P96000086230

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(Business Entity Name)

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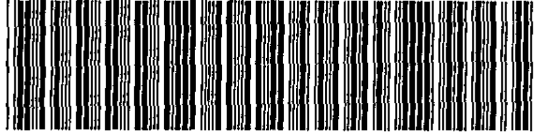

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FILED
04 DEC 30 PM 2:11
SECRETARY OF STATE
TALLAHASSEE FLORIDA

1/6/04
merger

CORPDIRECT AGENTS, INC. (formerly CCRS)
103 N. MERIDIAN STREET, LOWER LEVEL
TALLAHASSEE, FL 32301
222-1173

FILING COVER SHEET
ACCT. #FCA-14

CONTACT: KATIE WONSCH

DATE: 12/30/04

REF. #: 0438.33383

CORP. NAME: RUTLAND PLASTICS, INC.

( ) ARTICLES OF INCORPORATION
( ) ARTICLES OF AMENDMENT
( ) ARTICLES OF DISSOLUTION
( ) ANNUAL REPORT
( ) TRADEMARK/SERVICE MARK
( ) FICTITIOUS NAME
( ) FOREIGN QUALIFICATION
( ) LIMITED PARTNERSHIP
( ) LIMITED LIABILITY
( ) REINSTATEMENT
(XX) MERGER
( ) WITHDRAWAL
( ) CERTIFICATE OF CANCELLATION
( ) OTHER:

STATE FEES PREPAID WITH CHECK# ________ FOR $ 78.75

AUTHORIZATION FOR ACCOUNT IF TO BE DEBITED:

___________________________________ COST LIMIT: $________

PLEASE RETURN:

(XX) CERTIFIED COPY
( ) CERTIFICATE OF GOOD STANDING
( ) PLAIN STAMPED COPY
( ) CERTIFICATE OF STATUS

Examiner's Initials

ARTICLES OF MERGER
(Profit Corporations)

The following articles of merger are submitted in accordance with the Florida Business Corporation Act, pursuant to section 607.1105, F.S.

First: The name and jurisdiction of the **surviving** corporation:

Name	Jurisdiction	Document Number (If known/ applicable)
Rutland Plastics, Inc.	Florida	P96000086230

Second: The name and jurisdiction of each **merging** corporation:

Name	Jurisdiction	Document Number (If known/ applicable)
Rutland Merger Corp.	Florida	P04000170029

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Third: The Plan of Merger is attached.

Fourth: The merger shall become effective on the date the Articles of Merger are filed with the Florida Department of State.

OR ____/____/____ (Enter a specific date. NOTE: An effective date cannot be prior to the date of filing or more than 90 days in the future.)

Fifth: Adoption of Merger by **surviving** corporation - **(COMPLETE ONLY ONE STATEMENT)**
The Plan of Merger was adopted by the shareholders of the surviving corporation on December 20, 2004.

The Plan of Merger was adopted by the board of directors of the surviving corporation on ____________ and shareholder approval was not required.

Sixth: Adoption of Merger by **merging** corporation(s) **(COMPLETE ONLY ONE STATEMENT)**
The Plan of Merger was adopted by the shareholders of the merging corporation(s) on December 30, 2004.

The Plan of Merger was adopted by the board of directors of the merging corporation(s) on ____________ and shareholder approval was not required.

(Attach additional sheets if necessary)

Seventh: **SIGNATURES FOR EACH CORPORATION**

Name of Corporation	Signature	Typed or Printed Name of Individual & Title
Rutland Plastics, Inc.		Michael Vaden, Chief Executive Officer
Rutland Merger Corp.		Colby Collier, Chairman

PLAN OF MERGER
(Non Subsidiaries)

The following plan of merger is submitted in compliance with section 607.1101, F.S. and in accordance with the laws of any other applicable jurisdiction of incorporation.

First: The name and jurisdiction of the **surviving** corporation:

Name	Jurisdiction
Rutland Plastics, Inc.	Florida

Second: The name and jurisdiction of each **merging** corporation:

Name	Jurisdiction
Rutland Merger Corp.	Florida

Third: The terms and conditions of the merger are as follows:

The Merger shall be consummated pursuant to the Agreement and Plan of Merger (the "Agreement") to be executed on December 30, 2004 by and among Rutland Plastics, Inc., a Florida corporation, Rutland Holdings, LLC, a Delaware limited liability company and Rutland Merger Corp., Florida corporation. The terms and conditions of the merger are contained in the Agreement, an unexecuted copy of which is attached hereto as Exhibit A.

Fourth: The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving corporation or any other corporation or, in whole or in part, into cash or other property and the manner and basis of converting rights to acquire shares of each corporation into rights to acquire shares, obligations, or other securities of the surviving or any other corporation or, in whole or in part, into cash or other property are as follows:

Information concerning the manner and basis of conversion and manner and basis of converting rights is attached hereto as Attachment 1.

(Attach additional sheets if necessary)

THE FOLLOWING MAY BE SET FORTH IF APPLICABLE:

Amendments to the articles of incorporation of the surviving corporation are indicated below or attached as an exhibit:

See Attachment 2 hereto for the Amended and Restated Articles of Incorporation.

OR

Restated articles are attached:

Other provisions relating to the merger are as follows:

Other provisions relating to the merger are contained in the Agreement and Plan of Merger, an unexecuted copy of which is attached hereto as Exhibit A.

Attachment 1

Attachment to Plan of Merger
(as per Section 607.1101 of the FBCA)

Fourth: The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving corporation or, in whole or in part, into cash or other property and the manner and basis of converting rights to acquire shares of each corporation into rights to acquire shares, obligations, or other securities of the surviving or any other corporation or, in whole or in part, into cash or other property are as follows:

Upon the consummation of the merger (the "Merger") of Rutland Merger Corp. ("Merger Sub") with and into Rutland Plastics, Inc. (the "Corporation"), with the Corporation being the surviving entity (the "Surviving Corporation"), pursuant to the Agreement and Plan of Merger, effective as of December 30, 2004, among the Corporation, Rutland Holdings, LLC (the "Acquiror") and Merger Sub (the "Agreement"), (a) each share of common stock, par value $0.01 per share, of Merger Sub issued and outstanding immediately prior to the effective time of the Merger (the "Effective Time") shall, by virtue of the Merger and without further action on the part of any party, at the Effective Time, be converted into one duly authorized, validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation, (b) each share of common stock, par value $0.001 per share, of the Corporation held in the treasury of the Corporation immediately prior to the Effective Time shall, by virtue of the Merger and without further action on the part of any party, at the Effective Time be cancelled and cease to exist without conversion thereof), (c) each share of common stock, par value $0.001 per share, of the Corporation issued and outstanding immediately prior to the Effective Time (excluding such shares described in clause (b) above) shall, by virtue of the Merger and without further action on the part of any party, at the Effective Time be converted into the right to receive a portion of the Merger Consideration as more fully described herein but shall otherwise be deemed to cease to be outstanding and automatically be cancelled and retired and cease to exist, and (d) the shareholders of the Corporation, holders of options issued by the Corporation and certain recipients of bonuses determined on a per share equivalent amount (collectively, the "Shareholders") shall be entitled to receive the Merger Consideration (as defined below) consisting of cash, notes and equity payable as follows:

(i) on the Effective Date, the Acquiror shall pay, or shall cause to be paid, approximately $25,708,350 in cash (the "Closing Date Consideration Amount") to the Shareholders and the Corporation which shall be applied as follows: (a) approximately $25,527,000 to pay certain creditors of the Corporation and its subsidiaries, (b) $1,000,000 into escrow to be held by a third party escrow agent for a three (3) year period, (c) $400,000 to a holdback account with the escrow agent to fund any negative Working Capital Adjustment (as defined below); any seller transaction costs and certain other amounts, (d) approximately $906,000 to pay certain legal, accounting and investment banking service providers, (e) approximately $1,110,000 to the Corporation to make bonus payments to management, payments to holders of compensatory options

issued by the Corporation, and payments to certain employees required under their employment agreements, and (f) the balance to those Shareholders holding either Shares or non-compensatory options on a pro rata basis;

(ii) within the five (5) month period following the Effective Date, the Closing Date Consideration Amount may be subject to a working capital adjustment (which may be positive or negative) as determined by the Acquiror and Shareholders' Representative (the "Working Capital Adjustment"); and

(iii) after October 1, 2005, but not later than December 31, 2005, the Shareholders may be entitled to an additional payment (up to a maximum payment of $7,500,000) equal to 2.6x the amount, if any, by which the EBITDA for the Corporation during the period from October 2, 2004 through October 1, 2005, exceeds $4,665,887 (the "Contingent Purchase Price"). The Contingent Purchase Price may be paid by the Acquiror in the form of cash, Notes and/or Equity as set forth in the Agreement in the same proportions and manner amongst the Shareholders determined on a pro rata basis.

The "Merger Consideration" is equal to the sum of (i)(b) (if and to the extent such amounts are paid out of escrow to the Shareholders), (i)(c) (if and to the extent such amounts are paid out of the holdback account to the Shareholders), (i)(e), (i)(f), (ii) and (iii) above.

Pursuant to the terms of the Agreement, Canterbury RP Management LLC (the "Shareholders' Representative") shall act as agent for the Shareholders in connection with the receipt and distribution of certain portions of the Merger Consideration on a pro rata basis to the Shareholders, determining the Working Capital Adjustment, paying and/or reserving for any seller transaction costs and as otherwise set forth in the Agreement, including Article III and Section 11.9. All Shareholders shall be required to bear their pro rata share of any negative Working Capital Adjustment, indemnification obligations and seller transaction costs, including cost incurred in determining any Working Capital Adjustment and resolving any disputes regarding the Working Capital Adjustment, the escrow agreement, the Contingent Purchase Price and any claims for indemnification by the Acquiror under the Agreement. The Shareholders' Representative will serve as such without compensation but will receive reimbursement from a holdback account for its out-of-pocket expenses.

A more detailed description of the Merger Consideration as well as all other terms and conditions of the Merger are contained in the Agreement, an unexecuted copy of which is attached hereto as Exhibit A.

Attachment 2

Restated Articles of Incorporation

From and after the Effective Time of the Merger, the Articles of Incorporation of the Surviving Corporation are amended and restated in their entirety as follows:

ARTICLE I

The name of the Corporation is Rutland Plastics, Inc.

ARTICLE II

The street address and mailing address of the initial principal office of the Corporation is 10021 Rodney Street, Pineville, NC 28134.

ARTICLE III

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the laws of the State of Florida.

ARTICLE IV

The total number of shares of stock which the Corporation has authority to issue is ten (10) shares of Common Stock with a par value of $0.01 per share.

ARTICLE V

The Corporation is to have perpetual existence.

ARTICLE VI

In furtherance and not in limitation of the powers conferred by statute, the board of directors of the Corporation is expressly authorized to make, alter or repeal the by-laws of the Corporation.

ARTICLE VII

Meetings of stockholders may be held within or outside of the State of Florida, as the by-laws of the Corporation may provide. The books of the corporation may be kept outside the State of Florida at such place or places as may be designated from time to time by the board of directors in the by-laws of the Corporation. Election of the directors need not be by written ballot unless the by-laws of the Corporation so provide.

ARTICLE VIII

To the fullest extent permitted by the General Corporation Law of the State of Florida as the same exists or may hereafter be amended, a director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director. Any repeal or modification of this ARTICLE VIII shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE IX

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation in the manner now or hereafter prescribed herein and by the laws of the State of Florida, and all rights conferred upon stockholders herein are granted subject to this reservation.

ARTICLE X

The name and address of the Corporation's registered agent in the State of Florida is C T Corporation System, c/o C T Corporation System, 1200 South Pine Island Road, Plantation, Florida 33324.

Exhibit A

Agreement and Plan of Merger

[See attached]

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "**Agreement**") is entered into as of the 30th day of December, 2004, by and among Rutland Plastics, Inc., a Florida corporation (the "**Company**"), Rutland Holdings LLC, a limited liability company formed under the laws of Delaware ("**Acquiror**"), Rutland Merger Corp., a Florida corporation ("**Merger Sub**").

WHEREAS, the Board of Directors of the Company has determined that it is fair to, and in the best interest of, its Shareholders (as defined herein) that Merger Sub, a wholly-owned subsidiary of Acquiror, merge with and into the Company, pursuant to and subject to the terms and conditions of this Agreement and the Florida Law (as defined herein);

WHEREAS, the Acquiror desires to consummate the Merger (as defined below) and the other transactions contemplated by this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth in this Agreement, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1. **Definitions**. As used in this Agreement and the Exhibits and Schedules delivered pursuant hereto and to the extent incorporated in other Transaction Documents, the following definitions shall apply:

1.2. **"Accounts Receivable"** shall have the meaning set forth in Section 4.26.

1.3. **"Acquiror"** shall have the meaning set forth in the recital hereto.

1.4. **"Acquiror Indemnified Parties"** shall have the meaning set forth in Section 8.1(a).

1.5. **"Actual Closing Balance Sheet"** shall have the meaning set forth in Section 3.3(b).

1.6. **"Actual Net Working Capital"** shall have the meaning set forth in Section 3.3(b).

1.7. **"Additional Holdback Amount"** shall have the meaning set forth in Section 3.3(e)(i).

1.8. **"Advisory Agreement"** means that certain Advisory Agreement between Rutland Plastic Technologies, Inc., HSBC Capital (USA) Inc. and Rutland Managers, LLC dated as of the Closing Date.

1.9. "**Affiliate**" means, as to any Person, a Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Person specified. With respect to any natural person, the term Affiliate shall also include any member of said person's immediate family, any family limited partnership for said person and any trust, voting or otherwise, of which said person is a trustee or of which said person or any of said person's immediate family is a beneficiary. With respect to any trust, the term Affiliate shall also include any beneficiary or trustee of such trust. For purposes of the foregoing, the term "control" and variations thereof means the possession of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by Contract or otherwise.

1.10. "**Agreement**" shall have the meaning set forth in the recital hereto.

1.11. "**Balance Sheet**" shall have the meaning set forth in Section 4.5.

1.12. "**Balance Sheet Date**" shall have the meaning set forth in Section 4.5.

1.13. "**Base EBITDA Amount**" means $4,665,887.00.

1.14. "**Benefits Arrangement**" shall have the meaning set forth in Section 4.17.

1.15. "**Bonus Payment**" means payments due to participants in the Company's Equity Participation Plan.

1.16. "**Bonus Recipient**" means any person who receives a Bonus Payment.

1.17. "**Business**" means the existing business of the Company and its Subsidiaries, including the business of manufacturing and selling plastisols (as an adhesive, surface base or protective coating) for the textile (ink printing), automotive (primarily filters) and general industrial segments.

1.18. "**Business Day**" means any day other than a Saturday, Sunday or legal holiday in connection with which banks in New York, New York are authorized or permitted to close.

1.19. "**Canterbury**" shall have the meaning set forth in Section 8.8.

