement, or, to the Company's Knowledge, that would restrict in any material respect the ability of Parent or any Parent Subsidiary immediately after the Effective Time, to continue the conduct of such business in all material respects in the same manner and extent as conducted by the Company and the Company Subsidiaries as of the date of this Agreement.

SECTION 3.15. Properties.

(a) The Company and each Company Subsidiary own, have a valid leasehold interest in or otherwise have the valid right to use all real property used by them in their business as presently conducted, except for such real properties as are no longer used or useful in the conduct of their businesses or as have been disposed of in the ordinary course of business or are otherwise immaterial to the conduct of the business and except for defects in title, easements, restrictive covenants and similar encumbrances or impediments that, individually or in the aggregate, are not having or would not reasonably be expected to have a Material Adverse Effect on the Company. All of the Company's and the Company Subsidiaries' owned real properties are owned free and clear of all Liens, except for (i) Liens for Taxes that are not yet due and payable or (ii) Liens that, individually or in the aggregate, are not having or would not reasonably be expected to have a Material Adverse Effect on the Company.

(b) The Company and each of the Company Subsidiaries have complied with the terms of all real property leases to which each is a party, and all real property leases to which the Company or any Company Subsidiary is a party are in full force and effect, except for such noncompliance or failure to be in full force and effect that, individually or in the aggregate, are not having or would not reasonably be expected to have a Material Adverse Effect on the Company. None of the Company nor any Company Subsidiary has received any written notice of any event or occurrence that has resulted or could result (with or without the giving of notice, the lapse of time or both) in a default with respect to any material lease to which it is a party, except where the failure to so comply or to be in full force and effect is not having or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company.

(c) Except for matters that, individually or in the aggregate, are not having or would not reasonably be expected to have a Material Adverse Effect on the Company, (i) the Company and each Company Subsidiary own, have a valid leasehold interest in or otherwise have the right to use all of the personal property used in the conduct of their businesses as presently conducted, free and clear of all Liens, (ii) such assets are sufficient to conduct their business as presently conducted and (iii) such assets are in sufficiently good condition to permit the conduct of their business after Closing in the same manner as it was conducted prior to the Closing.

SECTION 3.16. Intellectual Property.

(a) The Company and the Company Subsidiaries own, clear of Liens, or are validly licensed or otherwise have the right to use (without any obligation to make any fixed or contingent payments including royalty payments in excess of $250,000 per annum for any license or right to use), all inventions and improvements reduced to practice, patents, patent rights, trademark, trademark rights, trade names, trade name rights, service marks, service mark rights, copyrights, domain names, software and other proprietary intellectual property rights material to the conduct of the business of the Company and the Company Subsidiaries as presently conducted (collectively, "Intellectual Property Rights"), except where the failure to own, have a valid license or have the rights to use such Intellectual Property Rights presently would not have or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company.

(b) No claims for infringement, unauthorized use or violation (other than those typical in the ordinary course of application and registration processes for patents, trademarks, copyrights, service marks and domain names) by the Company or any Company Subsidiary are pending in any jurisdiction in which the Company and the Company Subsidiaries presently have material business and which claim reasonably relates to a challenge to the ownership, licensing or right to use by the Company or any Company Subsidiary of any Intellectual Property Rights.

(c) To the Knowledge of the Company, (i) there is no fact or event (including receipt of a written notice) which the Company believes is likely to result in any claim of infringement, unauthorized use or violation of any patents, patent applications, registered trademarks, registered copyrights or registered service marks of any Person, (ii) no Person is

infringing the Intellectual Property Rights of the Company or any of the Company Subsidiaries, except where such infringement is not having or would not reasonably be expected to adversely effect the ability of the Company and the Company Subsidiaries to continue to conduct the business of the Company and the Company Subsidiaries, taken as a whole, in all material respects as conducted as of the date of this Agreement, (iii) the ownership, license of and a right to use by the Company and the Company Subsidiaries of its Intellectual Property Rights is subsisting and unexpired and will remain so without action by the Company or any Company Subsidiary outside of the ordinary course for at least through December 31, 2008, (iv) the Company has a program (including certain confidentiality, non-disclosure and assignment of invention features and provisions) for the benefit of the Company and the Company Subsidiaries that reasonably protects their respective Intellectual Property Rights.

SECTION 3.17. Labor Matters. None of the Company or any of the Company Subsidiaries is a party to or bound by, and none of their employees is subject to, any collective bargaining agreement and, to the Knowledge of the Company, there are no labor unions or other organizations representing, or purporting to represent, any employees employed by the Company or any of the Company Subsidiaries (a "Company Union"). To the Knowledge of the Company, no labor union is currently engaged in or threatening organizational efforts with respect to any employees of the Company or any of the Company Subsidiaries. There is no, and for the prior three years there has not been any, material strike, slowdown, picketing, work stoppage, concerted refusal to work overtime or other similar labor activity with respect to any employees of the Company or any of the Company Subsidiaries. There are no labor disputes instituted by a Company Union currently subject to any pending arbitration or litigation and there is no representation petition by a Company Union pending or, to the Knowledge of the Company, threatened by a Company Union with respect to any employee of the Company or any of the Company Subsidiaries.

SECTION 3.18. Brokers' Fees and Expenses. No broker, investment banker, or financial advisor or other Person, other than Credit Suisse Securities (USA) LLC (the "Company Financial Advisor"), the fees and expenses of which will be paid by the Company, is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the Merger and the other Transactions based upon arrangements made by or on behalf of the Company or the Company Subsidiaries. The Company has furnished to Parent a true and complete copy of all agreements between the Company and the Company Financial Advisor relating to the Merger and other Transactions.

SECTION 3.19. Opinion of Financial Advisor. The Company has received the opinion of the Company Financial Advisor, dated the date of this Agreement, to the effect that, as of such date, the consideration to be received in the Merger by the holders of Company Common Stock is fair to such holders from a financial point of view. The Company shall provide a complete and correct signed written copy of such opinion to Parent as soon as practicable after the date of this Agreement for information purposes only and the Company has received the consent of the Company Financial Advisor to include such written opinion in the Proxy Statement/Prospectus.

SECTION 3.20. Voting Requirements. The affirmative vote of holders of two-thirds of the outstanding shares of Company Common Stock entitled to vote at the Company

Stockholder Meeting or any adjournment or postponement thereof to adopt this Agreement (the "Company Stockholder Approval") is the only vote of the holders of any class or series of capital stock of the Company necessary in connection with the consummation of the Merger and the other Transactions.

SECTION 3.21. Insurance. Copies of all material insurance policies currently maintained by the Company and the Company Subsidiaries, including fire and casualty, general liability, business interruption, directors' and officers' and other professional liability policies, and all material settlement agreements with Company's insurance carriers have been made available to Parent. All such insurance policies are in full force and effect and provide insurance in such amounts and against such risks as the management of the Company reasonably believes to be prudent in accordance with industry practices or as is required by Law.

SECTION 3.22. Affiliate Transactions. Except as set forth in the Company's last proxy statement filed with the SEC prior to the date of this Agreement, since January 1, 2007, no event has occurred as of the date of this Agreement that would be required to be reported by the Company pursuant to Item 404 of Regulation S-K promulgated by the SEC.

SECTION 3.23. No Additional Representations. The Company acknowledges that none of Parent, Sub nor any Person has made any representation or warranty, express or implied, as to the accuracy or completeness of any information regarding Parent or Sub furnished or made available to the Company and its Representatives except as expressly set forth in Article IV (which includes the Parent Disclosure Letter and the Parent SEC Documents), and none of Parent, Sub or any other Person shall be subject to any liability to the Company or any other Person resulting from Parent's making available to the Company or the Company's use of such information or any information, documents or material made available to the Company in the due diligence materials provided to the Company, including in management presentations (formal or informal) or in any other form in connection with the Merger and the other Transactions. Without limiting the foregoing, the Company makes no representation or warranty to Parent or Sub with respect to any financial projection or forecast relating to the Company or any of the Company Subsidiaries, whether or not included in any management presentation.

ARTICLE IV

Representations and Warranties of Parent and Sub

Except as disclosed in the Parent SEC Documents filed prior to the date of this Agreement or in the disclosure letter delivered by Parent to the Company concurrently with the execution of this Agreement (the "Parent Disclosure Letter") (which shall be arranged to correspond to the sections contained in this Article IV and the disclosure in any section of the Parent Disclosure Letter shall qualify other sections in this Article IV to the extent that it is reasonably apparent that such disclosure also qualifies or applies to such other sections), Parent and Sub represent and warrant to the Company as follows:

SECTION 4.01. Organization, Standing and Power. Parent and each of its Subsidiaries, including Sub (the "Parent Subsidiaries"), are duly organized, validly existing and in good standing under the laws of the jurisdiction in which each is organized and have all

requisite power and authority and possesses all Permits necessary to enable it to own, lease or otherwise hold its properties and assets and to conduct its businesses as presently conducted (the "Parent Permits"), except where the failure to have such Parent Permits, individually or in the aggregate, is not having or would not reasonably be expected to have, a Material Adverse Effect on Parent. Parent and each Parent Subsidiary is duly qualified or licensed to do business in each jurisdiction where the nature of its business or the ownership or leasing of its properties make such qualification necessary, other than in such jurisdictions where the failure to be so qualified or licensed, individually or in the aggregate, is not having or would not reasonably be expected to have, a Material Adverse Effect on Parent. Since the date of its incorporation, Sub has not carried on any business or conducted any operations other than the execution of this Agreement, the performance of its obligations hereunder and matters ancillary thereto. Parent has delivered or made available to the Company, prior to execution of this Agreement, complete and accurate copies of the certificate of incorporation of Parent, as amended to the date of this Agreement (as so amended, the "Parent Charter"), and the bylaws of Parent, as amended to the date of this Agreement (as so amended, the "Parent Bylaws") and the certificate of incorporation and bylaws of Sub.

SECTION 4.02. Parent Subsidiaries; Equity Interests.

(a) The Parent Disclosure Letter lists each Parent Subsidiary and its form and jurisdiction of organization and, for each Parent Subsidiary that constitutes a significant subsidiary within the meaning of Rule 1-02 of Regulation S-X of the SEC (a "Significant Parent Subsidiary") as of the date of this Agreement, each jurisdiction in which such Significant Parent Subsidiary is qualified or licensed to do business. All the outstanding shares of capital stock of, or other voting securities or ownership interests in, each Parent Subsidiary have been validly issued and are fully paid and nonassessable and are owned by Parent, by another Parent Subsidiary or by Parent and another Parent Subsidiary, free and clear of all Liens except for Liens for Taxes that are not yet due and payable, and free of any other restriction (including any restriction on the right to vote, sell or otherwise dispose of such capital stock or other ownership interests), except for restrictions imposed by applicable securities laws.

(b) Except for its interests in the Parent Subsidiaries, neither Parent nor any Parent Subsidiary owns, directly or indirectly, any equity or similar interest in, or any interest convertible into or exchangeable or exercisable for, any corporation, partnership, joint venture or other business association or entity, excluding equities or similar interests in any publicly traded entity held for investment by Parent or the Parent Subsidiaries and comprising less than 5% of the outstanding equities or similar interests of such entity.

SECTION 4.03. Capital Structure.

(a) The authorized capital stock of Parent consists of 200,000,000 shares of Parent Common Stock and 30,000,000 shares of Cumulative Preferred Stock (the "Parent Preferred Stock" and, together with the Parent Common Stock, the "Parent Capital Stock"). At the close of business on June 30, 2008, (i) 63,005,458 shares of Parent Common Stock were issued and outstanding, (ii) no shares of Parent Preferred Stock were issued or outstanding, (iii) 8,469,020 shares of Parent Common Stock were reserved and available for issuance pursuant to the Parent Stock Plans or the Employee Savings Plan, of which 875,720 shares were subject to

outstanding Parent Stock Options, 2,031,758 shares were subject to outstanding Parent SARs that were not granted in tandem with Parent Stock Options and 739,727 shares were subject to outstanding Parent Stock Equivalent Awards. Except as set forth in this Section 4.03(a), at the close of business on June 30, 2008, no shares of capital stock or other voting securities of Parent were issued, reserved for issuance or outstanding. After June 30, 2008, there have been no issuances by Parent of shares of capital stock of, or other equity or voting interests in, Parent, other than the issuance of Parent Common Stock upon the exercise of Parent Stock Options or Parent SARs or pursuant to Parent Stock Equivalent Awards, in each case outstanding at the close of business on June 30, 2008 and in accordance with their terms on June 30, 2008, and issuances of additional Parent Stock Options, Parent SARs or Parent Stock Equivalent Awards thereafter in the ordinary course of business and shares of Parent Common Stock upon the exercise of such Parent Stock Options or Parent SARs or pursuant to such Parent Stock Equivalent Awards. Except as otherwise provided in this Section 4.03(a), there are no outstanding stock appreciation, "phantom" stock, profit participation or dividend equivalent rights or similar rights with respect to Parent or any Parent Subsidiary.

(b) All outstanding shares of Parent Capital Stock are, and all such shares that may be issued upon the exercise of Parent Stock Options or Parent SARs or pursuant to Parent Stock Equivalent Awards will be when issued, duly authorized, validly issued, fully paid and nonassessable and not subject to or issued in violation of any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of the Kentucky Business Corporation Act, the Parent Charter, the Parent Bylaws or any Contract to which Parent is a party or otherwise bound. There are not any bonds, debentures, notes or other indebtedness of Parent having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which holders of Parent Common Stock may vote ("Voting Parent Debt"). Except for the Parent Stock Options, Parent SARs and Parent Stock Equivalent Awards, there are not issued, reserved for issuance or outstanding any securities of Parent convertible into or exchangeable or exercisable for shares of capital stock or other voting securities or equity interests of Parent or any warrants, calls, options or other rights to acquire from Parent or any Parent Subsidiaries, and no obligation of Parent or any Parent Subsidiaries to issue, any capital stock, voting securities, equity interests or securities convertible into or exchangeable or exercisable for capital stock or voting securities of Parent. There are not any outstanding obligations of Parent or any of the Parent Subsidiaries to repurchase, redeem or otherwise acquire any capital stock of Parent or any securities referred to in the immediately preceding sentence or to issue, deliver or sell, or cause to be issued, delivered or sold, any capital stock of Parent or any such securities. Neither Parent nor any of the Parent Subsidiaries is a party to any voting agreement with respect to the voting of any capital stock of Parent or any such securities. There are no outstanding (1) securities of Parent or any of the Parent Subsidiaries convertible into or exchangeable or exercisable for shares of capital stock or voting securities or equity interests of any Parent Subsidiary, (2) warrants, calls, options or other rights to acquire from Parent or any Parent Subsidiary, and no obligation of Parent or any Parent Subsidiary to issue, any capital stock, voting securities, equity interests or securities convertible into or exchangeable or exercisable for capital stock or voting securities of any Parent Subsidiary or (3) obligations of Parent or any of the Parent Subsidiaries to repurchase, redeem or otherwise acquire any securities of any Parent Subsidiary or to issue, deliver or sell, or cause to be issued, delivered or sold, any securities of any Parent Subsidiary.

(c) The authorized capital stock of Sub consists of 1,000 shares of common stock, no par value, all of which have been validly issued, are fully paid and nonassessable and are owned by Parent free and clear of any Lien.

SECTION 4.04. Authority; Execution and Delivery; Enforceability.

(a) Each of Parent and Sub has all requisite corporate power and authority to execute and deliver this Agreement, to perform their obligations hereunder and to consummate the Merger and the other Transactions. The execution and delivery of this Agreement by Parent and Sub and the consummation by Parent and Sub of the Merger and the other Transactions have been duly authorized by all necessary corporate action on the part of Parent and Sub and, assuming for purposes of determining the absence of a required vote of the stockholders of Parent the accuracy of the representations and warranties of the Company set forth in Section 3.03 and the compliance by the Company with its obligations under Section 5.01(a), no other corporate proceedings on the part of Parent or Sub are necessary to authorize or adopt this Agreement or to consummate the Merger and the other Transactions. Parent, as the sole stockholder of Sub, has approved and adopted this Agreement. This Agreement has been duly executed and delivered by Parent and Sub and, assuming the due authorization, execution and delivery by the other parties thereto, constitutes a legal, valid and binding obligation of Parent and Sub, as applicable, enforceable against Parent and Sub, as applicable, in accordance with its terms.

(b) No "fair price," "moratorium," "control share acquisition" or other similar anti-takeover statute or regulation applies to Parent with respect to this Agreement and no anti-takeover provision in the Parent Charter or the Parent Bylaws is, or at the Effective Time will be, applicable to the Merger, the Share Issuance or the other Transactions. For purposes of this Agreement, "Share Issuance" means the authorized issuance by Parent of the Parent Common Stock constituting Stock Consideration and of a sufficient number of shares of Parent Common Stock for delivery upon exercise of the Company Stock Options to be assumed in accordance with Section 6.05.

SECTION 4.05. No Conflicts; Consents.

(a) The execution and delivery by each of Parent and Sub of this Agreement do not, and the consummation of the Merger, the Share Issuance and the other Transactions and compliance with the terms of this Agreement will not, conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation, to any obligation to make an offer to purchase any indebtedness, or loss of a material benefit under, or result in the creation of any Lien (other than Liens created by the Financing) upon any of the properties or assets of Parent or any Parent Subsidiary under, any provision of (i) the Parent Charter, the Parent Bylaws or the comparable charter or organizational documents of any Significant Parent Subsidiary, (ii) any Contract to which Parent or any Parent Subsidiary is a party or by which any of their respective properties or assets is bound or (iii) subject to the filings and other matters referred to in Section 4.05(b), any Judgment or Law applicable to Parent or any Parent Subsidiary or their respective properties or assets, other than, in the case of clauses (ii) and (iii) above, any such items that, individually or in the aggregate, are not having or would not reasonably be expected to have a Material Adverse Effect on Parent.

(b) No Consent of, or registration, declaration or filing with, or permit from, any Governmental Entity is required to be obtained or made by or with respect to Parent or any Parent Subsidiary in connection with the execution, delivery and performance of this Agreement or the consummation of the Transactions, other than (i) (A) the filing with the SEC of the Proxy Statement/Prospectus in definitive form, (B) the filing with the SEC, and declaration of effectiveness, of the Form S-4, in which the Proxy Statement will be included, (C) the filing with the SEC of such reports under, and such other compliance with, the Exchange Act and the Securities Act, and the rules and regulations thereunder, as may be required in connection with this Agreement, the Merger and the other Transactions and (D) the filing of such applications with, and compliance with requirements of, the NYSE, (ii) (A) compliance with and filings under the HSR Act and the termination of the waiting period required thereunder, (B) compliance with any applicable requirements under the EC Merger Regulation and (C) filings and approvals that to the Parent's Knowledge are required to be made under any Foreign Antitrust Laws, (iii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware and appropriate documents with the relevant authorities of the other jurisdictions in which Parent is qualified to do business, (iv) such filings and approvals as are required to be made or obtained under the securities or "blue sky" laws of various states in connection with the issuance of Parent Common Stock pursuant to this Agreement, (v) such of the foregoing as may be required in connection with the Financing and (vi) such other items that, individually or in the aggregate, are not having or would not reasonably be expected to have a Material Adverse Effect on Parent.

SECTION 4.06. SEC Documents; Undisclosed Liabilities.

(a) Parent has furnished or filed all reports, schedules, forms, statements and other documents (including exhibits and other information incorporated therein) required to be furnished or filed by Parent with the SEC since October 1, 2006 (such documents, together with any documents filed with the SEC during such period by Parent on a voluntary basis on a Current Report on Form 8-K, but excluding the Proxy Statement/Prospectus, as supplemented and amended since the time of filing, and the Form S-4, being collectively referred to as the "Parent SEC Documents").

(b) Each Parent SEC Document (i) at the time filed (and if amended or superseded by a filing or amendment prior to the date of this Agreement, then at the time of such filing and in the case of registration statements and proxy statements, on the dates of effectiveness and the dates of mailing, respectively), complied as to form in all material respects with the requirements of SOX and the Exchange Act or the Securities Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to such Parent SEC Document and (ii) did not at the time it was filed (or if amended or superseded by a filing or amendment prior to the date of this Agreement, then at the time of such filing, or in the case of registration statements and proxy statements, then on the dates of effectiveness and the dates of mailing, respectively) contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Each of the consolidated

financial statements of Parent included in the Parent SEC Documents complied at the time it was filed (and if amended or superseded by a filing or amendment prior to the date of this Agreement, then at the time of such filing and in the case of registration statements and proxy statements, on the dates of effectiveness and the dates of mailing, respectively) as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, has been prepared in accordance with GAAP (except, in the case of unaudited statements, as permitted by Form 10-Q of the SEC or otherwise by applicable Law) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly presented in all material respects (except, in the case of unaudited statements, as permitted by the rules and regulations of the SEC or otherwise by applicable Law) the consolidated financial position of Parent and its consolidated Subsidiaries as of the date thereof and the consolidated results of their operations and cash flows for the periods shown (subject, in the case of unaudited statements, to normal year-end audit adjustments).

(c) Neither Parent nor any Parent Subsidiary has any material liabilities or obligations of any nature, whether or not accrued, contingent or otherwise, that would be required by GAAP to be reflected on a consolidated balance sheet of Parent and its Subsidiaries (or in the notes thereto) other than those liabilities or obligations (i) incurred after September 30, 2007 in the ordinary course of business consistent with prior practice and not prohibited by this Agreement, (ii) permitted or contemplated by this Agreement or (iii) that have been discharged or paid in full in the ordinary course of business.

(d) Each of the principal executive officer of Parent and the principal financial officer of Parent (or each former principal executive officer of Parent and each former principal financial officer of Parent, as applicable), or persons performing similar functions, has made all applicable certifications required by Rule 13a-14 or 15d-14 under the Exchange Act and Sections 302 and 906 of SOX with respect to the Parent SEC Documents, and the statements contained in such certifications adhere to the requirements of SOX. None of Parent or any of the Parent Subsidiaries or Affiliates has outstanding, or has arranged since the effectiveness of Section 402 of SOX any outstanding, "extensions of credit" to directors or executive officers within the meaning of Section 402 of SOX. To the Knowledge of Parent, Parent's outside auditors and its principal executive officer and principal financial officer will be able to give, without qualification, the certifications and attestations required pursuant to SOX when next due.

(e) Parent maintains a system of "internal control over financial reporting" (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) sufficient to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in conformity with GAAP, together with the other reasonable assurances included in the above-referenced definition.

(f) Neither Parent nor any of the Parent Subsidiaries is a party to, or has any commitment to become a party to, any joint venture, off-balance sheet partnership or any similar Contract (including any Contract or arrangement relating to any transaction or relationship between or among Parent and any of the Parent Subsidiaries, on the one hand, and any unconsolidated Affiliate, including any structured finance, special purpose or limited purpose entity or Person, on the other hand or any "off-balance sheet arrangements" (as defined in Item

303(a) of Regulation S-K under the Exchange Act)), where the result, purpose or intended effect of such Contract is to avoid disclosure of any material transaction involving, or material liabilities of, Parent or any of the Parent Subsidiaries in the Parent's or such Parent Subsidiary's published financial statements or other Parent SEC Documents.

(g) The "disclosure controls and procedures" (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) utilized by Parent are reasonably designed to ensure that all information (both financial and non-financial) required to be disclosed by Parent in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that all such information required to be disclosed is accumulated and communicated to Parent's management as appropriate to allow timely decisions regarding required disclosure and to enable the principal executive officer and principal financial officer of Parent to make the certifications required under the Exchange Act with respect to such reports.

(h) Since October 1, 2006, Parent has not received any oral or written notification of any (x) "significant deficiency" or (y) "material weakness" in Parent's internal control over financial reporting. There is no outstanding "significant deficiency" or "material weakness" that has not been appropriately and adequately remedied by Parent, as certified by Parent's independent accountants. For purposes of this Agreement, the terms "significant deficiency" and "material weakness" shall have the meanings assigned to them in Exchange Act Rule 12b-2, as in effect on the date of this Agreement.

(i) Since October 1, 2006, (i) neither Parent nor any of the Parent Subsidiaries, nor, to the Knowledge of Parent, any director, officer, employee, auditor, accountant or representative of Parent or any of its Subsidiaries, has received any material written (or, to the Knowledge of Parent, oral) complaint, allegation, assertion or claim, challenging that Parent or any of its Subsidiaries has engaged in illegal accounting or auditing practices and (ii) no attorney representing Parent or any of its Subsidiaries, whether or not employed by Parent or any of its Subsidiaries, has reported evidence of a material violation of securities laws, breach of fiduciary duty or similar violation by Parent or any of its Subsidiaries or their respective officers, directors, employees or agents to the Board of Directors of Parent or any committee thereof or to any director or officer of Parent.

(j) Parent has no unresolved comments from the staff of the SEC relating to the Parent's filings with the SEC.

(k) None of the Parent Subsidiaries is, or has at any time since October 1, 2006 been, individually subject to the reporting requirements of Sections 13(a) and 15(d) of the Exchange Act.

SECTION 4.07. Information Supplied. None of the information supplied or to be supplied by Parent or Sub for inclusion or incorporation by reference in (i) the Form S-4 will, at the time the Form S-4 is filed with the SEC, at any time it is amended or supplemented or at the time it becomes effective under the Securities Act, 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 or (ii) the Proxy Statement/Prospectus will, at the date it is first

mailed to each of the Company's stockholders or at the time of the Company Stockholder Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Form S-4 will comply as to form in all material respects with the requirements of the Securities Act and the rules and regulations thereunder, except that no representation is made by Parent or Sub with respect to statements made or incorporated by reference therein based on information supplied by the Company for inclusion or incorporation by reference in the Proxy Statement/Prospectus.

SECTION 4.08. Absence of Certain Changes or Events.

(a) From October 1, 2007 through the date of this Agreement, Parent and each of the Parent Subsidiaries has conducted its respective business only in the ordinary course, and during such period there has not been any:

(i) Event that is having or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Parent;

(ii) declaration, setting aside or payment of any dividend or other distribution (whether in cash, stock or property) with respect to any Parent Capital Stock (other than regular quarterly cash dividends not in excess of $0.275 per share, with usual declaration, record and payment dates and in accordance with Parent's current dividend policy) or the capital stock of any of the Parent Subsidiaries (other than dividends or other distributions by a direct or indirect wholly owned Parent Subsidiary to its parent) or any repurchase for value by Parent of any Parent Capital Stock or the capital stock of any of the Parent Subsidiaries; or

(iii) split, combination, subdivision or reclassification of any Parent Capital Stock, other equity interests, securities convertible into or exercisable or exchangeable for Parent Capital Stock or other equity interests or any issuance or the authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares of Parent Capital Stock.

(b) Since the date of this Agreement, there has not been any Event that, individually or in the aggregate, is having or would reasonably be expected to have a Material Adverse Effect on Parent.

SECTION 4.09. Litigation. There is no suit, action or proceeding pending or, to the Knowledge of Parent, threatened against Parent or any Parent Subsidiary that, individually or in the aggregate, is having or would reasonably be expected to have a Material Adverse Effect on Parent and there is no Judgment outstanding against or, to the Knowledge of Parent, investigation by any Governmental Entity involving, Parent or any Parent Subsidiary or any of their respective material properties or assets that, individually or in the aggregate, is having or would reasonably be expected to have a Material Adverse Effect on Parent.

SECTION 4.10. Compliance with Applicable Laws.

(a) Parent and the Significant Parent Subsidiaries and, to the Knowledge of Parent, the Parent Subsidiaries (other than the Significant Parent Subsidiaries) are in compliance in all material respects with all applicable Laws and all Parent Permits, in each case that are material to their operations as presently conducted.

(b) To the Knowledge of Parent, no material action, demand or investigation by any Governmental Entity is pending or threatened alleging that Parent or a Parent Subsidiary is not in compliance in any material respect with any applicable Law or Parent Permit, in each case that are material to their operations as presently conducted.

SECTION 4.11. Brokers' Fees and Expenses. No broker, investment banker, financial advisor or other Person, other than Citigroup Global Markets Inc. (the "Parent Financial Advisor"), the fees and expenses of which will be paid by Parent, is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the Merger and the other Transactions based upon arrangements made by or on behalf of Parent, Parent's Subsidiaries or Sub.

Section 4.12. Opinion of Financial Advisor. Parent has received the opinion of the Parent Financial Advisor, dated the date of this Agreement, to the effect that, as of such date, the consideration to be paid in the Merger by Parent is fair to Parent from a financial point of view, a signed copy of which opinion has been, or will promptly be, delivered to Parent.

SECTION 4.13. Financing.

(a) Parent has received a commitment letter, dated as of the date of this Agreement (the "Financing Letter") from Banc of America Securities LLC, Banc of America Bridge LLC, Bank of America, N.A. and the Bank of Nova Scotia (collectively, the "Lenders"), relating to the financing (including all exhibits, schedules and amendments to the Financing Letter in effect as of the date of this Agreement) required to consummate the Merger and the other Transactions on the terms contemplated by this Agreement, to refinance certain existing indebtedness of the Parent and the Company and to pay related fees and expenses, which Financing Letter includes terms and conditions for (i) a $1.950 billion senior secured credit facility (the "Senior Facility") and (ii) a $750.0 million unsecured "bridge" loan facility (the "Bridge Facility") (or Senior Notes as defined in the Financing Letter ("Senior Notes") in lieu thereof). The Lenders have committed to provide and arrange the financing contemplated by the Financing Letter upon and subject to the terms and conditions in the Financing Letter (the "Financing"). Parent has provided the Company with true, complete and correct copies of the Financing Letter. As of the date of this Agreement, (i) the Financing Letter is in full force and effect, is a valid, binding and enforceable obligation of the Parent, and to the Knowledge of the Parent, the other parties thereto, and has not been withdrawn or terminated or otherwise amended or modified in any respect without the prior written consent of the Company and no such amendment or modification is contemplated by Parent or Sub or, to Parent's Knowledge, any other party thereto, and (ii) neither Parent nor Sub is in breach of any of the terms or conditions set forth therein and no event has occurred which, with or without notice, lapse of time or both, could reasonably be expected to constitute a breach or failure to satisfy a condition precedent set forth in the Financing Letter. Parent and Sub have paid any and all commitment fees or other fees in connection with the Financing Letter that are payable on or prior to the date of this Agreement.

(b) As of the date of this Agreement, subject to the accuracy of the representations and warranties of the Company set forth in Article III, and the satisfaction of the conditions set forth in Sections 7.01 and 7.02, neither Parent nor Sub has any reason to believe that it will be unable to satisfy the conditions of closing to be satisfied by it set forth in the Financing Letter on the Closing Date. Assuming the funding of the Financing in accordance with the Financing Letter, the proceeds from such Financing constitute all of the financing required for the consummation of the Merger and the other Transactions, and, together with the Stock Consideration, Parent's cash on hand, and cash on hand from operations of the Company, are sufficient for the satisfaction of all of Parent's and Sub's obligations under this Agreement, including the payment of the Merger Consideration, any other amounts required to be paid in connection with the consummation of the Merger and the other Transactions and to pay all related fees and expenses (including any repayment or refinancing of debt contemplated by this Agreement or the Financing Letter). There are no conditions precedent (i) to the availability of the "flex" provisions set forth in the Financing Letter or (ii) other than as expressly set forth in the Financing Letter, to the Lenders' obligation to fund that portion of the Financing required for the consummation of the Merger and other Transactions. As of the date of this Agreement, there are no side letters or other agreements, arrangements or understandings (written or oral) relating to the Financing (other than fee letters and an engagement letter with respect to the Senior Notes with the providers of the Financing) to which Parent or Sub or any of their Affiliates is a party.

SECTION 4.14. Capitalization of Sub. As of the date of this Agreement, the authorized capital stock of Sub consists of 1,000 shares of common stock, no par value, all of which are validly issued and outstanding. All of the issued and outstanding capital stock of Sub is, and at the Effective Time will be, owned by Parent or a direct or indirect wholly owned Subsidiary of Parent. Sub has no option, warrant, right, or any other agreement outstanding pursuant to which any Person other than Parent may acquire any equity security of Sub. Sub has not conducted any business prior to the date of this Agreement and has, and prior to the Effective Time will have, no assets, liabilities or obligations of any nature other than those incident to its formation and pursuant to this Agreement and the Merger and the other Transactions.

SECTION 4.15. Vote/Approval Required. No vote, consent, approval or other action of the stockholders of Parent or the holders of any other securities of Parent (equity or otherwise) is required by Law, the Parent Charter or Parent Bylaws or the rules of the NYSE or otherwise to approve this Agreement or the Merger or the other Transactions. The vote or consent of Parent as the sole stockholder of Sub (which shall have occurred immediately following the execution of this Agreement) is the only vote or consent of the stockholders of Parent or Sub necessary to approve this Agreement or the Merger or the other Transactions.

SECTION 4.16. Material Contracts.

(a) For purposes of this Agreement, a "Parent Material Contract" shall mean each Contract that is a "material contract" pursuant to Item 601(b)(10) of Regulation S-K;

(b) The Parent Disclosure Letter sets forth a list of all Parent Material Contracts as of the date of this Agreement, except for this Agreement, Contracts filed or incorporated by reference as an Exhibit to the Parent's most recent annual report on Form 10-K and Contracts filed as an Exhibit to any of Parent's quarterly reports on Form 10-Q or current

reports on Form 8-K filed since the filing of Parent's most recent annual report on Form 10-K. Each Parent Material Contract is a valid, binding and legally enforceable obligation of Parent or one of the Parent Subsidiaries, and, to the Knowledge of Parent, is in full force and effect, except for such failures to be valid, binding and legally enforceable or to be in full force and effect that are not having or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Parent. Subject to such exceptions as are not having or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Parent, there is no default under any Parent Material Contract by Parent or any Parent Subsidiary or, to the Knowledge of Parent, by any other party thereto, and no event has occurred that, with the lapse of time or the giving of notice or both, would constitute a default thereunder by Parent or any Parent Subsidiary or, to the Knowledge of Parent, by any other party thereto.

SECTION 4.17. No Additional Representations. Parent acknowledges that none of the Company nor any Person has made any representation or warranty, express or implied, as to the accuracy or completeness of any information regarding the Company furnished or made available to Parent and its Representatives except as expressly set forth in Article IV (which includes the Company Disclosure Letter and the Company SEC Documents), and none of the Company or any other Person shall be subject to any liability to Parent or any other Person resulting from the Company's making available to Parent or Parent's use of such information or any information, documents or material made available to Parent in the due diligence materials provided to Parent, including in the "data room," in management presentations (formal or informal) or in any other form in connection with the Merger and the other Transactions. Without limiting the foregoing, Parent makes no representation or warranty to the Company with respect to any financial projection or forecast relating to Parent or any Parent Subsidiary, whether or not included in any management presentation.

ARTICLE V

Covenants Relating to Conduct of Business

SECTION 5.01. Conduct of Business.