1.20. "**CERCLA**" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601-9657.

1.21. "**Certificate of Merger**" shall have the meaning set forth in Section 2.2.

1.22. "**Claims**" means any and all notices, claims, demands, Legal Proceedings, deficiencies Orders, and Losses assessed or sustained, including, without limitation, the defense or settlement of any such Claim and the enforcement of all rights to indemnification under this Agreement.

1.23. **"Closing"** means the consummation of the transactions contemplated by Articles II and III of this Agreement in accordance herewith which shall be deemed to occur at 11:59 p.m. on the Closing Date.

1.24. **"Closing Date"** shall have the meaning set forth in Section 2.10.

1.25. **"Closing Date Consideration Amount"** shall have the meaning set forth in Section 3.2(a)(vii).

1.26. **"Closing Date Purchase Price"** shall have the meaning set forth in Section 3.2(a).

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

1.28. **"Commitment Letters"** shall have the meaning set forth in Section 6.5.

1.29. **"Common Stock"** shall mean the Company's common stock, $.001 par value per share.

1.30. **"Company"** shall have the meaning set forth in the recital hereto.

1.31. **"Company Plan"** shall have the meaning set forth in Section 4.17.

1.32. **"Consent"** means any consent, authorization or approval.

1.33. **"Contingent Purchase Price"** shall have the meaning set forth in Section 3.4(a).

1.34. **"Contract"** means any contract, agreement, commitment, arrangement or understanding (whether written or oral, whether formal or informal).

1.35. **"Current Company Plans"** shall have the meaning set forth in Section 4.17.

1.36. **"Delivered Holder"** shall mean, as of any date of determination, (i) any Shareholder that shall have duly executed and delivered an Option Release and/or Letter of Transmittal (together with applicable stock certificates) prior to such date of determination in accordance with Section 3.2(a)(vii)(A), 3.2(a)(vii)(B), 3.2(b)(i) or 3.2(b)(ii) and (ii) any Bonus Recipient.

1.37. **"Dissenting Shares"** shall have the meaning set forth in Section 3.7.

1.38. **"EBITDA"** shall have the meaning set forth in Section 3.4(b).

1.39. **"EBITDA Period"** shall have the meaning set forth in Section 3.4(a).

1.40. **"Effective Time"** shall have the meaning set forth in Section 2.2.

1.41. **"Employment Agreements"** means the separate employment agreements each between the Surviving Corporation and Michael Vaden, J. William Dominick, Fred Shackelford,

Daniel Sweem, Gary Davis, Randolph Miller and Poinzettia Stephens, each dated as of the Effective Time.

1.42. **"Environmental Laws"** shall have the meaning set forth in Section 4.15(a).

1.43. **"EPA Settlement Agreement"** means the CERCLA Section 122(h)(1) Cashout Agreement for Ability to Pay among the Operating Company, the Environmental Protection Agency and the South Carolina Department of Health and Environmental Control, effective as of October 25, 2004.

1.44. **"Equalization Bonus"** shall have the meaning set forth in Section 3.2(a)(iv).

1.45. **"Equity"** shall mean Class A Units of the Acquiror. For the purposes of determining the number of Class A Units of the Acquiror issuable pursuant to Section 3.4(c)(iii), each Class A Unit of the Acquiror shall be valued at $1.00.

1.46. **"Equity Participation Plan"** means the Equity Participation Plan of the Company dated September 19, 2002.

1.47. **"ERISA Affiliate Plan"** shall have the meaning set forth in Section 4.17.

1.48. **"ERISA Affiliate"** shall have the meaning set forth in Section 4.17.

1.49. **"ERISA"** shall have the meaning set forth in Section 4.17.

1.50. **"Escrow Agent"** shall mean City National Bank, or such other Person as shall be acceptable to the Acquiror and the Shareholders' Representative.

1.51. **"Escrow Agreement"** shall mean the agreement by and among the Shareholders' Representative, the Escrow Agent and Acquiror, in the form attached hereto as **Exhibit A** or in such other form as shall be acceptable to the Acquiror and the Shareholders' Representative.

1.52. **"Escrow Amount"** shall mean $1,000,000.

1.53. **"Escrow Released Amount"** shall have the meaning set forth in Section 3.5(a)(i).

1.54. **"Estimated Closing Balance Sheet"** shall have the meaning set forth in Section 3.3(a).

1.55. **"Estimated Net Working Capital"** shall have the meaning set forth in Section 3.3(a).

1.56. **"Excess Amount"** shall have the meaning set forth in Section 3.3(g).

1.57. **"Excess Amount Notice"** shall have the meaning set forth in Section 3.3(g).

1.58. **"Final Merger Consideration"** shall have the meaning set forth in Section 3.3(e)(ii).

1.59. "**Final Per Share Merger Consideration**" shall have the meaning set forth in Section 3.3(e)(ii).

1.60. "**Financial Statements**" shall have the meaning set forth in Section 4.5 hereof.

1.61. "**Financing**" means the debt financings contemplated by the Commitment Letters and the equity financing contemplated by the Operating Agreement.

1.62. "**Financing Loan Documents**" means collectively, (a) the Revolving Credit, Term Loan and Security Agreement dated as of December 30, 2004 among PNC Bank, National Association, as agent, the financial institutions which are now or thereafter become a party thereto and the Operating Company, (b) the Export-Import Loan and Security Agreement dated as of December 30, 2004 among PNC Bank, National Association, as agent, the financial institutions which are now or thereafter become a party thereto and the Operating Company and (c) the Senior Subordinated Note and Class D Interest Purchase Agreement dated as of December 30, 2004 among Mezzanine Opportunities LLC, the Acquiror and the Operating Company and (d) all agreements, documents and instruments executed and delivered in connection the foregoing, all as amended, supplemented or otherwise modified from time to time.

1.63. "**First Tier Earnout Amount**" shall have the meaning set forth in Section 3.4(c)(iii)(A).

1.64. "**Florida Law**" means the Florida Business Corporation Act.

1.65. "**GAAP**" means generally accepted accounting principles in the United States, as in effect from time to time.

1.66. "**Governmental Entity**" means any government or agency, district, bureau, board, commission, court, department, official, political subdivision, tribunal, taxing authority or other instrumentality of any government, whether federal, state, municipal or local, domestic or foreign.

1.67. "**Hazardous Materials**" means any (i) toxic or hazardous materials or substances; (ii) solid wastes, including asbestos, polychlorinated biphenyls, mercury, buried contaminants, chemicals, flammable or explosive materials; (iii) radioactive materials; (iv) petroleum or petroleum-based substances or wastes and spills or releases of petroleum products; and (v) any other chemical, pollutant, contaminant, substance or waste that is regulated by any Governmental Entity under any Environmental Law.

1.68. "**Holdback Account**" shall have the meaning set forth in Section 3.2(a)(iii).

1.69. "**Holdback Amount**" shall mean the sum of (i) $400,000 plus (ii) any Additional Holdback Amount deposited in the Holdback Account pursuant to Section 3.3.

1.70. "**Holdback Release Notice**" shall have the meaning set forth in Section 3.8(a).

1.71. **"In-The-Money Option"** means any Option outstanding immediately prior to the Effective Time which has an exercise price which is less than the Per Share Merger Consideration.

1.72. **"Income Tax"** any federal, state, local or foreign Tax (a) based on, measured by or calculated with respect to net income or profits or (b) based on, measured by or calculated with respect to multiple bases (including without limitation corporate franchise Taxes) if one or more of the bases on which such Tax may be based is described in clause (a), in each case together with interest, additions to tax and penalties thereon.

1.73. **"Indebtedness"** shall mean, without duplication, (i) indebtedness for borrowed money or indebtedness issued or incurred in substitution or exchange for indebtedness for borrowed money, (ii) indebtedness evidenced by any note, bond, debenture, mortgage or other debt instrument or debt security, (iii) obligations under any interest rate, currency or other hedging agreement, (iv) obligations under any termination, severance, retention, transaction bonus or similar arrangement arising in connection with this Agreement or the consummation of the transactions contemplated hereunder, to the extent owed as of the Closing and unpaid as of the Closing, (v) capitalized lease obligations (excluding the obligations under the Operating Lease), (vi) all letter of credit and similar instruments, including letters of credit and (vii) guarantees or other contingent liabilities with respect to any indebtedness, obligation, claim or liability of any other Person of a type described in clauses (i) through (vi) above and (viii) for clauses (i) through (vi) above, all accrued interest thereon, if any, and any termination fees, prepayment penalties, "breakage" cost or similar payments associated with the repayments of such Indebtedness on the Closing Date; provided, however, that Indebtedness shall not include (i) trade payables and accruals in accordance with the Company's and its Subsidiaries' past practice or (ii) amounts with respect to the EPA Settlement Agreement.

1.74. **"Indemnified Parties"** shall mean the Acquiror Indemnified Parties and the Seller Indemnified Parties, collectively.

1.75. **"Independent Auditors"** shall mean Price Waterhouse Coopers.

1.76. **"Intellectual Property Rights"** means all rights in and to all trademarks and service marks, and registrations thereof or applications for registration therefor, trade names, domain names, and registrations thereof, logos, and all goodwill pertaining to each of the foregoing, licenses (including computer software licenses), inventions and trade secrets or confidential business information, whether or not patentable and whether or not reduced to practice, patents, patent applications, trade dresses, know-how, technical and business information (including research and development information, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans and proposals, customer and supplier lists and information, formulas, compositions, manufacturing and production processes and techniques, designs, drawings, specifications) copyrights, copyrightable materials, copyright registrations, applications for copyright registration and renewal of copyright registrations, software programs (whether in object code, source code or other form) and data bases, the "Rutland Plastics, Inc." and "Rutland Plastic Technologies, Inc." names and all derivations thereof, and all other proprietary intellectual property rights and intangible assets, and all embodiments and fixations thereof and related documentation,

registrations and franchises and all additions, improvements and accessions thereto, in each case which are owned or licensed by the Company or any of its Affiliates or used or held for use in the Business, whether registered or unregistered or domestic or foreign.

1.77. "**IPT**" shall have the meaning set forth in Section 3.4(b).

1.78. "**IRS**" means the United States Internal Revenue Service.

1.79. "**Labor Agreements**" shall have the meaning set forth in Section 4.12(b).

1.80. "**Law**" means any constitutional provision, common law, statute or other law, rule, regulation, or interpretation of any Governmental Entity and any Order.

1.81. "**Legal Proceedings**" means any judicial, administrative or arbitral actions, suits, proceedings (public or private) or governmental proceedings.

1.82. "**Letter of Transmittal**" shall have the meaning set forth in Section 3.2(a)(vii)(A).

1.83. "**Losses**" means any and all losses, damages, debts, demands, liabilities, obligations, deficiencies, penalties, amounts paid in connection with Claims, amounts paid in settlement, costs (including court costs) and expenses, including reasonable attorneys' and other professionals' fees and disbursements and other amounts paid or incurred in connection with the enforcement of rights (whether by law or pursuant to this Agreement) to recover Losses, including, without limitation, reasonable out-of-pocket costs of investigating, preparing or defending any Claim.

1.84. "**MAE Notice**" shall have the meaning set forth in Section 10.1(e).

1.85. "**Material Adverse Change**" means a material adverse change in the business, properties, assets, operations, prospects, results of operations, or condition (financial or otherwise) of the Company and its Subsidiaries taken as a whole or on the ability of the Company and its Subsidiaries to consummate timely the transactions contemplated by this Agreement.

1.86. "**Material Adverse Effect**" means a material adverse effect on the business, properties, assets, operations, prospects, results of operations, or condition (financial or otherwise) of the Company and its Subsidiaries taken as a whole or on the ability of the Company and its Subsidiaries to consummate timely the transactions contemplated by this Agreement.

1.87. "**Merger**" shall have the meaning set forth in Section 2.1.

1.88. "**Merger Consideration**" shall have the meaning set forth in Section 3.1.

1.89. "**Merger Sub**" shall have the meaning set forth in the recital hereto.

1.90. "**Multiemployer Plan**" shall have the meaning set forth in Section 4.17.

1.91. **"Net Working Capital"** means current assets consisting only of trade accounts receivable, inventories, and prepaid ordinary course of business expenses, less current liabilities, including accounts payable and accrued expenses. Under no circumstances, for purposes of determining, or adjusting, the Merger Consideration, will Net Working Capital include any Income Tax refunds or receivables, any reserves for accrued Income Taxes or any element of deferred income Taxes, whether recorded as a deferred charge or as a deferred credit, or the amounts paid pursuant to Section 3.2 with respect to Options issued under the Stock Option Plan, the Equity Participation Plan and the Equalization Bonus.

1.92. **"Notes"** shall mean any promissory notes issued by the Company to the Shareholders pursuant to Section 3.4(c)(iii), such promissory notes shall be in the form of **Exhibit B** hereto.

1.93. **"NPL"** shall have the meaning set forth in Section 4.15(c).

1.94. **"Objection Notice"** shall have the meaning set forth in Section 3.3(c).

1.95. **"Operating Company"** means Rutland Plastic Technologies, Inc., a Delaware corporation.

1.96. **"Operating Lease"** means the Operating Lease, dated May 7, 2004 between Company and BB&T Leasing Corporation.

1.97. **"Order"** means any decree, injunction, judgment, order, award, ruling, assessment or writ by a court, administrative agency, other Governmental Entity, arbitrator or arbitration panel.

1.98. **"Operating Agreement"** shall have the meaning set forth in Section 3.4(d).

1.99. **"Option"** means the stock options which have been granted as of the date hereof under the Stock Option Plan and the Stock Option Agreements.

1.100. **"Option Proceeds"** means the aggregate exercise price that would be paid if all In-The-Money Options outstanding immediately prior to the Effective Time were exercised in full.

1.101. **"Option Release"** shall have the meaning set forth in Section 3.2(a)(vii)(B).

1.102. **"Paying Account"** shall have the meaning set forth in Section 3.2(a)(vii)(D).

1.103. **"PBGC"** shall have the meaning set forth in Section 4.17.

1.104. **"Per Share Merger Consideration"** means a quotient, (i) the numerator of which is equal to the sum of (A) the Merger Consideration, plus (B) the Option Proceeds, and (ii) the denominator of which is equal to the aggregate number of outstanding Shares of Common Stock as of immediately prior to the Effective Time on a fully-diluted basis (assuming, for such purpose, that all In-The-Money Options outstanding immediately prior to the Effective Time

have been exercised into Shares of Common Stock and assuming that all Per Share Equivalent Amounts were outstanding Shares of Common Stock).

1.105. **"Per Share Equivalent Amount"** means with respect to a Bonus Recipient the number of Shares that would be obtained by dividing (A) such Bonus Recipient's Bonus Payments (subject to adjustment to give effect to any Working Capital Adjustment -- positive or negative -- and any portion of the Escrow Amount, Holdback Amount and the Contingent Purchase Price payable to such Bonus Recipient (in such Bonus Recipient's capacity as a Bonus Recipient hereunder) by (B) the Per Share Merger Consideration (subject to adjustment to give effect to any Working Capital Adjustment -- positive or negative -- and any portion of the Escrow Amount, Holdback Amount and the Contingent Purchase Price payable to such Bonus Recipient hereunder).

1.106. **"Permitted Liens"** means (a) mechanics', carriers', workmen's, warehousemen's, repairmen's or other like liens arising in the ordinary course of business which are not due and payable as of the Closing Date and which would not, individually or in the aggregate, have a Material Adverse Effect, (b) liens arising under original purchase price conditional sale contracts and equipment leases with third parties entered into in the ordinary course and which would not, individually or in the aggregate, have a Material Adverse Effect, (c) liens for Taxes not yet due and payable, (d) other imperfections of title, restrictions or encumbrances of record, if any, which liens, imperfections of title, restrictions or other encumbrances do not materially impair the value or the continued use or occupancy and operation of the specific assets to which they relate in the manner currently operated and (e) Restrictions in favor of the lenders thereunder imposed in connection with the Financing.

1.107. **"Person"** means any individual, partnership, joint venture, corporation, limited liability company, trust, estate, unincorporated organization or Governmental Entity.

1.108. **"Plan"** shall have the meaning set forth in Section 4.17.

1.109. **"Pre-Closing Period"** means any period that ends on or before the Closing Date or, with respect to a period that includes but does not end on the Closing Date, the portion of such period through and including the Closing Date.

1.110. **"Pro Rata Share"** means with respect to each Shareholder the percentage obtained by dividing (A) the sum of (i) the number of Shares of Common Stock owned by such Shareholder as set forth in the Company's stock transfer ledger, immediately prior to the Effective Time, plus (ii) the number of Shares of Common Stock into which each In-The-Money Option held by such Shareholder immediately prior to the Effective Time would be exercisable assuming that such In-The-Money Options were exercised immediately prior to the Effective Time, plus (iii) such Shareholder's Per Share Equivalent Amount, by (B) the aggregate number of outstanding Shares of Common Stock immediately prior to the Effective Time on a fully-diluted basis (assuming, for such purpose, that all In-The-Money Options outstanding immediately prior to the Effective Time have been exercised into Shares of Common Stock and assuming that all Per Share Equivalent Amounts were outstanding Shares of Common Stock).

1.111. **"Real Property"** has the meaning set forth in Section 4.22.

1.112. **"Released Holdback Amount"** shall have the meaning set forth in Section 3.8(a).

1.113. **"Restrictions"** means all liens, pledges, encumbrances, security interests, Taxes, voting trusts, options, warrants, calls and rights of first refusal.

1.114. **"Second Tier Earnout Amount"** shall have the meaning set forth in Section 3.4(c)(iii)(B).

1.115. **"Second Tier Earnout Principal Amount"** shall have the meaning set forth in Section 3.4(c)(iii)(B).

1.116. **"Section 10(c)(i) Payment"** shall have the meaning set forth in Section 7.1.

1.117. **"Seller Indemnified Parties"** shall have the meaning set forth in Section 8.1(b).

1.118. **"Seller Transaction Costs"** means the aggregate amount of all fees, costs and expenses of the Company, the Company's Subsidiaries, the Shareholders and the Shareholders' Representative incurred in connection with this Agreement and the other Transaction Documents or the transactions contemplated hereby or thereby, including, without limitation, any investment banking, accounting, advisory, brokers, finders, escrow agent or legal fees or fees paid to any Governmental Entity or third party.

1.119. **"Settlement Date"** shall have the meaning set forth in Section 3.3(e).

1.120. **"Shareholders"** means (i) the shareholders of the Company, (ii) the holders of the Options and (iii) Bonus Recipients, in each case as set forth on **Schedule 1.120**.

1.121. **"Shareholders Agreement"** means that certain Stockholders' and Registration Rights Agreement, dated September 19, 2002, by and among the Company, the Operating Company, Canterbury Mezzanine Capital, L.P., Heller Financial, Inc., Trivest Fund II, Ltd., Trivest Equity Partners II, Ltd., Trivest Principals Fund II, Ltd., Peter C. Brockway, Philip M. Carpenter III, H. Randall Litten and Michael E. Moran.

1.122. **"Shareholders Basket"** shall have the meaning set forth in Section 8.2(a)(i).

1.123. **"Shareholder Indemnity Cap"** shall have the meaning set forth in Section 8.2(a)(iii).

1.124. **"Shareholders' Representative"** means Canterbury RP Management LLC, a Delaware limited liability company.

1.125. **"Shares"** means shares of Common Stock.

1.126. **"Shortfall Amount"** shall have the meaning set forth in Section 3.3(f).

1.127. **"Stock Option Agreements"** means the separate Stock Option Agreements, between the Company and Michael Vaden and the Company and J. William Dominick, each dated September 19, 2002.

1.128. **"Stock Option Plan"** means the New Management Stock Option Plan of the Company dated September 19, 2002.

1.129. **"Subsidiary"** means each entity, at least a majority of the capital stock or other equity or voting securities of which are controlled or owned, directly or indirectly, by the Company or the Operating Company.

1.130. **"Surviving Corporation"** shall have the meaning set forth in Section 2.1.

1.131. **"Target Net Working Capital"** shall mean $7,123,000.

1.132. **"Tax Proceeding"** shall have the meaning set forth in Section 4.6(b).

1.133. **"Tax Return"** includes any return, declaration, report, claim for refund or credit, information return or statement, and any amendment thereto, including any consolidated, combined, unitary or separate return or other document (including any related or supporting information or schedule), required to be filed with any Governmental Entity in connection with the determination, assessment, collection or payment of Taxes or the administration of any Laws relating to Taxes.

1.134. **"Tax"** shall mean any federal, state, local or foreign tax, charge, fee, levy, deficiency or other assessment of whatever kind or nature imposed by any Governmental Entity (including any net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, withholding, payroll, employment, unemployment, excise, estimated, severance, stamp, occupation, real property, personal property, intangible property, occupancy, recording, minimum, environmental and windfall profits tax), including any liability therefor as a result of Treasury Regulation Section 1.1502-6 or any similar provision of applicable Law, or as a result of any Tax sharing or similar agreement, together with any interest, penalties and additions to tax or imposed thereon.

1.135. **"Termination Date"** shall have the meaning set forth in Section 10.1.

1.136. **"Third Party"** means any Person, other than the Company and any Subsidiary.

1.137. **"Third Tier Earnout Amount"** shall have the meaning set forth in Section 3.4(c)(iii)(C).

1.138. **"Title Claims"** means, with respect to any Shareholder, any claim brought against such Shareholder based upon the breach by such Shareholder of the representations and warranties made by such Shareholder in any Letter of Transmittal or Option Release delivered by such Shareholder pursuant to **Section 3.2(b)**.

1.139. **"Transaction Documents"** shall mean, collectively, this Agreement, the Escrow Agreement, the Employment Agreements, the Operating Agreement, any Notes, the Letters of Transmittal and the Option Releases.

1.140. **"Transaction Tax Benefit"** shall mean any Tax benefit attributable to (a) payments to be made by the Company or any of its Subsidiaries on the Closing Date in

connection with the transactions contemplated by this Agreement and (b) payments by the Surviving Corporation of the Shortfall Amount or the Contingent Purchase Price, and any deposits of the Escrow Amount and Holdback Amount, in each case, that are deductible for U.S. federal income tax purposes, including payments of bonuses payable pursuant to the Equity Participation Plan and payments for Options, and any deductions attributable to the Company's Indebtedness, including unamortized financing costs and repayment premiums.

1.141. **"Undelivered Holder"** shall mean, as of any date of determination, any Shareholder that is not a Delivered Holder as of such date of determination.

1.142. **"Waste"** shall have the meaning set forth in Section 4.15(a).

1.143. **"Working Capital Adjustment"** shall equal the difference between the Actual Net Working Capital and the Target Net Working Capital (expressed as (A) a positive number if the Actual Net Working Capital is more than One Hundred Fifty Thousand Dollars ($150,000) greater than the Target Net Working Capital, (B) a negative number if the Actual Net Working Capital is more than One Hundred Fifty Thousand Dollars ($150,000) less than the Target Net Working Capital or (C) zero if the Actual Net Working Capital is not more than One Hundred Fifty Thousand Dollars ($150,000) greater or less than the Target Net Working Capital).

1.144. **Terms Generally; Certain Rules of Construction.** Definitions in this Agreement and in any other Transaction Documents shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation". All references in this Agreement or any other Transaction Document to Sections, Exhibits and Schedules shall be deemed references to Sections of, and Exhibits and Schedules to, this Agreement or any other Transaction Document in which used, except as otherwise provided. Unless otherwise expressly provided herein or unless the context shall otherwise require, any references as of any time to the "Certificate of Incorporation," "By-laws" or other organizational or constituent documents of any Person, to any Contract, instrument or document or to any Law or any specific section or other provision thereof, shall be deemed a reference to the foregoing as amended and supplemented through such time (and, in the case of a Law or specific section or other provision thereof, to any successor of such Law, section or other provision). Any reference in this Agreement to a "day" or number of "days" (without the explicit qualification of "Business") shall be interpreted as a reference to a calendar day or number of calendar days. If any action or notice is to be taken or given on or by a particular calendar day, and such calendar day is not a Business Day, then such action or notice shall be deferred until, or may be taken or given on, the next Business Day. Unless otherwise expressly provided herein or unless the context shall otherwise require, any provision using a defined term which is based on a specified relationship between one Person and one or more other Persons shall, as of any time, refer only to such Persons who have the specified relationship as of that particular time. Expressions, in any form, regarding the "knowledge of" the Company and/or any Subsidiary with regard to any matter refer to either the actual knowledge of Mr. Michael Vaden and Mr. Fred Shackelford, or what such person would reasonably be expected to have knowledge of given such person's relationship or position with the Company.

ARTICLE II

THE MERGER

2.1. **The Merger**. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with Florida Law, at the Effective Time, Merger Sub shall be merged with and into the Company (the "**Merger**"). As a result of the Merger, the separate corporate existence of Merger Sub shall cease and the Company shall continue as the surviving corporation of the Merger (referred to herein as the "**Surviving Corporation**") and a wholly-owned subsidiary of Acquiror. The name of the Surviving Corporation shall be "Rutland Plastics, Inc."

2.2. **Effective Time**. As promptly as practicable after the Closing or simultaneously with the Closing, the parties hereto shall cause the Merger to be consummated by filing a certificate of merger (the "**Certificate of Merger**") with the Secretary of State of the State of Florida, in such form as required by, and executed in accordance with the relevant provisions of, Florida Law and in such form as approved by the Company and Acquiror prior to such filing (the date and time of the filing of the Certificate of Merger or the time specified therein being the "**Effective Time**").

2.3. **Effect of the Merger**. At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of Florida Law. At the Effective Time, except as otherwise provided herein, all the rights, privileges, powers and franchises of Merger Sub and the Company, shall vest in the Surviving Corporation, and all debts, liabilities and duties of Merger Sub and the Company shall become the debts, liabilities and duties of the Surviving Corporation.

2.4. **Certificate of Incorporation; Bylaws**. At the Effective Time, (a) the certificate of incorporation of Rutland Plastics, Inc., as in effect immediately prior to the Effective Time and as amended by the Certificate of Merger, shall be the certificate of incorporation of the Surviving Corporation, and (b) the bylaws of Rutland Plastics, Inc., as in effect immediately prior to the Effective Time, shall be the bylaws of the Surviving Corporation.

2.5. **Directors and Officers**. The directors and officers of Rutland Plastics, Inc. immediately prior to the Effective Time shall be the initial directors and officers of the Surviving Corporation, in each case until their respective successors are duly elected or appointed and qualified.

2.6. **Conversion of Shares**. Subject to the other provisions of this Section 2.6, at the Effective Time, by virtue of the Merger and without any action on the part of Acquiror, Merger Sub, or the Company each Share issued and outstanding immediately prior to the Effective Time (excluding any shares described in Section 2.7 and any Dissenting Shares) shall be converted into the right to receive the Per Share Merger Consideration payable or deliverable by the Acquiror to the Shareholders as set forth in Article III. All such Shares shall cease to be outstanding and shall automatically be canceled and retired and shall cease to exist, and each certificate previously evidencing any such Shares and each Option shall thereafter represent only the right to receive the Per Share Merger Consideration if, when and as payable or deliverable pursuant to Article III. The holders of certificates previously evidencing such Shares of

Common Stock issued and outstanding immediately prior to the Effective Time shall cease to have any rights with respect to such Shares except as otherwise provided herein or by law.

2.7. **Treasury Stock**. All shares of capital stock of the Company held in the treasury of the Company immediately prior to the Effective Time shall be canceled and extinguished without any conversion thereof and no cash or other Merger Consideration shall be delivered or deliverable in exchange therefor.

2.8. **Merger Sub Stock**. Each share of common stock, par value $.01 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one (1) duly authorized, validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation.

2.9. **Treatment of Options**.

(a) Prior to the Effective Time, each In-The-Money Option issued under the Stock Option Plan, whether or not then exercisable, shall be cancelled and converted into the right to receive from the Company and, after the Merger, from the Surviving Corporation, an amount equal to the product of (y) the number of Shares of Common Stock issuable immediately prior to such conversion upon the exercise of such In-The-Money Option, whether at or upon the passage of time or the occurrence of future events, times (z) the excess of the Per Share Merger Consideration over the exercise price per Share of Common Stock issuable upon exercise of such In-The-Money Option assuming such In-The-Money Option was exercised immediately prior to such conversion. Prior to the Effective Time, the Company shall cause each holder of an In-the-Money Option issued pursuant to the Stock Option Agreements to transfer such holder's In-the Money Option to the Company in consideration for the right to receive from the Company and, after the Merger, from the Surviving Corporation, an amount equal to the product of (y) the number of Shares of Common Stock issuable immediately prior to such purchase upon the exercise of such In-The-Money Option, whether at or upon the passage of time or the occurrence of future events, times (z) the excess of the Per Share Merger Consideration over the exercise price per Share of Common Stock issuable upon exercise of such In-The-Money Option assuming such In-The-Money Option was exercised immediately prior to such purchase. Each In-the-Money Option for which the holder shall have the right to receive a portion of the Merger Consideration pursuant to this Section 2.9(a) shall otherwise cease to be outstanding, shall be cancelled and retired and shall cease to exist.

(b) To the extent not converted into the right to receive a portion of the Merger Consideration pursuant to Section 2.9(a), all other Options outstanding as of the Effective Time shall be cancelled and retired without consideration therefor as of the Effective Time.