(a) Conduct of Business by the Company. Except (I) for matters set forth in the Company Disclosure Letter, (II) for actions required to be taken by applicable Law (provided that the Company shall reasonably promptly notify Parent after taking any action, other than in the ordinary course of business, in reliance on this clause (II)), (III) as may be agreed in writing by Parent (which consent shall not be unreasonably withheld, delayed or conditioned) and (IV) or otherwise expressly permitted or contemplated by this Agreement, from the date of this Agreement to the Effective Time, the Company shall, and shall cause each Company Subsidiary to, conduct its business in the usual, regular and ordinary course consistent with past practice and, to the extent consistent therewith, use commercially reasonable efforts to preserve intact its current business organization, keep available the services of its current employees and maintain their relationships with customers, suppliers, licensors, licensees, distributors, Governmental Entities and others having business dealings with them. However, the Company agrees not to issue any new equity compensation awards between the date of this Agreement to the Effective Time except as specifically provided for in clause (ii) below or with Parent's prior written consent. In addition, and without limiting the generality of the foregoing, except (A) for matters

set forth in the Company Disclosure Letter, (B) for actions required to be taken by applicable Law (provided that the Company shall reasonably promptly notify Parent after taking any action, other than in the ordinary course of business, in reliance on this clause (B)) or (C) as otherwise expressly permitted or contemplated by this Agreement from the date of this Agreement to the Effective Time, the Company shall not, and shall not permit any Company Subsidiary to, do any of the following without the prior written consent of Parent (which consent shall not be unreasonably withheld, delayed or conditioned):

(i) except for transactions among the Company and direct or indirect wholly owned Company Subsidiaries or among direct and indirect wholly owned Company Subsidiaries, (A) declare, set aside or pay any dividends on, or make any other distributions (whether in cash, stock or property or any combination thereof) in respect of, any of its capital stock, other than (1) dividends and distributions by the Company to a direct or indirect wholly owned Company Subsidiary or by a direct or indirect wholly owned Company Subsidiary to its parent or to another direct or indirect wholly owned Company Subsidiary and (2) regular quarterly cash dividends with respect to the Company Common Stock, not in excess of $0.06 per share, with usual declaration, record and payment dates and in accordance with the Company's current dividend policy, (B) split, combine, subdivide or reclassify any of its capital stock, other equity interests, securities convertible into or exercisable or exchangeable for capital stock or other equity interests or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock or (C) repurchase, redeem or otherwise acquire, or offer to repurchase, redeem or otherwise acquire any shares of capital stock of the Company or any Company Subsidiary or any other securities thereof or any rights, warrants or options to acquire any such shares or other securities, except pursuant to the Company Stock Options outstanding as of the date of this Agreement;

(ii) issue, deliver, sell, grant, pledge or otherwise encumber or subject to any Lien (A) any shares of its capital stock, (B) any Voting Company Debt or other voting securities, (C) any securities convertible into or exchangeable for, or any options, warrants or rights to acquire, any such shares, Voting Company Debt, voting securities or convertible or exchangeable securities or (D) any stock appreciation, "phantom" stock, profit participation or dividend equivalent rights or similar rights with respect to the Company or any Company Subsidiary, other than in each case (I) the issuance of Company Common Stock upon the exercise of Company Stock Options or the settlement of Company RSUs, in each case outstanding as of the date of this Agreement and in accordance with their terms as of the date of this Agreement and upon the exercise of the Warrants or the conversion of the Convertible Debentures, in each case in accordance with their terms as of the date of this Agreement, (II) grants of equity compensation awards with respect to up to 50,000 shares of Company Common Stock in the aggregate in connection with new hires consistent with past practice; provided, however, that if the number of shares in this clause (II) is exhausted, the Company may substitute non-equity awards of equivalent value for the equity awards it would otherwise grant, (III) the sale of shares of Company Common Stock pursuant to the exercise of Company Stock Options if necessary to effectuate an optionee direction upon exercise or for withholding of Taxes or (IV) the acquisition of Company Common Stock from a holder of Company Restricted Shares, a Company Stock Option or a Company RSU in satisfaction of withholding obligations or in payment of the exercise price;

(iii) amend the Company Charter, the Company Bylaws or other comparable charter or organizational documents of any Significant Company Subsidiary except as may be required by Law or the rules and regulations of the SEC or the NYSE;

(iv) except as is required to be taken by applicable Law (provided that the Company shall reasonably promptly notify Parent after taking any action (or, if reasonably practicable, prior to such action), other than in the ordinary course of business, in reliance on the preceding applicable Law exception), (A) grant to any current or former director, officer, employee or consultant of the Company or any Company Subsidiary any increase in compensation, bonus or fringe or other benefits or grant any type of compensation or benefit to any such Person not previously receiving or entitled to receive such compensation except for normal increases in cash compensation in the ordinary course of business consistent with past practice or to the extent required under Company Benefit Plans or Foreign Benefit Plans in effect as of the date of this Agreement, (B) grant to any such Person any increase in severance, change in control or termination compensation or benefits, except to the extent required under any Company Benefit Plans or Foreign Benefit Plans in effect as of the date of this Agreement, (C) enter into, adopt or amend in any manner that would increase costs or benefits thereunder, any Company Benefit Plan or Foreign Benefit Plan other than (1) in connection with hiring or retaining the services of any Person if the compensation (base and bonus) of such newly hired or retained Person shall not exceed $150,000 per year or (2) employment agreements terminable on less than 30 days' notice without penalty, or (D) take any action to accelerate or fund any rights or benefits, except to the extent required under Company Benefit Plans or Foreign Benefit Plans in effect as of the date of this Agreement, or make any material determinations not in the ordinary course of business consistent with prior practice, under any Company Benefit Plan or Company Foreign Plan;

(v) make any change in financial accounting methods, principles or practices, except insofar as may be required by applicable Law, SEC rule or policy or a change in GAAP;

(vi) except in the ordinary course of business, (A) make or change any Tax election (except as may be consistent with past practice), (B) adopt any change to the Company's or any of its Subsidiaries' method of accounting for Tax purposes, (C) settle or compromise any Tax liability or refund, (D) amend any Tax Return, (E) agree to waive or extend any statute of limitations relating to any Tax Return, or (F) fail to notify Parent of any income Tax audit, investigation or proceeding initiated by a Tax authority after the date of this Agreement with respect to the Company or any of its Subsidiaries, in each case, to the extent such action (or failure to act) is reasonably likely to result in an increase to a Tax liability, which increase is material to the Company and the Company Subsidiaries taken as a whole (this clause (vi) being the sole provision of this Section 5.01 governing Tax matters);

(vii) enter into new lines of business outside of their existing business and reasonable extensions of their existing business;

(viii) except for transactions among the Company and direct or indirect wholly owned Company Subsidiaries or among direct and indirect wholly owned Company Subsidiaries, directly or indirectly acquire or agree to acquire (A) by merging or consolidating

with, or by purchasing a substantial portion of the properties or assets of, or by any other manner, any equity interest in or business or any corporation, partnership, joint venture, association or other business organization or division thereof or (B) any properties or assets that are material, individually or in the aggregate, to the Company and the Company Subsidiaries, taken as a whole, except for (1) purchases of inventory or other assets in the ordinary course of business consistent with past practice and (2) acquisitions at or below fair market value for consideration not in excess of $5,000,000 individually or $15,000,000 in the aggregate;

(ix) except for transactions among the Company and direct or indirect wholly owned Company Subsidiaries or among direct and indirect wholly owned Company Subsidiaries, (A) sell, lease (as lessor), license, mortgage, sell and leaseback or otherwise encumber or subject to any Lien, or otherwise dispose of (collectively, "Transfers"), any properties or assets or any interests therein, except sales of inventory and excess or obsolete property or assets in the ordinary course of business consistent with past practice, Transfers of property or assets at not less than fair market value for consideration not greater than $5,000,000 individually and $20,000,000 in the aggregate; or (B) enter into, modify or amend any lease of property, except for modifications or amendments that are not materially adverse to the Company and the Company Subsidiaries, taken as a whole;

(x) except for transactions among the Company and direct or indirect wholly owned Company Subsidiaries or among direct and indirect wholly owned Company Subsidiaries, (A) incur any indebtedness, except for short-term borrowings in an amount not in excess of $25,000,000 incurred in the ordinary course of business consistent with past practice that may be prepaid on the Closing Date without penalty or premium, or (B) make any loans, advances or capital contributions to, or investments in, any other Person, whether by purchase of stock or securities, contributions to capital or property transfers;

(xi) make or agree to make any capital expenditure or expenditures that, individually, is in excess of $1,000,000 or, in the aggregate, are in excess of $15,000,000;

(xii) enter into any material Contract to the extent consummation of the Transactions or compliance by the Company with the provisions of this Agreement would conflict with, or result in a material violation or material breach of or material default (with or without notice or lapse of time, or both) under, or give rise to a right of, or result in, termination, cancellation or acceleration of any obligation, to make an offer to purchase any indebtedness or to the loss of a benefit under, or result in the creation of any Lien upon any of the properties or other assets of the Company or any Company Subsidiary under, or require Parent to license or transfer any of its Intellectual Property Rights or other material property or assets under, or give rise to any increased, additional, accelerated, or guaranteed right or entitlements of any third party under, or result in any material alteration of, any provision of such material Contract;

(xiii) enter into any Company Material Contract containing a termination right that is triggered upon consummation of the Merger;

(xiv) except in the ordinary course of business consistent with past practice and to the extent not prohibited by other provisions of this Section 5.01(a), enter into, terminate, renew, extend, amend or modify in any material respect, any Company Material Contract;

(xv) (A) pay, discharge, settle or satisfy any claims, liabilities, obligations or litigation (absolute, accrued, asserted or unasserted, contingent or otherwise), other than any matter with respect to Taxes, the payment, discharge, settlement or satisfaction, in the ordinary course of business consistent with past practice or in accordance with their terms, of liabilities reflected or reserved against in the most recent consolidated financial statements (or the notes thereto) of the Company included in the Company SEC Documents or incurred since the date of such financial statements in the ordinary course of business consistent with past practice, provided, however, that in no event shall the Company or any of the Company Subsidiaries settle any claim or litigation (x) for an amount in excess of $2,000,000 for any such settlement individually or (y) if such settlement would reasonably be expected to prohibit or materially restrict the Company or any Company Subsidiary, or, after the Effective Time, Parent or any Parent Subsidiary, from conducting its business in substantially the same manner as conducted on the date of this Agreement, and provided further that in no event shall the Company or any of the Company Subsidiaries settle any claim or litigation relating to the Transactions without consulting Parent or (B) forgive any indebtedness of a substantial value due or owing to the Company or any Company Subsidiary from any third-party (other than in consideration of reasonably equivalent value);

(xvi) enter into (A) any interest rate swap agreement, cross-currency interest rate swap agreement or similar agreement, (B) except in the ordinary course of business, any collar, options or similar agreement for the purpose of maintaining or controlling the cost of the Company's raw materials or (C) foreign currency forward contracts other than to match foreign currency positions; or

(xvii) authorize any of, or commit or agree to take any of, the foregoing actions.

(b) Conduct of Business by Parent. Except (I) for matters set forth in the Parent Disclosure Letter, (II) for actions required to be taken by applicable Law, (III) as may be agreed in writing by the Company (which consent shall not be unreasonably withheld, delayed or conditioned) or (IV) as otherwise expressly permitted or contemplated by this Agreement, from the date of this Agreement to the Effective Time, Parent shall, and shall cause each Parent Subsidiary to, conduct its business in the usual, regular and ordinary course consistent with past practice and, to the extent consistent therewith, use commercially reasonable efforts to preserve intact its current business organization, keep available the services of its current employees and maintain their relationships with customers, suppliers and others having business dealings with them except (A) for matters set forth in the Parent Disclosure Letter, (B) for actions required to be taken by applicable Law or (C) as otherwise expressly permitted or contemplated by this Agreement, from the date of this Agreement to the Effective Time, Parent shall not, and shall not permit any Parent Subsidiary to, do any of the following without the prior written consent of the Company (which consent shall not be unreasonably withheld, delayed or conditioned):

(i) (A) declare, set aside or pay any dividends on, or make any other distributions (whether in cash, stock or property or any combination thereof) in respect of, any of

its capital stock, other than (1) dividends and distributions by Parent to a direct or indirect wholly owned Parent Subsidiary or by a direct or indirect wholly owned Parent Subsidiary to its parent or to another direct or indirect wholly owned Company Subsidiary and (2) regular quarterly cash dividends with respect to the Parent Common Stock, not in excess of $0.275 per share, with usual declaration, record and payment dates and in accordance with the Parent's current dividend policy, (B) split, combine, subdivide or reclassify any of its capital stock, other equity interests, securities convertible into or exercisable or exchangeable for capital stock or other equity interests or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock or (C) repurchase, redeem or otherwise acquire, or offer to repurchase, redeem or otherwise acquire any shares of capital stock of Parent or any Parent Subsidiary or any other securities thereof or any rights, warrants or options to acquire any such shares or other securities except in accordance with Parent Stock Plans in the ordinary course of business consistent with past practice;

(ii) issue, deliver, sell, grant, pledge or otherwise encumber or subject to any Lien (A) any shares of its capital stock, (B) any Voting Parent Debt or other voting securities, (C) any securities convertible into or exchangeable for any such shares, Voting Parent Debt, voting securities or convertible or exchangeable securities, or (D) any stock appreciation, "phantom" stock, profit participation or dividend equivalent rights or similar rights with respect to the Company or any Company Subsidiary, other than the issuance of Parent Common Stock under Parent Stock Plans, upon the exercise of Parent Stock Options or Parent SARs or pursuant to Parent Stock Equivalent Awards, in each case outstanding on January 1, 2008 and in accordance with their terms on January 1, 2008, or which are thereafter issued in the ordinary course of business;

(iii) amend the Parent Charter or the Parent Bylaws in a manner that adversely affects the Parent Common Stock or the rights of the holders thereof except as may be required by Law or the rules and regulations of the SEC or the NYSE;

(iv) acquire for cash a material amount of assets or capital stock of any other person valued, giving effect to assumed indebtedness, at more than $100,000,000 in the aggregate (and, in each case, Parent shall give the Company reasonable prior notice of any such acquisition or agreement to make such an acquisition); provided, that Parent and the Parent Subsidiaries shall not make any acquisition if such acquisition would adversely affect the ability of Section 7.01(c) to be satisfied on or prior to the End Date;

(v) incur any indebtedness that would adversely affect Parent's ability to (A) obtain the Financing on the terms and conditions described in the Financing Letter as soon as reasonably practicable following the date of this Agreement and in any event on or prior to the End Date and (B) satisfy in all respects its obligations under Section 6.14, provided that nothing in this clause (v) shall prohibit Parent from incurring indebtedness specifically permitted as "Borrower Existing Indebtedness" as that term is defined in the second paragraph of Annex III of the Financing Letter; or

(vi) authorize any of, or commit or agree to take any of, the foregoing actions.

(c) Advice of Changes. The Company and Parent shall promptly advise the other orally and in writing of any change or event that is having or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on such party.

(d) Continued Operation of the Company. In connection with the continued operation of the Company and the Company Subsidiaries between the date of this Agreement and the Closing Date, the Company will confer in good faith on a regular and frequent basis with one or more representatives of Parent designated to the Company regarding operational matters and the general status of ongoing operations. The Company acknowledges that Parent does not and will not waive any rights it may have under this Agreement as a result of such consultations. Nothing contained in this Agreement will give Parent, directly or indirectly, the right to control or direct the Company's operations prior to the Effective Time.

SECTION 5.02. No Solicitation; Company Board Recommendation.

(a) Subject to Sections 5.02(b) and 5.02(d), the Company shall not, nor shall it authorize, give permission to or direct any Company Subsidiary or any of their or its respective directors, officers or employees or any investment banker, accountant, attorney or other advisor, agent or representative (collectively, "Representatives") to (i) directly or indirectly solicit, initiate or knowingly encourage the submission of, any Company Takeover Proposal or (ii) directly or indirectly participate in any discussions or negotiations regarding, or furnish to any Person any information with respect to, or knowingly take any other action to facilitate any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, any Company Takeover Proposal. Without limiting the foregoing, it is agreed that any violation of the restrictions set forth in the preceding sentence by any Representative of the Company or any of its Affiliates acting at the direction or with the Knowledge of the Company shall be a breach of this Section 5.02(a) by the Company. The Company shall, and shall cause the Company Subsidiaries to, immediately cease and cause to be terminated all existing discussions or negotiations with any Person conducted heretofore with respect to any Company Takeover Proposal and request the prompt return or destruction of all confidential information previously furnished. Notwithstanding the foregoing, at any time prior to obtaining the Company Stockholder Approval, in response to a bona fide written Company Takeover Proposal that the Company Board determines in good faith (after consultation with its outside counsel and a financial advisor of nationally recognized reputation) constitutes or could reasonably be expected to lead to a Superior Company Proposal, and which Company Takeover Proposal was not solicited after the date of this Agreement in breach of this Section 5.02(a) and was made after the date of this Agreement and did not otherwise result from a breach of this Section 5.02(a), the Company may, subject to compliance with Section 5.02(c), (x) furnish information with respect to the Company and the Company Subsidiaries or other public or nonpublic information to the Person making such Company Takeover Proposal (and its Representatives) pursuant to a customary confidentiality agreement with provisions not less restrictive of such Person than the Confidentiality Agreement, provided that such confidentiality agreement shall not contain any provisions that would limit the ability of such Person to make proposals to the Company Board, provided, further, that all such information has previously been provided to Parent or is provided to Parent prior to or substantially concurrent with the time it is provided to such Person and (y) participate in discussions or negotiations with the Person making such Company Takeover Proposal (and its Representatives) regarding such Company Takeover Proposal.

(b) Except as set forth in Section 8.01(g) and as otherwise set forth below, neither the Company Board nor any committee thereof shall (i) (A) withdraw (or modify in a manner adverse to Parent), or publicly propose to withdraw (or modify in any manner adverse to Parent), the approval or recommendation by the Company Board or any such committee thereof of this Agreement, the Merger or the other Transactions or (B) recommend, adopt or approve, or propose publicly to recommend, adopt or approve, any Company Takeover Proposal (any action described in this clause (i) being referred to as a "Company Adverse Recommendation Change") or (ii) approve or recommend, or propose to approve or recommend, or allow the Company or any of its Affiliates to execute or enter into, any letter of intent, memorandum of understanding, agreement in principle, merger agreement, acquisition agreement, option agreement, joint venture agreement, partnership agreement or other similar agreement constituting or related to, any Company Takeover Proposal or that would require the Company to abandon, terminate or fail to consummate the Merger or other Transactions (other than a confidentiality agreement referred to in Section 5.02(a)) (an "Acquisition Agreement"). Notwithstanding the foregoing, at any time prior to obtaining the Company Stockholder Approval, the Company Board may make a Company Adverse Recommendation Change if the Company Board determines in good faith (after consultation with its outside counsel and financial advisor of nationally recognized reputation) that the failure to do so would be or would reasonably be expected to be inconsistent with its fiduciary duties to the stockholders of the Company under applicable Law; provided, however, that no Company Adverse Recommendation Change may be made until after the fifth Business Day following Parent's receipt of written notice (a "Company Notice of Adverse Recommendation") from the Company advising Parent that the Company Board intends to take such action and specifying the terms and conditions of any Superior Company Proposal that is the basis of the proposed action by the Company Board (it being understood and agreed that any amendment to the financial terms or any other material term of such Superior Company Proposal shall require a new Company Notice of Adverse Recommendation and an additional five Business Day period). During such five Business Day period (or five Business Day period in the case of an amendment to the financial terms or any other material item of such Superior Company Proposal), if requested by Parent, the Company shall engage in good faith negotiations with Parent to amend this Agreement in such a manner that any Company Takeover Proposal which was determined to constitute a Superior Company Proposal no longer is a superior proposal. In determining whether to make a Company Adverse Recommendation Change, the Company Board shall take into account any changes to the financial terms of this Agreement proposed by Parent in response to a Company Notice of Adverse Recommendation or otherwise. Notwithstanding anything to the contrary contained in this Agreement (other than the specific requirements of Section 8.01(g)), the Company shall be entitled to terminate this Agreement in connection with a Superior Company Proposal pursuant to Section 8.01(g).

(c) In addition to the obligations of the Company set forth in paragraphs (a) and (b) of this Section 5.02, the Company shall promptly advise Parent orally and in writing of any Company Takeover Proposal, the material terms and conditions of any such Company Takeover Proposal or inquiry (including any changes thereto) and the identity of the Person making any such Company Takeover Proposal or inquiry. The Company shall (i) keep Parent fully informed of the status and details (including any change to the terms thereof) of any such Company Takeover Proposal or inquiry and (ii) provide to Parent as soon as practicable after receipt or delivery thereof with copies of all correspondence and other written material sent or provided directly or indirectly to the Company or any Company Subsidiary from any Person that

describes any of the terms or conditions of any Company Takeover Proposal, provided, however, that the Company need not provide Parent with any analysis or other information developed by a Company Representative in the context of any Company Takeover Proposal.

(d) Nothing contained in this Agreement shall prohibit the Company from (x) taking and disclosing to its stockholders a position contemplated by or complying with any other disclosure obligations under Section 14d-9 and Section 14e-2 promulgated under the Exchange Act or (y) making any disclosure to the stockholders of the Company if, in the good faith judgment of the Company Board (after consultation with outside counsel) failure to so disclose would be inconsistent with its obligations under applicable Law; provided, however, that if such disclosure constitutes a Company Adverse Recommendation Change, Parent's rights under Section 8.01(e) may be exercised to the extent provided in such section. Further, in the event that any provision of this Section 5.02 conflicts with the Confidentiality Agreement, this Section 5.02 shall govern.

(e) For purposes of this Agreement:

(i) "Company Takeover Proposal" means any contract, proposal or offer (whether or not in writing), with respect to any (A) merger, reorganization, consolidation, business combination, recapitalization, dissolution, liquidation or similar extraordinary transaction involving the Company or the Company Subsidiaries (which Company Subsidiaries collectively represent 20% or more of the consolidated revenues, net income or assets of the Company and the Company Subsidiaries taken as a whole), (B) sale, lease or other disposition directly or indirectly by merger, consolidation, business combination, share exchange, joint venture or otherwise of any business or assets of the Company or the Company Subsidiaries representing 20% or more of the consolidated revenues, net income or assets of the Company and the Company Subsidiaries taken as a whole, (C) issuance, sale or other disposition of (including by way of merger, consolidation, business combination, share exchange, joint venture or any similar transaction) securities (or options, rights or warrants to purchase, or securities convertible into or exchangeable for, such securities) representing 20% or more of the voting power of the Company, (D) transaction in which any Person shall acquire beneficial ownership, or the right to acquire beneficial ownership, or any group shall have been formed which beneficially owns or has the right to acquire beneficial ownership of, 20% or more of the Company Common Stock or (E) any combination of the foregoing (in each case, other than the Merger).

(ii) "Superior Company Proposal" means any bona fide Company Takeover Proposal (except that references in the definition of "Company Takeover Proposal" to 20% shall be replaced by 50%) made by any Person other than a party to this Agreement that the Company Board determines in good faith (after consultation with its outside counsel and financial advisor and in consideration of such factors as the Company Board considers to be appropriate) (A) is on terms that are more favorable to the Company and its stockholders than the Transactions, taking into account all the terms and conditions of such proposal and this Agreement (including any proposal by Parent to amend the terms of the Transactions) and (B) is reasonably likely to be completed, taking into account all financial, regulatory, legal and other aspects of such proposal that the Company Board considers to be appropriate.

ARTICLE VI

Additional Agreements

SECTION 6.01. Preparation of the Form S-4 and the Proxy Statement/Prospectus; Company Stockholder Meeting.

(a) As promptly as practicable following the date of this Agreement, the Company shall prepare (with Parent's reasonable cooperation) the proxy statement to be sent to the stockholders of the Company relating to the Company Stockholder Meeting (together with any amendments or supplements thereto, the "Proxy Statement/Prospectus") and Parent shall prepare (with the Company's reasonable cooperation) and file with the SEC a registration statement on Form S-4 in connection with the registration under the Securities Act of the shares of Parent Common Stock to be issued in the Merger. Each of the Company and Parent shall use its reasonable best efforts to respond as promptly as practicable to any written or oral comments of the SEC. The Proxy Statement/Prospectus will be included within the Form S-4 filed with the SEC. Each of the Company and Parent shall use its reasonable best efforts to have the Form S-4 declared effective under the Securities Act and to maintain such effectiveness for as long as necessary to consummate the Merger and the other Transactions as promptly as practicable after such filing. Parent shall also take any action (other than qualifying to do business in any jurisdiction in which it is not now so qualified) required to be taken under any applicable state securities or "blue sky" laws in connection with the issuance of Parent Common Stock in the Merger as contemplated by this Agreement and the Company shall furnish all information concerning the Company and the holders of the Company Common Stock and rights to acquire Company Common Stock as may be reasonably requested in connection with any such action.

(b) In addition to their obligations pursuant to Section 6.01(a), Parent and the Company shall make all necessary filings with respect to the Merger and the other Transactions under the Securities Act, the Exchange Act and applicable foreign or state securities or "blue sky" laws and the rules and regulations thereunder and provide each other with copies of any such filings. Parent and the Company shall advise the other party, promptly after receipt of notice thereof, of (and provide copies of any notices or communications with respect to) the time of the effectiveness of the Form S-4, the filing of any supplement or amendment thereto, the issuance of any stop order relating thereto, the suspension of the qualification of Parent Common Stock issuable in connection with the Merger for offering or sale in any jurisdiction, or of any SEC request for amendment to the Proxy Statement/Prospectus or the Form S-4, SEC comments thereon and each party's responses thereto or SEC request for additional information. No amendment or supplement to the Proxy Statement/Prospectus or the Form S-4 shall be filed without the approval of each of Parent and the Company, which approval shall not be unreasonably withheld, delayed or conditioned.

(c) If prior to the Effective Time, any event occurs with respect to the Company or any Company Subsidiary, or any change occurs with respect to other information supplied by the Company for inclusion in the Proxy Statement/Prospectus or the Form S-4, which is required to be described in an amendment of, or a supplement to, the Proxy Statement/Prospectus or the Form S-4, the Company shall promptly notify Parent of such event, and the Company and Parent shall cooperate in the prompt filing with the SEC of any necessary

amendment or supplement to the Proxy Statement/Prospectus and the Form S-4 and, as required by applicable Law, in disseminating the information contained in such amendment or supplement to the Company's stockholders.

(d) If prior to the Effective Time, any event occurs with respect to Parent or any Parent Subsidiary, or any change occurs with respect to other information supplied by Parent for inclusion in the Proxy Statement/Prospectus or the Form S-4, which is required to be described in an amendment of, or a supplement to, the Proxy Statement/Prospectus or the Form S-4, Parent shall promptly notify the Company of such event, and Parent and the Company shall cooperate in the prompt filing with the SEC of any necessary amendment or supplement to the Proxy Statement/Prospectus and the Form S-4 and, as required by applicable Law, in disseminating the information contained in such amendment or supplement to the Company's stockholders.

(e) The Company shall take all action in accordance with the federal securities laws, the DGCL, the Company Certificate and the Company Bylaws necessary to convene the Company Stockholder Meeting for the sole purpose of seeking the Company Stockholder Approval (and any authority needed to adjourn or postpone the Company Stockholder Meeting as desirable) on the earliest practicable date following the date the Form S-4 is declared effective under the Securities Act. The Company shall use its reasonable best efforts to cause the Proxy Statement/Prospectus to be mailed in definitive form to the Company's stockholders as promptly as practicable after the Form S-4 is declared effective under the Securities Act. Notwithstanding anything to the contrary contained in this Agreement, subject to the Company's right to terminate this Agreement in connection with a Superior Company Proposal pursuant to Section 8.01(g), the Company may adjourn or postpone the Company Stockholder Meeting to the extent necessary to ensure that any supplement or amendment to the Proxy Statement/Prospectus is provided to its stockholders sufficiently in advance of the vote to be held at the Company Stockholder Meeting or if there are insufficient shares of Company Common Stock represented (either in person or by proxy) to vote in favor of a proposal to approve and adopt the Merger Agreement or to constitute a quorum necessary to conduct the business of the Company Stockholder Meeting. The Company shall, through the Company Board, recommend to its stockholders that they give the Company Stockholder Approval, except to the extent that the Company Board shall have made a Company Adverse Recommendation Change as permitted by Section 5.02(b). Without limiting the generality of the foregoing, the Company agrees that its obligations pursuant to the first sentence of this Section 6.01(e) shall not be affected by (i) the commencement, public proposal, public disclosure or communication to the Company of any Company Takeover Proposal or (ii) the making of any Company Adverse Recommendation Change by the Company Board.

SECTION 6.02. Access to Information; Confidentiality. Subject to the restrictions imposed by any applicable Laws, including the HSR Act or other U.S. antitrust Laws and Foreign Antitrust Laws, each of the Company and Parent shall, and shall cause each of its respective Subsidiaries to, afford to the other party and to the Representatives of such other party reasonable access during normal business hours during the period prior to the Effective Time to all their respective properties, books, contracts, commitments, personnel and records and, during such period, each of the Company and Parent shall, and shall cause each of its respective Subsidiaries to, furnish promptly to the other party (a) a copy of each report, schedule,

registration statement and other document filed by it during such period pursuant to the requirements of federal or state securities laws and (b) all other information concerning its business, properties and personnel as such other party may reasonably request; provided, however, that either party may withhold (i) any document or information that is subject to the terms of a confidentiality agreement with a third party or subject to any attorney-client privilege or (ii) such portions of documents or information relating to pricing or other matters that are highly sensitive if the exchange of such documents (or portions thereof) or information, as determined by such party's counsel, might reasonably result in antitrust difficulties for such party or reasonably result in antitrust difficulties for such party (or any of its Affiliates). If any material is withheld by such party pursuant to the proviso to the preceding sentence, such party shall inform the other party as to the general nature of the information that is being withheld. Without limiting the generality of the foregoing, the Company shall, within two Business Days of request therefor, provide to Parent the information described in Rule 14a-7(a)(2)(ii) under the Exchange Act and any information to which a holder of Company Common Stock would be entitled under Section 220 of the DGCL (assuming such holder met the requirements of such section), and Parent shall, within two Business Days of request therefor, provide to the Company any information to which a holder of Parent Common Stock would be entitled under Section 220 of the DGCL (assuming such holder met the requirements of such section).

All information exchanged pursuant to this Section 6.02 shall be subject to the confidentiality agreement dated May 26, 2008 between the Company and Parent (including any amendment, the "Confidentiality Agreement").

SECTION 6.03. Reasonable Best Efforts; Notification.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the parties shall use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the Merger and the other Transactions, including (i) the obtaining of all necessary actions or nonactions, waivers, consents and approvals from Governmental Entities and the making of all necessary registrations and filings (including filings with Governmental Entities) and the taking of all reasonable steps as may be necessary to obtain an approval or waiver from, or to avoid an action or proceeding by, any Governmental Entity, (ii) the obtaining of all necessary consents, approvals or waivers from third parties, (iii) the defending of any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the Transactions, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Entity vacated or reversed, subject to the limitations set forth in Section 6.04(c) and (iv) the execution and delivery of any additional instruments necessary to consummate the Transactions and to fully carry out the purposes of this Agreement. In connection with and without limiting the foregoing, the Company and the Company Board shall (i) take all action necessary to ensure that no state takeover statute or similar statute or regulation is or becomes applicable to any Transaction or this Agreement and (ii) if any state takeover statute or similar statute or regulation becomes applicable to any Transaction or this Agreement, take all action necessary to ensure that the Merger and the other Transactions may be consummated as promptly as practicable on the terms contemplated by this Agreement. Notwithstanding the foregoing, the Company shall not be prohibited under this Section 6.03(a) from taking any action permitted by Section 5.02(b).

(b) The Company shall give prompt notice to Parent, and Parent or Sub shall give prompt notice to the Company, of (in each case, to its Knowledge) (i) any representation or warranty made by it contained in this Agreement that is qualified as to materiality or "Material Adverse Effect" becoming untrue or inaccurate in any respect or any such representation or warranty that is not so qualified becoming untrue or inaccurate in any material respect or (ii) the failure by it to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement; provided, however, that no such notification shall affect the representations, warranties, covenants or agreements of the parties or the conditions to the obligations of the parties under this Agreement.

(c) Nothing in this Section 6.03 shall require any party to (i) consent to any action or omission by any other party that would be inconsistent with Section 5.01, absent such consent or (ii) agree to amend or waive any provision of this Agreement.

SECTION 6.04. Governmental Approvals.

(a) Each of Parent and the Company agree (i) to make an appropriate filing of a Notification and Report Form pursuant to the HSR Act within ten Business Days after the date of this Agreement and any other filing or application required under Foreign Antitrust Laws, including the EC Merger Regulation, as promptly as practicable, with respect to the Merger and the other Transactions and (ii) to supply as promptly as reasonably practicable any additional information and documentary material that may be requested pursuant to the HSR Act or such Foreign Antitrust Laws, as applicable, and to take all other actions necessary, proper or advisable to cause the expiration or termination of the applicable waiting periods under the HSR Act or to obtain consents, approvals or authorizations under Foreign Antitrust Laws as soon as practicable, including by requesting early termination of the waiting period provided for in the HSR Act.

(b) Each of Parent and the Company shall (i) keep each other apprised of the status of any communications with, and any inquiries or requests for additional information from, any Governmental Entity in connection with the HSR Act or Foreign Antitrust Laws, and shall comply with any such inquiry or request as promptly as practicable. Parent and the Company shall cooperate and consult with each other in connection with the making of all filings, notifications and any other material actions pursuant to this Section 6.04, including, subject to applicable Laws relating to the exchange of information, by permitting counsel for the other party to review in advance, and consider in good faith the views of the other party in connection with, any proposed written communication to any Governmental Entity and provide counsel for the other party with copies of all filings and submissions made by such party and all correspondence and other written communications between such party (and its advisors) with any Governmental Entity and any other information supplied by such party and such party's Subsidiaries to a Governmental Entity or received from such a Governmental Entity in connection with the Merger and the other Transactions; provided, however, that materials may be redacted before being provided to the other party (x) to remove references concerning the valuation of Parent, the Company or any of their Subsidiaries, (y) as necessary to comply with contractual arrangements and (z) as necessary to address reasonable privilege or confidentiality

concerns and (ii) furnish to the other parties such information and assistance as such parties reasonably may request in connection with the preparation of any submissions to, or agency proceedings by, any Governmental Entity. Upon and subject to the terms of this Section 6.04, each party agrees to cooperate and use its reasonable best efforts to assist in any defense by any other party to this Agreement of the Merger and the Transactions before any Governmental Entity reviewing the Merger and the Transactions, including by providing as promptly as practicable such information as may be requested by such Governmental Entity or such assistance as may be reasonably requested by the other party to this Agreement in such defense.

(c) If any objections are asserted by any Governmental Entity with respect to the Merger or the Transactions under the HSR Act, other U.S. antitrust Laws or any Foreign Antitrust Law or which would otherwise prevent, materially impede or materially delay the consummation of the Merger and the Transactions, or if any Action is instituted by any Governmental Entity or any private party challenging any of the Transactions as violative of the HSR Act, other U.S. antitrust Laws or any Foreign Antitrust Law, or an order is issued enjoining the Merger or the Transactions, each of Parent and the Company shall use its reasonable best efforts to resolve any such objections or suits so as to permit consummation of the Merger and the Transactions contemplated by this Agreement by the Closing, including in order to resolve such objections or suits which, in any case if not resolved, could reasonably be expected to prevent, materially impede or materially delay the consummation of the Merger and the Transactions. In the event that any administrative or judicial action or proceeding is instituted (or threatened to be instituted) by a Governmental Entity or private party challenging the transactions contemplated by this Agreement, each of Parent and the Company shall cooperate in all respects with each other and use its respective reasonable best efforts to contest and resist any such action or proceeding, including defending through litigation on the merits any claim asserted in any court by any Person, and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the transactions contemplated by this Agreement.

(d) Each of Parent and the Company shall use their reasonable best efforts to cause the expiration or termination of the applicable waiting periods under the HSR Act or Foreign Antitrust Laws as soon as practicable. Parent and the Company shall not extend, directly or indirectly, any such waiting period or enter into any agreement with a Governmental Entity to delay or not to consummate the Merger and the other Transactions on the Closing Date, except with the prior written consent of the other party to this Agreement. Parent and the Company shall not have any substantive contact with any Governmental Entity in respect of any filing or proceeding contemplated by this Section 6.04 unless it consults with the other party in advance and, to the extent permitted by such Governmental Entity, gives the other party the opportunity to participate.

(e) Without limiting the foregoing or any other provision of this Agreement, Parent and the Parent Subsidiaries and the Company and the Company Subsidiaries, shall use reasonable best efforts to take any action necessary to avoid and eliminate each and every impediment under the HSR Act, other U.S. antitrust Laws or any Foreign Antitrust Laws, so as to enable the consummation of the Merger and the Transactions as soon as reasonably possible, including, (i) proposing, negotiating, committing to and effecting, by consent decree, hold

separate order, mitigation agreement or otherwise, the sale, divestiture or disposition of their respective businesses, product lines or assets and (ii) otherwise using reasonable best efforts to take or commit to take actions that after consummation of the Merger and the other Transactions would limit Parent's or the Parent Subsidiaries' freedom of action with respect to, or its or their ability to retain, one or more of the businesses, product lines or assets of Parent or any Parent Subsidiaries or the Company or any Company Subsidiaries, in each case as may be required in order to avoid the entry of, or to effect the dissolution of, any injunction, temporary restraining order, or other order in any suit or proceeding, which would otherwise have the effect of preventing or materially delaying the consummation of the Merger and the other Transactions. Parent and the Parent Subsidiaries and, if requested by Parent, the Company and the Company Subsidiaries, shall agree to divest, sell, dispose of, hold separate, or otherwise take or commit to take any actions that limit its freedom of action with respect to, or Parent's or any Parent Subsidiary's ability to retain, any of the businesses, product lines or assets of Parent, the Company or any of their respective Subsidiaries (including the Surviving Corporation), provided that any such action is conditioned upon the consummation of the Merger. Notwithstanding anything to the contrary in this Agreement, Parent shall not be obligated to take or proffer to take any of the foregoing actions if such actions (i) would be reasonably likely in the aggregate to have a Material Adverse Effect on Parent and its Subsidiaries (including Surviving Corporation), taken as a whole or (ii) would be prohibited by Section 8 of the Financing Letter.

SECTION 6.05. Company Stock Plans.

(a) Immediately prior to the Effective Time, each Company Stock Option, whether vested or unvested, that is outstanding immediately prior to the Effective Time shall become fully exercisable and vested. Subject to the proration provisions set forth in Section 6.05(d), each holder of a Company Stock Option shall be given the opportunity, prior to the Election Deadline, to elect either (i) to cause such Company Stock Option (a "Stock Electing Option") to become and represent an option to acquire shares of Parent Common Stock (a "Converted Stock Option") in accordance with paragraph (b) of this Section 6.05 or (ii) to cause such Company Stock Option (a "Cash Electing Option") to be cancelled in exchange for a single lump sum cash payment (less any required Tax withholding) (the "Company Option Cash Out Amount"), in an amount equal to the product of (A) the number of shares of Company Common Stock subject to such Company Stock Option immediately prior to the Effective Time and (B) the excess, if any, of the Cash Out Amount over the exercise price per share of such Company Stock Option, in accordance with paragraph (c) of this Section 6.05. Subject to the proration provisions set forth in Section 6.05(d), to the extent any holder of a Company Stock Option shall not have made an election with respect to such Company Stock Option prior to the Election Deadline, such Company Stock Option shall be deemed to be a Stock Electing Option. Section 6.05(a) of the Company Disclosure Letter lists certain individuals that have agreed that their Company Stock Options will be treated as Cash Electing Options (subject to limited exceptions) in accordance with the terms of letter agreements between such individuals and the Company, and true and correct copies of such letter agreements have been provided to Parent.

(b) Each Stock Electing Option shall, immediately following the Effective Time, and without any further action on the part of the holder thereof, be assumed by Parent and converted into a fully vested Converted Stock Option, on the same terms and conditions (except as provided in this Section 6.05(b)) as were applicable under such Company Stock Option, to

purchase a number of shares of Parent Common Stock equal to the product of (x) the number of shares of Company Common Stock subject to such Company Stock Option multiplied by (y) the Special Exchange Ratio (as defined in Section 6.05(h)) (provided that any fractional share resulting from such multiplication shall be rounded down to the nearest whole share). The exercise price per share of each Converted Stock Option resulting from the conversion of the Company Stock Option pursuant to this Section 6.05(b) shall be equal to the quotient of (i) the exercise price per share of the Company Stock Option that converted into the Converted Stock Option divided by (ii) the Special Exchange Ratio (provided that such exercise price shall be rounded up to the nearest whole cent). Notwithstanding anything to the contrary contained in this Agreement, in the case of any option to which Section 421 of the Code applies by reason of its qualification under either Section 422 or 424 of the Code ("qualified stock options"), the option price, the number of shares purchasable pursuant to such option and the terms and conditions of exercise of such option shall be determined in order to comply with Section 424(a) of the Code.

(c) Each Cash Electing Option shall, immediately following the Effective Time, and without any further action on the part
of any holder thereof, be cancelled in exchange for the Company Option Cash Out Amount. The Surviving Corporation or Parent
shall pay the holders of Company Stock Options the payments described in this Section 6.05(c) on or as soon as reasonably practicable after the Closing Date, but in any event (i) within seven Business Days following the Closing Date if the *pro ration* set forth in Section 6.05(d) does not apply and (ii) within ten Business Days of the Closing Date if the *pro ration* set forth in
Section 6.05(d) does apply.

(d) Notwithstanding anything to the contrary contained in this Agreement, in the event that the number of Stock Electing Options, when considered together with the number of shares of Parent Common Stock otherwise issuable pursuant to the provisions of this Agreement, including upon the exercise of Warrants and the conversion of Convertible Debentures outstanding at the Effective Time, would cause Parent to exceed the limitation set forth in Section 6.05(d) of the Company Disclosure Letter (the "Applicable Limitation"), then the In the Money Stock Electing Options shall be subject to *pro rata* reduction solely to the extent necessary to cause Parent not to exceed the Applicable Limitation and such *pro rata* reduction shall apply on the following basis: With respect to each holder of In the Money Stock Electing Options, a number of In the Money Stock Electing Options equal to (i) all of such holder's In the Money Stock Electing Options minus (ii) the Rollover Amount, shall be deemed to be Cash Electing Options and the balance of such holder's In the Money Stock Electing Options shall continue to be Stock Electing Options. For purposes of this Section 6.05(d), with respect to any holder of In the Money Stock Electing Options, "Rollover Amount" means a number of In the Money Stock Electing Options (rounded down to the nearest whole share) equal to the product of (x) all of such holder's In the Money Stock Electing Options multiplied by (y) the quotient of (I) the Maximum Amount divided by (II) the number of all In the Money Stock Electing Options; provided, however, that with respect to each holder of In the Money Stock Electing Options subject to *pro rata* reduction under this Section 6.05(d), the designation of Cash Electing Options shall apply to the applicable portion of such holder's In the Money Stock Electing Options with the greatest positive intrinsic value (*i.e.*, the excess of the Cash Out Amount over the exercise price) immediately prior to the Effective Time and thereafter to such holder's In the Money Stock Electing Options with the next greatest positive intrinsic value as of

immediately prior to the Effective Time (and so on), in each case, to the extent necessary. For purposes of this Section 6.06 (d), "In the Money Stock Electing Options" means any Stock Electing Options with an exercise price lower than the Cash Out Amount as of immediately prior to the Effective Time. For purposes of this Section 6.06(d), the "Maximum Amount" means the difference between (A) such number of Stock Electing Options that, in the reasonable, good faith judgment of Parent, would not result in Parent exceeding the Applicable Limitation minus (B) the number of Stock Electing Options that are not In the Money Stock Electing Options.

(e) Immediately prior to the Effective Time, each Company Restricted Share shall vest in full and be converted into the right to receive the Merger Consideration as provided in Section 2.01(c) of this Agreement.

(f) As of the Effective Time, each restricted stock unit with respect to shares of Company Common Stock that is outstanding immediately prior to the Effective Time (collectively, the "Company RSUs") shall be converted into a vested right to receive cash with a value equal to the product of (i) the Cash Out Amount and (ii) the number of shares of Company Common Stock underlying such Company RSUs (less any required Tax withholding) (such amount, the "Company RSU Consideration"). Subject to the immediately following sentence, the Surviving Corporation or Parent shall pay the holders of Company RSUs the Company RSU Consideration on or as soon as reasonably practicable after the Closing Date, but in any event within five Business Days following the Closing Date. In the event that any Company RSUs are subject to Section 409A of the Code, the Surviving Corporation or Parent shall pay the Company RSU Consideration in respect of such Company RSUs (x) if the Closing Date occurs on or prior to December 31, 2008, on January 2, 2009 (or earlier if permitted under Section 409A of the Code) and (y) if the Closing Date occurs on or after January 1, 2009, as soon as permissible under Section 409A of the Code, and in either such case, such delayed payments shall include earnings thereon from and after the Effective Time until the applicable payment date, at a rate equal to 120% of the long-term Applicable Federal Rate as prescribed under Section 1274(d) of the Code.

(g) Prior to the Effective Time, the Company Board (or, if appropriate, any committee thereof administering the Company Stock Plans) shall adopt such resolutions or take such other actions as may be required to effect the provisions of this Section 6.05. In addition, prior to the Effective Time, the Company Board (or, if appropriate, any committee thereof administering the Company Stock Plans) shall adopt such resolutions or take such other actions as may be required to effect the following:

(i) make such other changes to the Company Stock Plans as it deems appropriate to give effect to the Merger (subject to the approval of Parent, which shall not be unreasonably withheld, delayed or conditioned); and

(ii) ensure that, after the Effective Time, no Company Stock Options or other awards may be granted under any Company Stock Plan.

(h) For purposes of this Agreement, the term "Special Exchange Ratio" shall mean the sum of (i) the Exchange Ratio plus (ii) the quotient of (x) the Cash Consideration divided by (y) the Parent Closing Price.

(i) At the Effective Time, and subject to compliance by the Company with Section 6.05(a), other than with respect to Cash Electing Options which shall be entitled to the consideration contemplated by Section 6.05(c), Parent shall assume all the obligations of the Company with respect to each outstanding Company Stock Option under the applicable Company Stock Plan and the applicable agreement evidencing the grant thereof. As soon as practicable after the Effective Time, Parent shall deliver to the holders of Company Stock Options (other than Cash Electing Options) appropriate notices setting forth such holders' rights pursuant to the respective Company Stock Plans, and the agreements evidencing the grants of such Company Stock Options (other than Cash Electing Options) shall continue in effect on the same terms and conditions (subject to the adjustments required by this Section 6.05 after giving effect to the Merger).

(j) Parent shall take all corporate action necessary to reserve for issuance a sufficient number of shares of Parent Common Stock for delivery upon exercise of the Converted Stock Options resulting from the conversion of Stock Electing Options assumed by Parent in accordance with this Section 6.05. As soon as reasonably practicable after the Effective Time, Parent shall file a registration statement on Form S-8 (or any successor or other appropriate form) with respect to the shares of Parent Common Stock subject to such Converted Stock Options resulting from the conversion of Stock Electing Options and shall use its reasonable best efforts to maintain the effectiveness of such registration statement or registration statements (and maintain the current status of the prospectus or prospectuses contained therein) for so long as such Converted Stock Options remain outstanding.

(k) Prior to the Effective Time, Parent and the Company, and their respective Boards of Directors, shall use their reasonable best efforts to take all actions to cause any dispositions of Company Common Stock (including derivative securities with respect to Company Common Stock) or acquisitions of Parent Common Stock (including derivative securities with respect to Parent Common Stock) resulting from the Transactions by each individual who is subject to the reporting requirements of Section 16(a) of the Exchange Act to be exempt from Section 16(b) of the Exchange Act under Rule 16b-3 promulgated under the Exchange Act.

(l) In this Agreement:

"Cash Out Amount" means the sum of the Cash Consideration and the Stock Consideration Cash Value.

"Company Restricted Share" means any award of Company Common Stock that is subject to restrictions based on performance or continuing service and granted under any Company Stock Plan or otherwise.

"Company Stock Option" means any option to purchase Company Common Stock granted under any Company Stock Plan or otherwise.

"Company Stock Plans" means the Company Amended and Restated Long Term Incentive Compensation Plan, the Company Employee Stock Option Advantage Plan, the Company 1993 Non-Employee Director Stock Accumulation and Deferred Compensation Plan,

the Company Omnibus Equity Compensation Plan for Non-Employee Directors, and the Company Annual Management Incentive Compensation Plan.

"Election Deadline" means 5:00 p.m. on the fifth Business Day preceding the Closing Date or such other date as the Company and Parent mutually agree.

"Parent Closing Price" means the average, rounded to the nearest cent, of the closing sale prices of Parent Common Stock on the NYSE as reported by *The Wall Street Journal* for the ten trading days immediately preceding the Effective Time.

"Parent SAR" means any stock appreciation right linked to the price of Parent Common Stock.

"Parent Stock Equivalent Award" means any award of units, phantom shares, share equivalents or similar instruments that is payable in shares of Parent Common Stock or whose value is determined with reference to the value of shares of Parent Common Stock (other than Parent SARs) and granted under any Parent Stock Plan.

"Parent Stock Option" means any option to purchase Parent Common Stock granted under any Parent Stock Plan.

"Parent Stock Plans" means the 2006 Parent Incentive Plan, the Parent 1997 Stock Incentive Plan, the Amended and Restated Parent Incentive Plan, the Parent Deferred Compensation Plans for Employees, the Parent Deferred Compensation Plans for Non-Employee Directors and the Parent Stock Option Plan for Employees of Joint Ventures.

"Stock Consideration Cash Value" means the product of the Exchange Ratio and the Parent Closing Price.

SECTION 6.06. Benefit Plans.

(a) Until January 1, 2011, Parent shall provide or cause the Surviving Corporation (or, in any such case, its successors or assigns) to provide compensation and benefits to the employees of the Company and the Company Subsidiaries ("Company Employees") that, taken as a whole (and not on individual employee basis), are substantially comparable to the compensation and benefits received by such Company Employees in the aggregate immediately prior to the Effective Time; provided, however, that until January 1, 2011, Parent shall provide or cause the Surviving Corporation to provide to each Company Employee (on an individual basis) base salary or base wages that are at least equal to the base salary or base wages payable to such Company Employee immediately prior to the Effective Time.

(b) From and after the Effective Time, Parent shall, and shall cause the Surviving Corporation to, honor, in accordance with their respective terms (as in effect immediately prior to the Effective Time), all the Company Benefit Plans and the Foreign Benefit Plans, subject to the rights of Parent and the Surviving Corporation to amend, modify or terminate any such agreements, plans or policies in accordance with their respective terms (as in effect immediately prior to the Effective Time) or as permitted by applicable Law.

Notwithstanding any other provision of this Agreement to the contrary, (i) Parent shall or shall cause the Surviving Corporation to provide Company Employees whose employment terminates prior to January 1, 2011, with severance benefits at the levels and pursuant to the terms of the Company's severance plans and policies as in effect immediately prior to the Effective Time (or under Parent's plans so long as severance benefits levels are at least as high and on terms at least as favorable as the Company's plans and policies) and (ii) severance benefits offered to Company Employees shall for terminations prior to January 1, 2011, be determined without taking into account any reduction after the Effective Time in compensation paid to Company Employees.

(c) With respect to any employee benefit plan maintained by Parent or any Parent Subsidiary (including any severance plan) (the "New Plans"), in which Company Employees participate after the Effective Time, for all purposes (other than benefit accrual under any defined benefit pension plan), service with the Company or any Company Subsidiary (and their respective predecessors) prior to the Effective Time shall be treated as service with Parent or the Parent Subsidiaries; provided, however, that for purposes of a New Plan that is Parent's retiree medical, dental and group life plans, the prior service credit shall only be counted towards meeting the five years of service eligibility component for such plans and that the Company Employees shall be otherwise treated as newly hired employees with regard to the retiree medical plan coverage resulting in access-only coverage thereunder to the extent the Company Employees otherwise meet the requirements for coverage thereunder; provided further, however, that such service need not be recognized to the extent that such recognition would result in any duplication of benefits with respect to the same period of service. To the extent permitted by the New Plans, each Company Employee shall be immediately eligible to participate, without any waiting time, in any and all New Plans to the extent coverage under such New Plan is comparable to a Company Benefit Plan or Foreign Benefit Plan in which such Company Employee participated immediately before the consummation of the Merger.

(d) Parent shall waive, or cause to be waived, any pre-existing condition limitations or actively-at-work requirements under any welfare benefit plan (including with respect to any plan providing for medical, dental, pharmaceutical and/or vision benefits) maintained by Parent or any of its Affiliates (other than the Company) in which Company Employees (and their eligible dependents) will be eligible to participate from and after the Effective Time, except to the extent that such preexisting condition limitation or actively-at-work requirement would have been applicable under the comparable Company welfare benefit plan immediately prior to the Effective Time. Parent shall recognize, or cause to be recognized, the dollar amount of all expenses incurred by each Company Employee (and his or her eligible dependents) during the calendar year in which the Effective Time occurs for purposes of satisfying such year's deductible, maximum out-of-pocket requirements and co-payment limitations under the New Plans in which they will be eligible to participate from and after the Effective Time.

(e) Notwithstanding any other provision in this Agreement to the contrary, Parent agrees to continue or cause the Surviving Corporation to continue, through December 31, 2011, the Company's retiree welfare programs, including medical prescription drugs and retiree life insurance program (the "Company Retiree Welfare Programs") on terms and conditions no less favorable in duration, scope, value, participant cost, vesting and otherwise than those in

effect as of the Effective Time (provided, however, that participant costs shall increase on a dollar-for-dollar basis to the extent the current maximum employer costs of $275 per person per month for individuals under age 65 and $59 per person per month for individuals age 65 and over are exceeded) with respect to (i) all individuals who as of the time immediately prior to the Effective Time are receiving benefits under the Company Retiree Welfare Programs and (ii) all Company Employees who retire at any time on or prior to December 31, 2013 and are eligible to receive benefits under the Company Retiree Welfare Programs as of the date of such retirement (clauses (i) and (ii) together, the "Applicable Company Group"). Following December 31, 2011, Parent agrees to provide to the Applicable Company Group welfare programs, including medical prescription drugs and retiree life insurance program, on terms and conditions no less favorable in duration, scope, value, participant cost, vesting and otherwise than the lesser of (x) those in effect with respect to the group of Parent retirees eligible to receive subsidized retiree welfare benefits under Parent's retiree welfare programs as they existed prior to July 1, 2003 and (y) those in effect under the Company Retiree Welfare Program in effect as of the Effective Time (provided, however, that with respect to this clause (y), participant costs shall increase on a dollar-for-dollar basis to the extent the current maximum employer costs of $275 per person per month for individuals under age 65 and $59 per person per month for individuals age 65 and over are exceeded).

(f) Notwithstanding any other provision in this Agreement to the contrary, through December 31, 2010, each Company Employee shall continue to accrue benefits under the Pension Plan of Hercules Incorporated, Plan No. 001, and, to the extent applicable, the Company's excess benefit plan, within the meaning of Section 3(36) of ERISA (the "Excess Plan"), each as in effect on the date of this Agreement. Each Company Employee who is a participant in the Pension Plan of Hercules Incorporated immediately before the Effective Time shall have a guaranteed minimum benefit calculated thereunder as of the Effective Time. Following the Effective Time, with respect to each Company Employee who is a participant in the Pension Plan of Hercules Incorporated as of the Effective Time, service with the Parent or any of its Subsidiaries following the Effective Time will be credited under the Pension Plan of Hercules Incorporated and the Excess Plan (to the extent applicable) for eligibility to receive benefits under such plans.

(g) In accordance with, and not in limitation of, the provisions of Section 9.07, the parties acknowledge that the provisions of this Section 6.06 are solely for the benefit of the parties, and no current or former employee, director or consultant or any other individual associated therewith (including any beneficiary or dependent thereof) shall be regarded for any purpose as a third-party beneficiary of the Agreement, and no provision of this Section 6.06 shall create such rights in any such persons in respect of any benefits that may be provided, directly or indirectly, under any Company Benefit Plan or Foreign Benefit Plan or any employee benefit or compensation program, plan or arrangement of Parent or any of its Affiliates. No provision of this Agreement shall constitute a limitation on the rights to amend, modify or terminate after the Effective Time and in accordance with their terms any such plans or arrangements of Parent, the Surviving Corporation or any of their respective Affiliates, and nothing in this Agreement shall be construed as an amendment to any Company Benefit Plan or Foreign Benefit Plan for any purpose. No provision of this Section 6.06 shall require Parent, the Surviving Corporation or any of their respective Affiliates to continue the employment of any employee of the Company or any of the Company Subsidiaries for any specific period of time following the Effective Date.

SECTION 6.07. Convertible Debentures. If requested by Parent, the Company shall use commercially reasonable efforts to assist Parent to take such actions as are required under Sections 801 and 1311 of the Convertible Debentures Indenture to give effect to the Merger, including entering into a supplemental indenture.

SECTION 6.08. Indemnification and Directors' and Officers' Insurance.

(a) Parent and Sub agree that all rights to indemnification, advancement of expenses and exculpation from liabilities for acts or omissions occurring prior to the Effective Time now existing in favor of the current and former directors or officers of the Company or any of the Company Subsidiaries and the Persons who served as a director, officer, trustee, employee or agent of another corporation, or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans maintained or sponsored by the Company or the Company Subsidiaries (each, together with such Person's heirs, executors or administrators, an "Indemnified Party") as provided in their respective certificates of incorporation or bylaws or other organizational documents shall survive the Merger and shall continue in full force and effect in accordance with their terms; provided that any Indemnified Party to whom expenses may be advanced provides an undertaking to repay such advances if it is ultimately determined by a court of competent jurisdiction in a final, non-appealable order that such Indemnified Party is not entitled to indemnification.

(b) For six years from and after the Effective Time, to the fullest extent permitted by applicable Law, Parent and the Surviving Corporation shall maintain in effect the exculpation, indemnification and advancement of expenses provisions of the Company's (as the Surviving Company) and each of the Company Subsidiaries' (or their respective successors) certificates of incorporation and bylaws or similar organizational documents in effect immediately prior to the Effective Time (including the Company Certificate and the Company Bylaws), and shall not amend, repeal or otherwise modify any such provisions in any manner that would adversely affect the rights thereunder of any Indemnified Party; provided, however, that all rights to indemnification in respect of any action pending or asserted or any claim made within such period shall continue until the disposition of such action or resolution of such claim.

(c) Parent shall assume, be jointly and severally liable for, and honor, guaranty and stand surety for, and shall cause the Surviving Corporation and its Subsidiaries to honor, in accordance with their respective terms, each of the agreements contained in this Section 6.08 from and after the Effective Time.

(d) At or prior to the Effective Time, Parent shall cause the Company to purchase a "tail" directors' and officers' liability insurance policy for the Company and its current directors and officers in form and substance reasonably acceptable to the Company that shall provide the Company and such directors and officers with coverage for six years following the Effective Time of not less than the existing coverage and have other terms not less favorable to the insured persons (including the Company) than the directors' and officers' liability insurance coverage currently maintained by the Company; provided that Parent shall not be required to pay an aggregate premium for such policy in excess of 250% of the current annual premium paid by the Company for its directors' and officers' liability insurance coverage (the "Maximum Premium"), and in the event that the Maximum Premium is insufficient for such

coverage, Parent shall purchase the maximum amount of coverage that is available for such amount. Parent shall, and shall cause the Surviving Corporation to, maintain such policy in full force and effect, and continue to honor the obligations thereunder.

(e) Parent shall pay all expenses, including reasonable attorneys' fees, that are incurred by any Indemnified Party in enforcing Parent's obligations pursuant to this Section 6.08.

(f) The rights of each Indemnified Party hereunder shall be in addition to, and not in limitation of, any other rights such Indemnified Party may have under the Company Certificate, the Company Bylaws, any other indemnification arrangement, the DGCL or otherwise. The provisions of this Section 6.08 shall survive the consummation of the Merger and expressly are intended to benefit, and are enforceable by, each of the Indemnified Parties.

(g) In the event Parent, the Surviving Corporation or any of their respective successors or assigns (x) consolidate with or merge into any other Person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (y) transfer all or substantially all of their properties and assets to any Person, then, and in either such case, proper provision shall be made so that the successors and assigns of Parent or the Surviving Corporation, as the case may be, shall assume the obligations set forth in this Section 6.08.

SECTION 6.09. Fees and Expenses.

(a) Except as provided below, all fees and expenses incurred in connection with the Merger and the other Transactions shall be paid by the party incurring such fees or expenses, whether or not the Merger is consummated.

(b) The Company shall pay to Parent a fee of $77,500,000 (the "Termination Fee") if: (i) Parent terminates this Agreement pursuant to Section 8.01(e); (ii) (A) prior to the Company Stockholder Meeting, any Person makes a Company Takeover Proposal that is not withdrawn, (B) this Agreement is terminated pursuant to Section 8.01(b)(i), 8.01(b)(iii) or 8.01 (c) (but only if a vote to obtain the Company Stockholder Approval is not held or the Company Stockholder Meeting has not been held) and (C) within 18 months of such termination the Company enters into a definitive Contract to consummate, or consummates, the transactions contemplated by any Company Takeover Proposal (for purposes of this Section 6.09(b)(ii)(C), the term "Company Takeover Proposal" shall have the meaning assigned to such term in Section 5.02(e), except that all references to "20%" shall be changed to "50%"); or (iii) the Company terminates this Agreement pursuant to Section 8.01(g) (each of the events described in clauses (i), (ii) and (iii) above, a "Company Payment Event"). Any Termination Fee due under this Section 6.09(b) shall be paid by wire transfer of same-day funds on the fifth Business Day following (x) the date of termination of this Agreement, in the case of clauses (i) and (iii) above or (y) the date of the first to occur of the events referred to in the case of clause (ii) above. Further, if both clauses (ii)(A) and (ii)(B) occur, regardless of whether clause (ii) (C) occurs, then the Company shall pay to Parent all documented fees and expenses of Parent, including fees and expenses of financial advisors, outside legal counsel, accountants, experts and consultants, incurred by Parent in connection with the authorization, preparation, negotiation, execution and performance of this Agreement, the Transactions and the Financing ("Parent Expenses"), up to a

maximum of $12,500,000, by wire transfer of same-day funds on the fifth Business Day following the receipt of an invoice therefore. If, subsequent to such payment of Parent Expenses, the Company enters into a definitive Contract to consummate a Company Takeover Proposal pursuant to clause (ii)(C) above, then the Company shall pay to Parent, by wire transfer of same day funds, the excess of the Termination Fee minus the Parent Expenses paid pursuant to the immediately preceding sentence on the fifth Business Day following the date of the first to occur of such event(s) referred to above in this sentence. In the event of a Company Payment Event, the Company's payment of the Termination Fee will be considered liquidated damages for any breach by the Company of this Agreement and in the event of such payment, the Company shall have no other liability for any breach by it of any of the representations, warranties, covenants or agreements set forth in this Agreement, other than in the case of Sections 6.09(a), 6.09(e) and 8.02. If the Termination Fee is paid, in no event will Parent seek to recover any other money damages or seek any other remedy (including specific performance under Section 9.10(a)) from the Company (or its Affiliates) with respect to the Transactions, regardless of whether such monetary damages or other remedies are based on a claim in law or equity, and all such claims are hereby waived.

(c) In the event all of the conditions to Closing set forth in Sections 7.01 and 7.02 are satisfied or waived (other than those conditions which by their nature cannot be satisfied until the Closing, but which conditions at the time of termination shall be capable of being satisfied) and (i) Parent or Sub cannot satisfy its obligation to effect the Closing at such time as contemplated by Section 1.02 or such later time as agreed to by the Company because of a failure to receive the proceeds from the Financing or any Alternate Financing (a "Financing Failure") and (ii) this Agreement is terminated pursuant to Section 8.01(h) or 8.01(i), then Parent shall pay or cause to be paid to the Company $77,500,000 (the "Parent Financing Failure Fee") in immediately available funds within five Business Days following such termination. Notwithstanding anything in this Agreement to the contrary, if the Company Stockholder Approval is obtained between December 19, 2008 and January 19, 2009, then Parent cannot avoid payment of the Parent Financing Failure Fee by claiming that any Event occurring during the period between (x) six Business Days after the date the Company Stockholder Approval is obtained and (y) January 26, 2009 is having or would reasonably be expected to have a Material Adverse Effect on the Company.

(d) In the event of a Financing Failure, Parent's payment of the Parent Financing Failure Fee will be considered liquidated damages for any breach by Parent of this Agreement and in the event of such payment, Parent shall have no other liability for any breach by it of any of the representations, warranties, covenants or agreements set forth in this Agreement, other than in the case of Sections 6.09(a), 6.09(e) and 8.02. If the Parent Financing Failure Fee is paid, in no event will the Company seek to recover any other money damages or seek any other remedy (including specific performance under Section 9.10(a)) from Parent, Sub (or their respective Affiliates) or Lenders with respect to the Transactions, regardless of whether such monetary damages or other remedies are based on a claim in law or equity, and all such claims are hereby waived.

(e) The Company and Parent acknowledge and agree that the agreements contained in this Section 6.09 are an integral part of the Transactions, and that, without these agreements, neither Parent nor the Company would enter into this Agreement. Accordingly, if

the Company fails promptly to pay the amount due pursuant to Section 6.09(b), or Parent fails promptly to pay the amount due pursuant to Section 6.09(c), and, in order to obtain such payment, the Person owed the fee commences a suit that results in a judgment in its favor for the fee, the Person owing the fee shall pay to the Person owed the fee its costs and expenses (including attorneys' fees and expenses) in connection with such suit, together with interest on the amount of the fee from the date such payment was required to be made until the date of payment at the prime rate reported by *The Wall Street Journal* as in effect on the date such payment was required to be made.

SECTION 6.10. Public Announcements. Parent and Sub, on the one hand, and the Company, on the other hand, shall consult with each other before issuing, and provide each other the opportunity to review and comment upon, any press release or other public statements with respect to the Merger and the other Transactions, and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by applicable Law, court process or by obligations pursuant to any listing agreement with any national securities exchange. The parties agree that the initial press release to be issued with respect to the Transactions shall be a joint press release in the form agreed to by the parties.

SECTION 6.11. Listing. Parent shall use its reasonable best efforts to cause the shares of Parent Common Stock to be issued pursuant to and in accordance with this Agreement to be approved for listing on NYSE, subject to official notice of issuance, prior to the Closing Date.

SECTION 6.12. Certain Tax Matters; Section 16.

(a) The Company and Parent shall cooperate in the preparation, execution and filing of all Tax Returns, questionnaires, applications or other documents regarding any real property transfer or gains, sales, use, transfer, value added, stock transfer and stamp Taxes, and transfer, recording, registration and other fees and similar Taxes which become payable in connection with the Merger that are required or permitted to be filed on or before the Effective Time. Each of Parent and the Company shall pay, without deduction from any amount payable to holders of Company Common Stock and without reimbursement from the other party, any such Taxes or fees imposed on it by any Governmental Entity, which becomes payable in connection with the Merger.

(b) Prior to the Effective Time, each of the Company and Parent shall take all such steps as may be required (to the extent permitted under applicable Law) to cause any dispositions of Company Common Stock or acquisitions of Parent Common Stock (including, in each case, derivative securities) resulting from the Merger and the other Transactions by each individual who is subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to the Company to be exempt under Rule 16b-3 promulgated under the Exchange Act.

SECTION 6.13. Stockholder Litigation. The Company shall give Parent the opportunity to participate in the defense or settlement of any stockholder litigation against the Company and/or its directors relating to the Transactions. The Company shall not settle any such action without the prior consent of Parent (which shall not be unreasonably withheld,

delayed or conditioned) unless such settlement does not provide for monetary damages, the terms of such settlement are not in any way detrimental to Parent or the Surviving Company and such settlement does not contain any admission detrimental to Parent or the Surviving Company.

SECTION 6.14. Financing.

(a) Each of Parent and Sub will use its reasonable best efforts to obtain the Financing on the terms and conditions described in the Financing Letter, including using its reasonable best efforts (i) to negotiate definitive agreements with respect thereto on the terms and conditions contained in the Financing Letter (without regard to any adverse impact on any of Parent's corporate default or equivalent credit ratings (whether by Moody's, Standard & Poor's or other recognized credit rating agencies)), and on such other terms as Parent and the Lenders shall agree, (ii) to satisfy (or obtain the waiver of) all conditions on a timely basis to obtaining the Financing applicable to each of Parent and Sub set forth in such definitive agreements that are within its control, (iii) to comply in all material respects with its obligations under the Financing Letter (or obtain the waiver thereof) and (iv) to enforce its rights under the Financing Letter. Parent shall give the Company prompt notice upon becoming aware of any material breach of the Financing Letter by a party to the Financing Letter or any termination of the Financing Letter. Parent shall keep the Company informed on a reasonable basis and in reasonable detail of the status of its efforts to arrange the Financing and provide to the Company, upon its request, copies of the definitive documents related to the Financing (other than fee letters) and shall not permit any amendment or modification to be made to, or any waiver of any material provision or remedy under, the Financing Letter if such amendment, modification or waiver (i) reduces the aggregate amount of Financing, (ii) adversely amends or expands the conditions to the drawdown of the Financing in any respect that could make the conditions less likely to be satisfied by the End Date, (iii) can reasonably be expected to delay the Closing or the date on which the Financing would be obtained or (iv) is otherwise adverse to the interests of the Company in any other respect except with the prior written consent of the Company (which shall not be unreasonably withheld, delayed or conditioned). In the event that all conditions in the Financing Letter have been satisfied or, upon funding, will be satisfied, Parent and Sub shall use their reasonable best efforts to cause the Lenders to fund on the Closing Date the Financing required to consummate the Merger and the other Transactions (provided Parent is not required to bring any claims against Lenders to cause the Lenders to fund such Financing). In the event that Parent becomes aware of any event or circumstance that makes procurement of any portion of the Financing unlikely to occur in the manner or from the sources contemplated in the Financing Letter, Parent shall immediately notify the Company and Parent and Sub shall use their respective reasonable best efforts to arrange any such portion (other than amounts that are replaced by Parent's cash on hand) from alternative sources (such portion from alternate sources, the "Alternate Financing") on terms and conditions, taken as a whole, no less favorable to Parent and Sub. For the avoidance of doubt, in the event that (x) the proceeds from the Senior Notes are not available, (y) all closing conditions contained in Article VII (other than the delivery of a certificate pursuant to Sections 7.02(a) and 7.03(a)) shall have been satisfied or waived and (z) the Bridge Facility and Senior Facility contemplated by the Financing Letter (or Alternate Financing obtained in accordance with this Agreement) and the proceeds thereof are available on the terms and conditions described in the Financing Letter (or replacement thereof), then Parent and Sub shall cause the proceeds of the Bridge Facility to be used in lieu of proceeds from the Senior Notes on the Closing.

(b) Prior to the Closing, the Company shall provide, and shall cause the Company Subsidiaries to provide, and shall use its reasonable best efforts to cause its and their officers and employees to provide, on a timely basis, all reasonable cooperation requested by Parent and that is customary in connection with the arrangement of the Financing or any Alternate Financing to be incurred in connection with the Transactions (provided that such requested cooperation does not unreasonably interfere with the ongoing operations of the Company and the Company Subsidiaries), including using its commercially reasonable efforts to (i) facilitate the provision of guarantees and pledge of collateral (effective as of the Closing), (ii) provide financial and other pertinent information regarding the Company and the Company Subsidiaries as may be reasonably requested in writing by Parent in order to consummate the Financing or as necessary to satisfy the conditions set forth in the Financing Letter (as in effect on the date of this Agreement), (iii) provide copies of the most recent appraisals, environmental reports, evidence of title (including copies of deeds, lease documentation, title insurance policies and/or commitments for title insurance, title opinions, surveys, and similar information), and similar information with respect to the properties and assets of the Company and the Company Subsidiaries as may be reasonably requested by Parent, (iv) provide other reasonably requested customary certificates or documents, including a customary certificate of the principal financial officer of the Surviving Corporation (in his capacity as such) with respect to solvency matters, (v) request such customary legal opinions (which may be reasoned if circumstances require) and customary comfort letters as may be reasonably requested by Parent, (vi) participate in a reasonable number of informational meetings and road show meetings in connection with the Financing and (vii) assist Parent and its financing sources in the preparation of all agreements (including review of schedules for completeness), offering documents, an offering memorandum and other marketing and rating agency materials for the Financing or any such Alternate Financing, it being understood and agreed that information and documents provided by the Company and the Company Subsidiaries may be delivered to agents and lenders under the Financing Letter and their representatives (subject to customary arrangements for confidentiality that are substantially similar to the provisions in the Confidentiality Agreement or reasonably acceptable to the Company); provided that no certificate, document or instrument referred to above shall be effective until the Effective Time and none of the Company or any of the Company Subsidiaries shall be required to pay any commitment or other similar fee or incur any other liability or obligation in connection with the Financing prior to the Effective Time. Parent shall promptly, upon request by the Company, reimburse Company for all out-of-pocket costs (including attorneys' fees) incurred by the Company or any of the Company Subsidiaries in connection with the cooperation of the Company and the Company Subsidiaries contemplated by this Section 6.14 and shall indemnify and hold harmless the Company, the Company Subsidiaries and their respective directors, officers, employees and representatives from and against any and all losses, damages, claims, costs or expenses suffered or incurred by any of them in connection with the arrangement of the Financing and any information used in connection therewith, except with respect to any information provided by the Company or any of the Company Subsidiaries. The Company and the Company Subsidiaries shall afford Parent and its authorized representatives (who shall include agents and lenders under the Financing Letter and their representatives) reasonable access, during normal business hours and upon reasonable notice, to the real property of the Company and the Company Subsidiaries to conduct such investigations and activities as are necessary to consummate the Transactions; provided that any such investigations and activities shall be conducted in such a manner as not to interfere unreasonably with the normal operations of the Company and the Company Subsidiaries.