2.10. **Closing**. Subject to the terms and conditions of this Agreement, the Closing will take place as promptly as practicable after satisfaction of, or waiver of, the conditions set forth in Article IX hereof (the "**Closing Date**"), at the offices of Mayer, Brown, Rowe & Maw LLP, 1675 Broadway, New York, NY 10019-5820, unless another date or place is agreed to in writing by the parties hereto.

2.11. **Subsequent Actions**. If, at any time after the Effective Time, the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to continue in, vest, perfect or confirm of record any rights in the Surviving Corporation, its right, title or interest in, to or under any of the rights, properties, privileges, franchises or assets of either of its constituent corporations acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, the officers and directors of the Surviving Corporation shall be directed and authorized to execute and deliver, in the name and on behalf of either of such constituent corporations, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of each of such corporations or otherwise take all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties, privileges, franchises or assets in the Surviving Corporation or otherwise to carry out this Agreement.

ARTICLE III

MERGER CONSIDERATION

3.1. **Merger Consideration**. The Merger Consideration shall consist of the sum of (i) the Closing Date Consideration Amount, (ii) any Working Capital Adjustment (which may be a positive or negative number), (iii) the Escrow Amount, if and to the extent the Escrow Amount is paid to the Shareholders pursuant to the Escrow Agreement or any Notes and/or Equity substituted for the Escrow Amount pursuant to Section 3.5 hereof, (iv) the Holdback Amount, if and to the extent the Holdback Amount is paid to the Shareholders pursuant to the Escrow Agreement and (v) the Contingent Purchase Price, if any, payable by the Surviving Corporation as provided herein ((i) through (v) are collectively, the "**Merger Consideration**").

3.2. **Closing Date Consideration Amount; Shareholders' Representative**.

(a) **Initial Disbursements of Closing Date Consideration Amount**. The Closing Date Consideration Amount shall be Twenty-Five Million Seven Hundred Eight Thousand Three Hundred Fifty Dollars ($25,708,350) (the "**Closing Date Purchase Price**") which shall be payable on the Closing Date as follows (which payments shall be made, or be caused to be made, by the Acquiror in accordance with the flow of funds set forth on **Schedule 3.2(a)**):

(i) payments of amounts necessary to satisfy all Indebtedness outstanding immediately prior to the Closing shall be paid by wire transfer in immediately available funds directly to the lenders (lessors) of such Indebtedness at Closing to such accounts of such lenders and lessors as the Company shall have designated in writing to the Acquiror at least two (2) Business Days prior to the Closing Date;

(ii) the Escrow Amount shall be deposited, by wire transfer in immediately available funds, in an account with the Escrow Agent, which account shall be designated in writing to the Acquiror at least two Business Days prior to the Closing Date, to be held by the Escrow Agent pursuant to the Escrow Agreement;

(iii) the Holdback Amount shall be deposited, by wire transfer in immediately available funds, in an account with the Escrow Agent (the "**Holdback Account**"), which account shall be designated in writing to the Acquiror at least two Business Days prior to the Closing Date, to be held by the Escrow Agent pursuant to the Escrow Agreement;

(iv) payments of the respective amounts set forth on **Schedule 3.2(a)(iv)** with respect to Larry Schnell and Dennis Cooley;

(v) payments of the amounts set forth on **Schedule 3.2(a)(v)** (the "**Equalization Bonus**") to each of the Bonus Recipients set forth thereon; and

(vi) payments of the fees set forth on **Schedule 3.2(a)(vi)** to each of the recipients set forth thereon, in each case, in accordance with the payment procedures set forth on **Schedule 3.2(a)(vi)**;

(vii) the remaining balance of the Closing Date Purchase Price (the "**Closing Date Consideration Amount**") shall be paid as follows:

(A) with respect to any Shareholder holding a stock certificate which immediately prior to the Effective Time represented Shares of Common Stock, to the extent that such Shareholder shall have, prior to the Effective Time, delivered to the Shareholders' Representative such stock certificate(s) and a complete and duly executed Letter of Transmittal in the form attached hereto as **Exhibit D** (a "**Letter of Transmittal**"), an amount equal to the product of (i) the number of Shares of Common Stock represented by all stock certificates held by such Shareholder and delivered to the Shareholders' Representative prior to the Effective Time, times (ii) the Per Share Merger Consideration shall be paid to such Shareholder on the Closing Date in accordance with the payment instructions set forth in such Shareholder's Letter of Transmittal;

(B) with respect to any Shareholder holding an In-The-Money Option, to the extent that such Shareholder shall have, prior to the Effective Time, delivered to the Shareholders' Representative a complete and duly executed Option Surrender Agreement, Release and Waiver in the form attached hereto as **Exhibit E** (an "**Option Release**") with respect to such In-The-Money Option, an amount equal to the product of (i) the number of Shares of Common Stock issuable upon exercise of the In-The-Money Option held by such Shareholder immediately prior to the Effective Time (assuming such In-The-Money Option was exercised immediately prior to the Effective Time), times (ii) an amount equal to the excess of the Per Share Merger Consideration over the exercise price per Share of Common Stock issuable upon exercise of such In-The-Money Option (assuming such In-The-Money Option was exercised immediately prior to the Effective Time) shall be paid to such Shareholder on the Closing Date in accordance with the payment instructions set forth in such Shareholder's Option Release, which amounts, with respect to any such In-The-Money Options issued under the Stock Option Plan, are as set forth on **Schedule 3.2(a)(vii)(B)**;

(C) with respect to any Shareholder that is a Bonus Recipient, an amount equal to the product of (i) the Per Share Equivalent Amount in respect of such Bonus Recipient's Bonus Payments, times (ii) the Per Share Merger Consideration shall be paid to such Bonus Recipient on the Closing Date, which amounts are as set forth on **Schedule 3.2(a)(vii)(C)**; and

(D) the remaining balance of the Closing Date Consideration Amount shall be deposited in a segregated account of the Surviving Corporation (the "**Paying Account**").

Upon payment to any Shareholder of all amounts payable to such Shareholder pursuant to clause (vii)(A), (vii)(B) or (vii)(C) of this Section 3.2(a), the Acquiror, Merger Sub and the Surviving Corporation shall thereafter have no further liability to such Shareholder in respect of the Closing Date Purchase Price. Upon deposit in the Paying Account of any amounts depositable therein pursuant to clause (vii)(D) of this Section 3.2(a), the Acquiror, Merger Sub and the Surviving Corporation shall, except as otherwise explicitly set forth herein, thereafter have no further liability in respect of the Closing Date Purchase Price to any Shareholder that shall have not duly executed or delivered a Letter of Transmittal or Option Release on or prior to the Effective Time.

(b) ***Disbursements from the Paying Account***.

(i) **Disbursements in Respect of Shares**. In the event that any Shareholder holding a stock certificate which immediately prior to the Effective Time represented Shares of Common Stock shall deliver to the Shareholders' Representative, at any time after the Effective Time, such stock certificate(s) together with a completed and duly executed Letter of Transmittal, the Shareholders' Representative shall promptly deliver to the Surviving Corporation such Letter of Transmittal together with the applicable stock certificate(s). Upon the Surviving Corporation's receipt from the Shareholders' Representative of any such Letter of Transmittal and stock certificate(s), the Surviving Corporation shall pay to the applicable Shareholder out of funds contained in the Paying Account an amount equal to the product of (i) the number of Shares of Common Stock represented by the stock certificates held by such Shareholder and so delivered to the Shareholders' Representative and the Surviving Corporation, times (ii) the Per Share Merger Consideration (or, in the case of any payment to be paid pursuant to this Section 3.2(b)(i) on or after the Settlement Date, the Final Per Share Merger Consideration), which amount shall be payable by the Surviving Corporation out of funds then contained in the Paying Account to such Shareholder in accordance with the payment instructions set forth in each such Shareholder's Letter of Transmittal. For the avoidance of doubt, in no event shall any Shareholder be entitled to receive any payments under this clause (i) in respect of any Shares for which such Shareholder shall have previously received payments pursuant to Section 3.2(a)(vii)(A).

(ii) **Disbursements in Respect of In-The-Money Options**. In the event that any Shareholder holding an In-The-Money Option shall deliver to the Shareholders' Representative, at any time after the Effective Time, a completed and duly executed Option Release, the Shareholders' Representative shall promptly deliver to the Surviving Corporation such Option Release. Upon the Surviving Corporation's receipt from the Shareholders' Representative of any such Option Release, the Surviving Corporation shall pay to the applicable

Shareholder out of funds contained in the Paying Account an amount equal to the product of (i) the number of Shares of Common Stock issuable upon exercise of the applicable In-The-Money Option held by such Shareholder immediately prior to the Effective Time assuming such In-The-Money Option was exercised immediately prior to the Effective Time, times (ii) an amount equal to the excess of the Per Share Merger Consideration (or, in the case of any payment to be paid pursuant to this Section 3.2(b)(ii) on or after the Settlement Date, the Final Per Share Merger Consideration) over the exercise price per Share of Common Stock issuable upon exercise of such In-The-Money Option assuming such In-The-Money Option was exercised immediately prior to the Effective Time, which amount shall be payable by the Surviving Corporation out of funds then contained in the Paying Account to such Shareholder in accordance with the payment instructions set forth in each such Shareholder's Option Release. For the avoidance of doubt, in no event shall any Shareholder be entitled to receive any payments under this clause (ii) in respect of any In-The-Money Options for which such Shareholder shall have previously received payments pursuant to Section 3.2(a)(vii)(B).

(c) **Withholding; Interest**. All payments made to Shareholders pursuant to this Agreement or any other Transaction Document shall be subject to withholding of Taxes as required under any applicable Law. The Acquiror, the Surviving Corporation or any Subsidiary, as applicable, shall withhold Taxes, as required by Law, on all payments made to Shareholders by such Persons pursuant to this Agreement. No interest shall be paid on any cash payable upon the delivery of stock certificates, Letters of Transmittal or Option Releases. Neither the Acquiror, Merger Sub, the Surviving Corporation, the Shareholders' Representative nor any party hereto shall by liable to a Shareholder for any cash or interest thereon delivered to a public official pursuant to any applicable abandoned property, escheat or similar laws.

(d) **Return to Surviving Corporation**. On the date that is nine months following the Closing Date, all amounts then remaining in the Paying Account (including any amounts deposited in the Paying Account pursuant to Section 3.3(f)(ii)) shall be released to the Surviving Corporation. Any Shareholders will thereafter be entitled to look only to the Surviving Corporation for payment of their claim for the consideration set forth in this Section 3.2 and in Section 3.3, if any, without interest thereon, but will have no greater rights against the Surviving Corporation than may be accorded to general creditors thereof under applicable Law.

3.3. **Working Capital Adjustment**.

(a) At least five (5) Business Days prior to the Closing Date, the Shareholders' Representative shall deliver to the Acquiror a certificate containing a good faith estimate of the consolidated balance sheet of the Company and its Subsidiaries as of the close of business on the Closing Date (the "**Estimated Closing Balance Sheet**") which shall set forth a calculation of the estimated Net Working Capital as of the Closing Date (the "**Estimated Net Working Capital**"). Except with respect to the items specifically excluded from the computation of Net Working Capital, the Estimated Closing Balance Sheet and the Estimated Net Working Capital shall be prepared in accordance with GAAP in a manner consistent with the application of GAAP applied in the preparation of the Balance Sheet.

(b) As soon as reasonably practicable, but no later than sixty (60) calendar days after the Closing Date, the Acquiror shall prepare, or cause to be prepared, and deliver to

the Shareholders' Representative an unaudited consolidated balance sheet of the Company and its Subsidiaries as of the close of business on the Closing Date (the "**Actual Closing Balance Sheet**") which shall set forth a calculation of (i) Net Working Capital as of the Closing Date (the "**Actual Net Working Capital**") and (ii) the Working Capital Adjustment. Except with respect to the items specifically excluded from the computation of Net Working Capital, the Actual Closing Balance Sheet, the Actual Net Working Capital and the Working Capital Adjustment shall be prepared in accordance with GAAP in a manner consistent with the application of GAAP applied in the preparation of the Balance Sheet. During such sixty (60) day period, the Acquiror will provide the Shareholders' Representative with full access to the Company's and its Subsidiaries' books and records and its and their personnel and accountants during normal business hours and upon reasonable notice.

(c) On or prior to the thirtieth (30th) calendar day following the Acquiror's delivery of the Actual Closing Balance Sheet, the Shareholders' Representative may give the Acquiror a written notice stating in reasonable detail the Shareholders' Representative's objections (an "**Objection Notice**") to the Actual Closing Balance Sheet, the Actual Net Working Capital and the Working Capital Adjustment. Any Objection Notice shall specify in reasonable detail the dollar amount of any objection and the basis therefore. Any determination set forth on the Actual Closing Balance Sheet which is not specifically objected to in the Objection Notice shall be deemed acceptable and shall be final and binding upon the parties upon delivery of the Objection Notice. If the Shareholders' Representative does not give the Acquiror an Objection Notice within such thirty (30) day period, then the Actual Closing Balance Sheet will be conclusive and binding upon the parties and the Actual Net Working Capital and Working Capital Adjustment set forth in the Actual Closing Balance Sheet will be final and binding upon the parties for purposes of calculating the Merger Consideration under this Agreement.

(d) Following the Acquiror's receipt of any Objection Notice, the Shareholders' Representative and the Acquiror shall attempt to negotiate in good faith to resolve such dispute. In the event that the Shareholders' Representative and the Acquiror fail to agree on any of the Shareholders' Representative's proposed adjustments set forth in the Objection Notice within 30 days after the Acquiror receives the Objection Notice, the Shareholders' Representative and the Acquiror shall appoint the Independent Auditors and shall cause the Independent Auditors, within the 30-day period immediately following referral of the Actual Closing Balance Sheet to the Independent Auditors, to make the final determination of the Actual Net Working Capital and Working Capital Adjustment in accordance with the terms of this Agreement. The Acquiror and the Shareholders' Representative each shall provide the Independent Auditors with their respective determinations of the Actual Net Working Capital and Working Capital Adjustment. The Independent Auditors shall make an independent determination of the Actual Net Working Capital and Working Capital Adjustment that, assuming compliance with the previous clause, shall be final and binding upon the parties. The fees and expenses of the Independent Auditors shall be borne equally by the Shareholders, on the one hand, and the Acquiror, on the other hand.

(e) Promptly after the Actual Closing Balance Sheet, the Actual Net Working Capital and the Working Capital Adjustment are finally determined and become final and binding on the parties under this Section 3.3 (the "**Settlement Date**"):

(i) in the event that the Working Capital Adjustment shall equal a positive number, (A) the Shareholders' Representative shall have the right, exercisable in its sole discretion by delivery of written notice thereof to the Surviving Corporation on the Settlement Date, to instruct that the Surviving Corporation deposit a portion equal to not more than 59% of such Working Capital Adjustment (such selected amount, if any, the "**Additional Holdback Amount**") in the Holdback Account in accordance with this clause (e), (B) upon receipt of any such written instruction delivered pursuant to the preceding clause (A), the Surviving Corporation shall deposit in the Holdback Account, by wire transfer in immediately available funds, an amount equal to the Additional Holdback Amount, which amount shall be held by the Escrow Agent pursuant to the Escrow Agreement and (C) the amount of the Working Capital Adjustment shall be reduced by the amount of the Additional Holdback Amount; and

(ii) the Shareholders' Representative and the Acquiror, or the Independent Auditor if applicable, shall recalculate the Merger Consideration (the "**Final Merger Consideration**") and the Per Share Merger Consideration (the "**Final Per Share Merger Consideration**") by giving effect to such final and binding determinations and, if applicable, any increase in the Holdback Amount (and corresponding decrease in the Working Capital Adjustment) pursuant to clause (i) above, such recalculation to be subject to (A) payment of the Contingent Purchase Price, if any, pursuant to Section 3.4 hereof, and (B) payment to the Shareholders of any portion of the Escrow Amount and/or Holdback Amount payable to the Shareholders pursuant to Section 3.5 or 3.8 hereof and the Escrow Agreement.

(f) If the Final Merger Consideration exceeds the Merger Consideration as calculated on the Closing Date (such excess amount, the "**Shortfall Amount**"), then within two (2) Business Days following the Settlement Date, the Acquiror or the Surviving Corporation shall distribute the Shortfall Amount as follows:

(i) Pay to each Delivered Holder, the aggregate amount by which the consideration that would have otherwise been payable to such Shareholder under, as applicable, Section 3.2(a)(vii)(A), 3.2(a)(vii)(B), 3.2(a)(vii)(C), 3.2(b)(i) and/or 3.2(b)(ii) (as determined on the basis of the Final Per Share Merger Consideration) exceeds the aggregate amount actually previously paid to such Delivered Holder under such Sections, which payment shall be made to each such Delivered Holder in accordance with the payment instructions set forth in such Shareholder's Letter of Transmittal, Option Release, as applicable; and

(ii) the remaining balance of the Shortfall Amount shall be deposited in the Paying Account, which amount shall be held and disbursed by the Surviving Corporation in accordance with Section 3.2(b).

Upon the deposit and/or payment of the each of the amounts set forth in clauses (i) and (ii), the Acquiror, Merger Sub and the Surviving Corporation shall, except as otherwise explicitly set forth herein, thereafter have no further liability to any Shareholder in respect of the Shortfall Amount.

(g) If the Merger Consideration as calculated on the Closing Date exceeds the Final Merger Consideration (such excess amount, the "**Excess Amount**"), then, in accordance with the provisions of this clause (g), each Shareholder that shall have previously received amounts paid pursuant to Section 3.2(a)(vii)(A), 3.2(a)(vii)(B), 3.2(a)(vii)(C), 3.2(b)(i) and/or 3.2(b)(ii) shall be obligated to pay to the Acquiror an amount equal to the aggregate amount by which the amounts so paid to such Shareholder pursuant to such Sections (in each case, as determined on the basis of the Per Share Merger Consideration calculated as of the Closing Date) exceeds the amounts that would have otherwise been payable to such Shareholder pursuant to such Sections (as determined on the basis of the Final Per Share Merger Consideration). The Shareholders' Representative shall have the right, but not the obligation, to fulfill the payment obligations of the Shareholders to the Acquiror under this clause (g) by (i) on the Settlement Date, delivering written notice to the Escrow Agent and the Acquiror in accordance with Section 3.8 instructing the Escrow Agent to release to the Shareholders' Representative an amount of funds in the Holdback Account equal to the Excess Amount and (ii) promptly following the Shareholders' Representative's receipt of the released funds referred to in clause (i), but in any event within four (4) Business Days following the Settlement Date, remit to the Acquiror, out of the funds so released from the Holdback Account, an amount equal to the Excess Amount, which amount shall be applied on a Pro Rata Share basis in satisfaction of each Shareholder's respective payment obligation to the Acquiror under this clause (g). In the event that the Shareholders' Representative shall elect not to apply the funds contained in the Holdback Account in satisfaction of the Shareholders' obligations to the Acquiror under this clause (g), or if, for any reason, the Shareholders' Representative shall fail to remit the Excess Amount in full to the Acquiror in accordance with the previous sentence within four (4) Business Days following the Settlement Date, the Acquiror and the Shareholders' Representative shall, on the fifth (5th) Business Day following the Settlement Date deliver a joint written notice to each of the Shareholders (an "**Excess Amount Notice**"), which notice shall set forth (i) the existence of the Excess Amount and (ii) that each of the Shareholders that shall have previously received amounts paid pursuant to Section 3.2(a)(vii)(A), 3.2(a)(vii)(B), 3.2(a)(vii)(C), 3.2(b)(i) and/or 3.2(b)(ii) shall be obligated to pay to the Acquiror within two (2) Business Days following the delivery of the Excess Amount Notice, in accordance with the payment instructions set forth in the Excess Amount Notice, the respective amounts calculated in accordance with the first sentence of this clause (g). Within two (2) Business Days following the delivery of the Excess Amount Notice, each Shareholder that shall have previously received amounts paid pursuant to Section 3.2(a)(vii)(A), 3.2(a)(vii)(B), 3.2(a)(vii)(C), 3.2(b)(i) and/or 3.2(b)(ii) shall pay to the Acquiror the respective amounts calculated in accordance with the first sentence of this clause (g). Additionally, in the event that an Excess Amount shall occur, the, from and after the Settlement Date, all further payments made by the Surviving Corporation out of the Paying Account pursuant to Sections 3.2(b)(i) and 3.2(b)(ii) shall be calculated by reference to the Final Per Share Merger Consideration rather than the Per Share Merger Consideration.

3.4. **Contingent Purchase Price**.

(a) If EBITDA for the twelve month period commencing on October 2, 2004 and ending on October 1, 2005 (the "**EBITDA Period**"), which shall be derived from the Company's consolidated financial statements for the EBITDA Period, exceeds the Base EBITDA Amount, then for each one dollar ($1.00) of such excess, the Acquiror or the Company, as the Acquiror shall direct, shall pay and/or deliver to the Shareholders' Representative on

behalf of the Shareholders, in accordance with clause (c) below, Two and 60/100 Dollars ($2.60) up to a maximum payment of Seven Million Five Hundred Thousand Dollars ($7,500,000) payable in cash and/or Notes and/or Equity as provided in Section 3.4(c)(iv) hereof (the "**Contingent Purchase Price**").

(b) For purposes of this Section 3.4, "**EBITDA**" means the Company's and its Subsidiaries' consolidated net income (or loss) for the EBITDA Period determined in accordance with GAAP consistently applied (and a pro rata portion of income (loss) from Innovative Print Technologies ("**IPT**") prior to its consolidation with the Company), but excluding: (a) the income (or loss) of the Company from entities, other than Subsidiaries of the Company, in which the Company has an ownership interest unless received by the Company in a cash distribution; (b) the income (or loss) of any entities acquired during the EBITDA Period (other than a pro rata share of income (loss) from IPT), and (c) except with respect to IPT, the income (or loss) of an entity prior to the date such entity became a Subsidiary of the Company or is merged into or consolidated with the Company; plus, without duplication, (i) any provision for (or less any benefit from) income and franchise taxes included in the determination of net income, (ii) interest expense deducted in the determination of net income, (iii) amortization and depreciation deducted in determining net income, (iv) losses (or less gains) from asset dispositions or other non-cash items included in the determination of net income (excluding sales, expenses or losses related to current assets), (v) extraordinary losses (or less gains), as defined under GAAP, net of related tax effects, (vi) expenses relating to the sale of the business included in the determination of net income, (vii) expenses relating to the incentive payments made to Larry Schnell and Dennis Cooley included in the determination of net income, (viii) expenses relating to the IPT transaction, as well as any other potential acquisition, regardless of whether such acquisition is consummated, included in the determination of net income, (ix) all expenses related to start up costs of any new operations including with respect to Rutland Europe Limited as of December 31, 2003 and the transition to the warehouse in Charlotte, North Carolina as of September 30, 2004 included in the determination of net income, (x) expenses relating to payments made to management pursuant to the Rutland Plastics, Inc. Equity Participation Plan included in the determination of net income, (xi) expenses relating to payments made to holders of Options issued pursuant to the Stock Option Plan included in the determination of net income, (xii) expenses relating to payments made to Cobblestone Advisors is included in the determination of net income, (xiii) expenses, including collection costs, legal fees, and the loss of accounts receivable in connection with sales to Shanghai Ruilin and Steve Homolka made on June 28, 2003, (xiv) expenses relating to the settlement with the EPA (excluding any expenses relating to compliance (i.e. testing or monitoring) with environmental laws) included in the determination of net income, (xv) amounts payable to ConectX Partners pursuant to the Consulting Services Agreement dated November 12, 2004 in excess of $93,000, (xvi) all lease payments pursuant to the Operating Lease, and (xvii) for the purpose of determining EBITDA during the EBITDA Period (A) management fees or other fees paid or accrued pursuant to the Advisory Agreement, (B) any material change in the method of determining incentive compensation for Messrs. Vaden, Dominick or Shackelford that results in a material increase in the amounts that would have otherwise been due from the method established by the Acquiror and provided to the Shareholders prior to the Closing, and (C) any amount in excess of Three Hundred Thousand Dollars ($300,000) for additional new hires of employees who are at a vice president or above position who are not reflected in the budget supplied to the Acquiror provided that the

replacement of a person in an exiting position to the extent of the existing salary shall not count against such Three Hundred Thousand Dollars ($300,000).

(c) (i) No later than November 4, 2005, the Shareholders' Representative and the Acquiror shall in good faith, mutually determine the EBITDA for the EBITDA Period using identical procedures, cost assumptions and the application of GAAP principles as used by the Company and its Subsidiaries for Pre-Closing Periods. From the date that is 30 days prior to the determination of the EBITDA for the EBITDA Period in accordance with the previous sentence until the date that EBITDA for the EBITDA Period is finally determined and becomes final and binding on the parties under this Section 3.4(c), Acquiror shall cause the Company to provide the Shareholders' Representative full access to the Company's and its Subsidiaries' books and records and chief financial officers during normal business hours and upon reasonable notice for the purpose of determining such EBITDA.

(ii) If within fifteen (15) Business Days prior to December 31, 2005 the Acquiror and the Shareholders' Representative are unable to agree upon such EBITDA, they shall appoint the Independent Auditors to determine such EBITDA and the determination of the Independent Auditors shall be final and binding upon the parties. The fees and expenses of the Independent Auditors in making the determination of such EBITDA shall be borne equally by the Shareholders, on the one hand, and the Acquiror, on the other hand.

(iii) Within fifteen (15) Business Days of the date that EBITDA for the EBITDA Period is finally determined and becomes final and binding on the parties under this Section 3.4(c), which in any event shall not be later than December 31, 2005, if, and to the extent EBITDA for the EBITDA Period exceeds the Base EBITDA Amount, then the Acquiror or the Surviving Corporation, as the Acquiror shall direct, shall pay the cash portion of, and deliver any Notes and/or Equity comprising, the Contingent Purchase Price as follows:

(A) The first One Million Five Hundred Thousand Dollars ($1,500,000) of the Contingent Purchase Price (such amount, up to $1,500,000, is herein referred to as the "**First Tier Earnout Amount**") shall be payable as follows:

(1) the Acquiror or Surviving Corporation, as applicable, shall pay to each Delivered Holder an amount equal to the product of (x) the First Tier Earnout Amount times (y) such Delivered Holder's Pro Rata Share, which amount shall be payable in immediately available funds in accordance with the payment instructions set forth in such Delivered Holder's Letter of Transmittal or Option Release, as applicable; and

(2) the remaining portion of the First Tier Earnout Amount shall be retained by the Acquiror or Surviving Corporation, as applicable, for the future payment of the applicable Pro Rata Share of the First Tier Earnout Amount to any Undelivered Holder that shall, after the initial date of distributions pursuant to this Section 3.4(c)(iii), deliver to

the Surviving Corporation a completed and duly executed Letter of Transmittal (together with applicable stock certificates) or Option Release;

(B) Any Contingent Purchase Price in excess of the first One Million Five Hundred Thousand Dollars ($1,500,000) but less than Three Million Dollars ($3,000,000) (such excess amount, up to $1,500,000, is herein referred to as the "**Second Tier Earnout Amount**") shall be payable as follows:

(1) the Acquiror or Surviving Corporation, as applicable, shall pay to each Delivered Holder an amount equal to the product of (x) the Second Tier Earnout Amount times (y) such Delivered Holder's Pro Rata Share, which amount shall be payable in immediately available funds in accordance with the payment instructions set forth in such Delivered Holder's Letter of Transmittal or Option Release, as applicable; and

(2) the remaining portion of the Second Tier Earnout Amount shall be retained by the Acquiror or Surviving Corporation, as applicable, for the future payment of the applicable Pro Rata Share of the Second Tier Earnout Amount to any Undelivered Holder that shall, after the initial date of distributions pursuant to this Section 3.4(c)(iii), deliver to the Surviving Corporation a completed and duly executed Letter of Transmittal (together with applicable stock certificates) or Option Release;

provided, however, that at the Acquiror's election up to fifty percent (50%) of any cash amount otherwise payable to the Shareholders pursuant to this clause (B) (such elected amount, the "**Second Tier Earnout Principal Amount**") may be paid by delivering (in the case of clause (1)) or retaining for future payment (in the case of clause (2)) to each Shareholder a Note issued by, at the Acquiror's election, the Acquiror or the Surviving Corporation in the name of such Shareholder, in an initial principal amount equal to the product of (x) the Second Tier Earnout Principal Amount times (y) such Shareholder's Pro Rata Share; provided, further, however, that in the event that the Acquiror elects to pay, or cause the Surviving Corporation to pay, any portion of such fifty percent (50%) in cash instead of Notes the Acquiror or the Surviving Corporation, as the case may be, shall be entitled to a discount in the amount of twenty-five percent (25%) for such cash payment; provided, further, however, that Acquiror, or the Surviving Corporation, as applicable, may reduce the cash portion of the Second Tier Earnout Amount to less than 50% of the foregoing payment and substitute Notes with an original principal amount equal to any such reduction to the extent that a cash payment of a greater amount would result in an event of default under the Financing Loan Documents. By way of example and not limitation, if pursuant to this clause (B) $100 of Contingent Purchase Price is due and payable, the first $50 shall be paid in cash, the second $50 may at the Acquiror's or the Surviving Corporation's election be payable in cash or Notes. If, for example, the Acquiror or the Surviving Corporation, as applicable, elects to pay the second $50 all in cash instead of Notes the amount of cash payable would be reduced by 25%