(c) For purposes of this Section 6.14, the term "Financing" shall also be deemed to include any Alternative Financing and the term "Financing Letter" shall also be deemed to include any commitment letter (or similar agreement) with respect to such Alternate Financing.

ARTICLE VII

Conditions Precedent

SECTION 7.01. Conditions to Each Party's Obligation to Effect the Merger. The respective obligation of each party to effect the Merger is subject to the satisfaction or waiver on or prior to the Closing Date of the following conditions:

(a) Stockholder Approval. The Company shall have obtained the Company Stockholder Approval.

(b) Listing. The shares of Parent Company Stock issuable pursuant to and in accordance with this Agreement shall have been approved for listing on the NYSE, subject to official notice of issuance.

(c) Antitrust Laws. (i) Any applicable waiting period under the HSR Act shall have expired or been earlier terminated, (ii) the European Commission shall have issued a decision under the EC Merger Regulation declaring the Merger compatible with the common market and (iii) the parties shall have received all waivers, consents, licenses, permits, authorizations, orders and approvals from, and made all registrations, filings, notices and notifications with, Governmental Entities under all other U.S. antitrust Laws or all other Foreign Antitrust Laws applicable to the Merger and the other Transactions, except in the case of this clause (iii) for such waivers, consents, licenses, permits, authorizations, orders and approvals the failure of which to obtain, and such registrations, filings, notices and notifications the failure of which to make, prior to closing would not reasonably be expected to materially affect the business of Parent or the Company in an adverse way.

(d) No Restraints. No judgment, temporary restraining order, preliminary or permanent injunction or comparable judicial action that prohibits the consummation of the Merger (collectively, the "Restraints") by any court or other judicial body of competent jurisdiction in (i) the United States, (ii) the European Union or (iii) any foreign government (if consummation of the Merger in contravention of such foreign government's Restraint would reasonably be expected to materially affect the business of Parent or the Company in an adverse way) shall have been entered and shall continue to be in effect.

(e) Form S-4. The Form S-4 shall have been declared effective under the Securities Act and shall not be the subject of any stop order or proceedings for such purpose shall be pending or threatened before the SEC.

SECTION 7.02. Conditions to Obligations of Parent and Sub. The obligations of Parent and Sub to effect the Merger are further subject to the satisfaction or waiver on or prior to the Closing Date of the following conditions:

(a) Representations and Warranties. (i) The representations and warranties of the Company set forth in Article III (except for the representations and warranties set forth in Sections 3.03, 3.04 and 3.06(a) and (b)) that are qualified by a "Material Adverse Effect" qualification shall be true and correct in all respects as so qualified at and as of the date of this Agreement and at and as of the Closing as though made at and as of the Closing; (ii) the representations and warranties of the Company set forth in Article III (except for the representations and warranties set forth in Sections 3.03, 3.04 and 3.06(a) and (b)) that are not qualified by a "Material Adverse Effect" qualification shall be true and correct at and as of the date of this Agreement and at and as of the Closing as if made at and as of such time (without giving effect to any limitation as to "materiality" set forth therein), except for such failures to be true and correct that, individually or in the aggregate, are not having or would not reasonably be expected to have a Material Adverse Effect on the Company; and (iii) the representations and warranties of the Company set forth in Sections 3.03, 3.04 and 3.06(a) and (b) shall be true and correct in all material respects at and as of the date of this Agreement and at and as of the Closing as if made at and as of such time; provided, however, that, with respect to clauses (i), (ii) and (iii) above, representations and warranties that are made as of a particular date or period shall be true and correct (in the manner set forth in clause (i), (ii) or (iii), as applicable) only as of such date or period.

(b) Performance of Obligations of the Company. The Company shall have performed in all material respects all obligations required to be performed and complied in all material respects with each covenant to be complied with by it under this Agreement at or prior to the Closing.

(c) Certificate. The Company shall have delivered to Parent a certificate duly executed by the Company's chief executive officer and chief financial officer on behalf of the Company to the effect that each of the conditions specified above in Sections
7.02(a) and 7.02(b) is satisfied in all respects.

(d) Absence of Material Adverse Effect on the Company. Since the date of this Agreement, there shall not have been any Event that, individually or in the aggregate, is having or would reasonably be expected to have a Material Adverse Effect on the Company.

SECTION 7.03. Conditions to Obligation of the Company. The obligation of the Company to effect the Merger is further subject to the satisfaction or waiver on or prior to the Closing Date of the following conditions:

(a) Representations and Warranties. (i) The representations and warranties of Parent and Sub set forth in Article IV (except for the representations and warranties set forth in Sections 4.03 and 4.04) that are qualified by a "Material Adverse Effect" qualification shall be true and correct in all respects as so qualified at and as of the date of this Agreement and at and as of the Closing as though made at and as of the Closing; (ii) the representations and warranties of Parent and Sub set forth in Article IV (except for the representations and warranties set forth

in Sections 4.03 and 4.04) that are not qualified by a "Material Adverse Effect" qualification shall be true and correct at and as of the date of this Agreement and at and as of the Closing as if made at and as of such time (without giving effect to any limitation as to "materiality" set forth therein), except for such failures to be true and correct that, individually or in the aggregate, are not having or would not reasonably be expected to have a Material Adverse Effect on Parent; and (iii) the representations and warranties of Parent and Sub set forth in Sections 4.03 and 4.04 shall be true and correct in all material respects at and as of the date of this Agreement and at and as of the Closing as if made at and as of such time; provided, however, that, with respect to clauses (i), (ii) and (iii) above, representations and warranties that are made as of a particular date or period shall be true and correct (in the manner set forth in clause (i), (ii) or (iii), as applicable) only as of such date or period.

(b) Performance of Obligations of Parent and Sub. Parent and Sub shall have performed in all material respects all obligations required to be performed and complied in all material respects with each covenant to be complied with by them under this Agreement at or prior to the Closing.

(c) Exchange Fund. Consistent with Section 2.02(a), Parent shall have deposited or caused to be deposited with the Exchange Agent at or prior to the Closing certificates representing the shares of Parent Common Stock and cash in U.S. dollars in an aggregate amount sufficient to pay the Merger Consideration in respect of all Company Common Stock.

(d) Certificate. Parent shall have delivered to the Company a certificate duly executed by Parent's chief executive officer and chief financial officer on behalf of Parent to the effect that each of the conditions specified above in Sections 7.03 (a) and 7.03(b) is satisfied in all respects.

SECTION 7.04. Frustration of Closing Conditions. Neither the Company nor Parent may rely, either as a basis for not consummating the Merger or for terminating this Agreement and abandoning the Merger, on the failure of any condition set forth in Section 7.01, 7.02 or 7.03, as the case may be, to be satisfied if such failure was primarily caused by such party's failure to perform any covenant or obligation under or breach of any provision of this Agreement.

ARTICLE VIII

Termination, Amendment and Waiver

SECTION 8.01. Termination. This Agreement may be terminated at any time prior to the Closing, whether before or after receipt of the Company Stockholder Approval:

(a) By mutual written consent of Parent, Sub and the Company.

(b) By either Parent or the Company:

(i) if the Merger is not consummated on or before March 31, 2009 (the "End Date"); provided, however, that the right to terminate this Agreement under this

Section 8.01(b)(i) shall not be available to any party whose failure to perform any covenant or obligation or whose willful breach of a provision under this Agreement has been the cause of or resulted in the failure of the Merger to occur on or before such date;

(ii) if any Restraint having any of the effects set forth in Section 7.01(d) shall be in effect and shall have become final and nonappealable; provided that the party seeking to terminate this Agreement pursuant to this Section 8.01(b)(ii) shall have used its reasonable best efforts to remove such ruling, injunction, order or decree as required by Section 6.03; or

(iii) if the Company Stockholder Approval is not obtained at the Company Stockholder Meeting duly convened (or any adjournment or postponement thereof).

(c) By Parent, if the Company breaches or fails to perform in any material respect any of its representations, warranties or covenants contained in this Agreement, which breach or failure to perform (i) would give rise to the failure of a condition set forth in Section 7.02(a) or 7.02(b) and (ii) cannot be or has not been cured within 30 calendar days after the giving of written notice to the Company of such breach or failure.

(d) By the Company, if Parent breaches or fails to perform in any material respect any of its representations or warranties (other than the representations and warranties contained in Section 4.13 or Section 4.08(b)) or covenants (other than the covenants contained in Section 6.14) contained in this Agreement, which breach or failure to perform (i) would give rise to the failure of a condition set forth in Section 7.03(a) or 7.03(b) and (ii) cannot be or has not been cured within 30 calendar days after the giving of written notice to Parent of such breach or failure.

(e) By Parent, in the event that, prior to receipt of the Company Stockholder Approval, a Company Adverse Recommendation Change shall have occurred or the Company Board shall have refused to affirm its recommendation of this Agreement, the Merger and the other Transactions publicly within 10 calendar days after receipt of any written request from Parent which request was made on a reasonable basis.

(f) By the Company, if, at any time following receipt of the Company Stockholder Approval, the percentage decline in the average of the closing prices of the Parent Common Stock, as reported on the NYSE Composite Tape, for any five trading day period following the Company Stockholder Meeting (the "Measuring Period") is greater than 20% as measured against the closing price of the Parent Common Stock on the day preceding the Company Stockholder Meeting and (ii) the percentage decline during the Measuring Period of the closing price of Parent Common Stock, as reported on the NYSE Composite Tape, is 20% or more than the percentage decline, during the same Measuring Period, of Standard & Poor's 500 Index.

(g) By the Company, if, prior to the receipt of the Company Stockholder Approval, (i) the Company Board has received a Superior Company Proposal, (ii) in light of such Superior Company Proposal, the Company Board shall have determined in good faith, after consultation with outside counsel, that the failure to withdraw or modify its recommendation of

this Agreement, the Merger or the other Transactions would be inconsistent with the Company Board's exercise of its fiduciary duty under applicable Law, (iii) the Company is in compliance in all material respects with Section 5.02 and (iv) the Company's Board concurrently approves, and the Company concurrently enters into, a definitive agreement providing for the implementation of such Superior Company Proposal.

(h) By the Company if the conditions to Closing set forth in Sections 7.01 and 7.02 are satisfied (or, upon an immediate Closing, would be satisfied as of such Closing) if Parent does not (i) satisfy the conditions set forth in Section 7.03 (c) within five Business Days (or by January 26, 2009 if the Company Stockholders Meeting at which the Company Stockholder Approval is obtained occurs between December 19, 2008 and January 19, 2009) after notice by the Company to Parent that the conditions set forth in Sections 7.01 and 7.03(a) and (b) are satisfied (or, upon an immediate Closing, would be satisfied as of such Closing) and (ii) proceed immediately thereafter to give effect to a Closing.

(i) By the Company, if Parent breaches or fails to perform in any material respect any of its representations or warranties contained in Section 4.13 or any of its covenants contained in Section 6.14, which breach or failure to perform (i) would give rise to the failure of a condition set forth in Section 7.03(a) or 7.03(b) and (ii) cannot be or has not been cured within 30 calendar days after the giving of written notice to Parent of such breach or failure.

(j) By the Company, if, after the Company Stockholder Approval is obtained, Parent advises the Company that it cannot deliver the certificate required by Section 7.03(d) because the representation and warranty in Section 4.08(b) is not true and correct.

SECTION 8.02. Effect of Termination. In the event of termination of this Agreement by either the Company or Parent as provided in Section 8.01, this Agreement shall forthwith become void and have no effect, without any liability or obligation on the part of Parent, Sub or the Company, other than the last sentence of Section 6.02, Section 6.09, this Section 8.02 and Article IX, which provisions shall survive such termination, except, liability arising out of any willful or intentional breach of any of the representations, warranties or covenants in this Agreement (subject to any express limitations set forth in this Agreement), any action for fraud, or as provided for in the Confidentiality Agreement (which shall survive termination of this Agreement in accordance with its terms), in which case the aggrieved party shall be entitled to all rights and remedies available at law or in equity.

SECTION 8.03. Amendment. This Agreement may be amended by the parties at any time before or after receipt of the Company Stockholder Approval; provided, however, that (i) after receipt of the Company Stockholder Approval, no amendment shall be made that by Law requires further approval by the stockholders of the Company without such further approval, (ii) no amendment shall be made to this Agreement after the Effective Time and (iii) except as provided in clause (i) above, no amendment of this Agreement shall require the approval of the stockholders of the Company. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties.

SECTION 8.04. Extension; Waiver. At any time prior to the Effective Time, the parties may (a) extend the time for the performance of any of the obligations or other acts of the

other parties, (b) waive any inaccuracies in the representations and warranties contained in this Agreement or in any document delivered pursuant to this Agreement or (c) waive compliance with any of the agreements or conditions contained in this Agreement. No extension or waiver by the Company shall require the approval of the stockholders of the Company unless such approval is required by Law and no extension or waiver by Parent shall require the approval of the stockholders of Parent unless such approval is required by Law. Any agreement on the part of a party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

SECTION 8.05. Procedure for Termination, Amendment, Extension or Waiver. A termination of this Agreement pursuant to Section 8.01, an amendment of this Agreement pursuant to Section 8.03 or an extension or waiver pursuant to Section 8.04 shall, in order to be effective, require in the case of Parent, Sub or the Company, action by its Board of Directors or the duly authorized designee of its Board of Directors. Termination of this Agreement prior to the Effective Time shall not require the approval of the stockholders of the Company or Parent.

ARTICLE IX

General Provisions

SECTION 9.01. Nonsurvival of Representations and Warranties. None of the representations and warranties in this Agreement or in the officers' certificates delivered pursuant to this Agreement shall survive the Effective Time. This Section 9.01 shall not limit any covenant or agreement of the parties which by its terms contemplates performance after the Effective Time.

SECTION 9.02. Notices. All notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be deemed given upon receipt by the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) if to Parent or Sub, to:

Ashland Inc.
50 E. RiverCenter Boulevard
Covington, Kentucky 41011
Phone: (859) 815-4711
Facsimile: (859) 815-5053
Attention: David L. Hausrath, Esq.

with a copy to:

Squire, Sanders & Dempsey L.L.P.
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114
Phone: (216) 479-8528
Facsimile: (216) 479-8780
Attention: Carolyn J. Buller, Esq.

(b) if to the Company, to:

Hercules Incorporated
Hercules Plaza
1313 North Market Street
Wilmington, Delaware 19894-0001
Phone: (302) 594-7317
Facsimile: (302) 594-7252
Attention: Richard G. Dahlen, Esq.

with a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Phone: (212) 403-1000
Facsimile: (212) 403-2000
Attention: David A. Katz, Esq.

SECTION 9.03. Definitions. For purposes of this Agreement:

(a) An "Affiliate" of any Person means another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person.

(b) A "Business Day" means any day other than (i) a Saturday or a Sunday or (ii) a day on which banking and savings and loan institutions are authorized or required by Law to be closed in New York City.

(c) The "Knowledge" of any Person that is not an individual means, with respect to any matter in question, (x) with respect to Parent, the actual knowledge of the individuals set forth on Section 9.03 of the Parent Disclosure Letter and (y) with respect to the Company, the actual knowledge of the individuals listed on Section 9.03 of the Company Disclosure Letter.

(d) A "Material Adverse Effect" on a party means any change, effect, event, occurrence, state of facts or development (an "Event") that materially adversely affects the business, financial condition or annual results of operations of such party and its Subsidiaries, taken as a whole; provided, however, that a "Material Adverse Effect" shall not include any Events directly or indirectly resulting from: (i) changes or conditions generally affecting the businesses or industries in which such party and its Subsidiaries operate, to the extent such changes or conditions do not materially and disproportionately impact such party and its Subsidiaries, taken as a whole, (ii) changes or conditions in U.S., European, Asian or Latin American or global, international, or general economic, regulatory, or political conditions (including calamities, the outbreak or escalation of hostilities or acts of war or terrorism), to the

extent such conditions do not materially and disproportionately impact such party and its Subsidiaries, taken as a whole, (iii) changes or conditions generally affecting the financial, securities or credit markets, (iv) any failure, in and of itself, by such party to meet any projections, forecasts, revenue or earnings estimates for any period ending on or after the date of this Agreement (it being understood that the facts or occurrences giving rise to or contributing to such failure that are not otherwise excludable may be deemed to constitute, or be taken into account in determining whether there has been or will be, a Material Adverse Effect), (v) the public announcement, pendency, execution, delivery or existence of this Agreement, the Merger and the other Transactions, including such party's compliance with this Agreement and the impact of this Agreement, the Merger and the other Transactions on the relationships of such party with its employees, independent contractors, customers, suppliers, licensors, licensees, distributors, Governmental Entities and other third parties with whom such party has business dealings, (vi) changes in GAAP, applicable Law or accounting standards (or interpretations thereof) or accounting estimates of existing contingent liabilities under GAAP, (vii) any changes in the market price or trading volume of the Company Common Stock or Parent Common Stock, as the case may be (it being understood that the facts or occurrences giving rise to or contributing to such changes in market price or trading volume that are not otherwise excludable may be deemed to constitute, or be taken into account in determining whether there has been or will be, a Material Adverse Effect), (viii) any litigation arising from allegations of a breach of fiduciary duty relating to this Agreement or the Merger and the other Transactions or (ix) changes in any analyst's recommendations, any corporate default or equivalent credit ratings (whether by Moody's, Standard & Poor's or other recognized credit rating agencies) or any other recommendations or ratings as to Company or Parent, as the case may be, or their respective Subsidiaries (including, in and of itself, any failure to meet analyst projections).

(e) A "Person" means any individual, firm, corporation, partnership, company, limited liability company, trust, joint venture, association, organization, group (as such term is used in Section 13 of the Exchange Act), Governmental Entity, other entity or any permitted successors and assigns of such Person.

(f) "Subsidiary" means any entity of which a Person (a) directly or indirectly owns 50% or more of the outstanding voting securities or other voting ownership interests or (b) through contract or otherwise possesses power to appoint at least 50% of the directors of such entity (or Persons performing similar functions).

SECTION 9.04. Interpretation. When a reference is made in this Agreement to an Article or Section, such reference shall be to an Article or Section, as applicable, of this Agreement unless otherwise indicated. The table of contents, index of defined terms and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." References to "this Agreement" shall include the Company Disclosure Letter and the Parent Disclosure Letter. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant to this Agreement unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular, as well as to the plural forms of such terms and to the masculine, as well as to the feminine and neuter genders of such term. Any Law defined or referred to in

this Agreement means such Law as from time to time amended, modified or supplemented, including by succession of comparable successor Laws and references to all attachments thereto and instruments incorporated therein. Any Contract defined or referred to in this Agreement means such Contract as amended, modified or supplemented, including (in the case of Contracts or instruments) by waiver or consent, through the date of this Agreement. References to a person are also to its permitted successors and assigns. Each of the parties has participated in the drafting and negotiation of this Agreement with the assistance of counsel and other advisors. If an ambiguity or question of intent or interpretation arises, this Agreement must be construed as if it is drafted by all the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement or interim drafts of this Agreement.

SECTION 9.05. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule or Law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Merger and the other Transactions is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the Merger and the other Transactions are fulfilled to the extent possible.

SECTION 9.06. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties. The parties may execute more than one copy of this Agreement, each of which shall constitute an original. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in "portable document format" ("pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

SECTION 9.07. Entire Agreement; No Third-Party Beneficiaries. This Agreement, taken together with the Company Disclosure Letter, the Parent Disclosure Letter, and the Confidentiality Agreement (although any provisions of the Confidentiality Agreement conflicting with this Agreement shall be governed by this Agreement), (a) constitute the entire agreement, and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the Transactions and (b) except for Section 6.08 (which is intended to be for the benefit of the Persons identified therein, and may be enforced by such Persons), are not intended, and nothing in this Agreement or therein shall be construed or implied, to confer upon any Person other than the parties any rights or remedies. Notwithstanding clause (b) of the immediately preceding sentence, following the Effective Time the provisions of Article II shall be enforceable by holders of Certificates.

SECTION 9.08. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE, REGARDLESS OF THE LAWS THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

SECTION 9.09. Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of Law or otherwise by any of the parties without the prior written consent of the other parties. Any purported assignment without such consent shall be void. Subject to the preceding sentences, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

SECTION 9.10. Enforcement.

(a) The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that, subject to the last two sentences of Section 6.09(b) and Section 6.09(d), the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement exclusively in the Delaware Court of Chancery, or in the event (but only in the event) that such court does not have subject matter jurisdiction over such action, in the United States District Court for the District of Delaware, this being in addition to any other remedy to which they are entitled at law or in equity in such courts.

(b) In addition, each of the parties to this Agreement (a) consents to submit itself and its property to the personal jurisdiction of the aforesaid courts in the event any dispute arises out of this Agreement or any Transaction, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion, as a defense, counterclaim or other request for leave from any such court or otherwise, (c) agrees that it will not bring any action relating to this Agreement or any Transaction in any court other than the Delaware Court of Chancery, or in the event (but only in the event) that such court does not have subject matter jurisdiction over such action, in the United States District Court for the District of Delaware, (d) agrees not to assert any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (e) to the fullest extent permitted by the applicable Law, agrees not to assert any claim that (i) the action in such court is brought in an inconvenient forum, (ii) the venue of such action is improper or (iii) this Agreement, or the subject matter of this Agreement, may not be enforced in or by such courts. The parties to this Agreement further agree to waive any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief. Each of the Company, Parent and Sub hereby consents to service being made through the notice procedures provided for in Section 9.02 and agrees that service of any process, summons, notice or document by registered mail (return receipt requested and first-class postage prepaid) to the respective addresses provided for in Section 9.02 shall be effective service of process for any suit or proceeding in connection with this Agreement or the Merger or the other Transactions.

SECTION 9.11. WAIVER OF JURY TRIAL. EACH PARTY TO THIS AGREEMENT HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS. EACH PARTY TO THIS AGREEMENT (A) CERTIFIES THAT

NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH PARTY WOULD NOT, IN THE EVENT OF ANY ACTION, SUIT OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT, BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 9.11.

IN WITNESS WHEREOF, Parent, Sub and the Company have duly executed this Agreement, all as of the date first written above.

ASHLAND INC.,

by

/s/ James J. O'Brien
Name: James J. O'Brien
Title: Chairman and Chief Executive Officer

ASHLAND SUB ONE, INC.,

by

/s/ John W. Joy
Name: John W. Joy
Title: President

HERCULES INCORPORATED,

by

/s/ Craig A. Rogerson
Name: Craig A. Rogerson
Title: President and Chief Executive Officer

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Exhibit 10.1

BANC OF AMERICA SECURITIES LLC
BANC OF AMERICA BRIDGE LLC
BANK OF AMERICA, N.A.
One Bryant Park
New York, New York 10036
214 North Tryon Street
Charlotte, North Carolina 28255

THE BANK OF NOVA SCOTIA
One Liberty Plaza
New York, New York 10006

July 10, 2008

Ashland Inc.
50 E. RiverCenter Boulevard
P.O. Box 391
Covington, Kentucky 41012-0391

Attention: Kevin Willis

Project Viking
Commitment Letter
$1.950 Billion Senior Credit Facilities
$750.0 Million Senior Bridge Facility

Ladies and Gentlemen:

You have advised Bank of America, N.A. ("***Bank of America***"), The Bank of Nova Scotia ("***Scotiabank***" and, together with Bank of America, the "***Committing Banks***"), Banc of America Bridge LLC ("***Banc of America Bridge***"), and Banc of America Securities LLC ("***BAS***" and, together with Banc of America Bridge and the Committing Banks, the "***Committing Parties***") that Ashland Inc., a Kentucky corporation (the "***Borrower***" or "***you***"), intends to acquire (the "***Acquisition***") all of the stock of Hercules Incorporated, a Delaware corporation (the "***Acquired Business***") (the Borrower, the Acquired Business and their subsidiaries are sometimes collectively referred to herein as the "***Companies***"), from the shareholders of the Acquired Business, for consideration consisting of not more than $2.162 billion in cash and 0.093 shares of the Borrower's common stock for each share of the Acquired Business' common stock (as more fully provided in the Acquisition Agreement (as defined below)) issued to shareholders of the Acquired Business. The Acquisition will be effected through the merger of a newly created wholly-owned subsidiary of the Borrower with and into the Acquired Business, with the Acquired Business being the surviving corporation as a wholly owned subsidiary of the Borrower.

You have also advised us that you intend to finance the Acquisition, the costs and expenses related to the Transaction (as hereinafter defined), the repayment of certain existing indebtedness of the Companies (the "***Refinancing***") and the ongoing working capital and other general corporate purposes of the Companies after consummation of the Acquisition from

the following sources (and that no financing other than the financing described herein will be required in connection with the Transaction): (a) at least $871.0 million of cash on hand at the Borrower and at least a number of shares of common stock of the Borrower as set forth in the

previous paragraph issued to shareholders of the Acquired Business (the "***Equity Consideration***"); (b) up to $1.950 billion in senior secured credit facilities of the Borrower (collectively, the "***Senior Credit Facilities***"), comprised of (i) term loan A facilities (the "***Term A Facility***") aggregating up to $600.0 million, (ii) term loan B facilities (the "***Term B Facility***") aggregating up to $850.0 million and (iii) a revolving credit facility of up to $500.0 million; and (c) at least $750.0 million in gross proceeds from the issuance and sale by the Borrower of senior unsecured notes having the same guarantees as the Senior Credit Facilities (the "***Senior Notes***") or, alternatively, up to $750.0 million of senior unsecured loans under a bridge facility (the "***Bridge Facility***" and, together with the Senior Credit Facilities, the "***Facilities***") made available to the Borrower as interim financing to the Permanent Securities referred to below (such senior loans being the "***Bridge Loans***" and, together with any Rollover Loans and Exchange Notes (as defined in Annex II hereto), the "***Bridge Financing***"). It is understood that up to $100.0 million of the Term A Facility and $100.0 million of the Term B Facility may be replaced prior to the Closing Date or repaid after the Closing Date with an accounts receivable securitization facility of the Borrower as described in Annex IV hereto and otherwise on customary terms and conditions (the "***A/R Facility***"), with the proceeds of such A/R Facility reducing or repaying, as the case may be, the Term A Facility and Term B Facility on a dollar for dollar basis allocated between such facilities in consultation with the Borrower as the Lead Arrangers may reasonably determine. The $100.0 million of the Term A Facility and $100.0 million of the Term B Facility which may be funded on the Closing Date in lieu of the A/R Facility is referred to herein as the "***A/R Facility Backstop***." The Acquisition, the issuance of the Equity Consideration, the entering into and funding of the Senior Credit Facilities, the issuance and sale of the Senior Notes or the entering into and funding of the Bridge Facility, the Refinancing and all related transactions are hereinafter collectively referred to as the "***Transaction***." The sources and uses for the financing for the Transaction are as set forth on Schedule I hereto.

BAS, Scotiabank and Scotia Capital (USA) Inc. ("***Scotia Capital***") have also delivered to you a separate engagement letter dated the date hereof (the "***Engagement Letter***") setting forth the terms on which BAS and Scotia Capital are willing to act as joint lead underwriters, joint lead initial purchasers, joint lead arrangers and joint lead placement agents for (i) the Senior Notes or (ii) if the Bridge Facility is funded on the Closing Date, the senior unsecured notes or any other securities of the Companies that may be issued after the Closing Date for the purpose of refinancing all or a portion of the outstanding amounts under the Bridge Facility (the "***Permanent Securities***").

1. **Commitments.** In connection with the foregoing, (a) each of Bank of America and Scotiabank, severally and not jointly, are pleased to advise you of its commitment to provide 50% and 50%, respectively, of the principal amount of the Senior Credit Facilities and Bank of America's willingness to act as the sole and exclusive administrative agent (in such capacity, the "***Administrative Agent***") for the Senior Credit Facilities, all upon and subject to the terms and conditions set forth in this letter and in the summary of terms attached as Annex I and Annex III hereto (collectively, the "***Senior Financing Summary of Terms***"), (b) each of BAS and Scotiabank, jointly and not severally, are pleased to advise you of their willingness, as the joint lead arrangers and joint book running managers (in such capacities, the "***Senior Lead Arrangers***") for the Senior Credit Facilities, to form a syndicate of financial institutions and institutional lenders (collectively, the "***Senior Lenders***") in consultation with you for the Senior Credit Facilities, including Bank of America and Scotiabank; *provided* that BAS will have "left"

placement in all marketing materials and other documentation used in connection with the Senior Credit Facilities and will have the roles associated with such "left" placement, (c) each of Banc of America Bridge and Scotiabank, severally and not jointly, are pleased to advise you of its commitment to provide 50% and 50%, respectively, of the principal amount of the Bridge Facility, all upon and subject to the terms and conditions set forth in this letter and in the summary of terms attached as Annex II and Annex III hereto (collectively, the "***Bridge Summary of Terms***" and, together with the Senior Financing Summary of Terms, the "***Summaries of Terms***" and, together with this letter agreement, the "***Commitment Letter***"), and (d) each of BAS and Scotiabank, are also pleased to advise you of their willingness, as the joint lead arrangers and joint book running managers (in such capacities, the "***Bridge Lead Arrangers***"; BAS and Scotiabank acting in their capacities as Senior Lead Arrangers and/or Bridge Lead Arrangers are sometimes referred to herein as the "***Lead Arrangers***") for the Bridge Facility, to form a syndicate of financial institutions and institutional lenders (collectively, the "***Bridge Lenders***" and, together with the Senior Lenders, the "***Lenders***") for the Bridge Facility, including Banc of America Bridge and Scotiabank (the "***Initial Bridge Lenders***"); *provided* that BAS will have "left" placement in all marketing materials and other documentation used in connection with the Bridge Facility and will have the roles associated with such "left" placement. All capitalized terms used and not otherwise defined herein shall have the same meanings as specified therefor in the Summaries of Terms. If you accept this Commitment Letter as provided below in respect of the Senior Credit Facilities, the date of the initial funding under the Senior Credit Facilities, and/or if you accept this Commitment Letter as provided below in respect of the Bridge Facility, the date of the initial funding of the Bridge Facility or of the issuance and sale of the Senior Notes in lieu of funding the Bridge Facility, in each case, is referred to herein as the "***Closing Date***."

2. **Syndication.** The Lead Arrangers intend to commence syndication of each of the Facilities promptly upon your acceptance of the terms of this Commitment Letter and the Fee Letter related to such Facility, and the commitment of the Commitment Banks hereunder, as the case may be, related to such Facility shall be reduced dollar-for-dollar as and when corresponding commitments received from the Senior Lenders or Bridge Lenders, as the case may be, are funded on the Closing Date. You agree to actively assist, and to use commercially reasonable efforts to cause the Acquired Business to actively assist, the Lead Arrangers in achieving a syndication of each such Facility that is satisfactory to the Lead Arrangers and you. Such assistance shall include (a) your providing and causing your advisors to provide the Lead Arrangers and the Lenders upon request with all information reasonably deemed necessary by the Lead Arrangers to complete such syndication, including, but not limited to, information and evaluations prepared by the Companies and their advisors, or on their behalf, relating to the Transaction (including the Projections (as hereinafter defined), the "***Information***"), (b) your assistance in the preparation of Information Memoranda and other materials to be used in connection with the syndication of each such Facility (collectively with the Summaries of Terms and any additional summaries of terms prepared for distribution to Public Lenders (as hereinafter defined), the "***Information Materials***"), (c) your using your commercially reasonable efforts to ensure that the syndication efforts of the Lead Arrangers benefit materially from the existing banking relationships of the Companies, (d) your procuring a rating for each of the Facilities and the Senior Notes from each of Standard & Poor's Ratings Services ("***S&P***") and Moody's Investors Service, Inc. ("***Moody's***") prior to the launch of the syndication and (e) your otherwise assisting the Lead Arrangers in their syndication efforts, including by making the officers and

advisors of the Borrower, and using your commercially reasonable efforts to cause officers and advisors of the Acquired Business, available from time to time to attend and make presentations regarding the business and prospects of the Companies, as appropriate, at one or more meetings of prospective Lenders. The parties hereby agree that the Information Memoranda to be used in connection with the syndication of the Facilities shall be completed at least 30 days prior to the Closing Date.

It is understood and agreed that, in consultation with the Borrower, the Lead Arrangers will manage and control all aspects of the syndication of each Facility, including decisions as to the selection of prospective Lenders and any titles offered to proposed Lenders, when commitments will be accepted and the final allocations of the commitments among the Lenders. It is understood that no Lender participating in either Facility will receive compensation from you in order to obtain its commitment, except on the terms contained herein and in the Summaries of Terms. It is also understood and agreed that the amount and distribution of the fees among the Lenders will be at the sole and absolute discretion of the Lead Arrangers.

3. **Information Requirements.** You represent, warrant and covenant that (a) all financial projections concerning the Companies that have been or are hereafter made available to the Committing Parties or the Lenders by any of the Borrower, its subsidiaries or their representatives (or on their behalf) (the "***Projections***") have been or will be prepared in good faith based upon reasonable assumptions, (b) to your knowledge, all Projections that have been or are hereafter made available to the Committing Parties or the Lenders by the Acquired Business or its representatives (or on its behalf) (or to the Borrower and delivered by the Borrower to the Committing Parties or Lenders) have been or will be prepared in good faith based upon reasonable assumptions, (c) all Information, other than Projections, which has been or is hereafter made available to the Lead Arrangers or any of the Lenders by any of the Borrower, its subsidiaries or any of their representatives (or on their behalf) in connection with any aspect of the Transaction, as and when furnished, is and will be complete 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, in light of the circumstances in which made, not misleading, and (d) to your knowledge, all Information, other than Projections, which has been or is hereafter made available to the Lead Arrangers or any of the Lenders by the Acquired Business or its representatives (or on its behalf) (or to the Borrower and delivered by the Borrower to the Committing Parties or Lenders) in connection with any aspect of the Transaction, as and when furnished, is and will be complete 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, in light of the circumstances in which made, not misleading. You agree to furnish us with further and supplemental information from time to time until the Closing Date and, if requested by us, for such period thereafter as is necessary to complete the syndication of the Facilities so that the representation, warranty and covenant in the immediately preceding sentence are correct on the Closing Date and on such later date on which the syndication of the Facilities is completed as if the Information were being furnished, and such representation, warranty and covenant were being made, on such date. In issuing these commitments and in arranging and syndicating each of the Facilities, the Committing Parties are and will be using and relying on the Information without independent verification thereof. Information and Projections provided to the Lead Arrangers prior to the date hereof are hereinafter referred to as the "***Pre-Commitment Information***."

You acknowledge that (a) the Committing Parties on your behalf will make available Information Materials to the proposed syndicate of Lenders by posting the Information Materials on IntraLinks or another similar electronic system and (b) certain prospective Lenders (such Lenders, "***Public Lenders***"; all other Lenders, "***Private Lenders***") may have personnel that do not wish to receive material non-public information (within the meaning of the United States federal securities laws, "***MNPI***") with respect to the Companies, their respective affiliates or any other entity, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such entities' securities. If requested, you will assist us in preparing an additional version of the Information Materials not containing MNPI (the "***Public Information Materials***") to be distributed to prospective Public Lenders.

Before distribution of any Information Materials (a) to prospective Private Lenders, you shall provide us with a customary letter authorizing the dissemination of the Information Materials and (b) to prospective Public Lenders, you shall provide us with a customary letter authorizing the dissemination of the Public Information Materials and confirming the absence of MNPI therefrom. In addition, at our request, you shall identify Public Information Materials by clearly and conspicuously marking the same as "***PUBLIC***".

You agree that the Committing Parties on your behalf may distribute the following documents to all prospective Lenders, unless you advise the Committing Parties in writing (including by email) within a reasonable time prior to their intended distributions that such material should only be distributed to prospective Private Lenders: (a) administrative materials for prospective Lenders such as lender meeting invitations and funding and closing memoranda, (b) notifications of changes to the terms of the Facilities and (c) other materials intended for prospective Lenders after the initial distribution of the Information Materials, including drafts and final versions of definitive documents with respect to the Facilities. If you advise us that any of the foregoing items should be distributed only to Private Lenders, then the Committing Parties will not distribute such materials to Public Lenders without further discussions with you. You agree (whether or not any Information Materials are marked "***PUBLIC***") that Information Materials made available to prospective Public Lenders in accordance with this Commitment Letter shall not contain MNPI.