($12.50) and the Acquiror or the Company would pay (in the case of clause (1)) or retain for future payment (in the case of clause (2)) to the Shareholders an aggregate amount of 75% thereof ($37.50). If, however, the Acquiror or the Surviving Corporation, as applicable, elects to pay, for example, half of such second $50 in cash and half in Notes, the cash portion ($25) would be reduced by 25% ($6.25) so that the Acquiror or the Surviving Corporation, as applicable would pay (in the case of clause (1)) or retain for future payment (in the case of clause (2)) to the Shareholders an aggregate amount of $18.75 in cash and pay (in the case of clause (1)) or retain for future payment (in the case of clause (2)) to the Shareholders' Notes in the aggregate original principal amount of $25; and

(C) Any Contingent Purchase Price in excess of Three Million Dollars ($3,000,000) (such excess amount is herein referred to as the "**Third Tier Earnout Amount**") shall be payable, at the election of the Acquiror, in any combination of Notes issued by the Acquiror or the Surviving Corporation and/or Equity issued by Acquiror with an aggregate value equal to Third Tier Earnout Amount (which, for the purposes of determining compliance with this clause (C), (x) the "value" of any Notes issued pursuant to this clause (C) shall equal the original principal amount thereof and (y) the "value" of any Equity issued pursuant to this clause (C) shall be determined in accordance with the definition of "Equity"); provided, that, to the extent that any combination of Notes and Equity are distributed (or retained for future distribution) to the Shareholders pursuant to this clause (C), each Shareholder shall be entitled to receive (or to have retained for future distribution) the same proportionate allocation of Notes and Equity), which Third Tier Earnout Amount shall be paid as follows:

(1) the Acquiror or Surviving Corporation, as applicable, shall issue to each Delivered Holder Notes and/or Equity having a "value" equal to the product of (x) the Third Tier Earnout Amount times (y) such Delivered Holder's Pro Rata Share; and

(2) Notes and/or Equity having a "value" equal to the remaining portion of the Third Tier Earnout Amount shall be retained by the Acquiror or Surviving Corporation, as applicable, for the future issuance of the applicable Pro Rata Share of the Third Tier Earnout Amount to any Undelivered Holder that shall, after the initial date of distributions pursuant to this Section 3.4(c)(iii), deliver to the Surviving Corporation a completed and duly executed Letter of Transmittal (together with applicable stock certificates) or Option Release;

it being understood that each dollar of "value" of any Notes and/or Equity issued hereunder shall be in satisfaction of one dollar of obligations of the Acquiror and/or Surviving Corporation to the applicable Shareholder in respect of any Contingent Purchase Price payable to such Shareholder hereunder.

(d) As a condition precedent to the obligation of the Acquiror to issue any Equity to any Shareholder pursuant to Section 3.4(c), such Shareholder shall enter into and agree

to be bound by (a) the Limited Liability Company Agreement of the Acquiror in the form attached hereto as **Exhibit F** (the "**Operating Agreement**") and (b) a Registration Rights Agreement of the Acquiror in the form attached hereto as **Exhibit G**. As a condition precedent to the obligation of the Acquiror or the Surviving Corporation, as applicable, to issue any Notes to any Shareholder pursuant to Section 3.4(c), such Shareholder shall enter into and agree to be bound by a Subordination Agreement in the form attached hereto as **Exhibit H**.

(e) Upon delivery and/or deposit in full by the Acquiror and/or the Surviving Corporation in accordance with Section 3.4(c) of the cash, Notes and/or Equity deliverable pursuant to this Section 3.4, the Acquiror, Merger Sub and the Surviving Corporation shall, except as otherwise explicitly set forth herein, thereafter have no further liability in respect of the Contingent Purchase Price.

3.5. **Escrow.**

(a) On December 31, 2005, all or a portion of the Escrow Amount shall be released to the Shareholders' Representative in accordance with the provisions of the Escrow Agreement for distribution to the Shareholders in accordance with the following:

(i) Any and all amounts received by the Shareholders' Representative upon the release of all or any portion of Escrow Amount (the "**Escrow Released Amount**") shall be held in a segregated account of the Shareholders' Representative in trust for the benefit of the Shareholders as their interests may appear; and

(ii) Following the Shareholders' Representative's receipt of any Escrow Released Amount, the Shareholders' Representative shall distribute all of the Escrow Released Amount to, or on behalf of, the Shareholders in proportion to their respective Pro Rata Shares as follows:

(A) with respect to any Delivered Holder, the Shareholders' Representative shall promptly disburse to such Delivered Holder an amount equal to such Delivered Holder's Pro Rata Share of the Escrow Released Amount, which amount shall be payable in immediately available funds in accordance with the payment instructions set forth in such Delivered Holder's Letter of Transmittal or Option Release, as applicable; and

(B) the Shareholders' Representative shall promptly disburse the remaining portion of the Escrow Released Amount to the Surviving Corporation, which remaining portion of the Escrow Released Amount shall be retained by the Surviving Corporation for the future payment of the applicable Pro Rata Share of the Escrow Released Amount to any Undelivered Holder that shall, after the date of distributions pursuant to this Section 3.5(a), deliver to the Surviving Corporation a completed and duly executed Letter of Transmittal (together with applicable stock certificates) or Option Release.

The Shareholders' Representative, in its individual capacity and not on behalf of the Shareholders, shall indemnify and hold harmless each of the Acquiror Indemnified Parties for any Losses or other liabilities incurred by any such Acquiror Indemnified

Party in connection with, or in respect of, any Claim by any Shareholder based upon the actual or alleged nonpayment, late payment, failure to pay in full or insufficiency of payment of any amounts payable or disbursable by the Shareholders' Representative pursuant to this Section 3.5(a).

(b) If, pursuant to the provisions of the Escrow Agreement, the Acquiror or the Surviving Corporation is obligated to deliver to the Escrow Agent any portion of the Notes and/or Equity otherwise issuable to the Shareholders pursuant to Section 3.4(c)(iii), then:

(i) the Acquiror and/or the Surviving Corporation shall deposit with the Escrow Agent one Note and/or one certificate for Equity, in each case registered in the name of the Escrow Agent on behalf of each of the Shareholders, reflecting the aggregate "value" (as calculated in accordance with Section 3.4(c)(iii)(C)) of the Notes and/or Equity to be so deposited, which shall be held in escrow by the Escrow Agent in accordance with the Escrow Agreement; and

(ii) the aggregate "value" (as calculated in accordance with Section 3.4(c)(iii)(C)) of any Notes and/or Equity issued or issuable to the Shareholders pursuant to Section 3.4(c)(iii) shall be reduced by the "value" of the Notes and/or Equity to be so deposited with the Escrow Agent (with such aggregate reduction in "value" to be allocated to a reduction in the "value" of each Note and Equity issued or issuable to the Shareholders pursuant to Section 3.4(c)(iii) on a pro rata basis in proportion to each such Shareholder's Pro Rata Share).

3.6. **Closing of Transfer Books**. At the Effective Time, the stock transfer books of the Company with respect to all shares of capital stock of the Company shall be closed and no further registration or transfers of such shares of capital stock shall thereafter be made on the records of the Company. All shares of Common Stock issued and outstanding immediately prior to the Effective Time shall be cancelled automatically and without any action on the part of the Shareholders, including without delivery of the certificates representing the shares of Common Stock to the Company or the Shareholders' Representative for cancellation, and except with respect to any Dissenting Shares the holders of Common Stock immediately prior to the Effective Time shall have no further rights in or to such shares other than to receive any remaining Merger Consideration, without interest thereon except to the extent interest is due and payable pursuant to the Escrow Agreement and the Notes, payable or deliverable pursuant to this Article III.

3.7. **Dissenting Shares**. Notwithstanding any other provisions of this Agreement to the contrary, Shares of Common Stock that are issued and outstanding immediately prior to the Effective Time and that are held by Shareholders of the Company who shall not have voted in favor of the Merger or consented thereto in writing and who shall have demanded properly in writing appraisal for such shares in accordance with Section 607.1320 of Florida Law (Appraisal Notice & Form) (collectively, the "**Dissenting Shares**") shall not be converted into or represent the right to receive any portion of the Merger Consideration. Such Shareholders of the Company shall be entitled to receive payment of the appraised value of such Shares of Common Stock held by them in accordance with the provisions of such Section 607.1302 of Florida Law (Right of Shareholders to Appraisal), except that all Dissenting Shares held by Shareholders of the

Company who shall have failed to perfect or who effectively shall have withdrawn or lost their rights to appraisal of such Shares of Common Stock under such Section 607.1323 of Florida Law (Perfection of rights, right to withdraw) shall thereupon be deemed to have been converted into and to have become exchangeable, as of the Effective Time, for the right to receive, without any interest thereon, the appropriate portion of the Merger Consideration, upon surrender of the certificate or certificates that formerly evidenced such shares of Common Stock to the Company.

3.8. **Holdback Account**.

(a) At any time, and from time to time, the Shareholders' Representative shall have the sole right, in accordance with the Escrow Agreement, to, upon delivery of written notice thereof to the Escrow Agent and the Acquiror (a "**Holdback Release Notice**"), direct the release to the Shareholders' Representative of any funds then held by the Escrow Agent in the Holdback Account; provided, that, any such release, and the application of any such released amounts, shall be either paid to or applied for the account of to each Shareholder on a pro rata basis in accordance with each such Shareholder's Pro Rata Share.

(b) In the event that all or any portion of the Holdback Amount shall be released from the Holdback Account to the Shareholders' Representative pursuant to clause (a) (the "**Released Holdback Amount**"), then:

(i) the Shareholders' Representative shall hold such Released Holdback Amount in a segregated account of the Shareholders' Representative in trust for the benefit of the Shareholders as their interests may appear;

(ii) the Shareholders' Representative shall have the right to apply the Released Holdback Amount on behalf of the Shareholders to the payment of Seller Transaction Costs, the payment of any Excess Amount in accordance with Section 3.3 or the payment of any pro rata indemnification obligations of the Shareholders under Article VIII; provided, that any and all such applications of the Released Holdback Amount shall be made on behalf of all of the Shareholders in proportion of their respective Pro Rata Shares; and

(iii) in the event that the Released Holdback Amount shall not be applied by the Shareholders' Representative for the purposes set forth in clause (ii) above, the Shareholders' Representative shall disburse all of the Released Holdback Amount to, or on behalf of, the Shareholders in proportion to their respective Pro Rata Shares as follows:

(A) with respect to any Delivered Holder, the Shareholders' Representative shall promptly disburse to such Delivered Holder an amount equal to such Delivered Holder's Pro Rata Share of the Released Holdback Amount, which amount shall be payable in immediately available funds in accordance with the payment instructions set forth in such Delivered Holder's Letter of Transmittal or Option Release, as applicable; and

(B) the Shareholders' Representative shall promptly disburse the remaining portion of the Released Holdback Amount to the Surviving

Corporation, which remaining portion of the Released Holdback Amount shall be retained by the Surviving Corporation for the future payment of the applicable Pro Rata Share of the Released Holdback Amount to any Undelivered Holder that shall, after the date of distributions pursuant to this Section 3.8(b), deliver to the Surviving Corporation a completed and duly executed Letter of Transmittal (together with applicable stock certificates) or Option Release.

The Shareholders' Representative, in its individual capacity and not on behalf of the Shareholders, shall indemnify and hold harmless each of the Acquiror Indemnified Parties for any Losses or other liabilities incurred by any such Acquiror Indemnified party in connection with, or in respect of, any Claim by any Shareholder based upon (i) any application of any Released Holdback Amount in any manner other than on behalf of all of the Shareholders in proportion of their respective Pro Rata Shares or (ii) the actual or alleged nonpayment, late payment, failure to pay in full or insufficiency of payment of any amounts payable or disbursable by the Shareholders' Representative pursuant to this Section 3.8(b).

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to Acquiror and Merger Sub as follows:

4.1. **Formation, Organization, Etc.**

(a) **Schedule 4.1(i)** correctly sets forth each of the Company's and its Subsidiaries' place of incorporation, principal place of business, jurisdictions in which they are qualified to do business and their capitalization (including the identity of each stockholder and the number of shares held by each). The Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of Florida, with all requisite power and authority, and all necessary material Consents, Orders, licenses, certificates and permits of and from, and declarations and filings with, all Governmental Entities, to own, lease, license, and use their properties and assets and to carry on the Business in which it is engaged and in which it presently proposes to engage. Neither the Company nor any Subsidiary owns, directly or indirectly, any capital stock or other equity or ownership or proprietary interest in any corporation, partnership, limited liability company, association, trust, joint venture or other Person other than the Subsidiaries listed on **Schedule 4.1(ii)**. The Company owns all the capital stock and securities of each Subsidiary listed on **Schedule 4.1(ii)**. Each of the Subsidiaries is a corporation duly organized, validly existing, and in good standing under the laws of each of their jurisdictions of incorporation with all requisite power and authority, and, except as set forth on **Schedule 4.1(iii)**, all necessary Consents, Orders, licenses, certificates, and permits of and from, and declarations and filings with, all Governmental Entities, to own, lease, license, and use its properties and assets and to carry on the Business. The Company and each Subsidiary is duly qualified to transact the Business and is in good standing as a foreign corporation in all jurisdictions in which its ownership, leasing, licensing, or use of property or assets or the conduct of the Business makes such qualification necessary except where the failure to be so qualified

would not have a Material Adverse Effect on the Business. The Company's registered name for each of the states of its incorporation and qualification is "Rutland Plastics, Inc." The Company has not authorized any Person to use the name "Rutland Plastics, Inc." Each Subsidiary's registered name for each of the jurisdictions of its incorporation and qualification is as set forth on **Schedule 4.1(iv)** and neither the Company nor such Subsidiary has authorized any Person to use the name of such Subsidiary.

(b) The authorized classes of capital stock of the Company consists of: 20,000,000 Shares, of which 15,001,127 are issued or outstanding, 2,714,932 Shares of Common Stock have been reserved for issuance under the Stock Option Plan, an additional 384,615 Shares have been reserved for issuance under the Stock Option Agreements. All of the issued and outstanding capital stock of the Company and each Subsidiary is duly authorized, validly issued, fully paid and nonassessable. Except as set forth on **Schedule 4.1(b)(i)**, neither the Company nor any Subsidiary is bound by any subscription, option, warrant, conversion privilege, or other right, call, Contract to issue or sell, or any obligation or Contract to purchase or otherwise acquire any of its authorized capital stock or any securities convertible into or exchangeable for any of its authorized capital stock. As of the Closing Date, neither the Company nor any Subsidiary will be bound by any subscription, option, warrant, conversion privilege, or other right, call, Contract to issue or sell, or any obligation or Contract to purchase or otherwise acquire any of its authorized capital stock or any securities convertible into or exchangeable for any of its authorized capital stock. The Shares have not been issued in violation of any preemptive or contractual rights of any Person. Other than as set forth in the Shareholders' Agreement (which will be terminated on the Closing Date), no preemptive or contractual rights exist now or will exist at the Closing Date. There are no outstanding stock appreciation, phantom stock, profit participation or similar rights with respect to the Company or any Subsidiary. Except as set forth on **Schedule 4.1(b)(ii)**, there are no voting trusts, proxies, or other agreements or understandings with respect to the voting of any capital stock of the Company or any Subsidiary.

(c) The execution, delivery and performance by the Company of this Agreement and the Transaction Documents to which it is a party, if any, and the consummation by the Company of the transactions contemplated hereby and thereby are within the corporate powers of the Company and have been duly authorized by all necessary corporate action on the part of the Company. This Agreement constitutes, and, upon their execution and delivery, each of the Transaction Documents to which the Company is a party, if any, will constitute, a valid and legally binding agreement of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally.

(d) The execution, delivery and performance by the Company of this Agreement and the Transaction Documents to which it is a party, if any, and the consummation by the Company of the transactions contemplated hereby and thereby have been approved by all requisite Shareholder action under Section 607.1103 of Florida Law (Action on Plan) in accordance with Section 607.0704 of Florida Law (Action by Shareholders Without a Meeting) and all notices required to be delivered to the Shareholders under Florida Law, including, without limitation, pursuant to Section 607.0704(3) of Florida Law, have been properly and timely delivered by the Company.

(e) Except as set forth in **Schedule 4.1**, neither the execution and delivery of this Agreement nor the consummation or performance of any of the transactions contemplated by this Agreement will, directly or indirectly (with or without notice of lapse of time):

(i) contravene, conflict with, or result in a violation of (A) any provision of the articles of incorporation or bylaws of the Company and its Subsidiaries, or (B) any resolution adopted by the board of directors of the stockholders of any of the Company or its Subsidiaries;

(ii) contravene, conflict with, or result in a violation of, or give any Governmental Entity or other Person the right to challenge any of the transactions contemplated by this Agreement or to exercise any remedy or obtain any relief under, any legal requirement or any Order to which any of the Company or any of its Subsidiaries, or any of the assets owned or used by any of the Company or its Subsidiaries, may be subject;

(iii) contravene, conflict with, or result in a violation of any of the terms or requirements of, or give any Governmental Entity the right to revoke, withdraw, suspend, cancel, terminate, or modify, any governmental authorization that is held by any of the Company or its Subsidiaries or that otherwise related to the business of, or any of the assets owned or used by, the Company or its Subsidiaries;

(iv) contravene, conflict with, or result in a violation or breach of any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, or modify, any Contract; or

(v) result in the imposition or creation of any encumbrance upon or with respect to any of the assets owned or used by the Company or its Subsidiaries.

4.2. **Articles of Incorporation and By-Laws**. Copies of (a) the articles of incorporation of the Company and each Subsidiary, as certified by the Secretary of State (or the UK equivalent, as applicable), of the state or commonwealth or other jurisdiction of its incorporation and (b) the by-laws of the Company and each Subsidiary, certified by the secretary (or the UK equivalent, as applicable) of such company, have heretofore been made available to the Acquiror, and such copies are each true and complete copies of such instruments as amended and in effect on the date hereof. Neither the Company nor any of its Subsidiaries has taken any action in violation or derogation of its articles of incorporation or by-laws.

4.3. **Corporate Records**. All material proceedings occurring since September 19, 2002, of the directors of the Company and each Subsidiary and all Consents to actions taken thereby, are accurately reflected in the minutes and records contained in the corporate minute books of the Company and such Subsidiary which have heretofore been made available to the Acquiror.

4.4. **Consents of Governmental Entities**. Except as set forth on **Schedule 4.4**, no consent, or declaration, filing or registration by the Company with any Governmental Entity is required in connection with the execution, delivery and performance of this Agreement by the Company and the consummation of the transactions contemplated hereby.

4.5. **Financial Condition**. Annexed hereto as **Schedule 4.5** are copies of (a) the audited consolidated and consolidating balance sheet of the Company and the Subsidiaries as at December 31, 2003 and the related audited consolidated statements of income, retained earnings and cash flows for the year then ended together with the report therein by the Company's independent certified public accountants and (b) the unaudited consolidated and consolidating balance sheet of the Company and the Subsidiaries as at October 2, 2004 and the related statements of income, retained earnings and cash flows for the period commencing on September 27, 2003 and ended on October 2, 2004 (such audited and unaudited statements, including the related notes and Schedules thereto, are referred to herein as the "**Financial Statements**"). The Financial Statements described in clauses (a) and (b) above are complete and correct in all material respects, have been prepared in accordance with GAAP and in conformity with the practices consistently applied by the Company without modification of the accounting principles used in the preparation thereof and present fairly the financial position, results of operations and cash flows of the Company and the Subsidiaries as at the dates and for the periods indicated. For the purposes hereof, the balance sheet of the Company and the Subsidiaries as at October 2, 2004 is referred to as the "**Balance Sheet**" and October 2, 2004 is referred to as the "**Balance Sheet Date**". The Financial Statements (i) were prepared from the books and records of the Company and the Subsidiaries; (ii) with respect to the Financial Statements in clause (a) above, were prepared on an accrual basis in accordance with GAAP consistently applied; (iii) fairly and accurately present the financial condition and the results of operations of the Company and the Subsidiaries as of their respective dates and for the periods then ended in all material respects; and (iv) contain and reflect all necessary adjustments and accruals for a fair and accurate presentation of the financial condition of the Company and the Subsidiaries as of their respective dates in all material respects.

4.6. **Taxes**.

(a) Except as set forth on **Schedule 4.6**, the Company and each Subsidiary has (A) duly and timely filed (taking into account valid extensions of time to file) all Tax Returns required to be filed by it prior to the date hereof, which Tax Returns are true, correct and complete in all material respects, and (B) duly and timely paid (taking into account valid extensions of time to pay) all Taxes due and payable in respect of all periods through the date hereof, and has properly accrued on the Financial Statements all Taxes not yet payable in respect of all periods through and including the date hereof. The Company and each Subsidiary have timely and properly withheld or collected, paid over and reported all employment Taxes required to be withheld or collected by it on or before the Closing Date. The net unpaid Taxes of the Company and the Subsidiaries (i) did not, as of the Balance Sheet Date, exceed the reserve for Tax liability set forth on the Financial Statements and (ii) do not exceed that reserve as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of the Company in filing its Tax Returns.

(b) Except as set forth on **Schedule 4.6**, (A) none of the Company or any of its Subsidiaries has received written or, to the knowledge of the Company or any Subsidiary, verbal notice from a Governmental Entity asserting an additional Tax on the Company or any of its Subsidiaries that has not been fully satisfied, (B) neither the Company nor any of its Subsidiaries has received any written or, to the knowledge of the Company or any Subsidiary, verbal notice from any Governmental Entity that such Governmental Entity intends to conduct

an audit, examination, investigation, dispute, Legal Proceeding or claim (collectively, "**Tax Proceeding**") relating to any Tax of the Company or any of its Subsidiaries, (C) to the knowledge of the Company and its Subsidiaries, there are no Tax Proceedings in progress relating to any Tax of the Company or any of its Subsidiaries, (D) none of the Company or any of its Subsidiaries has waived or extended a statute of limitations with respect to the assessment or collection of any Tax or Tax Proceedings of the Company or any of its Subsidiaries (unless the period to which it has been waived or extended has expired), (E) there is no outstanding power of attorney from the Company or any of its Subsidiaries authorizing anyone to act on behalf of the Company or any Subsidiary in connection with any Tax of the Company or any of its Subsidiaries, (F) there is no outstanding closing agreement, ruling request, request to consent to change a method of accounting, subpoena or request for information with or by any Governmental Entity with respect to the Company or any Subsidiary, its income, assets, Business or Tax, (G) neither the Company nor any Subsidiary is required to include any adjustment under Section 481 of the Code (or any corresponding provision of applicable Law) in income for any period ending after the Balance Sheet Date, (H) neither the Company nor any Subsidiary is or has ever been a party to any Tax sharing or Tax allocation Contract (other than with the Company or a Subsidiary), (I) neither the Company nor any Subsidiary is or has ever been included in any consolidated, combined or unitary Tax Return (other than a consolidated, combined or unitary income tax return in which the Company is the common parent), (J) no written claim has been made by a Governmental Entity in a jurisdiction where the Company or any of its Subsidiaries do not file Tax Returns that the Company or such Subsidiary is or may be subject to taxation by that jurisdiction, (K) the Company has delivered to the Acquiror complete copies of (i) all U.S. federal and state income or franchise Tax Returns of the Company and its Subsidiaries relating to the Company's fiscal years ending on December 31, 2001, 2002 and 2003 and (ii) any audit report issued within the last three years relating to Taxes due from or with respect to the Company and its Subsidiaries and their income, assets or operations, (L) neither the Company nor any Subsidiary is the subject of any private letter ruling of the IRS or comparable rulings of other taxing authorities, and (M) neither the Company nor any Subsidiary has requested any extension of time within which to file any Tax Return, which Tax Return has since not been filed.

(c) Except as set forth on **Schedule 4.6**, (A) neither the Company nor any Subsidiary is a party to any Contract that would result, individually or in the aggregate, in a payment of any material amount or benefit that would not be deductible by the Company or such Subsidiary by reason of Section 280G of the Code; (B) neither the Company nor any Subsidiary has any "tax-exempt bond financed property" or "tax-exempt use property" within the meaning of Section 168(g) or (h), respectively, of the Code, (C) neither the Company nor any Subsidiary has ever made an election under Section 338 of the Code, or (D) neither the Company nor any Subsidiary has constituted either a "distributing corporation" or a "controlled corporation" within the meaning of Section 355(a)(1)(A) of the Code in a distribution qualifying for tax-free treatment under Section 355 of the Code (i) in the two years prior to the date of this Agreement or (ii) in a distribution that otherwise constitutes a part of a "plan" or "series of transactions" (within the meaning of Section 355(e) of the Code) in conjunction with this Agreement. The Company has not been a "United States real property holding corporation" (within the meaning of Code Section 897(c)(2)) at any time during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

4.7. **Absence of Certain Developments**. Except as set forth in **Schedule 4.7**, since the Balance Sheet Date, (i) no Material Adverse Change has occurred, and (ii) neither the Company nor any Subsidiary has done any of the following:

(a) issued any notes, bonds or other debt securities, any equity securities, any profits interests, or any securities exchangeable for or convertible into any equity securities or profits interests;

(b) other than in the ordinary course of business declared, set aside or made any payment or distribution of cash or other property, or any equity securities or profit interests, with respect to its capital stock or purchased, redeemed or otherwise acquired any shares of its capital stock or made any interest, principal or other payments to any of the Company or its Subsidiaries;

(c) (i) borrowed any amounts or created, incurred, assumed, or guaranteed any indebtedness for borrowed money or capitalized lease obligation or (ii) entered into any other liabilities which are not in the ordinary course of business, consistent with past practice;

(d) sold, leased, assigned or transferred any of its assets, tangible or intangible, other than for fair consideration in the ordinary course of business, consistent with past practices;

(e) (i) compromised any debt or Claim other than in the ordinary course of business consistent with past practices; (ii) intentionally waived any rights other than in the ordinary course of business consistent with past practices; (iii) suffered any theft, destruction, damage or casualty loss; (iv) intentionally waived, canceled or released any right, Claim or account receivable other than in the ordinary course of business consistent with past practices; or (v) suffered any extraordinary losses;

(f) other than the acceleration of the vesting of certain of the Options, authorized any increase in the compensation of the Company's or any Subsidiary's directors, officers and employees (including any such increase pursuant to any bonus, pension, profit sharing or other plan or commitment) or any increase in the compensation payable or to become payable to any director, officer and employee of the Company or any Subsidiary other than pursuant to the Company's or such Subsidiary's customary annual salary and bonus reviews;

(g) made any change in any method of accounting or accounting practice;

(h) agreed, whether in writing or otherwise, to take any action described in this Section 4.7;

(i) accepted any purchase order or quotation, arrangement, or understanding for future sale of the products or services of the Company or any Subsidiary, other than in the ordinary course of business, consistent with past practice;

(j) written down or written up the value of any inventory, increased inventory levels in excess of historical levels for comparable periods or written off as uncollectible any

notes or accounts receivable, except in the ordinary course of business consistent with past practice;

(k) made any single capital expenditure (or series or released capital expenditures) or commitment in excess of One Hundred Fifty Thousand Dollars ($150,000) for additions to property, plant, equipment or intangible capital assets or made capital expenditures (or series or released capital expenditures) or commitments in excess of Three Hundred Thousand Dollars ($300,000) in the aggregate for additions to property, plant, equipment or intangible capital assets;

(l) made any material change in the manner in which products or services have been performed or marketed;

(m) had any labor dispute or received notice of any material grievance;

(n) entered into any contract, lease or license outside the ordinary course of business;

(o) no party has accelerated, terminated, or cancelled any lease, or license to which any of the Company and its Subsidiaries is a party or by which any of them is bound;

(p) imposed any security interest upon any of the Company or its Subsidiaries' assets, tangible or intangible;

(q) made any material capital investment in, or material loan to, any other Person outside the ordinary course of business;

(r) made any loan to, or entered into any other transaction with, any of its directors, officers, and employees outside the ordinary course of business;

(s) entered into any employment contract or collective bargaining agreement, written or oral, or modified the terms of any existing such contract or agreement;

(t) other than with respect to accelerating the vesting of certain of the Options, adopted, amended, modified or terminated any bonus, profit sharing, incentive, severance, or other plan, contract, or commitment for the benefit of any of its directors, officers, and employees (or taken any such action with respect to any other Plan); or

(u) made any other change in employment terms for any of its directors, officers, and employees outside the ordinary course of business.

4.8. **Officers and Directors**. Set forth on **Schedule 4.8** is a list of the names of the directors and officers of the Company and each Subsidiary and, in the case of officers, the title, or classification of each such officer.

4.9. **Affiliates**. Except as set forth on **Schedule 4.9**, no director, officer or Affiliate of the Company or any Subsidiary or any corporation, partnership, limited liability company, trust or other entity in which any such Person, is an officer, director, trustee, member, manager,

partner or holder of more than 5% of any class of outstanding equity thereof, is a party to any Contract to which the Company or any Subsidiary is also a party.

4.10. **Contracts**.