4. **Fees and Indemnities.** You agree to pay the fees set forth in the Fee Letter dated as of the date hereof (the "***Fee Letter***") among the parties hereto. You also agree to reimburse the Committing Parties from time to time on demand for all reasonable and invoiced out-of-pocket fees and expenses (including, but not limited to, the reasonable and invoiced fees, disbursements and other charges of Cahill Gordon & Reindel LLP, as counsel to the Lead Arrangers and the Administrative Agent, and of any special and local counsel to the Committing Parties retained by the Lead Arrangers, and reasonable and invoiced and due diligence expenses) incurred in connection with the Facilities, the syndication thereof, the preparation of the definitive documentation therefor and the other transactions contemplated hereby; provided that the Lead Arrangers shall consult with the Borrower on a regular basis regarding the engagement of special counsel and the incurrence of due diligence expenses. In addition, if this Commitment

Letter is accepted with respect to the Bridge Facility, the reasonable and invoiced out-of-pocket fees and expenses incurred by BAS and Scotiabank in connection with the Senior Notes or the Permanent Securities will be reimbursed as provided in the Engagement Letter.

You also agree to indemnify and hold harmless the Committing Parties, each other Lender and each of their affiliates and their officers, directors, employees, agents, advisors and other representatives (each an "***Indemnified Party***") from and against (and will reimburse each Indemnified Party as the same are incurred for) any and all claims, damages, losses, liabilities and expenses (including, without limitation, the reasonable fees, disbursements and other charges of counsel) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding or preparation of a defense in connection therewith) (a) any aspect of the Transaction or any similar transaction and any of the other transactions contemplated thereby or (b) the Facilities and any other financings contemplated by the Commitment Letter or the Engagement Letter, or any use made or proposed to be made with the proceeds thereof, except to the extent such claim, damage, loss, liability or expense is found by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Indemnified Party or such Indemnified Party's subsidiaries or the officers, directors, employees, agents, advisors and other representatives of such Indemnified Party or its subsidiaries. In the case of an investigation, litigation or proceeding to which the indemnity in this paragraph applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by you, your equity holders or creditors or an Indemnified Party, whether or not an Indemnified Party is otherwise a party thereto and whether or not any aspect of the Transaction is consummated. Each Indemnified Party will promptly notify you upon receipt of written notice of any claim or threat to institute a claim, provided that any failure by any Indemnified Party to give such notice shall not relieve you from the obligation to indemnify the Indemnified Parties unless you are materially prejudiced by such failure. You also agree that none of the Committing Parties, and none of their affiliates and their officers, directors, employees, agents, advisors and other representatives shall have any liability (whether direct or indirect, in contract or tort or otherwise) to you or your subsidiaries or affiliates or to your or their respective equity holders or creditors arising out of, related to or in connection with any aspect of the Transaction, except to the extent of direct (as opposed to special, indirect, consequential or punitive) damages determined by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Indemnified Party or such Indemnified Party's subsidiaries or the officers, directors, employees, agents, advisors and other representatives of such Indemnified Party or its subsidiaries. It is further agreed that Bank of America and Scotiabank shall only have liability to you (as opposed to any other person), and that Bank of America and Scotiabank shall be liable solely in respect of their own commitment to the Facilities on a several, and not joint, basis with any other Lender. Notwithstanding any other provision of this Commitment Letter, no Indemnified Party shall be liable for any damages arising from the use by others of information or other materials obtained through electronic telecommunications or other information transmission systems, other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnified Party or of such Indemnified Party's subsidiaries or the officers, directors, employees, agents, advisors and other representatives of such Indemnified Party or its subsidiaries as determined by a court of competent jurisdiction.

5. **Conditions to Financing.** The commitments of Bank of America and Scotiabank in respect of the Senior Credit Facilities, the commitment of Banc of America Bridge and Scotiabank in respect of the Bridge Facility and the undertaking of BAS and Scotiabank to provide the services described herein are subject to the satisfaction of each of the conditions set forth in Annex III hereto.

6. **Confidentiality and Other Obligations.** This Commitment Letter, the Fee Letter and the Engagement Letter and the contents hereof and thereof are confidential and, except for the disclosure hereof or thereof on a confidential basis to your accountants, attorneys and other professional advisors retained in connection with the Transaction, may not be disclosed in whole or in part to any person or entity without our prior written consent; provided, however, it is understood and agreed that you may disclose this Commitment Letter (including the Summaries of Terms) but not the Fee Letter or the Engagement Letter (a) on a confidential basis to the board of directors, senior officers and advisors of the Acquired Business in connection with their consideration of the Transaction, (b) after your acceptance of this Commitment Letter and the Fee Letter, in filings with the Securities and Exchange Commission and other applicable regulatory authorities and stock exchanges and (c) after written notice (to the extent permitted by law) to the Lead Arrangers of any legally required disclosure, as otherwise required by law.

You acknowledge that the Committing Parties or their affiliates may be providing financing or other services to parties whose interests may conflict with yours. The Committing Parties agree that they will not furnish confidential information obtained from you to any of their other customers and that they will treat confidential information relating to the Companies with the same degree of care as they treat their own confidential information. The Committing Parties further advise you that they will not make available to you confidential information that they have obtained or may obtain from any other customer. In connection with the services and transactions contemplated hereby, you agree that the Committing Parties are permitted to access, use and share with any of their bank or non-bank affiliates, agents, advisors (legal or otherwise) or representatives, any information concerning the Companies or any of their respective affiliates that is or may come into the possession of the Committing Parties or any of such affiliates.

In connection with all aspects of each transaction contemplated by this letter, you acknowledge and agree that: (a) (i) the arranging and other services described herein regarding the Facilities are arm's-length commercial transactions between you and your affiliates, on the one hand, and the Committing Parties, on the other hand, (ii) you have consulted your own legal, accounting, regulatory and tax advisors to the extent you have deemed appropriate, and (iii) you are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated hereby; (b) (i) each of the Committing Parties has been, is, and will be acting solely as a principal and, except as otherwise expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for you, any of your affiliates or any other person or entity and (ii) none of the Committing Parties has any obligation to you or your affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein; and (c) the Committing Parties and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from yours and those of your affiliates, and the Committing Parties have no obligation to disclose any of such interests to you or your affiliates. To the fullest extent permitted by law, you hereby waive and release any claims that you may have against the Committing Parties with respect to

any breach or alleged breach of agency or fiduciary duty (as distinct from contractual duties hereunder) in connection with any aspect of any transaction contemplated by this Commitment Letter.

The Committing Parties hereby notify you that pursuant to the requirements of the USA PATRIOT Act, Title III of Pub. L. 107-56 (signed into law October 26, 2001) (the "*Act*"), each of them is required to obtain, verify and record information that identifies you, which information includes your name and address and other information that will allow the Committing Parties, as applicable, to identify you in accordance with the Act.

The Committing Parties acknowledge and agree that all MNPI furnished by the Companies to the Committing Parties shall be for the confidential use of the Committing Parties and of the prospective Senior Lenders who are subject to the standard confidentiality agreement of, as the case may be, the Committing Parties or IntraLinks or Syndtrak and each of their respective officers, directors, employees, attorneys and other advisors who accept such information subject to an obligation to keep it confidential or are otherwise bound by an obligation of confidentiality, in accordance with their customary procedures for handling confidential information and for disseminating such information to prospective lenders.

7. **Survival of Obligations.** The provisions of numbered paragraphs 3, 4 and 6 shall remain in full force and effect regardless of whether any definitive documentation for the Facilities shall be executed and delivered and notwithstanding the termination of this Commitment Letter or any commitment or undertaking of the Committing Parties hereunder.

8. **Miscellaneous.** This Commitment Letter and the Fee Letter may be executed in multiple counterparts and by different parties hereto in separate counterparts, all of which, taken together, shall constitute an original. Delivery of an executed counterpart of a signature page to this Commitment Letter or the Fee Letter by telecopier or electronic transmission shall be effective as delivery of a manually executed counterpart thereof.

This Commitment Letter and the Fee Letter shall be governed by, and construed in accordance with, the laws of the State of New York. Each of the parties hereto hereby irrevocably waives any and all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Commitment Letter (including, without limitation, the Summaries of Terms), the Fee Letter, the Transaction and the other transactions contemplated hereby and thereby or the actions of the Committing Parties in the negotiation, performance or enforcement hereof. Each of the parties hereto hereby irrevocably submits to the exclusive jurisdiction of any New York State court or Federal court sitting in the Borough of Manhattan in New York City in respect of any suit, action or proceeding arising out of or relating to the provisions of this Commitment Letter (including, without limitation, the Summaries of Terms), the Fee Letter, the Transaction and the other transactions contemplated hereby and thereby and irrevocably agrees that all claims in respect of any such suit, action or proceeding may be heard and determined in any such court. Each of the parties hereto waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceedings brought in any such court, and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. You shall not sell, transfer or otherwise dispose of any material portion of assets (other than inventory) of the Borrower and its subsidiaries on a consolidated basis prior to the Closing Date.

This Commitment Letter, together with the Summaries of Terms and the Fee Letter (and, if this Commitment Letter is accepted with respect to the Bridge Facility, the Engagement Letter), embodies the entire agreement and understanding among the Committing Parties, you and your affiliates with respect to the Facilities and supersedes all prior agreements and understandings relating to the subject matter hereof. However, please note that the terms and conditions of the commitments of the Committing Banks and undertaking of BAS and Scotiabank hereunder are not limited to those set forth herein or in the Summaries of Terms. Those matters that are not covered or made clear herein or in the Summaries of Terms or the Fee Letter are subject to mutual agreement of the parties. No party has been authorized by the Committing Parties to make any oral or written statements that are inconsistent with this Commitment Letter.

This Commitment Letter is not assignable by you without our prior written consent and is intended to be solely for the benefit of the parties hereto and the Indemnified Parties.

All commitments and undertakings of the Committing Banks under this Commitment Letter with respect to the Senior Credit Facilities will expire at 12:00 midnight (New York City time) on July 10, 2008 unless you execute this Commitment Letter as provided below and the Fee Letter as provided therein to accept such commitments and return them to us prior to that time. All commitments and undertakings of Banc of America Bridge, Scotiabank and BAS under this Commitment Letter with respect to the Bridge Facility will also expire at that time unless you sign this Commitment Letter as provided below and the Fee Letter as provided therein to accept such commitments, and also sign the Engagement Letter, and return them to us prior to that time. Thereafter, all accepted commitments and undertakings of the Committing Parties hereunder will expire on the earliest of (a) December 31, 2008, unless the Closing Date occurs on or prior thereto, (b) the closing of the Acquisition, (i) in the case of the Senior Credit Facilities, without the use of the Senior Credit Facilities, or (ii) in the case of the Bridge Facility, without the use of the Bridge Facility, (c) the acceptance by any of the Companies or any of their affiliates of an offer for all or any substantial part of the capital stock or property and assets of the Companies other than as part of the Transaction, and (d) if any event occurs or information becomes available that, in the reasonable and good faith judgment of the Committing Parties, results or is reasonably likely to result in the failure to satisfy any condition set forth in paragraph 5 of this Commitment Letter. In addition, all accepted commitments and undertakings of the Committing Parties hereunder may be terminated by us if you fail to perform your obligations under this Commitment Letter or the Fee Letter (or, if this Commitment Letter is accepted with respect to the Bridge Facility, the Engagement Letter) on a timely basis.

BY SIGNING THIS COMMITMENT LETTER, EACH OF THE PARTIES HERETO HEREBY ACKNOWLEDGES AND AGREES THAT (A) BANK OF AMERICA AND SCOTIABANK ARE OFFERING TO PROVIDE THE SENIOR CREDIT FACILITIES SEPARATE AND APART FROM BANC OF AMERICA BRIDGE'S AND SCOTIABANK'S OFFER TO PROVIDE THE BRIDGE FACILITY AND (B) BANC OF AMERICA BRIDGE AND SCOTIABANK ARE OFFERING TO PROVIDE THE BRIDGE FACILITY SEPARATE AND APART FROM THE OFFER BY BANK OF AMERICA AND SCOTIABANK TO

PROVIDE THE SENIOR CREDIT FACILITIES. YOU MAY, AT YOUR OPTION, ELECT TO ACCEPT THIS COMMITMENT LETTER (AND THE APPLICABLE PROVISIONS OF THE FEE LETTER) WITH RESPECT TO EITHER THE SENIOR CREDIT FACILITIES OR THE BRIDGE FACILITY OR BOTH.

[The remainder of this page intentionally left blank.]

We are pleased to have the opportunity to work with you in connection with this important financing.

Very truly yours,

BANK OF AMERICA, N.A.

By: /s/ K. James Pirouz
Name: K. James Pirouz
Title: Principal

BANC OF AMERICA BRIDGE LLC

By: /s/ K. James Pirouz
Name: K. James Pirouz
Title: Principal

BANC OF AMERICA SECURITIES LLC

By: /s/ K. James Pirouz
Name: K. James Pirouz
Title: Principal

THE BANK OF NOVA SCOTIA

By: /s/ Todd Meller
Name: Todd Meller
Title: Managing Director

The provisions of this Commitment Letter with respect to the Senior Credit Facilities are accepted and agreed to as of the date first written above:

ASHLAND INC.

By: /s/ J. Kevin Willis
Name: J. Kevin Willis
Title: Treasurer and Vice President, Finance

The provisions of this Commitment Letter with respect to the Bridge Facility are accepted and agreed to as of the date first written above:

ASHLAND INC.

By: /s/ J. Kevin Willis
Name: J. Kevin Willis
Title: Treasurer and Vice President, Finance

SCHEDULE I

SOURCES AND USES OF FUNDS
($ millions)

Sources		Uses	
Senior Credit Facilities	$1,439.0	Cash Purchase Price of Acquired Business Equity	$2,133.0
Senior Notes or Bridge Facility	750.0	Refinancing of Existing Borrower Debt	593.0
Cash	871.0	Common Stock of Borrower	492.0
Common Stock of Borrower	492.0	Estimated Fees and Expenses	334.0
Total Sources	$3,552.0	Total Uses	$3,552.0

Common Stock of the Borrower is based on an exchange rate of 0.093 shares of Common Stock of the Borrower for each share of Common Stock of the Acquired Business and consideration will fluctuate.

Cash includes the Borrower's cash on hand at closing, the Acquired Business's cash on hand at closing and option proceeds.

ANNEX I

SUMMARY OF TERMS AND CONDITIONS
$1.950 BILLION SENIOR CREDIT FACILITIES

Capitalized terms not otherwise defined herein have the same meanings as specified therefor in the Commitment Letter to which this Annex I is attached.

Borrower: Ashland Inc., a Kentucky corporation (the "***Borrower***"). A newly created, wholly-owned subsidiary of the Borrower will merge with and into the Acquired Business, with the Acquired Business surviving as a wholly owned subsidiary of the Borrower. The Borrower, the Acquired Business and their subsidiaries are collectively referred to herein as the "***Companies***").

Guarantors: The obligations of the Borrower and its subsidiaries under the Senior Credit Facilities and under any treasury management, interest protection or other hedging arrangements entered into with a Senior Lender (or an affiliate thereof) will be guaranteed by each of the existing and future direct and indirect Material Subsidiaries of the Borrower, including the Acquired Business and its subsidiaries, other than (i) any joint venture and (ii) any subsidiary that is a "***controlled foreign corporation***" (a "***CFC***") under Section 957 of the Internal Revenue Code to the extent such guarantee could reasonably be expected to result in a material tax liability (the "***Guarantors***"); *provided* that recourse under the guaranty of Ashland International Holdings, Inc., Valvoline International, Inc., Hercules Paper Holdings, Inc. and any other Guarantor substantially all business and purpose of which is the holding of stock of CFCs (each a "***Foreign Holdco***") shall be limited to Collateral pledged by such Foreign Holdco pursuant to the "Security" section below (and Foreign Holdcos may be subject to covenants prohibiting them from engaging in other businesses or operations and acquiring assets and liabilities, except that the three identified by name above may continue activities being conducted by them on the Closing Date so long as there is no material change in the nature or material increase in the relative quantity of such activities thereafter). All guarantees will be guarantees of payment and not of collection. "***Material Subsidiaries***" shall be defined in a manner to be agreed in the loan documentation.

Administrative and Collateral Agent:	Bank of America, N.A. ("***Bank of America***") will act as sole and exclusive administrative and collateral agent for the Senior Lenders (the "***Administrative Agent***").
Joint Lead Arrangers and Joint Book Managers:	Banc of America Securities LLC ("***BAS***") and The Bank of Nova Scotia ("***Scotiabank***") will act as joint lead arrangers and joint book running managers for the Senior Credit Facilities (the "***Senior Lead Arrangers***").
Senior Lenders:	Bank of America and Scotiabank and other banks, financial institutions and institutional lenders acceptable to the Senior Lead Arrangers and selected in consultation with the Borrower.
Senior Credit Facilities:	An aggregate principal amount of up to $1.950 billion will be available through the following facilities: *Term A Facility:* a $600.0 million term loan facility, all of which will be drawn on the Closing Date. *Term B Facility:* a $850.0 million term loan facility, all of which will be drawn on the Closing Date (together with Term A Facility, the "***Term Loan Facilities***"). It is understood that up to $100.0 million of the Term A Facility and $100.0 million of the Term B Facility may be replaced prior to the Closing Date or repaid after the Closing Date with an accounts receivable securitization facility of the Borrower on customary terms and conditions (the "***A/R Facility***"), with the proceeds of such A/R Facility reducing or repaying, as the case may be, the Term A Facility and Term B Facility on a dollar for dollar basis allocated between such facilities as the Lead Arrangers may determine. The $100.0 million of the Term A Facility and $100.0 million of the Term B Facility which may be funded on the Closing Date in lieu of the A/R Facility is referred to herein as the "***A/R Facility Backstop***." Prior to the Closing Date, the Senior Lead Arrangers shall have the right to reallocate the principal amount of the Term Loan Facilities between the Term A Facility and the Term B Facility (with corresponding changes to the Scheduled Amortization (as hereinafter defined)) in consultation with the Borrower. At the request of the Senior Lead Arrangers, the Borrower will use its commercially reasonable efforts to cause a portion of the Term Loan Facilities as requested by the Senior Lead Arrangers to be issued by one or more of the Borrower's European

subsidiaries (in US Dollars, Euro, or other freely available currencies that may be agreed), and *provided* in any event that the Borrower and the Guarantors will remain guarantors with respect thereto and *provided, further*, that the Borrower shall not be required to use such efforts if, in the Borrower's good faith determination, such borrowings by European subsidiaries (or the use or repatriation of the proceeds thereof) would reasonably be expected to cause any (other than immaterial) (i) detriment to the Companies' current or prospective operations, earnings or financial condition or (ii) tax liability to the Companies.

Revolving Credit Facility: a $500.0 million revolving credit facility, available from time to time until the fifth anniversary of the Closing Date, and to include a sublimit to be determined for the issuance of standby and commercial letters of credit (each a "***Letter of Credit***") and a sublimit for swingline loans (each a "***Swingline Loan***"). At the Borrower's request the Revolving Credit Facility will contain a sub-facility denominated in Euros and not greater than the Euro equivalent of $100.0 million. Letters of Credit will be initially issued by a Lender specified by the Borrower prior to the Closing Date and reasonably acceptable to the Senior Lead Arrangers (in such capacity, the "***Issuing Bank***") and a sublimit for swingline loans (each a "***Swingline Loan***"), and each of the Lenders under the Revolving Credit Facility will purchase an irrevocable and unconditional participation in each Letter of Credit and each Swingline Loan. Only $12.0 million of the Revolving Credit Facility may be drawn on the Closing Date and up to $130.0 million of rollover L/Cs may be rolled over or backstopped; *provided* that the Borrower may also borrow additional amounts under the Revolving Credit Facility on the Closing Date in order to fund upfront fees or original issue discount.

Swingline Option: Swingline Loans will be made available on a same day basis in an aggregate amount not exceeding an amount to be determined and in a minimum amount to be determined. The Borrower must repay each Swingline Loan in full no later than ten (10) business days after such loan is made.

Purpose: The proceeds of the Senior Credit Facilities shall be used (i) to finance in part the Acquisition; (ii) to pay fees and expenses incurred in connection with the Transaction; (iii) to provide ongoing working capital and for other general corporate purposes of the Borrower and its subsidiaries; and (iv) to finance in part the Refinancing.

Closing Date: On or before December 31, 2008.

Interest Rates:	The interest rates per annum applicable to the Senior Credit Facilities will be, at the option of the Borrower (i) LIBOR plus the Applicable Margin (as hereinafter defined) or (ii) the Alternate Base Rate (to be defined as the higher of (x) the Bank of America prime rate and (y) the Federal Funds rate plus 0.50%) plus the Applicable Margin. The Applicable Margin means (a) with respect to the Term A Facility and the Revolving Credit Facility (i) for the first six months after the Closing Date, 2.75% per annum, in the case of LIBOR advances, and 1.75% per annum, in the case of Alternate Base Rate advances, and (ii) thereafter, a percentage per annum to be determined in accordance with a pricing grid attached hereto as Addendum II and (b) with respect to the Term B Facility, 3.25% per annum, in the case of LIBOR advances, and 2.25% per annum, in the case of Alternate Base Rate advances. In no event shall LIBOR be deemed to be less than 3.00% (the "***LIBOR Floor***") nor shall the Alternate Base Rate be deemed to be less than 4.00% (the "***Base Rate Floor***"). The Borrower may select interest periods of one, two, three or six months for LIBOR advances. Interest shall be payable at the end of the selected interest period, but no less frequently than quarterly. During the continuance of any event of default under the loan documentation, the Applicable Margin on all obligations owing under the loan documentation shall increase by 2% per annum.
Commitment Fee:	Commencing on the Closing Date, a commitment fee of (a) until six months following the Closing Date, 0.50% and (b) thereafter, a percentage per annum determined in accordance with a pricing grid attached hereto as Addendum II (calculated on a 360-day basis) shall be payable on the unused portions of the Senior Credit Facilities, such fee to be payable quarterly in arrears and on the date of termination or expiration of the commitments.
Calculation of Interest and Fees:	Other than calculations in respect of interest at the Alternate Base Rate (which shall be made on the basis of actual number of days elapsed in a 365/366 day year), all calculations of interest and fees shall be made on the basis of actual number of days elapsed in a 360-day year.
Cost and Yield Protection:	Customary for transactions and facilities of this type, including, without limitation, in respect of breakage or redeployment costs incurred in connection with prepayments, changes in capital adequacy and capital requirements or their interpretation, illegality, unavailability, reserves without proration or offset and payments free and clear of withholding or other taxes.

Letter of Credit Fees:	Letter of Credit fees equal to the Applicable Margin from time to time on Revolving Credit LIBOR advances on a per annum basis will be payable quarterly in arrears and shared proportionately by the Senior Lenders under the Revolving Credit Facility. In addition, a fronting fee at a rate per annum and payable as established by separate agreement between the Borrower and the Issuing Bank will be payable to the Issuing Bank for its own account. Both the Letter of Credit fees and the fronting fees will be calculated on the amount available to be drawn under each outstanding Letter of Credit.
Maturity:	*Term Loan A Facility:* five years after the Closing Date. *Term Loan B Facility:* seven years after the Closing Date. *Revolving Credit Facility:* five years after the Closing Date.
Scheduled Amortization:	*Term Loan Facilities:* The Term A Facility will be subject to quarterly amortization of principal (in equal installments), with 5% of the aggregate Term A advances to be payable in each of the first two years, 10% of the aggregate Term A advances to be payable in the third year, 20% of the aggregate Term A advances to be payable in the fourth year and 60% of the aggregate Term A advances to be payable in the fifth year (in quarterly installments of 5%, 5%, 5%, and 45%. The Term B Facility will be subject to quarterly amortization of principal (in equal installments), with 1% of the initial aggregate Term B advances to be payable in each of the first six years and 94% of the initial aggregate Term B advances to be payable in the final year (in quarterly installments of 0.25%, 0.25%, 0.25%, and 93.25%) (collectively, the "***Scheduled Amortization***"). *Revolving Credit Facility:* Advances under the Revolving Credit Facility may be made, and Letters of Credit may be issued, on a revolving basis up to the full amount of the Revolving Credit Facility.
Mandatory Prepayments and Commitment Reductions:	In addition to the amortization set forth above, (a) all cash proceeds (net of fees, commissions, and other related expenses and taxes attributable to the event) from (i) sales of property and assets of Borrower and its subsidiaries (including sales or issuances of equity interests by subsidiaries of Borrower but

excluding sales of inventory in the ordinary course of business, and other exceptions to be agreed in the loan documentation), and (ii) Extraordinary Receipts (to be defined to include extraordinary receipts such as tax refunds, casualty and indemnity payments, and certain casualty insurance proceeds and to exclude cash receipts in the ordinary course of business and any reimbursements matched to an expense, including asbestos and environmental claim insurance and indemnity payments), in each case, subject to reinvestments completed during the 12 month period following receipt, (b) all cash proceeds (net of fees, commissions, and other related expenses and taxes attributable to the event) from the issuance or incurrence after the Closing Date of additional debt of Borrower or any of its subsidiaries (other than debt permitted under the loan documentation and other than, if the Bridge Facility is funded, the Rollover Loans or Exchange Notes referred to in Annex II or equity or Permanent Securities in an initial principal amount sufficient to refinance any outstanding Bridge Financing), and (c) 25% of Excess Cash Flow (to be defined in the loan documentation) of Borrower and its subsidiaries (stepping down to 0% when the Borrower's total Leverage Ratio is less than 2.5 to 1.0), shall be applied to the prepayment of (and permanent reduction of the commitments under) the Senior Credit Facilities in the following manner: first, ratably to the principal repayment installments of each of the Term Loan Facilities on a pro rata basis and, second, to the Revolving Credit Facility; *provided* that prepayments of Excess Cash Flow applied to the Revolving Credit Facility shall not reduce the commitments thereunder.

Optional Prepayments and Commitment Reductions:

The Senior Credit Facilities may be prepaid at any time in whole or in part without premium or penalty, except that any prepayment of LIBOR advances other than at the end of the applicable interest periods therefor shall be made with reimbursement for any funding losses and redeployment costs of the Senior Lenders resulting therefrom. Each such prepayment of the Term Loan Facilities shall be applied ratably to the principal repayment installments of each of the Term Loan Facilities on a pro rata basis. The unutilized portion of any commitment under the Senior Credit Facilities may be reduced or terminated by the Borrower at any time without penalty.

Security:

The Borrower and each of the Guarantors shall grant the Administrative Agent (for its benefit and for the benefit of the Senior Lenders) valid and perfected first priority (subject to certain exceptions to be set forth in the loan documentation) liens and security interests in all of the following (collectively, the "***Collateral***"):

(a) all present and future shares of capital stock of (or other ownership or profit interests in) each of its present and future subsidiaries, except that (i) in the case of each subsidiary that is a CFC, such pledge shall be limited to 65% of the voting stock of each such entity and (ii) none of the stock of a Foreign Holdco shall be pledged;

(b) all present and future intercompany debt owed to the Borrower and each Guarantor;

(c) (i) all of the present and future personal property of the Borrower and each Guarantor, including, but not limited to, equipment (other than motor vehicles and other certificate of title vehicles), inventory, accounts receivable (other than those subject to the A/R Facility), fixtures, certain material deposit and bank accounts, investment property, license rights, intellectual property and other general intangibles, insurance proceeds and instruments and (ii) owned real estate having a value in excess of a value to be agreed in the loan documentation (to the extent permitted under applicable existing agreements); provided that interests in joint ventures will be pledged only to the extent permitted by formation documents; and

(d) all proceeds and products of the property and assets described in clauses (a), (b) and (c) above.

Notwithstanding the foregoing, the collateral shall not include assets where the Administrative Agent determines that the cost of obtaining such pledge or security interest is excessive in relation to the benefit thereof.

The Collateral shall ratably secure the relevant party's obligations in respect of the Senior Credit Facilities, any interest rate swap or similar agreements with a Senior Lender or an affiliate of a Senior Lender and treasury management agreements with a Senior Lender or an affiliate of a Senior Lender.

Conditions Precedent to Closing and Initial Borrowings:

Those specified in Annex III to the Commitment Letter.

Conditions Precedent to Each Borrowing Under the Senior Credit Facilities:

Each borrowing or issuance or renewal of a Letter of Credit under the Senior Credit Facilities (other than the initial

borrowings on the Closing Date) will be subject to satisfaction of the following conditions precedent: (i) all of the representations and warranties in the loan documentation shall be materially correct; and (ii) no defaults or Events of Default shall have occurred and be continuing.

Representations and Warranties:

The following and others reasonably agreed by the Senior Lead Arrangers and the Borrower: (i) corporate status; (ii) corporate power and authority, enforceability; (iii) no violation of law, contracts or organizational documents; (iv) no material litigation; (v) accuracy and completeness of specified financial statements and other information and no material adverse change; (vi) no required governmental (including without limitation exchange control) or third party approvals or consents; (vii) use of proceeds/compliance with margin regulations; (viii) valid title to property and assets (including, intellectual property and licenses), free and clear of liens, charges and other encumbrances; (ix) status under Investment Company Act; (x) ERISA matters; (xi) environmental matters; (xii) perfected liens, security interests and charges; (xiii) solvency; (xiv) tax status and payment of taxes; (xv) status as senior debt; (xvi) defaults; (xvii) insurance; and (xviii) reportable transactions.

The foregoing will be subject to qualifications for material adverse effect, exclusions and/or materiality thresholds, in each case to be agreed upon in the loan documentation.

Covenants:

The following affirmative, negative and financial covenants and other affirmative and negative covenants reasonably agreed by the Senior Lead Arrangers and the Borrower:

(a) *Affirmative Covenants:* (i) Compliance with laws and regulations (including, without limitation, ERISA and environmental laws); (ii) payment of taxes and other obligations; (iii) maintenance of appropriate and adequate insurance; (iv) preservation of corporate existence, rights (charter and statutory), franchises, permits, licenses and approvals; (v) visitation and inspection rights; (vi) keeping of proper books in accordance with generally accepted accounting principles; (vii) maintenance of properties; (viii) performance of leases, related documents and other material agreements; (ix) conducting transactions with affiliates on terms equivalent to those obtainable on an arm's-length basis; (x) further assurances as to perfection and priority of security interests; (xi) grant of security on additional property and

assets of the Companies not already Collateral upon the occurrence of an Event of Default and (xii) customary financial and other reporting requirements (including, without limitation, audited annual financial statements and quarterly unaudited financial statements, notices of defaults, compliance certificates, annual business plans and forecasts, notices of material litigation and proceedings, material environmental actions and liabilities and material ERISA and tax events and liabilities, reports to shareholders and other creditors, and other business and financial information as any Senior Lender shall reasonably request).

The foregoing will be subject to qualifications for material adverse effect, exclusions and/or materiality thresholds or baskets, in each case to be agreed upon in the loan documentation.

(b) *Negative Covenants:* Restrictions (with qualifications and exceptions to be agreed) on (i) liens; (ii) debt (other than the Senior Notes or the Bridge Financing and Permanent Securities in an initial principal amount sufficient to refinance the outstanding Bridge Financing, the A/R Facility (if any) and the Indebtedness to Remain Outstanding (as defined in Annex III)), guarantees or other contingent obligations (including, without limitation, the subordination of all intercompany indebtedness on terms satisfactory to the Lenders); (iii) mergers and consolidations; (iv) sales, transfers and other dispositions of property and assets (other than sales of inventory in the ordinary course of business); (v) loans, acquisitions, joint ventures and other investments (with an exception for investments consisting of asset transfers to a joint venture between the Borrower and Sud-Chemie AG, (A) in which each would have a 50% interest and (B) under which the Borrower would contribute its Casting Solutions business group and its interest in Ashland-Südchemie-Kernfest GmbH, which contributed assets shall be as separately described to the Lead Arrangers as part of the Pre-Commitment Information); (vi) in the case of the Borrower, dividends and other distributions to, and redemptions and repurchases from, equity holders; (vii) creating new subsidiaries; (viii) becoming a general partner in any partnership; (ix) prepaying, redeeming or repurchasing debt; (x) capital expenditures; (xi) granting negative pledges (other than any such negative pledge under the definitive

documentation for the Bridge Facility and the Senior Notes which shall expressly permit liens in favor of the Administrative Agent and the Senior Lenders); (xii) changes in the nature of business; (xiii) amending organizational documents, or amending or otherwise modifying certain material agreements; (xiv) changes in accounting policies or reporting practices; (xv) sale and leaseback transactions; and (xvi) transactions with affiliates.

The foregoing will be subject to qualifications for material adverse effect, exclusions and/or materiality thresholds or baskets, in each case to be agreed upon in the loan documentation.

(c) *Financial Covenants:*

- Maintenance of a maximum Leverage Ratio, with step downs to be determined; and
- Maintenance of a minimum Fixed Charge Coverage Ratio, with step ups to be determined.

All of the financial covenants will be calculated on a consolidated basis and for each consecutive four fiscal quarter period, except that during the first year following the Closing Date such measurements for historical fiscal quarters ended prior to the Closing Date for which quarterly financial statements have been provided to the Senior Lead Arrangers pursuant to Annex III shall be made by reference to stipulated amounts of EBITDA and Fixed Charges to be agreed in the loan documentation.

Interest Rate Protection:

The Borrower shall obtain interest rate protection in form and with parties acceptable to the Senior Lead Arrangers for a notional amount and otherwise on terms to be agreed in the loan documentation.

Within 90 days after the Closing Date, the Borrower shall enter into interest rate swap contracts with terms and conditions and with counterparties reasonably satisfactory to the Administrative Agent covering such amount of consolidated funded debt for borrowed money such that at least 50% of the aggregate principal amount of consolidated funded debt for borrowed money of the Borrower and its subsidiaries is subject to interest rate swap contracts providing for effective payment of interest on a fixed rate basis or bears interest at fixed rates for a period of at least three years.

Events of Default:	The following and others reasonably agreed by the Senior Lead Arrangers and the Borrower: (i) nonpayment of principal, interest, fees or other amounts, (ii) any representation or warranty proving to have been materially incorrect when made or confirmed; (iii) failure to perform or observe covenants set forth in the loan documentation within a specified period of time, where customary and appropriate, after notice or knowledge of such failure; (iv) cross-defaults to other indebtedness in an amount to be agreed; (v) bankruptcy and insolvency defaults (with grace period for involuntary proceedings); (vi) monetary judgment defaults in an amount to be agreed and material non-monetary judgment defaults; (vii) actual or asserted impairment of loan documentation or security; (viii) Change of Control (to be defined); and (ix) customary ERISA defaults. The foregoing will be subject to customary and reasonable notice, grace and cure periods and qualifications for material adverse effect or other materiality thresholds.
Assignments and Participations:	Each Senior Lender will be permitted to make assignments in minimum amounts to be agreed to other financial institutions approved by the Administrative Agent and, so long as no event of default has occurred and is continuing, the Borrower, which approval shall not be unreasonably withheld or delayed; *provided, however*, that neither the approval of the Borrower nor the Administrative Agent shall be required in connection with assignments to other Senior Lenders or any of their affiliates. Each Senior Lender will also have the right, without consent of the Borrower or the Administrative Agent, to assign (i) as security all or part of its rights under the loan documentation to any Federal Reserve Bank and (ii) all or part of its rights or obligations under the loan documentation to any of its affiliates. Senior Lenders will be permitted to sell participations with voting rights limited to significant matters such as changes in amount, rate and maturity date. An assignment fee will be charged to the applicable Lender with respect to each assignment as set forth in Addendum I.
Waivers and Amendments:	Amendments and waivers of the provisions of the loan documentation will require the approval of Senior Lenders holding advances and commitments representing more than 50% of the aggregate advances and commitments under the Senior Credit Facilities, except that (a) the consent of each affected Senior Lender will be required with respect to the following: (i) increases in commitment amounts, (ii) reductions of principal, interest, or fees, (iii) extensions of scheduled maturities or times

for payment (which, by way of clarification and not limitation, shall not be deemed to include mandatory prepayments), (iv) releases of all or substantially all of the collateral or value of the guarantees and (v) changes that impose any restriction on the ability of any Senior Lender to assign any of its rights or obligations and (b) the consent of Senior Lenders holding more than 50% of the advances and commitments under each of the Term A Facility and the Term B Facility shall be required with respect to any amendment or waiver that changes the allocation of any payments between the Term Loan Facilities.

Indemnification: The Borrower will indemnify and hold harmless the Administrative Agent, the Senior Lead Arrangers, each Senior Lender and each of their affiliates and their officers, directors, employees, agents and advisors from and against all losses, liabilities, claims, damages or expenses arising out of or relating to the Transaction, the Senior Credit Facilities, the Borrower's use of loan proceeds or the commitments, including, but not limited to, reasonable attorneys' fees and settlement costs other than losses, liabilities, claims, damages or expenses, except to the extent of direct (as opposed to special, indirect, consequential or punitive) damages determined by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of such Indemnified Party or such Indemnified Party's subsidiaries or the officers, directors, employees, agents, advisors and other representatives of such indemnified party or its subsidiaries. This indemnification shall survive and continue for the benefit of all such persons or entities, notwithstanding any failure of the Senior Credit Facilities to close.

Governing Law: New York.

Expenses: The Borrower will pay all reasonable and invoiced costs and expenses associated with the preparation, due diligence, administration, syndication and enforcement of all loan documentation, including, without limitation, the reasonable and invoiced legal fees and expenses of the Administrative Agent's counsel, regardless of whether or not the Senior Credit Facilities are closed. The Borrower will also pay the expenses of each Senior Lender in connection with the enforcement, during an Event of Default, of any of the loan documentation related to the Senior Credit Facilities.

Counsel to the Administrative Agent: Cahill Gordon & Reindel LLP.

Miscellaneous:	Each of the parties shall (i) waive its right to a trial by jury and (ii) submit to exclusive New York jurisdiction. The loan documentation will contain customary increased cost, withholding tax, capital adequacy and yield protection provisions.

ADDENDUM I
PROCESSING AND RECORDATION FEES

The Administrative Agent will charge a processing and recordation fee (an "***Assignment Fee***") in the amount of $2,500 for each assignment; *provided, however*, that in the event of two or more concurrent assignments to members of the same Assignee Group (which may be effected by a suballocation of an assigned amount among members of such Assignee Group) or two or more concurrent assignments by members of the same Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group), the Assignment Fee will be $2,500 *plus* the amount set forth below:

Transaction:	Assignment Fee:
First four concurrent assignments or suballocations to members of an Assignee Group (or from members of an Assignee Group, as applicable)	-0-
Each additional concurrent assignment or suballocation to a member of such Assignee Group (or from a member of such Assignee Group, as applicable)	$500

For purposes hereof, "***Assignee Group***" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor. The terms "***Affiliate***," "***Approved Fund***" and "***Eligible Assignee***" shall be defined in the definitive loan documentation.

ADDENDUM II
PRICING GRID

		Applicable Margin	
Leverage Ratio	Commitment Fee	LIBOR	Alternate Base Rate
≥ 3.75:1.00	.50%	3.25%	2.25%
≥ 3.50:1.00 and < 3.75:1.00	.50%	3.00%	2.00%
≥ 2.75:1.00 and < 3.50:1.00	.50%	2.75%	1.75%
≥ 2.00:1.00 and < 2.75:1.00	.40%	2.50%	1.50%
< 2.00:1.00	.30%	2.00%	1.00%

ANNEX II-A

SUMMARY OF TERMS AND CONDITIONS
$750.0 MILLION SENIOR BRIDGE FACILITY

Capitalized terms not otherwise defined herein have the same meanings as specified therefor in the Commitment Letter to which this Annex II-A is attached.

Borrower:	Same Borrower as in the Senior Financing Summary of Terms.
Guarantors:	Same Guarantors as in the Senior Financing Summary of Terms.
Joint Lead Arrangers and Joint Book Managers:	Banc of America Securities LLC ("***BAS***") and The Bank of Nova Scotia ("***Scotiabank***") will act as joint lead arrangers and joint book running managers for the Bridge Facility (in such capacity, the "***Bridge Lead Arrangers***").
Bridge Lenders:	Banc of America Bridge LLC or an affiliate thereof ("***Banc of America Bridge***") and The Bank of Nova Scotia or an affiliate ("***Scotiabank***" and, together with Banc of America Bridge, the "***Initial Bridge Lenders***") and other financial institutions and institutional lenders acceptable to the Bridge Lead Arrangers in consultation with the Borrower (the "***Bridge Lenders***").
Bridge Facility:	Up to $750.0 million of unsecured senior bridge loans (the "***Bridge Loans***"). The Bridge Loans will be available to the Borrower in one drawing upon consummation of the Acquisition.
Ranking:	The Bridge Loans will be unsecured, senior obligations of the Borrower, ranking pari passu with or senior to all other unsecured obligations of the Borrower. The Guarantees will be unsecured, senior obligations of each Guarantor, ranking pari passu with or senior to all other unsecured obligations of such Guarantor.
Purpose:	Together with borrowings under the Senior Credit Facilities, the proceeds of the Bridge Facility shall be used (i) to finance in part the Acquisition; (ii) to pay fees and expenses incurred in connection with the Transaction; and (iii) to finance in part the Refinancing.
Closing Date:	On or before December 31, 2008.
Interest Rate:	Interest shall be payable quarterly in arrears at a rate per annum equal to the greatest of (i) three-month LIBOR plus the Applicable Margin, (ii) the yield on the U.S. Treasury security with a maturity closest to the Rollover Maturity Date plus the Applicable Margin and (iii) 3.00% per annum plus the Applicable

	Margin. The Applicable Margin for Bridge Loans shall initially be 450 basis points and will in each case increase by an additional 50 basis at the end of each subsequent three-month period for as long as the Bridge Loans are outstanding; *provided* that the interest rate shall not exceed 12.00% per annum; *provided* that such maximum interest rate permitted by this clause shall increase by an additional 25 basis points in the event that (i) the sum of the consolidated operating income from continuing operations, plus depreciation and amortization (excluding the impact of non-recurring one time gains and losses and including interest income of the Acquired Business and its subsidiaries but excluding interest income of the Borrower and its subsidiaries) (for purposes of this proviso, "***EBITDA***") of the Borrower and the EBITDA of the Acquired Business, in each case for the quarter ended June 30, 2008, is less than $190.0 million or (ii) the sum of the EBITDA of the Borrower and the EBITDA of the Acquired Business, in each case for the six months ended September 30, 2008 (calculated based on the monthly financial statements of the Borrower and the Acquired Business provided to the Lead Arrangers in accordance with clause (v) of Annex III to the Commitment Letter on or prior to October 24, 2008 or, if released prior to such date by the Borrower or the Acquired Business or both, the earnings release issued by the Borrower or the Acquired Business or both for the quarter ending September 30, 2008), is less than $350.0 million. Notwithstanding the foregoing, in the case of an Event of Default, the Applicable Margin shall be increased by 2.0% per annum.
Maturity:	12 months from the Closing Date (the "***Bridge Loan Maturity Date***" or "***Rollover Date***").
Optional Prepayment:	The Bridge Loans may be prepaid prior to the Bridge Loan Maturity Date, without premium or penalty, in whole or in part, upon written notice, at the option of the Borrower, at any time, together with accrued interest to the prepayment date.
Mandatory Prepayments:	The Borrower will prepay the Bridge Loans, without premium or penalty, together with accrued interest to the prepayment date, with any of the following: (i) the net proceeds from the issuance of any debt or equity securities of the Borrower; (ii) subject to customary exceptions to be agreed and prepayment requirements under the Senior Credit Facilities, the net proceeds from any other indebtedness incurred by the Borrower or any of the Borrower's subsidiaries; and (iii) subject to customary exceptions to be agreed and to prepayment requirements under the Senior Credit Facilities, the net proceeds from asset sales by the Borrower or any of the Borrower's subsidiaries.

Change of Control:	In the event of a Change of Control, each Bridge Lender will have the right to require the Borrower, and the Borrower must offer, to prepay the outstanding principal amount of the Bridge Loans plus accrued and unpaid interest thereon to the date of prepayment plus a prepayment fee equal to 1% of such outstanding principal amount. Prior to making any such offer, the Borrower will, within 30 days of the Change of Control, repay all obligations under the Senior Credit Facilities or obtain any required consent of the Senior Lenders under the Senior Credit Facilities to make such prepayment of the Bridge Loans.
Conversion into Rollover Loans:	If the Bridge Loans have not been previously prepaid in full for cash on or prior to the Rollover Date, the principal amount of the Bridge Loans outstanding on the Rollover Date may, subject to the conditions precedent set forth in Annex II-B, be converted into unsecured, senior rollover loans with a maturity of seven years from the Rollover Date (the "***Rollover Loans***") and otherwise having the terms set forth in Annex II-B. On or after the Rollover Date, each Bridge Lender will have the right to exchange the outstanding Rollover Loans held by it for unsecured, senior exchange notes of the Borrower having the terms set forth in Annex II-C.
Conditions Precedent:	Those specified in Annex III to the Commitment Letter.
Covenants:	To include financial covenants, and other covenants reasonably agreed by the Bridge Lead Arrangers and the Borrower and in any event to include covenants similar to those contained in the Senior Credit Facilities and a covenant for the Borrower to use its commercially reasonable efforts to refinance the Bridge Facility with the proceeds of the Permanent Financing as promptly as practicable following the Closing Date.
Representations and Warranties, Events of Default, Waivers and Consents:	Provisions similar to those contained in the Senior Credit Facilities and others reasonably agreed by the Bridge Lead Arrangers and the Borrower.
Assignments and Participations:	The Bridge Lenders shall have the right to assign their interest in the Bridge Loans in whole or in part in compliance with

	applicable law to any third parties. In addition, the Initial Bridge Lenders may share their respective commitments with any third party.
Indemnification:	Substantially similar to the Senior Credit Facilities.
Governing Law:	New York.
Expenses:	The Borrower will pay all reasonable and invoiced costs and expenses associated with the preparation, due diligence, administration, syndication and enforcement of all loan documentation, including, without limitation, the reasonable and invoiced legal fees and expenses of the Bridge Lead Arrangers' counsel, regardless of whether or not the Bridge Facility is closed. The Borrower will also pay the expenses of each Bridge Lender in connection with the enforcement following default of any of the loan documentation related to the Bridge Facility.
Counsel to Bridge Lead Arrangers:	Cahill Gordon & Reindel LLP.
Fees:	As provided in the Fee Letter.

ANNEX II-B

SUMMARY OF TERMS AND CONDITIONS
$750.0 MILLION SENIOR ROLLOVER FACILITY

Capitalized terms not otherwise defined herein have the same meanings as specified therefor in the Commitment Letter to which this Annex II-B is attached.

Borrower:	Same Borrower as in Senior Financing Summary of Terms and Bridge Summary of Terms.
Guarantors:	Same Guarantors as in Senior Financing Summary of Terms and Bridge Summary of Terms.
Rollover Facility:	Unsecured, senior rollover loans (the "***Rollover Loans***") in an initial principal amount equal to 100% of the outstanding principal amount of the Bridge Loans on the Rollover Date. Subject to the conditions precedent set forth below, the Rollover Loans will be available to the Borrower to refinance the Bridge Loans on the Rollover Date. The Rollover Loans will be governed by the definitive documents for the Bridge Loans and, except as set forth below, shall have the same terms as the Bridge Loans.
Ranking:	Same as Bridge Loans.
Interest Rate:	At the Rollover Date, the interest rate on the Rollover Loans will be a rate per annum equal to the greatest of (i) three-month LIBOR in effect from time to time (ii) the yield in effect from time to time on the U.S. Treasury security with a maturity closest to the Rollover Maturity Date and (iii) 3.00% per annum plus the Applicable Margin on the Bridge Loans in effect on the Rollover Date. For each three-month period after the Rollover Date the interest rate shall increase by 0.50%. The interest rate on the Rollover Loans shall not exceed the Cap. Notwithstanding the foregoing, following the occurrence of an Event of Default, the applicable interest rate shall be increased by 2.0% per annum. Interest on the Rollover Loans will be payable quarterly in arrears.
Maturity:	Seven years from the Rollover Date (the "***Rollover Maturity Date***").
Optional Prepayment:	For so long as the Rollover Loans have not been exchanged for unsecured, senior exchange notes of the Borrower as provided in Annex II-C, they may be prepaid at the option of the Borrower, in whole or in part, at any time, together with accrued and unpaid interest to the prepayment date (but without premium or penalty).

Conditions Precedent to Rollover:	The ability of the Borrower to refinance any Bridge Loans with Rollover Loans is subject to the following conditions being satisfied: (i) at the time of any such refinancing, there shall exist no Event of Default or event that, with notice and/or lapse of time, could become an Event of Default; (ii) all fees due to the Bridge Lead Arrangers and the Initial Bridge Lenders shall have been paid in full; (iii) the Bridge Lenders shall have received promissory notes evidencing the Rollover Loans (if requested) and such other documentation as shall be set forth in the loan documents; and (iv) no order, decree, injunction or judgment enjoining any such refinancing shall be in effect.
Assignments and Participations:	The Bridge Lenders shall have the right to assign their interest in any Rollover Loans in whole or in part in compliance with applicable law to any third parties. The Bridge Lenders will be permitted to sell participations with voting rights limited to significant matters such as changes in amount, rate and maturity date.
Rollover Covenants:	From and after the Rollover Date, the covenants applicable to the Rollover Loans will conform to those applicable to the Exchange Notes, except for covenants relating to the obligation of the Borrower to refinance the Rollover Loans and others to be agreed.
Governing Law:	New York.
Expenses:	Same as the Bridge Loans.
Fees:	As provided in the Fee Letter.

Annex II-B-2

ANNEX II-C

SUMMARY OF TERMS AND CONDITIONS
$750.0 MILLION SENIOR EXCHANGE NOTES

Capitalized terms not otherwise defined herein have the same meanings as specified therefor in the Commitment Letter to which this Annex II-C is attached.

Borrower:	Same Borrower as in Senior Financing Summary of Terms and Bridge Summary of Terms.
Guarantors:	Same Guarantors as in Senior Financing Summary of Terms and Bridge Summary of Terms.
Ranking:	Same as Bridge Loans.
Exchange Notes:	At any time on or after the Rollover Date, Rollover Loans due to any Bridge Lender may, at the option of such Bridge Lender, be exchanged for an equal principal amount of unsecured, senior exchange notes of the Borrower (the "***Exchange Notes***"). The Borrower will issue the Exchange Notes under an indenture that complies with the Trust Indenture Act of 1939, as amended (the "***Indenture***"). The Borrower will appoint a trustee reasonably acceptable to the holders of the Exchange Notes. The Indenture will be in substantially the form attached as an exhibit to the definitive agreement for the Bridge Facility. The Indenture will include provisions customary for an indenture governing publicly traded high yield debt securities, but with covenants that are more restrictive in certain respects. Except as expressly set forth above, the Exchange Notes shall have the same terms as the Rollover Loans.
Interest Rate Redemption Provision:	Each Exchange Note will initially bear interest at the rate in effect on the Rollover Loans for which it is exchanged and, thereafter, the interest rate on the Exchange Notes shall be determined in the same manner as set forth in Annex II-B with respect to the Rollover Loans. For so long as they bear interest at an increasing rate of interest, the Exchange Notes will be redeemable at the option of the Borrower, in whole or in part at any time, at par plus accrued and unpaid interest to the redemption date. Each holder of Exchange Notes shall have the option to fix the interest rate on the Exchange Notes to a rate that is equal to the then applicable rate of interest borne by the Exchange Notes (but in no event in excess of the Cap). In such event, such Exchange Notes will be non-callable until the fourth anniversary of the Closing Date and will be callable thereafter at

	par plus accrued interest plus a premium equal to one-half of the coupon in effect on the date on which the interest rate was fixed, declining ratably to par on the date that is one year prior to maturity of the Exchange Notes. The Exchange Notes will provide for mandatory repurchase offers customary for publicly traded high yield debt securities.
Registration Rights:	Within 270 days after the Closing Date the Borrower shall file a shelf registration statement with the Securities and Exchange Commission and the Borrower shall use its commercially reasonable efforts to cause such shelf registration statement to be declared effective by the Bridge Loan Maturity Date and keep such shelf registration statement effective, with respect to resales of the Exchange Notes, for as long as it is required by the holders to resell the Exchange Notes. Upon failure to comply with the requirements of the registration rights agreement (a "***Registration Default***"), the Borrower shall pay liquidated damages to each holder of Exchange Notes with respect to the first 90-day period immediately following the occurrence of the first Registration Default in an amount equal to one-half of one percent (0.50%) per annum on the principal amount of Exchange Notes held by such holder. The amount of the liquidated damages will increase by an additional one-half of one percent (0.50%) per annum on the principal amount of Exchange Notes with respect to each subsequent 90-day period until all Registration Defaults have been cured, up to a maximum amount of liquidated damages for all Registration Defaults of 1.5% per annum.
Governing Law:	New York.

ANNEX III

CONDITIONS PRECEDENT TO CLOSING
$1.950 BILLION SENIOR CREDIT FACILITIES
$750.0 MILLION SENIOR BRIDGE FACILITY

Capitalized terms not otherwise defined herein have the same meanings as specified therefor in the Commitment Letter to which this Annex III is attached.

The commitments of Bank of America and Scotiabank in respect of the Senior Credit Facilities, the commitment of Banc of America Bridge and Scotiabank in respect of the Bridge Facility and the undertaking of BAS and Scotia Capital to provide the services described herein are subject to the satisfaction of each of the following conditions precedent and each of the other conditions precedent set forth in this Annex III: (a) in the case of the Senior Credit Facilities and the Bridge Facility, respectively, you shall have accepted the separate fee letter addressed to you dated the date hereof from the Committing Parties (the "***Fee Letter***") as provided therein for the Senior Credit Facilities, the Bridge Facility, or both Facilities, as the case may be; and you shall have paid, or caused the Companies to pay, all applicable reasonable and invoiced fees and expenses (including the reasonable and invoiced fees and disbursements of counsel) that are due thereunder; (b) in the case of the Bridge Facility, you shall have accepted the Engagement Letter; and thereafter the Engagement Letter shall remain in full force and effect; (c) the negotiation, execution and delivery of definitive documentation with respect to each such Facility consistent with the terms and conditions of the applicable Summary of Terms and otherwise reasonably satisfactory to the Lead Arrangers and the Lenders under such Facility; (d) prior to and during the syndication of the Facilities, there shall be no offering, placement or arrangement of any debt securities or bank financing by or on behalf of any of the Companies or any of their affiliates (other than the Senior Notes, the A/R Facility (if any) and operating facilities, lines of credit pooling activity, guarantees, capital leases, derivatives, letters of credit, discounting of accounts receivable by foreign subsidiaries, defeased indebtedness, and other indebtedness that did not exceed $40 million in the aggregate as of June 30, 2008, in each case as disclosed as part of the Pre-Commitment Information, and replacements and other modifications thereof in the ordinary course of business and consistent with past practice and other unsecured indebtedness not to exceed $20,000,000 in the aggregate, in each case so long as the same are not syndicated and do not breach Section 5.01(b) of the Acquisition Agreement (the "***Borrower Existing Indebtedness***")) and (e) none of Bank of America, Banc of America Bridge, BAS or Scotiabank becoming aware after the date hereof of any information, or any event, development or change relating to the Companies that, in our reasonable judgment, is inconsistent in a material and adverse manner with any information or other matter (other than Projections in respect of the Companies and any matter relating to financial models and forward-looking underlying assumptions relating to such Projections) disclosed to us by the Borrower prior to the date hereof.

In addition, the closing and the initial extension of credit under the Senior Credit Facilities and the extension of the Bridge Loans under the Bridge Facility will be subject to the following:

(i) Reference is made to the certain Agreement and Plan of Merger among the Borrower, Ashland Sub One Inc. and Hercules Incorporated of even date herewith (collectively with all schedules and exhibits thereto, and as modified pursuant to the immediately following sentence, the "***Acquisition Agreement***"). The Acquisition Agreement shall not have been altered, amended or otherwise changed or supplemented or any condition therein consented to or waived without the prior written consent of the Lenders (other than a waiver by the Acquired Business of the condition set forth in Section 7.03(c) of the Acquisition Agreement and other than any other such alterations, amendments, changes, supplements, consents or waivers that are not materially adverse individually or in the aggregate to the interests of the Lead Arrangers or Lenders). The Acquisition shall have been consummated in accordance with the terms of the Acquisition Agreement, as its provisions may from time to time have been altered, amended, changed, supplemented, consented to or waived in accordance with the immediately preceding sentence. All principal, interest and other amounts outstanding in connection with existing debt of the Companies that is material, individually or in the aggregate, shall have been paid in full and any liens securing such debt shall be released, except for (i) in the case of the Acquired Business and its subsidiaries, (a) the 6.50% junior subordinated deferrable interest debentures due 2029 in an aggregate par value of approximately $282,000,000; (b) interest rate and currency hedge exposure aggregating (if it were to be terminated on the date hereof) approximately $175,000,000, some of which may, at the option of certain of the respective counterparties thereto, be due and payable following the Acquisition; (c) reimbursement obligations in respect of letters of credit in the aggregate amount of approximately $50,000,000 as of the date hereof (which will be backstopped or rolled over as part of the rolledover or backstopped L/Cs as set forth in Annex I); (d) indebtedness for borrowed money of foreign subsidiaries of the Acquired Business in the aggregate principal amount of approximately $74,000,000 as of June 30, 2008; and (e) other debt incurred by the Acquired Business after the date hereof pursuant and subject to Section 5.01(a) of the Acquisition Agreement (it being understood for the avoidance of doubt that the Acquired Business' accounts receivables facility will be terminated as of the Closing Date) and (ii) in the case of the Borrower and its subsidiaries, the Borrower Existing Indebtedness (other than its existing revolving credit facility, which shall be repaid and terminated in full prior to or concurrently with the closing) ((i) and (ii) collectively, the "***Indebtedness to Remain Outstanding***"). Since the date of this Commitment Letter, there shall not have been any Event (as defined below) that, individually or in the aggregate, is having or would reasonably be expected to have a Material Adverse Effect on the Acquired Business. "***Material Adverse Effect***" means any change, effect, event, occurrence, state of facts or development (an "***Event***") that materially adversely affects the business, financial condition, or annual results of operations of the Acquired Business and its Subsidiaries (as defined in the Acquisition Agreement), taken as a whole; provided, however, that a "Material Adverse Effect" shall not include any Events directly or indirectly resulting from: (i) changes or conditions generally affecting the businesses or industries in which the Acquired Business and its Subsidiaries operate, to the extent such changes or conditions do not materially and disproportionately impact the Acquired Business and its Subsidiaries, taken as a whole, (ii) changes or conditions in U.S., European, Asian or Latin American or global, international, or general economic, regulatory, or political conditions (including calamities, the outbreak or escalation of hostilities or acts of war or terrorism), to the extent such conditions do not materially and disproportionately impact the Acquired Business and its Subsidiaries, taken as a whole, (iii) changes or conditions generally affecting the financial, securities or credit markets,

(iv) any failure, in and of itself, by the Acquired Business to meet any projections, forecasts, revenue or earnings estimates for any period ending on or after the date of this Commitment Letter (it being understood that the facts or occurrences giving rise to or contributing to such failure that are not otherwise excludable may be deemed to constitute, or be taken into account in determining whether there has been or will be, a Material Adverse Effect), (v) the public announcement, pendency, execution, delivery or existence of the Acquisition Agreement, the Acquisition and the other Transactions, including the Acquired Business' compliance with the Acquisition Agreement and the impact of the Acquisition Agreement, the Acquisition and the other Transactions on the relationships of the Acquired Business with its employees, independent contractors, customers, suppliers, licensors, licensees, distributors, Governmental Entities (as defined in the Acquisition Agreement) and other third parties with whom the Acquired Business has business dealings, (vi) changes in GAAP (as defined in the Acquisition Agreement), Applicable Law (as defined in the Acquisition Agreement) or accounting standards (or interpretations thereof) or accounting estimates of existing contingent liabilities under GAAP, (vii) any changes in the market price or trading volume of the Company Common Stock (as defined in the Acquisition Agreement) (it being understood that the facts or occurrences giving rise to or contributing to such changes in market price or trading volume that are not otherwise excludable may be deemed to constitute, or be taken into account in determining whether there has been or will be, a Material Adverse Effect), (viii) any litigation arising from allegations of a breach of fiduciary duty relating to the Acquisition Agreement or the Acquisition and the other Transactions or (ix) changes in any analyst's recommendations, any corporate default or equivalent credit ratings (whether by Moody's, Standard & Poor's or other recognized credit rating agencies) or any other recommendations or ratings as to the Acquired Business or its Subsidiaries (including, in and of itself, any failure to meet analyst projections).

(ii) The Administrative Agent under each Facility shall have received (a) satisfactory opinions of counsel to the Borrower and the Guarantors (which shall cover, among other things, authority, legality, validity, binding effect and enforceability of the documents for such Facility and, in the case of the Senior Credit Facilities, creation and perfection of the liens granted thereunder on the Collateral, and in each case subject to customary and reasonable assumptions, qualifications and limitations) and of appropriate local counsel and such corporate resolutions, certificates and other documents as such Administrative Agent shall reasonably require and (b) satisfactory evidence that in the case of the Senior Credit Facilities, the Administrative Agent (on behalf of the Senior Lenders) shall have a valid and perfected first priority lien and security interest in such capital stock and in the other Collateral as provided in Annex I to the Commitment Letter. In the case of the Senior Credit Facilities, all filings, recordations and searches necessary or reasonably desirable in connection with the liens and security interests in the Collateral shall have been duly made; all filing and recording fees and taxes shall have been duly paid and any surveys, title insurance, landlord waivers or access letters (if obtainable through the Companies' commercially reasonable efforts and only with respect to locations containing material amounts of tangible Collateral) requested by the Administrative Agent with respect to real property interests of the Borrower and its subsidiaries shall have been obtained. The Administrative Agent shall have received evidence of the Borrower's and the Guarantors' compliance with the insurance requirements of the loan documentation, and the Administrative Agent shall have received endorsements naming the Administrative Agent, on behalf of the Senior Lenders, as an additional insured or loss payee, as the case may be, under all insurance policies to be maintained with respect to the properties of the Borrower and the Guarantors forming part of the Collateral. All loans made by the Lenders to the Borrower or any of its affiliates shall be in full compliance with the Federal Reserve's regulations.

(iii) The Lead Arrangers and the Lenders shall have received: (A) audited consolidated financial statements of the Borrower and its Subsidiaries for the three fiscal years most recently ending at least 60 days prior to the Acquisition, unaudited consolidated financial statements of the Companies for any interim monthly periods ending at least 20 days prior to the Acquisition and quarterly periods ending at least 35 days prior to the Acquisition, and pro forma financial statements as to the Companies giving effect to the Transaction for the most recently completed fiscal year, the period commencing with the end of the most recently completed fiscal year and ending with the most recently completed month and the most recently completed twelve month period, which in each case, (1) shall be satisfactory in form and substance to the Lead Arrangers, (2) shall not be materially inconsistent with the Pre-Commitment Information, and (3) shall meet the requirements of Regulation S-X under the Securities Act of 1933, as amended, and all other accounting rules and regulations of the SEC promulgated thereunder applicable to a registration statement under such Act on Form S-1; (B) audited consolidated financial statements of the Acquired Business and its Subsidiaries for the three fiscal years ended most recently ending at least 60 days prior to the Acquisition, unaudited consolidated financial statements of the Companies for any interim monthly periods ending at least 20 days prior to the Acquisition and quarterly periods ending at least 35 days prior to the Acquisition, which in each case, (1) shall be satisfactory in form and substance to the Lead Arrangers and the Lenders, (2) shall not be materially inconsistent with the Pre-Commitment Information, and (3) shall meet the requirements of Regulation S-X under the Securities Act of 1933, as amended, and all other accounting rules and regulations of the SEC promulgated thereunder applicable to a registration statement under such Act on Form S-1; (C) forecasts prepared by management of the Companies, each in form satisfactory to the Lead Arrangers and the Lenders, of balance sheets, income statements and cash flow statements for each quarter for the first four quarters following the Closing Date and for each of the first five years following the Closing Date commencing with the first fiscal year following the Closing Date; (D) the pro forma financial statements delivered pursuant to clauses (A) and (B) above and the forecasts delivered pursuant to clause (C) above shall be prepared in good faith and on the basis of the assumptions that are stated therein, which assumptions are fair in light of the then existing conditions or, to the extent including projections or forward-looking information, in accordance with the representations and warranties of the Borrower in clauses (a) and (b) of Section 3 of the Commitment Letter, and, in the case of each of (1), (2) and (3) above, the chief financial officer of the Borrower shall have provided the Lead Arrangers a written certification to that effect and (E) copies of written certifications from the chief executive officer and chief financial officer of the Borrower that are required to be issued by Section 906 and Section 302 of the Sarbanes-Oxley Act of 2002.

(iv) Each of the Senior Credit Facilities, the Bridge Facility and the Senior Notes shall have received ratings from Moody's and S&P at least 30 days prior to the Closing Date.

(v) The Companies shall have complied in all material respects with all of the terms of the Fee Letter, including, without limitation, Section 2 thereof, and, if the Commitment Letter shall have been accepted as to the Bridge Facility, the Engagement Letter to be complied with on or before such date. All accrued reasonable and invoiced fees and expenses of the Administrative Agent, the Senior Lead Arrangers, the Bridge Lead Arrangers and the Lenders

(including the reasonable and invoiced fees and expenses of Cahill Gordon & Reindel LLP, counsel for the Administrative Agent and the Lead Arrangers and local counsel for the Administrative Agent) then invoiced shall have been paid.

(vi) In the case of the Senior Credit Facilities, the Administrative Agent shall have received satisfactory evidence of receipt by the Borrower of not less than $750.0 million cash proceeds from the advance of the Bridge Loans or the issuance by the Borrower of the Senior Notes; and, in the case of the Bridge Facility, the Lead Arrangers shall have received evidence satisfactory to the Lead Arrangers that all other conditions to commitments of the Senior Lenders under the Senior Credit Facilities have been satisfied, in each of the foregoing cases, subject to any re-allocation of amounts permitted under Section 3 of the Fee Letter.

(vii) In the case of the Bridge Facility, (A) not later than 30 days prior to the Closing Date, the Companies shall have completed and made available to the Lead Arrangers and potential investors copies of an offering memorandum for the offer and sale of the Senior Notes pursuant to Rule 144A of the rules and regulations under the Securities Act containing such disclosures as may be required by applicable laws, as are customary and appropriate for such a document or as may be reasonably required by the Lead Arrangers (including all audited, pro forma and other financial statements and schedules of the Companies of the type that would be required in a registered public offering of the Senior Notes on Form S-1 and including commercially reasonable efforts to deliver a customary "comfort letter" from the independent public accountants for the Companies in form and substance satisfactory to the Lead Arrangers), (B) senior management and officers of the Borrower shall have made themselves available (subject to the reasonable notice and scheduling) for due diligence and a road show and other meetings with potential investors for the Senior Notes as required by the Lead Arrangers in their reasonable judgment to market the Senior Notes and (C) the Borrower shall have used commercially reasonable efforts to cause the senior management and officers of the Acquired Business to make themselves available (subject to the reasonable notice and scheduling) for due diligence and a road show and other meetings with potential investors for the Senior Notes as required by the Lead Arrangers in their reasonable judgment to market the Senior Notes.

(viii) (A) With respect to the Acquired Business and its subsidiaries (immediately prior to giving effect to the Acquisition), the representations and warranties with respect to the Acquired Business and its subsidiaries shall be true and correct to the extent required by the condition set forth in Section 7.02(a) of the Acquisition Agreement;

(B) with respect to the Acquired Business and its Subsidiaries (immediately after giving effect to the Acquisition), the following representations and warranties shall in each case be true and correct in all material respects: (1) corporate power and authority, due execution, delivery and enforceability of the loan documentation, (2) no material violation of law, material contracts (with material contracts of the Acquired Business being those set forth in the schedules to the Acquisition Agreement) or organizational documents, (3) Federal Reserve margin regulations and the Investment Company Act and (4) perfected liens, security interests and charges in favor of the Administrative Agent;

(C) with respect to the Borrower and its subsidiaries (excluding subsidiaries acquired as part of the Acquisition), the representations and warranties in the loan documentation in respect

of (1) perfected liens, security interests and charges in favor of the Administrative Agent and (2) corporate status (7.01), corporate power and authority, enforceability (7.05), no violation of law, contracts or organizational documents (7.04), disclosure (but without representation of no material adverse change) (7.10), no material litigation (7.03), accuracy and completeness of specified financial statements and other information (but without representation of no material adverse change) (7.02), no required governmental (including without limitation exchange control) or third party approvals or consents (7.06), use of proceeds/compliance with margin regulations (7.07), status under Investment Company Act (7.11), ERISA matters (7.08), environmental matters (7.14), tax status and payment of taxes (7.09), defaults (7.13), insurance (7.15) and reportable transactions (7.16) shall be true and correct in all material respects; provided, however, that in the event of any inaccuracy in any material respect of any representations and warranties listed in this subclause (2) the Borrower shall be permitted to satisfy the requirement in respect of such representations and warranties (each a "Subject Rep") if in each case the corresponding representation and warranty contained in the section of the Revolving Agreement referenced in the parenthetical adjacent to the Subject Rep above can be made by the Borrower true and correct in all material respects (for the purposes of this clause (viii) only, without giving effect to any termination of the Revolving Agreement occurring on or before the Closing Date); and

(D) no default or event of default shall have occurred and be continuing under any of clauses (i), (v) and (vii) (limited to assertions by a Company) of Events of Default; and no event of default shall have occurred and be continuing under any of the other clauses thereof.

As used herein, the term "Revolving Agreement" shall mean the Credit Agreement dated as of April 9, 2007 among the Borrower, The Bank of Nova Scotia, as administrative agent, a joint lead arranger and book manager, Bank of America, N.A., as syndication agent, SunTrust Bank, Inc., JP Morgan Chase Bank, N.A. and Citibank, N.A., collectively as co-documentation agents, Banc of America Securities LLC as a joint lead arranger and the lenders party thereto, as in effect on the date hereof and as hereafter modified, but only so long as no such modification is materially adverse to the interests of the Lead Arrangers or Lenders. For the purpose of determining compliance with the foregoing, (I) the audited consolidated balance sheet and statements of income, common stockholders equity and cash flows and the unaudited consolidated balance and statements of income, common stockholders equity and cash flows referred to in Section 7.02 of the Revolving Agreement shall be deemed to refer to the most recent audited consolidated balance sheet and statements of income, common stockholders equity and cash flows and unaudited consolidated balance sheet and statements of income, common stockholders equity and cash flows, respectively, delivered to the Lead Arrangers, (II) the following defined terms used in the Revolving Agreement shall be deemed to refer to the equivalent defined term under the loan documentation: Consolidated, Lenders, Agreement, Notes, Effective Date, Loans, Letters of Credit, Majority Lenders, Default, Property and (III) other appropriate conforming changes to the loan documentation may be indicated as the parties may reasonably agree.

ANNEX IV
SUMMARY OF TERMS AND CONDITIONS
$200.0 MILLION ACCOUNTS
RECEIVABLE FACILITY

Borrower/Servicer/ Seller:	Certain Subsidiaries of Ashland Incorporated.
Issuer:	A bankruptcy remote SPE of the Seller.
Term of Facility:	364-days, expected (but not required) to be renewed annually.
Concentration Limits:	To be applied to obligors using standard rating agency methodology.
Eligible Receivables:	Standard eligibility criteria for such transactions.
Required Reserves:	Comprised of reserves for portfolio losses, dilution, yield and servicing.
Servicer Defaults:	Usual and customary for transactions of this nature.
Termination Events:	Customary for transactions of this nature.

EXPLO SYSTEMS INC.
ENCLOSURE C
DRAFT ADMINISTRATIVE ORDER ON CONSENT
DRAFT STATEMENT OF WORK

November 2013 DRAFT

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

IN THE MATTER OF:	)	**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION**
The Explo Systems Inc. Site	)	
General Dynamics-Ordnance and Tactical Systems, Ashland, Inc. and Alliant Techsystems, Inc.	)	U.S. EPA Region 6 CERCLA Docket No. ____
Respondents.	)	Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622)

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTIONS

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA"), Ashland, Inc., General Dynamics – Ordnance and Tactical Systems ("GD-OTS"), and Alliant Techsystems, Inc. ("ATK or Alliant"). These parties are collectively referred to as "Respondents" throughout this Settlement Agreement. EPA plans to address the United States Department of Army under authorities other than CERCLA. This Settlement Agreement provides for the performance of a removal action by Respondents and the payment of certain response costs incurred by the United States at or in connection with the "Explo Systems, Inc. Site" (the "Site") located at the Louisiana Army Ammunition Plant, renamed to Camp Minden under a January 1, 2005, property transfer. The Site is located in the northwestern corner of the State of Louisiana, in Webster Parish, near the town of Doyline.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 ("CERCLA").

3. EPA has notified the State Louisiana (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV (Findings of Fact) and V (Conclusions of Law and Determinations) of this Settlement Agreement. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement is binding upon EPA, and upon Respondents and their heirs, successors, and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement Agreement.

6. Respondents are jointly and severally liable for carrying out all activities required by this Settlement Agreement. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement Agreement, the remaining Respondents shall complete all such requirements.

7. Respondents shall provide a copy of this Settlement Agreement to each contractor hired to perform the Work required by this Order and to each person representing any Respondents with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. Respondents or their contractors shall provide written notice of the Order to all subcontractors hired to perform any portion of the Work required by this Order. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Order.

III. DEFINITIONS

8. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or its attached appendices, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall mean the effective date of this Settlement Agreement as provided in Section XXX.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"LDEQ" shall mean the Louisiana Department of Environmental Quality and any successor departments or agencies of the State.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, and other deliverables pursuant to this Settlement Agreement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, Section IX (Access), Section XIII (Emergency Response and Notification of Releases), Paragraph 63 (Work Takeover), and the costs incurred by the United States in enforcing the terms of this Settlement Agreement, including all costs incurred in connection with Dispute Resolution pursuant to Section XV (Dispute Resolution) and all litigation

costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry ("ATSDR") costs regarding the Site.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.[1]

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean EPA and Respondents.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with this Site through September 30, 2013, plus interest on all such costs through such date.

"Post-Removal Site Control" shall mean actions necessary to ensure the effectiveness and integrity of the removal action consistent with Sections 300.415(*l*) and 300.5 of the NCP and "Policy on Management of Post-Removal Site Control" (OSWER Directive No. 9360.2-02, Dec. 3, 1990).

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"Respondents" shall mean Ashland, Inc., General Dynamics – Ordnance and Tactical Systems ("GD-OTS"), and Alliant Techsystems, Inc. ("ATK or Alliant").

"Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

"Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXIX - Integration/Appendices). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

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[1] The Superfund currently is invested in 52-week MK notes. The interest rate for these MK notes changes on October 1 of each year. Current and historical rates are available online at http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm.

"Site" shall mean the Explo Systems, Inc. Site" (the "Site") located on the Louisiana Army Ammunition Plant, renamed to Camp Minden under a January 1, 2005, property agreement transfer. The Site is located in the northwestern corner of the State of Louisiana, in Webster Parish, near the town of Doyline.

"State" shall mean the State of Louisiana.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the removal action, as set forth in Appendix A 1, and any modifications made thereto in accordance with this Settlement Agreement. The Statement of Work is incorporated into this Order and is an enforceable part of this Order as are any modifications made thereto in accordance with this Order.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); and (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

"Work" shall mean all activities and obligations Respondents are required to perform under this Settlement Agreement except those required by Section XI (Record Retention).

IV. FINDINGS OF FACT

9. The following information addresses the facts and circumstances surrounding the contamination and endangerment at the Explo Systems, Inc. Site.

a. The Explo Systems, Inc. Site ("Site") is located on approximately 132 acres of Camp Minden, Louisiana. Camp Minden includes approximately 14,995 acres, and was formerly known as the Louisiana Army Ammunition Plant ("LAAP"). LAAP's primary function was to produce, assemble, load, and pack ammunitions. Burning and demolition activities were also performed to destroy explosives and explosive wastes generated by manufacturing of munitions. The above activities resulted in LAAP's placement on the National Priorities List in March 1989.

b. On January 1, 2005, the United States Army ("Army") transferred ownership of the Louisiana Army Ammunition Plant to the State of Louisiana Military Dept./National Guard ("LM/NG"), and the property was re-named Camp Minden, Louisiana. As owner of the Site property, LM/NG entered into leasing agreements with Explo Systems, Inc. ("Explo"), which allowed Explo to use the Site property and approximately 100 magazines/buildings. Explo utilized the Site property, magazines and buildings to perform activities required under demilitarization and disposal contracts (i.e., November 16, 2006 and March 24, 2010 contracts) Explo entered into with the Army. Under the March 24, 2010, contract the Army agreed to pay Explo $2,902,500 for the demilitarization of artillery

155MM propelling charges. The contract price increased to $8,684,722.25 on March 8, 2012, to account for the additional 155MM propelling charges demilitarization work performed by Explo.

c. On October 15, 2012, an explosion of a magazine and a box van trailer containing black powder occurred at the Explo Site. The explosion of the magazine containing 124,190 of smokeless powder and trailer containing 42,240 pounds of M6 propellant completely destroyed the magazine and the trailer. The explosion shattered windows in Minden, La. located approximately four miles northeast of the Site, and produced a 7,000 foot mushroom cloud. As a result of the violations observed during inspection of the explosion, the Louisiana State Police ("LSP") served a search warrant on Explo Systems, Inc. The search warrant was executed on November 27, 2012. During the search, LSP identified 9-10 million pounds of unsecured and improperly stored M6 propellant. The M6 propellant in 60 pound cardboard boxes, 140 drums, and 880 pound super sacks throughout Site buildings, hallways, and outside where is was exposed to the elements including heat which reduces the propellant stabilizers. From November 30, 2012 through December 7, 2012, people from the town of Doyline, Louisiana (i.e., approximately 400 homes) were voluntarily evacuated due to the risk of explosion from the M6 propellant, and its unsafe proximity to the human population residing in Doyline, Louisiana. From November 28, 2012, through May 2013, the LSP and Explo secured and stored the M6 propellant in magazines at the Site. Some of the magazines where the M6 propellant was stored were not subject to the lease agreements between the LM/NG and Explo.

d. Additional investigation of the Explo Site revealed the improper storage of other materials, in addition to the M6 propellant. For example, the Army's Explosives Safety Board 2013 safety reviews show the materials stored at the Site include: 1) 128 pounds of black powder; 2) 200 pounds of Composition H6; 3) four 50-gallon drums of ammonium perchlorate;4) two 50-gallon drums and 150 pound boxes of Explosive D (ammonium picrate); 5) 109,000 pounds of M30 propellant; 6) 320,000 pounds of Clean Burning Incendiary (CBI); 7) 661,000 pounds of nitrocellulose; 8) 2.1 million pounds of tritonal mixed with wax/tar; and 9) 15 million pounds of M6 propellant. Some of the chemicals included in the above materials include trinitrotoluene, aluminum, 2-methy-1,3,5- trinitrobenzene, dinitrotoluene, dibutylphthalate, diphenylamine, nitroglycerin, nitroguanidine, centralite, and graphite. The materials listed above are known to be highly reactive according to material safety data sheets. Incompatible hazardous materials are stored in close proximity to one another. There is no stability monitoring program in place for the M6 propellant and other explosives at the Site. Due to the deterioration of stabilizers in the M6 propellant and other explosives over time, the risk of auto-ignition increases as the explosives age.

e. Site investigations also show that Explo Systems Inc. utilized Site property and buildings to perform sub-contract work required under the Demilitarization and Disposal Purchase Order Agreements (i.e., September 11, 2011, December 2012 and January 17, 2013) between Explo and General Dynamics-OTS ("GD-OTS"). GD-OTS served as the primary 2contractor under August 18, 2005, and March 17, 2011, demilitarization and disposal contracts between GD-OTS and the Army. Pursuant to work required under such agreements, M30 propellant and bombs containing tritonal (aluminum/TNT mixture) were sent to the Explo Site.

The M30 propellant and tritonal contain some of the chemicals (e.g., nitrocellulose, nitroglycerin, and nitroguanidine) listed in item 9.d. Explo also utilized Site property and buildings to perform sub-contract work for Alliant Techsystems, Inc ("ATK or Alliant"). Alliant and the U.S. Army entered into a September 12, 2003 contract requiring Alliant to supply the U.S. Army with trinitrotoluene ("TNT") reclaimed from the tritonal included bombs over a 5-year period. The above contract identifies Explo as a subcontractor who reclaimed TNT from the tritonal included in the bombs. Explo's agreements (i.e., July 24, 2002, May 6, 2010) with Alliant also resulted in the shipment of nitrocellulose to the Site. Explo's agreements with Hercules (i.e., acquired by Ashland Inc.) also resulted in the shipment of nitrocellulose at the Site.

f. Site investigations show that the hazardous materials at the Site present a significant risk of an explosion, and injury to workers and residents near the Site. The investigations show that due to the handling and unknown storage conditions of the materials, lot integrity/identity has been compromised and the stability of the materials cannot be guaranteed per the Army's Propellant Management Guide. According to hazardous materials explosiveness standards (U.S. Army Supply Bulletin: Inspection of Supplies and Equipment, Ammunition Surveillance Procedures -SB-742-1), materials stability tested as Level C and Level D have stability concerns. Level D tested materials should be disposed of immediately as they present a significant risk of explosion. In addition, materials such as nitrocellulose have the ability to auto-ignite due to the degradation/aging process which leads to the loss of stabilizers over time. As such, the conditions at the Site and preponderant evidence show that an explosion will likely occur if the materials are not addressed in the near-term. During an August 1, 2013, meeting a DOD explosives expert stated that the likelihood of a magazine explosion increased within the next 2 through 10 years due to stability concerns including the loss of lot integrity and identity, and improper storage exposing the explosives to heat and moisture. Due to the volume of explosive and hazardous materials, the unknown stability of such materials, the incompatible storage of such materials, and the unsafe proximity to human populations, there is a significant threat of an explosion and injury for workers at the Site, and residents of the town of Decline, Louisiana. On September 6, 2013, the Louisiana Governor declared the Site a state of emergency due to the 18 million pounds of M6 propellant and other explosives stored at the Site, and the safety risks presented to the citizens and property of the State of Louisiana.

g. Due to the handling and storage conditions of the hazardous materials described above, and the threat of explosion and injury to Site workers on-site and nearby residents, the LSP commenced license revocation proceedings against Explo Systems, Inc. on May 20, 2013. The LM/NG commenced eviction proceedings against Explo Systems, Inc. for delinquent rent and expenses on July 22, 2013. In addition, the United States Alcohol, Tobacco, and Firearms Bureau (ATF) issued a notice of license revocation on August 5, 2013, due to a criminal indictment pending against Explo, and the improper storage of explosives at the Site. The Webster Parish, Louisiana, District Attorney's Office issued a criminal indictment against several of Explo's executives and officers on June 10, 2013, and the criminal action is proceeding towards trial.

h. On August 12, 2013, Explo filed for Chapter 11 bankruptcy in the United States Bankruptcy Court, Western District of Louisiana, Shreveport Division, Case No.13-12046. On September 23, 2013, the U.S. Bankruptcy Court granted the Louisiana State Department of Public Safety and Louisiana Military Dept./National Guard's motion to take possession of and confiscate all of Explo's explosives located at Camp Minden, and possession of all leased premises and premises where the explosives were stored. The Bankruptcy Court terminated all leases between Explo and the Louisiana Military Depart./National Guard. On September 30, 2013, the Bankruptcy Court transferred title and ownership of the M6 and other explosives stored at Camp Minden, La., to the Louisiana Military Department. The Louisiana National Guard ("LNG") is the component of the Louisiana Military Dept. responsible for the Site's management and activities.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

10. Based on the Findings of Fact set forth above, and the administrative record, EPA has determined that:

a. The Explo Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site.

(1) Respondents Ashland Inc., General Dynamics-OTS, the U.S. Army, and Alliant Techsystems, Inc. arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

e. The conditions described in Paragraphs 9.c through 9.f of the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The removal action required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

11. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the administrative record, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

12. Respondents shall retain one or more contractors to perform the Work and shall notify EPA of the names and qualifications of such contractors within 10 days after the Effective Date. Respondents shall also notify EPA of the names and qualifications of any other contractors or subcontractors retained to perform the Work at least 7 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 7 days after EPA's disapproval. The proposed contractor must demonstrate compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by EPA.

13. Within 10 days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 7 days following EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by all Respondents.

14. EPA has designated Paige Delgado of the Response and Prevention Branch, as its On-Scene Coordinator ("OSC"). EPA and Respondents shall have the right, subject to Paragraph 13, to change their respective designated OSC or Project Coordinator. Respondents shall notify EPA 7 days before such a change is made. The initial notification by Respondents may be made orally, but shall be promptly followed by a written notice.

15. Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to the OSC at:

Paige Delgado
On-Scene Coordinator
United States Environmental Protection Agency
Response and Prevention Branch (6SF-RR)
1445 Ross Avenue
Dallas, Texas 75202-2733

Respondents shall submit 3 copies of all plans, reports, or other deliverables required by this Settlement Agreement, the Statement of Work ("SOW"), or any approved work plan. Upon request by EPA, Respondents shall submit such documents in electronic form. All data evidencing Site conditions shall be submitted to EPA in electronic form.

16. The OSC shall be responsible for overseeing Respondents' implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

VIII. WORK TO BE PERFORMED

17. Respondents shall perform, at a minimum, all actions necessary to implement the removal action as set for in the attached Statement of Work, and this Settlement Agreement. The actions to be implemented generally include, but are not limited to, the following:

a. Respondents shall conduct a removal action of the following hazardous substances, pollutants and contaminants currently stored at the Site to include: 1) 200 pounds of Composition H6; 2) 109,000 pounds of M30 propellant; 3) 661,000 pounds of nitrocellulose; 4) 1.817-2.2 million pounds of tritonal mixed with tar/aluminum and TNT mixture and 133,836 pounds of "tritonal and tar mixture."

b. In addition to on-site and off-site disposal options, the Respondents shall explore and propose any and all options for sale, recycling, and/or reuse for the materials listed above in Paragraph 17.a.

c. Respondents shall generate and provide a proposed work plan that includes, but is not limited to staffing requirements and limitations, travel/mobilization costs and requirements, necessary equipment as well as availability/limitations of necessary equipment required and available materials, proposed disposal/recycle/reuse methods, total and itemized cost, and duration for each phase (if applicable), and timeline/schedule.

d. Limitations concerning the volume to be disposed of should be accounted for when calculating the total cost and time required for disposal, recycling, or reusing the total volume of materials listed in 17.a. Potential limitations are:

- Minimum safe distance limitations on the maximum volume of material that can be disposed of at one time;

-Limitations due to the maximum volume of material that can be disposed of each day, due to maintenance of the disposal areas or other reasons;

-Permit and/or capacity requirements/limitations for volume and/or location of disposal; and

-Provide any other limitations, qualifications, assumptions that impact the implementation of the proposed work plan.

e. Respondents shall verify and provide the availability of licensed and experienced personnel that will be available. The proposed Work Plan shall reflect compliance with State and Federal statutory requirements. Respondents shall provide their process for ensuring compliance with State and Federal statutory requirements.

f. Respondents shall prepare a Spill and Emergency Response Contingency Plan - Respondents must implement the plan after approval by the OSC. The following items must be addressed in detail – (1) Response to spills or releases at and/or from the Site to address both the workers on-site and the public exposure, (2) Response analysis for conceivable occurrences (i.e. who and what will respond, alternative communication methods), (3) Call-down list for notification, (4) Coordination mechanism with State and local authorities.

g. Respondents shall propose achievable milestones by which to gauge the work performed (i.e., date to initiate action, date to complete the removal of 25%, 50%, 75% of the material, completion date for the removal of all materials listed in 17.a).

18. Work Plan and Implementation.

a. Within 14 days after the Effective Date, Respondents shall submit to EPA for approval a draft work plan for performing the removal action (the "Removal Work Plan") generally described in Paragraph 17 above. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Removal Work Plan in whole or in part. If EPA requires revisions, Respondents shall submit a revised draft Removal Work Plan within 7 days after receipt of EPA's notification of the required revisions. Respondents shall implement the Removal Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Removal Work Plan, the schedule, and any subsequent

modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Upon approval of the Removal Work Plan Respondents shall commence implementation of the Work in accordance with the schedule included therein. Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement.

d. Unless otherwise provided in this Settlement Agreement, any additional plans, reports, or other deliverables that require EPA approval under the SOW or Removal Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph.

19. Health and Safety Plan.

a. Within 14 days after the Effective Date, Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

20. Quality Assurance, Sampling, and Data Analysis.

a. Respondents shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA to Respondents of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

b. Prior to the commencement of any monitoring project under this Settlement Agreement, Respondents shall submit to EPA for approval, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, and the NCP. Respondents shall ensure that EPA and State regulator personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents in implementing this Settlement Agreement. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP. Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement Agreement perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory

Program (http://www.epa.gov/superfund/programs/clp/), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (http://www.epa.gov/ttnamti1/airtox.html)," and any amendments made thereto during the course of the implementation of this Settlement Agreement. However, upon approval by EPA, Respondents may use other appropriate analytical methods, as long as: (a) quality assurance/quality control ("QA/QC") criteria are contained in the methods and the methods are included in the QAPP, (b) the analytical methods are at least as stringent as the methods listed above, and (c) the methods have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondents shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement Agreement have a documented Quality System that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network ("ERLN") laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP"), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs (http://www.epa.gov/fem/accredit.htm) as meeting the Quality System requirements. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement Agreement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

c. Upon request, Respondents shall provide split or duplicate samples to EPA and the State regulators, or their authorized representatives. Respondents shall notify EPA and the State regulators not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Respondents split or duplicate samples of any samples it takes as part of EPA's oversight of Respondents' implementation of the Work.

d. Respondents shall submit to EPA the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondents with respect to the Site and/or the implementation of this Settlement Agreement unless EPA agrees otherwise.

e. Notwithstanding any provision of this Settlement Agreement, the United States retain all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes and regulations.

21. Post-Removal Site Control. In accordance with the Removal Work Plan schedule, or as otherwise directed by EPA, Respondents shall submit a proposal for Post-

Removal Site Control which shall include, but not be limited to: a) a Post-Site Control and Implementation Plan specifying the objectives, and who is responsible for implementation, monitoring, inspection, reporting and enforcement. Upon EPA approval, Respondents shall either conduct Post-Removal Site Control activities, or obtain a written commitment from another party for conduct of such activities, until such time as EPA determines that no further Post-Removal Site Control is necessary. Respondents shall provide EPA with documentation of all Post-Removal Site Control commitments.

22. Reporting.

a. Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every 14th day after the date of receipt of EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

23. Final Report. Within 21 days after completion of all Work required by this Settlement Agreement, Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports," and EPA Guidance (i.e., Superfund Removal Procedures: Removal Response Reporting – POLREPS and OSC Reports" - OSWER Directive No. 9360.3-03, June 1, 1994). The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of a Respondent or Respondents' Project Coordinator:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

24. Off-Site Shipments.

a. Respondents may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondents obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 200.440(b). Respondents may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if Respondents comply with EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992).

b. Respondents may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to the OSC. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondents also shall notify the state environmental official referenced above and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondents shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

IX. ACCESS

25. If the Site, or any other real property where access or land, water, or other resource use restrictions are needed, is owned or controlled by any Respondents:

a. Such Respondents shall, commencing on the Effective Date, provide the United States, the State regulators, and the other Respondents, and their representatives, contractors, and subcontractors, with access at all reasonable times to the Site, or such other real property, to conduct any activity regarding the Settlement Agreement including, but not limited to, the following activities:

1) Monitoring the Work;

2) Verifying any data or information submitted to EPA;

3) Conducting investigations regarding contamination at or near the Site;

4) Obtaining samples;

5) Assessing the need for, planning, or implementing additional response actions at or near the Site;

6) Assessing implementation of quality assurance and quality control practices as defined in the approved QAPP;

7) Implementing the Work pursuant to the conditions set forth in Paragraph 63 (Work Takeover);

8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents, consistent with Section X (Access to Information);

9) Assessing Respondents' compliance with the Settlement Agreement; and

10) Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement Agreement.

26. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 10 days after the Effective Date, or as otherwise specified in writing by the OSC. Respondents shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Section, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondents shall describe in writing their efforts to obtain access. EPA may assist Respondents in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate. Respondents shall reimburse EPA for all costs incurred, direct or indirect, by the United States in obtaining such access, including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation, in accordance with the procedures in Section XV (Payment of Response Costs).

27. Notwithstanding any provision of the Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

X. ACCESS TO INFORMATION

28. Respondents shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondents shall also make available to EPA, for purposes of investigation, information

gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

29. Privileged and Protected Claims.

a. Respondents may assert that all or part of a Record is privileged or protected as provided under federal law, provided they comply with Paragraph 29.b, and except as provided in Paragraph 29.c.

b. If Respondents assert such a privilege or protection, they shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, the Record shall be provided to EPA in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they claim to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents' favor.

c. Respondents may make no claim of privilege or protection regarding:

(1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidence conditions at or around the Site; or

(2) the portion of any Record that Respondents are required to create or generate pursuant to this Settlement Agreement.

30. Business Confidential Claims. Respondents may assert that all or part of a Record submitted to EPA under this Section or Section XI (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondents shall segregate and clearly identify all Records or parts thereof submitted under this Settlement Agreement for which Respondents assert business confidentiality claims. Records submitted to EPA determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Respondents that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondents.

31. Notwithstanding any provision of this Settlement Agreement, the United States retain all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. RECORD RETENTION

32. Until 10 years after the Effective Date, Respondents shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to their liability under CERCLA with regard to the Site, provided, however, that Respondents who are potentially liable as an owner or operator of the Site, must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that each Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

33. At the conclusion of the document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any Records, and, upon request from EPA, and except as provided in Paragraph 29, Respondents shall deliver any such records to EPA.

34. Each Respondent certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since the earlier of notification of potential liability by EPA or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

35. Respondents shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondents shall identify ARARs in the Removal Work Plan subject to EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

36. In the event any action or occurrence during performance of the Work causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate, or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Response and Prevention Branch, EPA Region 6, at 1-866-EPA-SPIL (or 1-866-372-7745), of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

37. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify the OSC at 1-866-EPA-SPIL (or 1-866-372-7745), and the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. PAYMENT OF RESPONSE COSTS

38.1 Payment for Past Response Costs.

a. Within 30 days after the Effective Date, Respondents shall pay to EPA $308,316.80 for Past Response Costs. Payment shall be made by Fedwire Electronic Funds Transfer ("EFT") to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

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and shall reference Site/Spill ID Number A6GH and the EPA docket number for this action. Respondents may note the availability to make payment by ACH. For ACH payment:

Payment by Respondents shall be made to EPA by Automated Clearinghouse ("ACH") to:

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

and shall reference Site/Spill ID Number A6GH and the EPA docket number for this action.

For online payment:

Payment shall be made at https://www.pay.gov to the U.S. EPA account in accordance with instructions to be provided to Respondents by EPA.

b. At the time of payment, Respondents shall send notice that payment has been made to:

Section Chief, Enforcement Assessment (6SF-TE)
U.S. EPA, Region 6
1445 Ross Ave., Suite 1200
Dallas, Texas 75202-2733

and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

c. The total amount to be paid by Respondents pursuant to Paragraph 38.1 shall be deposited by EPA in the Explo Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

38.2 Payments for Future Response Costs. Respondents shall pay EPA all Future Response Costs not inconsistent with the NCP.

a. On a periodic basis, EPA will send Respondents a bill requiring payment that includes a costs summary (standard cost accounting summary), which includes direct and

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indirect costs incurred by EPA, and its contractors, and the Department of Justice. Respondents shall make all payments within 30 days after receipt of each bill requiring payment, except as otherwise provided in Paragraph 40 of this Settlement Agreement.

b. Respondents shall make all payments required by this Paragraph to EPA by Fedwire Electronic Funds Transfer ("EFT") to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number A6GH and the EPA docket number for this action. Respondents may note the availability to make payment by ACH. For ACH payment:

Payment by Respondents shall be made to EPA by Automated Clearinghouse ("ACH") to:

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

and shall reference Site/Spill ID Number A6GH and the EPA docket number for this action.

For online payment:

Payment shall be made at https://www.pay.gov to the U.S. EPA account in accordance with instructions to be provided to Respondents by EPA.

c. At the time of payment, Respondents shall send notice that payment has been made to:

Section Chief, Enforcement Assessment (6SF-TE)
U.S. EPA, Region 6
1445 Ross Ave., Suite 1200
Dallas, Texas 75202-2733

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and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

d. The total amount to be paid by Respondents pursuant to Paragraph 38.2 shall be deposited by EPA in the Explo Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. Prepayment of Future Response Costs – PrePayment of Future Response Costs in the amount of $300,000, shall be made in accordance with this Paragraph. In lieu of paying future response costs in accordance with Paragraph 38.2 (a) – (d), the Respondents shall, within 30 days after the Effective Date, shall pay to EPA $300,000 as prepayment of Future Response Costs. Payment shall be made in accordance with Paragraph 38.1(a). The total amount shall be deposited by EPA in the Explo Site Future Response Costs Special Account. These funds shall be retained and used by EPA to conduct or finance response actions at or in connection with the Site.

f. On a periodic basis, EPA will send Respondents a bill requiring payment that includes a costs summary (standard cost accounting summary), which includes direct and indirect costs incurred by EPA, and its contractors, and the Department of Justice. Respondents shall make all payments within 30 days after receipt of each bill requiring payment, except as otherwise provided in Paragraph 40 of this Settlement Agreement.

Respondents shall make all payments required by this Paragraph [38.2(f)], to EPA by Fedwire Electronic Funds Transfer ("EFT") to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number A6GH and the EPA docket number for this action. Respondents may note the availability to make payment by ACH. For ACH payment:

Payment by Respondents shall be made to EPA by Automated Clearinghouse ("ACH") to:

PNC Bank

808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

and shall reference Site/Spill ID Number A6GH and the EPA docket number for this action.

For online payment:

Payment shall be made at https://www.pay.gov to the U.S. EPA account in accordance with instructions to be provided to Respondents by EPA.

At the time of payment, Respondents shall send notice that payment has been made to:

Section Chief, Enforcement Assessment (6SF-TE)
U.S. EPA, Region 6
1445 Ross Ave., Suite 1200
Dallas, Texas 75202-2733

and to the EPA Cincinnati Finance Office by email at accisreceivable.cinwd@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

g. After EPA issues the Notice of Completion of Work pursuant to Paragraph 90 and a final accounting of Future Response Costs (including crediting the Respondents for any amounts received under Paragraphs 38.2(e) or (f), EPA will remit and return an unused amount of the funds paid by the Respondents pursuant to Paragraphs 38.2(e) or (f).

39. Interest. In the event that the payment for Future Response Costs are not made within 30 days after Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVII (Stipulated Penalties).

40. Respondents may contest payment of any Future Response Costs billed under Paragraph 38 if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA

incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such objection shall be made in writing within 30 days after receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondents shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 38. Simultaneously, Respondents shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC"), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the EPA OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondents shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution). If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 38. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 38. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

XV. DISPUTE RESOLUTION

41. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

42. If Respondents object to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, they shall notify EPA in writing of their objections within 7 days after such action, unless the objections have been resolved informally. EPA and Respondents shall have 14 days from EPA's receipt of Respondents' written objections to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

43. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Superfund Division Director level or higher will issue a written decision on the dispute to Respondents. EPA's decision

shall be incorporated into and become an enforceable part of this Settlement Agreement. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

44. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Respondents under this Settlement Agreement, not directly in dispute, unless EPA provides otherwise in writing. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 40. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement Agreement. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVI. FORCE MAJEURE

45. "Force Majeure" for purposes of this Settlement Agreement, is defined as any event arising from causes beyond the control of Respondents, of any entity controlled by Respondents, or of Respondents' contractors that delays or prevents the performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work , or increased cost of performance, or a failure to attain performance standards set forth in the EPA Statement of Work.

46. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement for which Respondents intend or may intend to assert a claim of force majeure, Respondents shall notify EPA's OSC orally or, in his or her absence, the alternate EPA OSC, or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 6, within 24 hours f when Respondents first knew that the event might cause a delay. Within 7 days thereafter, Respondents shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents' contractors knew or should have known.

Failure to comply with the above requirements regarding an event shall preclude Respondents from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 45 and whether Respondents have exercised their best efforts under Paragraph 45, EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely notices under this Paragraph.

47. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement Agreement that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

48. If Respondents elect to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's written decision. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of Paragraphs 05 and 06. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Settlement Agreement identified to EPA.

XVII. STIPULATED PENALTIES

49. Respondents shall be liable for stipulated penalties in the amounts set forth in Paragraphs 50 and 51 to EPA for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVI (Force Majeure). "Compliance" by Respondents shall include completion of all payments and activities required under this Settlement Agreement, or any plan, report, or other deliverable approved under this Settlement Agreement, in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans, reports, or other deliverables approved under this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

50. Stipulated Penalty Amounts - Work (Including Removal Work and Payments, and Excluding Plans, Reports, and Other Deliverables).

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 50.a:

Penalty Per Violation Per Day	Period of Noncompliance
$5,000	1st through 14th day
$7,500	15th through 30th day
$15,000	31st day and beyond

b. Compliance Milestones Violations of compliance milestones, including but not limited to due dates establishing escrow accounts to hold disputed Future Response Costs; milestones under Section XXV (Financial Assurance) to establish and maintain financial assurance; and due dates to establish and insurance (Section XXIV – Insurance) shall result in stipulated penalties accruing per violation per day as provided under Paragraph 50.b.

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th day
$3,500	15th through 30th day
$5,000	31st day and beyond

51. Stipulated Penalty Amounts - Plans, Reports, and Other Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports, plans or other deliverables pursuant to this Settlement Agreement:

Penalty Per Violation Per Day	Period of Noncompliance
$5,000	1st through 14th day
$7,500	15th through 30th day
$15,000	31st day and beyond

52. In the event that EPA assumes performance of all or any portion of the Work pursuant to Paragraph 63 (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of $50,000. Stipulated penalties under this Paragraph are in addition to the funding available to EPA under Section XXV (Financial Assurance).

53. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 18 (Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Superfund Division Director level or higher, under Paragraph 43 of Section XV (Dispute Resolution), during the period, if any, beginning the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding

such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order.

54. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement Agreement, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

55. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section XV (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 38 (Payments for Future Response Cost).

56. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondents have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 39 until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 39 until the date of payment. If Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

57. The payment of penalties and Interest, if any, shall not alter in any way Respondents' obligation to complete the performance of the Work required under this Settlement Agreement.

58. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), provided however, that the EPA shall not seek civil penalties pursuant to Section 122(*l*) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement Agreement, except in the case of a willful violation of this Settlement Agreement.

59. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XVIII. COVENANTS BY EPA

60. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Past and Future Response Costs. These covenants shall take effect upon the Effective Date and are conditioned upon the complete and satisfactory performance by Respondents of all obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Paragraph 38 (Payments for Future Response Costs). These covenants extend only to Respondents and do not extend to any other person.

XIX. RESERVATIONS OF RIGHTS BY EPA

61. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement Agreement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

62. The covenants set forth in Section XVIII (Covenants by EPA) do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

a. liability for failure by Respondents to meet a requirement of this Settlement Agreement;

b. liability for costs not included within the definition Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for violations of federal or state law that occur during or after implementation of the Work;

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement Agreement.

63. Work Takeover. In the event EPA determines that any Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondents and assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued. Respondents may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. However, notwithstanding Respondents' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover until the earlier of the date that Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 63. Funding of Work Takeover costs is addressed under Paragraph 83. Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XX. COVENANTS BY RESPONDENTS

64. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Louisiana Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Work, or Future Response Costs.

These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by EPA), other than in Paragraph 62 (liability for failure to meet a requirement of the Settlement Agreement) or Paragraph 62 (criminal liability), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

65. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

66. Respondents reserve, and this Settlement Agreement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondents' plans, reports, other deliverables or activities.

XXI. OTHER CLAIMS

67. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

68. Except as expressly provided in Section XVIII (Covenants by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

69. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

70. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section XX (Covenants by Respondents), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

71. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Future Response Costs. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which each Respondent has, as of the Effective Date, "resolved its liability to the United States . . . for some or all of a response action or for some or all of the costs of such action."

72. Each Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, each Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

73. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XVIII (Covenants By EPA).

74. Effective upon signature of this Settlement Agreement by a Respondent, such Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from such Respondent the payments required by Section XIV (Payment of Response Costs) and, if any, Section XVII (Stipulated Penalties) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 71 and that, in any action brought by the United States related to the "matters addressed," such Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondents that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

XXIII. INDEMNIFICATION

75. Respondents shall indemnify, save, and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

76. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

77. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

78. At least 14 days prior to commencing any on-Site Work under this Settlement Agreement, Respondents shall secure, and shall maintain for the duration of this Settlement Agreement, commercial general liability insurance with limits of $2 million dollars, for any one occurrence, and automobile insurance with limits of $2 million dollars, combined single limit, naming the EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Settlement Agreement. Within the same time period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement Agreement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXV. FINANCIAL ASSURANCE

79. In order to ensure completion of the Work, Respondents shall establish, maintain, and submit to EPA financial assurance, initially in the amount of $20 million, the estimated cost of the work, for the benefit of EPA. Respondents shall also establish, maintain, and submit to EPA a standby trust fund into which funds from financial assurance mechanisms can be deposited if the issuer of the financial assurance is directed to do so by EPA pursuant to Paragraph 83. The financial assurance, which must be satisfactory in form and substance to EPA, shall be in the form of one or more of the following mechanisms (provided that, if Respondents intend to use multiple mechanisms, such multiple mechanisms shall be limited to surety bonds, letters of credit, trust funds, and insurance policies).

a. a surety bond that provides EPA with acceptable rights as a beneficiary thereof unconditionally guaranteeing payment and/or performance of the Work;

b. an irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. a trust fund established for the benefit of EPA that is administered by a trustee acceptable in all respects to EPA;

d. a policy of insurance that provides EPA with acceptable rights as a beneficiary thereof, is issued by an insurance carrier acceptable in all respects to EPA, and ensures the payment and/or performance of the Work;

e. a demonstration by one or more Respondents that each such Respondent meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work (plus the amount(s) of any other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee), provided that all other requirements of 40 C.F.R. § 264.143(f) and this Section are satisfied; and/or

f. a written guarantee to fund or perform the Work executed in favor of EPA provided by one or more of the following: (1) a direct or indirect parent company of a Respondent, or (2) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with at least one Respondent; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test and reporting requirements for owners and operators set forth in subparagraphs (1) through (8) of 40 C.F.R. § 264.143(f) and this Section with respect to the Estimated Cost of the Work (plus the amount(s) of any other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee).

80. Within 14 days after the Effective Date, Respondents shall submit all executed or otherwise finalized financial assurance mechanisms or other documents required, in a form substantially identical to the documents agreed to during negotiations that includes the Superfund Division Director as the Region 6 recipient, at the mailing address:

Superfund Division Director (6SF)
United States Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733.

A copy shall be sent to Paige Delgado consistent with the address/information at Paragraph 15.

81. If Respondents provide or obtain financial assurance for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 79.e or 79.f, Respondents and/or their guarantors shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f) relating to these mechanisms unless otherwise provided in this Settlement Agreement, and with the requirements of this Section, including but not limited to: (a) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant to EPA no later than 14 days after the Effective Date; (b) the annual re-submission of such reports and statements within 90 days after the close of each such entity's fiscal year; and (c) the notification of EPA no later than 30 days after any such entity determines that it no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1), and in any event within 90 days after the close of any fiscal year for which the year-end financial data show that such entity no longer satisfies such financial test requirements. Respondents agree that EPA may also, based on a belief that the relevant entity may no longer meet the financial test requirements of this Section, require reports of financial condition at any time from the relevant entity in addition to those specified in this Section. For purposes of the financial

assurance mechanisms specified in this Section, references in 40 C.F.R. Part 264, Subpart H to: (1) the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall also include the Estimated Cost of the Work; (2) "the sum of current closure and post-closure cost estimates and the current plugging and abandonment cost estimates" shall mean "the sum of all environmental obligations" (including obligations under CERCLA, RCRA, EPA's Underground Injection Control program, 40 C.F.R. Part 144, enacted as part of the Solid Waste Disposal Act, 42 U.S.C. §§ 6901 to 6992k, the Toxic Substances Control Act, 15 U.S.C. §§ 2601 to 2695d, and any other federal, state, or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated in addition to the Estimated Cost of the Work to be performed in accordance with this Settlement Agreement; (3) the terms "owner" and "operator" shall be deemed to refer to each Respondent obtaining a guarantee or making a demonstration under Paragraph 79.e or 79.f; and (4) the terms "facility" and "hazardous waste management facility" shall be deemed to include the Site.

82. Respondents shall diligently monitor the adequacy of the financial assurance. In the event that EPA determines and so notifies Respondents, or any Respondents become aware of information indicating, that financial assurance provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Respondents shall notify EPA of the inadequacy within 30 days and, within 30 days after providing to or receiving from EPA such notice, shall obtain and submit to EPA for approval a proposal for a revised or alternative form of financial assurance that satisfies the requirements set forth in this Section. If EPA approves the proposal, Respondents shall provide a revised or alternate financial assurance mechanism in compliance with and to the extent permitted by such written approval and shall submit all documents evidencing such change to EPA pursuant to the delivery instructions in Paragraph 80 within 30 days after receipt of EPA's written approval. In seeking approval for a revised or alternate form of financial assurance, Respondents shall follow the procedures set forth in Paragraph 84. If EPA does not approve the proposal, Respondents shall follow the procedures set forth in Paragraph 84 to obtain and submit to EPA for approval another proposal for a revised or alternate form of financial assurance within 30 days after receipt of EPA's written disapproval.

83. The issuance of a Work Takeover Notice pursuant to Paragraph 63 (Work Takeover) shall trigger EPA's right to receive the benefit of any financial assurances provided pursuant to this Section. At such time, EPA shall have the right to enforce performance by the issuer of the relevant financial assurance mechanism and/or immediately access resources guaranteed under any such mechanism, whether in cash or in kind, as needed to continue and complete all or any portion(s) of the Work assumed by EPA. In the event (a) EPA is unable to promptly secure the resources guaranteed under any such financial assurance mechanism, whether in cash or in kind, necessary to continue and complete the Work assumed by EPA, or (b) the financial assurance involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 79.e or 79.f, Respondents shall immediately upon written demand from EPA deposit into an account

specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA. All EPA Work Takeover costs not paid pursuant to this Paragraph shall be reimbursed under Section XIV (Payment of Response Costs). In addition, if at any time EPA is notified by the issuer of a financial assurance mechanism that such issuer intends to cancel the financial assurance mechanism it has issued, then, unless Respondents provide an alternate financial assurance mechanism in accordance with this Section no later than 30 days prior to the impending cancellation date, EPA shall be entitled (as of and after the date that is 30 days prior to the impending cancellation) to draw fully on the funds guaranteed under the then-existing financial assurance.

84. Respondents shall not reduce the amount of, or change the form or terms of, the financial assurance until Respondents receive written approval from EPA to do so. Respondents may petition EPA in writing to request such a reduction or change on any anniversary of the Effective Date, or at any other time agreed to by the Parties. Any such petition shall include the estimated cost of the remaining Work and the basis upon which such cost was calculated, and, for proposed changes to the form or terms of the financial assurance, the proposed revisions to the form or terms of the financial assurance. If EPA notifies Respondents that it has approved the requested reduction or change, Respondents may reduce or otherwise change the financial assurance incompliance with and to the extent permitted by such written approval and shall submit all documents evidencing such reduction or change to EPA pursuant to the delivery instructions in Paragraph 80 within 30 days after receipt of EPA's written decision. If EPA disapproves the request, Respondents may seek dispute resolution pursuant to Section XV (Dispute Resolution), provided however, that Respondents may reduce or otherwise change the financial assurance only in accordance with an agreement reached pursuant to Section XV or EPA's written decision resolving the dispute.

85. Respondents shall not release, cancel, or discontinue any financial assurance provided pursuant to this Section until: (a) Respondents receive written notice from EPA in accordance with Paragraph 90 that the Work has been fully and finally completed in accordance with this Settlement Agreement; or (b) EPA otherwise notifies Respondents in writing that they may release, cancel, or discontinue the financial assurance(s) provided pursuant to this Section. In the event of a dispute, Respondents may seek dispute resolution pursuant to Section XV (Dispute Resolution), and may release, cancel, or discontinue the financial assurance required hereunder only in accordance with an agreement reached pursuant to Section XV or EPA's written decision resolving the dispute.

XXVI. MODIFICATION

86. The OSC may modify any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

87. If Respondents seek permission to deviate from any approved work plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 89.

88. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVII. ADDITIONAL REMOVAL ACTION

89. If EPA determines that additional removal actions not included in the Removal Work Plan, or other approved plan are necessary to protect public health, welfare, or the environment, and such additional removal actions are consistent with the Statement of Work attached to this Settlement Agreement, EPA will notify Respondents of that determination. Unless otherwise stated by EPA, within 30 days after receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondents shall submit for approval by EPA a work plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement Agreement. Upon EPA's approval of the plan pursuant to Paragraph 18 (Work Plan and Implementation), Respondents shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVI (Modification).

XXVIII. NOTICE OF COMPLETION OF WORK

90. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including Post-Removal Site Controls, payment of Future Response Costs, or record retention, EPA will provide written notice to Respondents. If EPA determines that such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice.

Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXIX. INTEGRATION/APPENDICES

91. This Settlement Agreement and its Statement of Work constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

XXX. EFFECTIVE DATE

92. This Settlement Agreement shall be effective 7 days after the Settlement Agreement is signed by the Region 6 Superfund Division Director.

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The undersigned representative of the Respondent certifies that they are fully authorized to enter into the terms and conditions of this Settlement Agreement, CERCLA Docket No. _____, and to bind the party they represent, in the matter of Explo Systems, Inc. Site.

Agreed this ___ day of _____; 2___ .

For Respondent _____

By

Title _____

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The undersigned Party enters into this Settlement Agreement, CERCLA Docket No. _____, in the matter of Explo Systems, Inc. Site.

It is so ORDERED and Agreed this _____ day of _____, 2___.

BY: _____ DATE:_____

Carl Edlund, P.E.
Superfund Division Director
EPA Region 6,
U.S. Environmental Protection Agency

EFFECTIVE DATE: _____

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APPENDIX A

1. EPA Statement of Work.

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Statement of Work
EXPLO Systems, Inc.
Minden, Webster Parish, Louisiana

1) Site Background

The Explo Systems, Inc. Site ("Site") is located on approximately 132 acres of Camp Minden, Louisiana. Camp Minden includes approximately 14,995 acres, and was formerly known as the Louisiana Army Ammunition Plant ("LAAP"). LAAP's primary function was to produce, assemble, load, and pack ammunitions. Burning and demolition activities were also performed to destroy explosives and explosive wastes generated by manufacturing of munitions. The above activities resulted in LAAP's placement on the National Priorities List in March 1989.

On January 1, 2005, the United States Army ("Army") transferred ownership of the Louisiana Army Ammunition Plant to the State of Louisiana National Guard ("LNG"), and the property was re-named Camp Minden, Louisiana. As owner of the Site property, LNG entered into leasing agreements with Explo Systems, Inc. ("Explo"), which allowed Explo to use the Site property and approximately 100 magazines/buildings. Explo utilized the Site property, magazines and buildings to perform activities required under demilitarization and disposal contracts (i.e., November 16, 2006 and March 24, 2010 contracts) Explo entered into with the Army.

2) Site History

On October 15, 2012, an explosion of a magazine containing black powder occurred at the Explo Site. As a result of the violations observed during the inspection of the explosion, the Louisiana State Police ("LSP") served a search warrant on Explo Systems, Inc. The search warrant was executed on November 27, 2012. During the search, LSP identified 9-10 million pounds of unsecured and improperly stored M6 propellant. From November 28, 2012 through December 7, 2012, people from the town of Doyline, Louisiana (i.e., approximately 400 homes) were evacuated due to the risk of explosion from the M6 propellant, and its unsafe proximity to the human population residing in Doyline, Louisiana. From November 28, 2012, through May 2013, the LSP and Explo secured and stored the M6 Propellant in magazines at the Site.

Additional investigation of the Explo Site revealed the improper storage of other materials, in addition to the M6 propellant. For example, the Army's Explosives Safety Board 2013 safety reviews show the materials stored at the Site include: 1) 128 pounds of black powder; 2) 200 pounds of Composition H6; 3) four 50-gallon drums of ammonium perchlorate; 4) two 50-gallon drums and 150 pound boxes of Explosive D (ammonium picrate); 5) 109,000 pounds of M30 propellant; 6) 320 pounds of Clean Burning Incendiary (CBI); 7) 661,000 pounds of nitrocellulose; 8) 1.817 million pounds of tritonal mixed with tar; and 9) 15 million pounds of M6 propellant. Some of the hazardous substances and chemicals included in the above materials include trinitrotoluene, aluminum, 2-methy-1,3,5- trinitrobenzene, dinitrotoluene, dibutylphthalate, diphenylamine, nitroglycerin, nitroguanidine, centralite, and graphite. These materials are known to be highly reactive according to material safety data sheets. Incompatible hazardous materials are stored in close proximity to one another.

Site investigations also show that Explo Systems Inc. utilized Site property and buildings to perform sub-contract work required under the Demilitarization and Disposal Purchase Order Agreements (i.e., September 11, 2011, December 2012 and January 17, 2013) between Explo and General Dynamics-OTS ("GD-OTS"). GD-OTS served as the primary contractor under August 18, 2005, and March 17, 2011,

demilitarization and disposal contracts between GD-OTS and the Army. Pursuant to work required under such agreements, M30 propellant and tritonal (aluminum/TNT mixture) were sent to the Explo Site. The M30 propellant and tritonal also contain some of the chemicals (e.g., nitrocellulose, nitroglycerin, and nitroguanidine) mentioned previously.

Site investigations show that the hazardous materials at the Site present a significant risk of an explosion, and injury to workers and residents near the Site. The investigations show that due to the handling and unknown storage conditions of the materials, lot integrity/identity has been compromised and the stability of the materials cannot be guaranteed. According to hazardous materials explosiveness standards, materials stability tested as Level C and Level D have stability concerns. Level D tested materials should be disposed of immediately as they present a significant risk of explosion. In addition, materials such as nitrocellulose have the ability to auto-ignite. As such, the conditions at the Site and preponderant evidence show that an explosion will likely occur if the materials are not addressed in the near-term. Due to the volume of explosive and hazardous materials, the unknown stability of such materials, the incompatible storage of such materials, and the unsafe proximity to human populations, there is a significant threat of an explosion and injury for workers at the Site, and residents of the town of Doyline, Louisiana.

Due to the handling and storage conditions of the hazardous materials described above, and the threat of explosion and injury to workers on-site and nearby residents, the LSP commenced license revocation proceedings against Explo Systems, Inc. in 2013. The LNG commenced eviction proceedings against Explo Systems, Inc. for delinquent rent and expenses in 2013 as well. In addition, the United States Alcohol, Tobacco, and Firearms Bureau (ATF) issued a notice of license revocation in August 2013 due to a criminal indictment pending against Explo, and the improper storage of explosives at the Site. The Webster Parish, Louisiana, District Attorney's Office issued a criminal indictment against several of Explo's executives and officers in 2013, and the criminal action is proceeding towards trial. In 2012, EPA Criminal Investigations Division (CID) commenced an investigation concerning Explo, and such investigation is ongoing.

3) Work To Be Performed

a) Work shall include, at a minimum, all actions necessary to implement the removal action as described within the site-specific Statement of Work. The actions to be implemented generally include, but are not limited to, the following:

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To conduct a removal action of the following hazardous materials currently stored at the Site to include: 1) 128 pounds of black powder; 2) 200 pounds of Composition H6; 3) four 50-gallon drums of ammonium perchlorate; 4) two 50-gallon drums and 150 pound boxes of Explosive D (ammonium picrate); 5) 109,000 pounds of M30 propellant; 6) 320 pounds of Clean Burning Incendiary (CBI); 7) 661,000 pounds of nitrocellulose; 8) 1.817 million pounds of tritonal mixed with tar; and 9) 15 million pounds of M6 propellant.

b) In addition to on-site and off-site disposal options, explore and propose any and all options for sale, recycling, and/or reuse for the materials listed above in Paragraph 3a.

c) Generate and provide a proposed work plan that includes, but is not limited to staffing requirements and limitations, travel/mobilization costs and requirements, necessary equipment as well as availability/limitations of necessary equipment required and available materials, proposed disposal/recycle/reuse methods, total and itemized cost, and duration for each phase (if applicable), and timeline/schedule.

d) Limitations concerning the volume to be disposed of should be accounted for when calculating the total cost and time required for disposal, recycling, or reusing the total volume of materials listed in Paragraph 3a. Potential limitations are:

-Minimum safe distance limitations on the maximum volume of material that can be disposed of at one time;

-Limitations due to the maximum volume of material that can be disposed of each day, due to maintenance of the disposal areas or other reasons;

-Permit and/or capacity requirements/limitations for volume and/or location of disposal; and

-Provide any other limitations, qualifications, assumptions that impact the implementation of the proposed work plan.

e) Verify and provide the availability of licensed and experienced personnel that will be available to perform the removal of the materials listed in Paragraph 3a. The proposed Work Plan shall reflect compliance with State and Federal statutory requirements. Provide the process for ensuring compliance with State and Federal statutory requirements.

f) Prepare a Spill and Emergency Response Contingency Plan and implement the plan after approval by the OSC. The following items must be addressed in detail – (1) Response to spills or releases at and/or from the Site to address both the workers on-site and the public exposure, (2) Response analysis for conceivable occurrences (i.e. who and what will respond, alternative communication methods), (3) Call-down list for notification, (4) Coordination mechanism with State and local authorities.

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g) Propose achievable milestones by which to gauge the work performed (i.e. date to initiate action, date to complete the removal of 25%, 50%, 75% of the material, completion date for the removal of all materials listed in Paragraph 3a.

4) Work Plan and Implementation.

a) Within 14 days after the Effective Date, submit to EPA for approval a draft work plan for performing the removal action (the "Removal Work Plan") generally described in Paragraphs 3a – f. The draft Removal Work Plan shall provide a description of and an expeditious schedule for, the actions described within this Statement of Work.

b) EPA may approve, disapprove, require revisions to, or modify the draft Removal Work Plan in whole or in part. If EPA requires revisions, submit a revised draft Removal Work Plan within 7 days after receipt of EPA's notification of the required revisions. Implement the Removal Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA.

c) Upon approval of the Removal Work Plan, implementation of the Work will commence, in accordance with the predetermined schedule. Any additional plans, reports, or other deliverables that require EPA approval under the SOW or Removal Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph.

5) Health and Safety Plan

Within 14 days after the Effective Date, submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work in accordance with this Statement of Work. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. The plan shall also include contingency planning. Incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

6) Quality Assurance, Sampling, and Data Analysis

a) Utilize quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

b) Prior to the commencement of any monitoring project in accordance with this Statement of Work, submit to EPA for approval, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, and the NCP. Ensure that EPA and State regulator personnel and their authorized representatives are allowed access at reasonable times to all laboratories

utilized for the implementation of this Statement of Work. In addition, ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP. Ensure that the laboratories they utilize for the analysis of samples taken in accordance with this Statement of Work perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (http://www.epa.gov/superfund/programs/clp/), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm), "Standard Methods for the Examination of Water and Wastewater" (http://www.standardmethods.org/), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (http://www.epa.gov/ttnamti1/airtox.html)," and any amendments made thereto during the course of the implementation of this Statement of Work. However, upon approval by EPA, other appropriate analytical methods may be utilized, as long as: (a) quality assurance/quality control ("QA/QC") criteria are contained in the methods and the methods are included in the QAPP, (b) the analytical methods are at least as stringent as the methods listed above, and (c) the methods have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Ensure that all laboratories they use for analysis of samples taken during actions performed in accordance with this Statement of Work have a documented Quality System that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network ("ERLN") laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP"), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs (http://www.epa.gov/fem/accredit.htm) as meeting the Quality System requirements. Ensure that all field methodologies utilized in collecting samples for subsequent analysis performed during the course of the implementation of this Statement of Work are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

c) Upon request, provide split or duplicate samples to EPA and the State regulators, or their authorized representatives. Notify EPA and the State regulators not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide split or duplicate samples of any samples it takes as part of EPA's oversight of the implementation of the Work.

d) Submit to EPA the results of all sampling and/or tests or other data obtained or generated with respect to the Site and/or the implementation of this Statement of Work unless EPA agrees otherwise.

e) The EPA retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes and regulations.

7) Post-Removal Site Control

In accordance with the Removal Work Plan schedule, or as otherwise directed by EPA, submit a proposal for Post-Removal Site Control which shall include, but not be limited to: a) a Post-Site Control and Implementation Plan specifying the objectives, and who is responsible for implementation, monitoring, inspection, reporting and enforcement. Upon EPA approval, either conduct Post-Removal Site Control activities, or obtain a written commitment from another party for conduct of such activities, until such time as EPA determines that no further Post-Removal Site Control is necessary. Provide EPA with documentation of all Post-Removal Site Control commitments.

8) Reporting

Submit a written progress report to EPA concerning the actions listed in this Statement of Work every 14th day after the date of receipt of EPA's approval of the Work Plan until completion of the work described in the work plan approved by EPA, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

9) Final Report

Within 21 days after completion of all Work described within this Statement of Work, submit for EPA review and approval a final report summarizing the actions taken to complete the actions described within this Statement of Work. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports," and EPA Guidance (i.e., Superfund Removal Procedures: Removal Response Reporting – POLREPS and OSC Reports" - OSWER Directive No. 9360.3-03, June 1, 1994). The final report shall include a good faith estimate of total costs or a statement of actual costs incurred, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official or Project Coordinator:

i) "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly

responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

10) Off-Site Shipments.

a) Any and all shipment of hazardous substances, pollutants and contaminants from the Site to an off-Site facility must comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment will be deemed compliant if a prior determination from EPA is obtained indicating that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 200.440(b). Investigation Derived Waste (IDW) from the Site may be shipped to an off-Site facility in compliance with EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992).

b) The shipment of any Waste Material from the Site to an out-of-state waste management facility will be permitted only if, prior to any shipment, a written notice is provided to the appropriate state environmental official in the receiving facility's state and to the OSC. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Notify the state environmental official referenced above and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

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EXPLO SYSTEMS INC.
ENCLOSURE D
PRP REPRESENTATIVES

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EXPLO SYSTEMS INC.
ENCLOSURE E
SMALL BUSINESS FAIRNESS ACT INFORMATION FACT SHEET

United States Environmental Protection Agency

Office of Enforcement and Compliance Assurance (2201A)
EPA 300-F-03-001 October 2003

Office of Enforcement and Compliance Assurance

INFORMATION SHEET

U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance and tools to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Hotlines, Helplines and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements.

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers; www.epa.gov/clearinghouse

Pollution Prevention Clearinghouse
www.epa.gov/opptintr/library/ppicindex.htm

EPA's Small Business Ombudsman Hotline provides regulatory and technical assistance information.
(800) 368-5888

Emergency Planning and Community Right-To-Know Act
(800) 424-9346

National Response Center (to report oil and hazardous substance spills)
(800) 424-8802

Toxics Substances and Asbestos Information
(202) 554-1404

Safe Drinking Water
(800) 426-4791

Stratospheric Ozone Refrigerants Information
(800) 296-1996

Clean Air Technology Center
(919) 541-0800

Wetlands Helpline
(800) 832-7828

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page
www.epa.gov

Small Business Assistance Program
www.epa.gov/ttn/sbap

Compliance Assistance Home Page
www.epa.gov/compliance/assistance

Office of Enforcement and Compliance Assurance
www.epa.gov/compliance

Small Business Ombudsman
www.epa.gov/sbo

Innovative Programs for Environmental Performance
www.epa.gov/partners

Recycled/Recyclable
Printed with Soy/Canola Ink on paper that contains at least 30% post consumer fiber

U.S. EPA SMALL BUSINESS RESOURCES

Compliance Assistance Centers

In partnership with industry, universities, and other federal and state agencies, EPA has established Compliance Assistance Centers (Centers) that provide information targeted to industries with many small businesses. All Centers can be accessed at: http://www.assistancecenters.net

Metal Finishing
(1-800-AT-NMFRC or www.nmfrc.org)

Printing
(1-888-USPNEAC or www.pneac.org)

Automotive Service and Repair
(1-888-GRN-LINK or www.ccar-greenlink.org)

Agriculture
(1-888-663-2155 or www.epa.gov/agriculture)

Printed Wiring Board Manufacturing
(1-734-995-4911 or www.pwbrc.org)

Chemical Industry
(1-800-672-6048 or www.chemalliance.org)

Transportation Industry
(1-888-459-0656 or www.transource.org)

Paints and Coatings
(1-800-286-6372 or www.paintcenter.org)

Construction Industry
(www.cicacenter.org)

Automotive Recycling Industry
(www.ecarcenter.org)

US / Mexico Border Environmental Issues
(www.bordercenter.org)

State Agencies

Many state agencies have established compliance assistance programs that provide on-site and other types of assistance. Contact your local state environmental agency for more information or call EPA's Small Business Ombudsman at (800)-368-5888 or visit the Small Business Environmental Homepage at http://www.smallbiz-enviroweb.org.

Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two policies that potentially apply to small businesses: The Small Business Policy (http://www.epa.gov/compliance/incentives/smallbusiness) and Audit Policy (http://www.epa.gov/compliance/incentives/auditing).

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established an ombudsman ("SBREFA Ombudsman") and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The SBREFA Ombudsman will annually rate each agency's responsiveness to small businesses. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System (NAICS) designation, number of employees or annual receipts, defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community because the regulated community previously commented on its activities.

Your Duty to Comply

If you receive compliance assistance or submit comments to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) or related provisions.

EXPLO SYSTEMS INC.
ENCLOSURE F
INFORMATION REQUEST

ENCLOSURE F
EXPLO SYSTEMS, INC.
INFORMATION REQUEST

RESPONSE TO INFORMATION REQUEST

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as the federal "Superfund" law, the U.S. Environmental Protection Agency (EPA) responds to the release or threat of release of hazardous substances, pollutants or contaminants into the environment to stop additional contamination and to clean-up or otherwise address any prior contamination.

The EPA is requesting information under CERCLA Section 104(e). Section 104(e) may be found in the United States Code (U.S.C.) at Title 42 Section (section is denoted by the symbol "§") 9604(e) 42 U.S.C. §9604(e).

Pursuant to the authority of CERCLA §104(e), you are hereby requested to respond to the enclosed information request. If you have any questions concerning the Site's history or this information request letter, please contact Ms. Cynthia Brown, the designated Enforcement Officer for the Site, at phone number (214) 665-7480, fax number (214) 665-6660 or via email at Brown.Cynthia@EPA.gov. Please mail your response within 10 working days of your receipt of this request to the following address:

Ms. Cynthia Brown, Removal Enforcement Coordinator
Superfund Enforcement Assessment Section (6SF-TE)
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

If you or your attorney has legal questions that pertain to this information letter request, please contact Mr. George Malone at phone number (214) 665-8030, fax number (214) 665-6460 or via email at Malone.George@EPA.gov. For contact via mail, use the following address:

Mr. George Malone, Assistant Regional Counsel
Office of Regional Counsel (6RC-S)
U. S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

BACKGROUND INFORMATION

The Explo Site consists of 132 acres on Camp Minden, owned by the Louisiana National Guard. Camp Minden was formerly the Louisiana Army Ammunition Plant. In December 2004, DOD transferred the property to the Louisiana National Guard. Explo Systems, Inc., under contract with the DOD, conducted recycling of explosive powders and/or explosives from military munitions (cartridges for Howitzers) for commercial use starting in November 2006.

On October 15, 2012, the explosion of a magazine at Explo Systems, Camp Minden, LA, prompted attention from the EPA, and the Louisiana State Police (LSP). On November 27, 2012, the LSP served a warrant to Explo and identified 10 million pounds of unsecured M6 Propellant. From November 30, 2012 through January 7, 2013, the town of Doyline, LA (approximately 400 homes) was evacuated during operational hours. A total of 97 magazines at Camp Minden are filled to capacity with approximately 18 million lbs. of M6 Propellant and other explosives.

In addition to the M6 Propellant, there are other hazardous materials onsite including Red or Pink Water which is a waste generated by the operations at Explo and contains trinitrotoluene (TNT) and potentially cyclotrimethylenetrinitramine (RDX). There is also black powder, Composition H6, ammonium picrate, M30 propellant, nitrocellulose, Clean Burning Incendiary (CBI), and Tritonal which is aluminum powder contaminated with TNT which is explosive from previous bomb demilitarization process.

ENCLOSURE F
EXPLO SYSTEMS, INC.
INSTRUCTIONS and DEFINITIONS

INSTRUCTIONS

Under the authority of Section 104(e)(2) of CERCLA, 42 U.S.C. § 9604(e) (2), the EPA is requesting you to respond to this Information Request. Compliance with this Information Request is required by law. Please note that false, fictitious, or fraudulent statements or representations may subject you to civil or criminal penalties.

1. Answer Every Question Completely. A separate response must be made to each of the questions set forth in the Information Request. For each question contained in this letter, if information responsive to this information request is not in your possession, custody, or control, please identify the person(s) from whom such information may be obtained.

2. Number Each Answer. Precede each answer with the corresponding number of the question and the subpart to which it responds.

3. Provide the Best Information Available. Provide responses to the best of Respondent's ability, even if the information sought was never put down in writing or if the written documents are no longer available. You should seek out responsive information from current and former employees/agents. Submission of cursory responses when other responsive information is available to the Respondent will be considered non-compliance with this Information Request.

4. Identify Sources of Answer. For each question, identify (see Definitions) all the persons and documents that you relied on in producing your answer.

5. Continuing Obligation to Provide/Correct Information. Pursuant to CERCLA Section 104(e)(2), if additional information or documents responsive to this Request become known or available to you after you respond to this Request, you must supplement your response to the EPA.

6. Confidential Information. The information requested herein must be provided even though you may contend that it includes confidential information or trade secrets. You may assert a confidentiality claim covering part or all of the information requested, pursuant Sections 104(e) (7) (E) and (F) of CERCLA, 42 U.S.C. § 9604(e) (7) (E) and F, and Section 3007(b) of RCRA, 42 U.S.C. § 6927(b), and 40 C.F.R. § 2.203(b). To prove your claim of confidentiality, each document must separately address the following points:

   A. the portions of the information alleged to be entitled to confidential treatment;

   B. the period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specific event, or permanently);

C. measures taken by you to guard against the undesired disclosure of the information to others;

D. the extent to which the information has been disclosed to others, and the precautions taken in connection therewith;

E. pertinent confidentiality determinations, if any, by the EPA or other federal agencies, and a copy of any such determinations or reference to them, if available; and

F. whether you assert that disclosure of the information would likely result in substantial harmful effects on your business' competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects.

To make a confidentiality claim, please stamp or type "confidential" on all confidential responses and any related confidential documents. Confidential portions of otherwise non confidential documents should be clearly identified. You should indicate a date, if any, after which the information need no longer be treated as confidential. Please submit both a clean and a redacted version of any documents or response for which you claim confidential in a separate envelope. If you are submitting information which you assert is entitled to treatment as confidential business information, you may comment on this intended disclosure within fourteen (14) days of receiving this Information Request.

All confidentiality claims are subject to the EPA verification. It is important that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information, that you intend to continue to do so and that it is not and has not been obtainable by legitimate means without your consent. Information covered by such claim will be disclosed by the EPA only to the extent permitted by CERCLA Section 104(e). **If no such claim accompanies the information when it is received by the EPA, it may be made available to the public by the EPA without further notice to you.**

7. Disclosure to the EPA Contractor. Information which you submit in response to this Information Request may be disclosed by the EPA to authorized representatives of the United States, pursuant to 40 C.F.R. 2.310(h), even if you assert that all or part of it is confidential business information.

8. Personal Privacy Information. Personnel and medical files, and similar files the disclosure of which to the general public may constitute an invasion of privacy should be segregated from your responses, included on a separate sheet(s), and marked as "Personal Privacy Information".

9. Objections to Questions. Even if you have objections to some or all the questions within the Information Request, you are still required to respond to each of the questions.

DEFINITIONS

The following definitions shall apply to the following words as they appear in Information Request. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA or the Resource Conservation and Recovery Act ("RCRA"), in which case the statutory or regulatory definitions shall apply.

1. The terms "and" and "or" shall be construed either conjunctively or disjunctively as necessary to bring within the scope of this Information Request any information which might otherwise be construed to be outside its scope.

2. The term "any" (e.g., as in "any documents"), shall mean "any and all."

3. The term "arrangement" shall mean every separate contract or other agreement between two or more persons, whether written or oral.

4. The term "asset" shall include the following: real estate, buildings or other improvements to real estate, equipment, vehicles, furniture, inventory, supplies, customer lists, accounts receivable, interest in insurance policies, interests in partnerships, corporations and unincorporated companies, securities, patents, stocks, bonds, and other tangible as well as intangible property.

5. The term "disposal" shall mean the discharge, deposit, injection, dumping, spilling, leaking, or placing of any material into or on any land or water, including ground water.

6. The term "document(s)" shall mean any object that records, stores, or presents information, and includes writings of any kind, formal or informal, whether or not wholly or partially in handwriting, including by way of illustration and not by way of limitation, any invoice, manifest, bill of lading, receipt, endorsement, check, bank draft, canceled check, deposit slip, withdrawal slip, order, correspondence, record book, minutes, memorandum of telephone and other conversations including meetings/agreements and the like, diary, calendar, desk pad, scrapbook, notebook, bulletin, circular, form, pamphlet, statement, journal, postcard, letter, telegram, telex, telescope, telefax, report, notice, message, analysis, comparison, graph, chart, map, interoffice or intra office communications, Photostat or other copy of any documents, microfilm or other film record, photograph, sound recording on any type of device, punch card, disc pack, tape or other type of memory generally associated with computers and data processing (including printouts and the programming instructions and other written material necessary to use such punch card, disc, or disc pack, tape or other type of memory), every copy of each document which is not an exact duplicate of a document which is produced, every copy of each document which has any writing on it (including figures, notations, annotations, or the like), drafts of documents, attachments to or enclosures with any document, and every document referred to in any other document.

7. The term "generator" shall mean persons who arranged for the disposal or treatment of hazardous substances at the Explo Systems Site where the hazardous substances were released.

8. The term "hazardous material" shall mean any hazardous substances, pollutants or contaminants, and hazardous wastes, as defined below.

9. The term "hazardous substance" shall have the same definition as that contained in Subsection 101(14) of CERCLA, 42 U.S.C. Section 9601(14), and includes any mixtures of such hazardous substances with any other substances.

10. The term "hazardous waste" shall have the same definition as that contained in Subsection 1004(5) of RCRA, 42 U.S.C., Section 6903(5), and 40 CFR Part 261.

11. The term "identify" shall mean, with respect to a natural person, to set forth the person's name, present or last known business, present or last known job (including job title and position), and personal addresses and telephone numbers.

12. The term "identify" shall mean, with respect to a corporation, partnership, business trust or other association or business entity (including, but not limited to, a sole proprietorship), to set forth its full name, address, and legal form (e.g., corporation [including state of incorporation], partnership, etc.), organization, if any, a brief description of its business, and to indicate whether or not it is still in existence and, if it is no longer in existence, to explain how its existence was terminated and to indicate the date on which it ceased to exist.

13. The term "identify" shall mean, with respect to a document, to provide the type of document. This information includes the document's customary business description, its date, its number (e.g., invoice or purchase order number), if any, subject matter, the identity of the author (including the addressor and the addressee and/or recipient), and the present location of such document.

14. The term "identify" shall mean, with respect to a piece of real property or property interest, to provide the legal description which appears in the county property records office, or in the equivalent office which records real property transactions for the area which includes the real property in question.

15. The term "material(s)" shall mean any and all objects, goods, substances, or matter of any kind including, but not limited to, wastes.

16. The term "operator" shall mean those persons who once owned or operated the place (i.e., Explo Systems at 1600 Java Road, Minden, Webster Parish, Louisiana, where hazardous substances were released.

17. The term "owner" shall mean the person who now owns the property (i.e., Explo Systems, Inc.,) where the hazardous substances were released or person(s) who previously owned the property.

18. The term "person" shall have the same definition as in Subsection 101(21) of CERCLA, 42 U.S.C., Section 9601(21), and shall include any individual, firm, unincorporated association, partnership, corporation, trust, consortium, joint venture, commercial entity, United States government, State and political subdivision of a State, municipality, commission, any interstate body, or other entity.

19. The terms "pollutant" or "contaminant," shall have the same definition as that contained in Subsection 101(33) of CERCLA, 42 U.S.C., Section 9601(33), and includes any mixtures of such pollutants and contaminants with any other substances. The term shall include, but not be limited to, any element, substance, compound, or mixture. The term shall also include disease-causing agents which after release into the environment will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunction in reproduction), or physical deformations.

20. The term "property interest" shall mean any interest in property including, but not limited to, any ownership interest, an easement, a deed, a lease, a mining claim, any interest in the rental of property, any interest in a corporation that owns or rents or owned or rented property, and any interest as either the trustee or beneficiary of a trust that owns or rents, or owned or rented property.

21. The term "real estate" shall mean and include, but not be limited to, the following: land, buildings, homes, dwelling places, condominiums, cooperative apartments, offices or commercial buildings. The term includes real estate located outside of the United States.

22. The term "release" has the same definition as that contained in Subsection 101(22) of CERCLA, 42 U.S.C., Section 9601(22), and includes any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discharging of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant.

23. The terms "Site" or "Facility" shall mean and include operations at the business located at1600 Java Road, Minden, Webster Parish, Louisiana.

24. The term "solid waste" shall have the same definition as that contained in Subsection 1004(27) of RCRA, 42 U.S.C., Section 9603(27), and 40 CFR Part 261.

25. The terms "transaction" or "transact" shall mean any sale, transfer, giving, delivery, change in ownership, or change in possession.

26. The term "transporter" shall mean persons who selected the place (i.e., Explo Systems, located at 1600 Java Road, Minden, Webster Parish, Louisiana) where the hazardous substances were released as a disposal site and transported the hazardous substances to that place.

ENCLOSURE F
EXPLO SYSTEMS, INC.
QUESTIONS for ASHLAND

1. Please provide a detailed description of when Hercules started doing business with Explo Systems, Inc., and what Explo did for Hercules.

2. What did Hercules ship to Explo? Provide documentation for type of materials, material identification (i.e. product names), manifests, volumes, dates of transport and origination of shipments.

3. What was the specific procedure for processing the materials received from Hercules once Explo accepted the shipments?

4. What was the final disposition of the materials once they were accepted by Explo?

5. Provide a copy of the July 2008, Merger Agreement between Ashland and Hercules.

6. Please provide copies of all contracts or sub-contracts Hercules had with Explo Systems, Inc., including activities pertaining to materials including but not limited to ammonium picrate, M30 Propellant, M6 Propellant, other propellants, potassium nitrate, nitrocellulose, Composition H6, black powder, Tritonal/TNT mixtures, and any explosives or hazardous materials.

7. Provide an explanation as to the source of the materials which Hercules shipped to Explo, including but not limited to ammonium picrate, M30 Propellant, M6 Propellant, other propellants, potassium nitrate, nitrocellulose, Composition H6, black powder, Tritonal/TNT mixtures, and any explosives or hazardous materials, such as type of munitions or equipment that contained the materials.

8. What waste was generated as a result of your processes? Where was the waste, stored, shipped, disposed of, etc.?

9. Provide a copy of the certificates of approval and any licenses provided by the ATF.

10. Provide a copy of the Department of Transportation permit for Hercules and/or Ashland as it relates to the shipment of materials/chemicals currently at the Explo Site.

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City, State, ZIP+4: Covington, Kentucky 41011

PS Form 3800, August 2006 See Reverse for Instructions

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- For an additional fee, a *Return Receipt* may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS® postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement *"Restricted Delivery"*.
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

IMPORTANT: Save this receipt and present it when making an inquiry.

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