(a) Except as set forth on **Schedule 4.10(a)**, neither the Company nor any Subsidiary is bound by any of the following:

(i) any Contract that grants a power of attorney, agency or similar authority to another Person;

(ii) any Contract to lend or advance to, invest in, or guarantee any indebtedness, obligation or performance of, or indemnify any Person;

(iii) any Contract relating to the employment of any Person by the Company or any Subsidiary not terminable at will by the Company or such Subsidiary without obligation to pay any severance, termination or other payment, or any bonus, deferred compensation, pension, severance, profit sharing, stock option, employee stock purchase, retirement or other employee benefit plan;

(iv) other than purchase orders submitted by the Company or its Subsidiaries to its suppliers and purchase orders submitted to the Company or its Subsidiaries by their customers, in each case in the ordinary course of the business, any Contract pursuant to which the Company or any Subsidiary is (1) required to make payments of Fifty Thousand Dollars ($50,000) or more, or (2) entitled to receive payments of Fifty Thousand Dollars ($50,000) or more, and, in each such case, any such Contract is not, without a payment required thereunder (beyond those due for work performed or materials delivered thereunder), terminable upon thirty (30) days (or less) notice;

(v) any Contract limiting the freedom of the Company or any Subsidiary from engaging in any business;

(vi) any agreement concerning a partnership or joint venture;

(vii) any agreement concerning confidentiality or non-competition;

(viii) any agreement involving any of the Company's Shareholders and their affiliates;

(ix) any profit sharing, stock option, stock purchase, stock appreciation, deferred compensation, severance, other material plan or arrangement for the benefit of its current or former directors, officers, and employees;

(x) any collective bargaining agreement;

(xi) any agreement under which it has advanced or loaned any amount to any of its directors, officers, and employees outside the ordinary course of business;

(xii) any agreement under which the consequences of a default or termination could have a Material Adverse Effect;

(xiii) except for Permitted Liens, any Contract that contains a Restriction with respect to any asset of the Company or any Subsidiary; and

(xiv) any other Contract which involves consideration or other expenditures or potential liability of the Company or any Subsidiary in excess of Fifty Thousand Dollars ($50,000) or involving performance over a period of more than twelve (12) months, or which is otherwise material to the Business or to the Company and the Subsidiaries taken as a whole.

(b) Each Contract to which the Company or any Subsidiary is a party is valid and in full force and effect and there exists no (i) default or event of default which could reasonably be expected to cause a Material Adverse Effect or (ii) event, occurrence, condition or act which, with the giving of notice or the lapse of time, would become a default or event of default thereunder which could reasonably be expected to cause a Material Adverse Effect. The Company and each Subsidiary has substantially performed all of the terms and conditions of any Contract to which it is a party in all respects, and, to the knowledge of the Company, all of the covenants to be performed by any other party thereto have been performed in all material respects. A copy of each Contract identified on **Schedule 4.10(b)** or on any of the other Schedules to this Agreement has heretofore been delivered to the Acquiror and such copy is true, correct, and complete in all respects. Each Contract listed on any Schedule hereto is on arms length terms.

(c) The Company and each Subsidiary enjoys peaceful and undisturbed possession under all leases and licenses under which it is operating.

4.11. **Litigation; Compliance**. Except as disclosed on **Schedule 4.11** hereto, (A) there has been no notice of any Claim pending or, to the knowledge of the Company or any Subsidiary, threatened in either case, that would reasonably be expected to have a Material Adverse Effect nor is there any written Order outstanding, against the Company or any Subsidiary; and (B) neither the Company nor any Subsidiary has received any written notice claiming any violation of any Law or Order from any Governmental Entity that would reasonably be expected to have a Material Adverse Effect and neither the Company nor any Subsidiary is subject to any Order.

4.12. **Employees; Labor Disputes**.

(a) Except as set forth on **Schedule 4.12(a)(i)**, during the last five years neither the Company nor any of its Subsidiaries has experienced any labor disputes, union organization attempts or any work stoppage due to labor disagreements in connection with its business. The Company and its Subsidiaries are in material compliance with all applicable Laws respecting employment and employment practices, terms and conditions of employment and wages and hours. There is no unfair labor practice charge or complaint against the Company or any Subsidiary pending or, to the knowledge of the Company or any Subsidiary, threatened. There is no labor strike, dispute, request for representation, slowdown or stoppage actually

pending or to the knowledge of the Company or any Subsidiary, threatened against or affecting the Company or any Subsidiaries nor any secondary boycott with respect to products of the Company or any Subsidiary. Except as set forth on **Schedule 4.12(a)(ii)**, neither the Company nor any Subsidiary is a party to or subject to any employment contract, consulting agreement, collective bargaining agreement, confidentiality agreement restricting their (or any employees) activities, or non-competition agreement restricting their activities. Except as set forth on **Schedule 4.12(a)(iii)**, there are no administrative charges or court complaints against the Company or any Subsidiary concerning alleged employment discrimination or other employment related matters pending or, to the knowledge of the Company or any Subsidiary, threatened before the U.S. Equal Employment Opportunity Commission or any Government Entity. The Company and each Subsidiary enjoys generally good working relationships with its employees.

(b) **Schedule 4.12(b)** sets forth a true and complete list of every employee group or executive medical, life, or disability insurance plan, and each incentive, bonus, profit sharing, retirement, deferred compensation, phantom interest or severance plan of the Company and each Subsidiary now in effect or under which the Company or any Subsidiary has any obligation, that does not apply to the Company's or any Subsidiary's employees generally (collectively, "**Labor Agreements**"). True and correct copies of all Labor Agreements have been provided to the Acquiror. The transactions contemplated by this Agreement do not give rise to any termination rights on the part of any Persons covered by any of the Labor Agreements.

4.13. **No Conflict; Consents**. **Schedule 4.13(i)** sets forth a complete list of all Contracts to which the Company or any Subsidiary is a party which contains a change of control provision which would be triggered by the transactions contemplated in this Agreement and, except with respect to the Contracts listed on **Schedule 4.13(ii)**, no Consent or other action by, or notice to, any Person (other than the consent of the requisite majority of the Shareholders and any Governmental Consent) or party to any of the Transaction Documents to which the Company or any Subsidiary is a party is necessary for the consummation of the transactions contemplated hereby or thereby.

4.14. **Assets**. Except as set forth on **Schedule 4.14(i)** hereof, the Company and each Subsidiary has good and marketable title to all their properties and assets, free and clear of all Restrictions other than Permitted Liens. All such properties and assets (including intangibles) owned by the Company and each Subsidiary are reflected on the Balance Sheet. Except as set forth on **Schedule 4.14(ii)**, all personal and other tangible properties and assets owned, leased, or licensed by the Company and each Subsidiary are in good and usable condition (except reasonable wear and tear. The personal and other properties and assets (including intangibles) owned by the Company and each Subsidiary or leased or licensed by the Company and each Subsidiary from a Third Party constitute all such properties and assets which are necessary for the conduct of the Business as presently conducted. **Schedule 4.14(iii)** sets forth the type, amount and location (including each warehouse and storage facility) of the tangible assets owned by the Company as of the Balance Sheet Date. All leases listed on **Schedule 4.14(iv)** are in full force and effect and no event of default by the Company or any Subsidiary has occurred which (whether with or without notice, lapse of time or both) would constitute a default thereunder. To the knowledge of the Company and each Subsidiary, the only jurisdictions where UCC's have been filed that list the Company or any Subsidiary as a debtor are set forth on **Schedule 4.14(v)**.

4.15. **Environmental Laws and Regulations.**

(a) The applicable Laws relating to pollution or protection of the environment, including Laws relating to emissions, discharges, generation, storage, releases or threatened releases of pollutants, contaminants, chemicals or industrial, toxic, hazardous or petroleum or petroleum-based substances or waste ("**Waste**") or Hazardous Materials into the environment (including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Waste or Hazardous Materials including, without limitation, the Clean Water Act, the Clean Air Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act and CERCLA, as amended, and their state and local counterparts and the applicable rules of common law, are herein collectively referred to as the "**Environmental Laws**." Except as set forth on **Schedule 4.15(a)(i)** hereof, the Company and each Subsidiary is in full compliance with all limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in the Environmental Laws or contained in any regulations, code, plan, order, decree, judgment, injunction, notice or demand letter issued, entered, promulgated or approved thereunder for which the lack of compliance would result in a Material Adverse Effect. Except as set forth on **Schedule 4.15(a)(ii)** hereof, the Company and its Subsidiaries have not received any notice of any investigations, inquiries or other Legal Proceedings nor is any demand, claim, hearing or notice of violation pending or, to the knowledge of the Company or any Subsidiary, threatened against the Company or any Subsidiary relating in any way to the Environmental Laws or any Order issued, entered, promulgated or approved thereunder. Except as set forth on **Schedule 4.15(a)(iii)** hereof, there are no past or present events, conditions, circumstances, activities, practices, incidents, actions, omissions or plans which may interfere with or prevent compliance or continued compliance with the Environmental Laws or with any Order issued, entered, promulgated or approved thereunder, which may give rise to any Environmental Liability, including, without limitation, liability under CERCLA or similar state or local Laws, or otherwise form the basis of any Legal Proceeding, hearing, notice of violation, study or investigation, based on or related to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling, or the emission, discharge, release or threatened release into the environment, of any Waste.

(b) None of the Company or any of its Subsidiaries owns, operates or leases a treatment, storage or disposal facility requiring a permit under Environmental Law; and, without limiting the foregoing, are not reasonably likely, individually or in the aggregate, to have a Material Adverse Effect, except as set forth on **Schedule 4.15(b)** hereof, (i) no polychlorinated bi-phenyl is or has been brought, (ii) no asbestos or asbestos- containing material is or has been brought, (iii) no underground storage tanks or surface impoundments for Hazardous Materials, active or abandoned, have been installed or operated by the Company or any of its Subsidiaries and (iv) no Hazardous Material has been released in a quantity reportable under, or in violation of, any Environmental Law or otherwise released, in the cases of clauses (i) and (iv), at, on or under any site or facility now owned, operated or leased or previously owned, operated or leased to the knowledge of the Company or any Subsidiary.

(c) Neither the Company nor any of its Subsidiaries has transported or arranged for the transportation of any Hazardous Material, or disposed of any Hazardous

Materials at, to any location that is (i) listed on the National Priorities List under CERCLA ("**NPL**"), (ii) listed for possible inclusion of the NPL or any similar state or local list by the Environmental Protection Agency or similar state or local Governmental Authority or (iii) the subject of enforcement actions by any Governmental Authority that may lead to Claims against the Company or any of its Subsidiaries.

(d) Except as set forth on **Schedule 4.15(d)** hereof, no Hazardous Material generated by the Company or any of its Subsidiaries has been recycled, treated, stored, disposed of or released by the Company or any of its Subsidiaries at any location in violation of any applicable Environmental Law.

(e) Except as set forth on **Schedule 4.15(e)** hereof, no notification of a release of Hazardous Materials has been registered or filed by or on behalf of the Company or any of its Subsidiaries and no site or facility now owned, operated or leased or to the knowledge of the Company or any Subsidiary previously owned, operated or leased by the Company or any of its Subsidiaries is listed or proposed for listing on the NPL or any similar list of sites requiring investigation or clean-up.

(f) All environmental investigations, studies, audits, tests, reviews or other analyses conducted by, or that are in the possession of, or under the control of, the Company or any of its Subsidiaries relating to any site or facility now or previously owned, operated or leased by the Company or any of its Subsidiaries have been delivered to the Acquiror.

4.16. **Brokerage**. Except as set forth on **Schedule 4.16**, no broker or finder has acted directly or indirectly for the Company or any of its Subsidiaries in connection with the transactions contemplated in this Agreement and no broker or finder is entitled to any brokerage or finder's fee or other commission in respect thereof based in any way on any Contract made by or on behalf of the Company or any of its Subsidiaries. Except with respect to Cobblestone Advisors (solely to the extent described in Schedule 4.16), the Company and its Subsidiaries have no liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which the Acquiror could become liable.

4.17. **Employee Benefit Plans**. Set forth on **Schedule 4.17(i)** is a true and complete list of the Company's and its Subsidiaries' employee benefit Plans and Benefit Arrangements (as defined below). Except as set forth on **Schedule 4.17(ii)** hereto, neither the Company nor any Subsidiary is individually or jointly and severally liable, and neither the Company's nor any Subsidiary's officers and employees are or could reasonably be expected to become liable for any material liability (direct or indirect or otherwise) arising under the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), the Code or any other law or regulation, relating to: (1) an employee benefit plan, within the meaning of Section 3(3) of ERISA (a "**Plan**"), covering or formerly covering any present or former employee of the Company or any Subsidiary (a "**Company Plan**"); (2) a Plan not described in clause (1) covering or formerly covering any present or former employee of a Person which, together with the Company and its Subsidiaries, are treated as a single employer under Code Section 414 (such Person hereinafter being referred to as an "**ERISA Affiliate**" and such Plan hereinafter being referred to as an "**ERISA Affiliate Plan**"); or (3) an employee benefit plan or arrangement, other than an ERISA

Plan, maintained by the Company or any Subsidiary providing benefits or compensation to any one or more employees, including, but not limited to, stock option, stock appreciation, incentive, severance, retention, insurance and deferred compensation plans and arrangements and employment agreements (a "**Benefits Arrangement**"), which (in all three cases) is not reflected in the Company's most recent Financial Statement. No Company Plan or ERISA Affiliate Plan that is a "pension plan" within the meaning of Section 3(2) of ERISA, has incurred any "accumulated funding deficiency" as that term is defined in Section 412 of the Code (whether or not waived) and, with respect to each such Plan, the accumulated benefit obligation of the Plan does not exceed the fair market value of the assets of such Plan based upon actuarial assumptions which are reasonable in the aggregate. Each Company Plan and Benefits Arrangement has been maintained and administered in all respects in material compliance with its terms and all applicable laws, rules and regulations. Each Company Plan that is intended to be qualified under Code Section 401(a) has been amended for GUST and has received a determination letter from the IRS that the Plan satisfies the requirements of the Code (including GUST), or is an adoption of a prototype or volume submitter document that has received a favorable IRS opinion letter with respect to such qualification upon which the Company is entitled to rely, and nothing has occurred with respect thereto which could reasonably be expected to result in the loss of such qualification. Except as set forth on **Schedule 4.17(iii)** hereto, (i) no material Claims are pending with respect to any Company Plan or Benefits Arrangement (other than routine claims for benefits) and, to the knowledge of the Company, no material Claims have been threatened and no condition exists which would provide grounds for any such Claim relating to the Company Plan or Benefits Arrangement; (ii) none of the Company or any Subsidiary has received notice from any Governmental Entity, including the IRS, the Department of Labor and the Pension Benefit Guaranty Corporation ("**PBGC**"), that such Governmental Entity has initiated an examination, audit or investigation of a Company Plan or Benefits Arrangement that could result in a material liability; (iii) none of the Company or any Subsidiary has received notice of, no event has occurred and there does not now exist any condition or set of circumstances, that could subject the Company or any Subsidiary to any material liability arising under the Code, ERISA or any other applicable legal requirement or under any indemnity agreement to which the Company or any Subsidiary is a party, excluding liability for routine benefit claims and funding obligations payable in the ordinary course; (iv) the transactions contemplated by this Agreement will not result in a reportable event, within the meaning of ERISA Section 4043, other than a reportable event with respect to which the ERISA Section 4043 reportable event notice requirement has been waived or the PBGC has announced that it will not apply a penalty for failure to satisfy the reportable event notice requirement; (v) the transactions contemplated by this Agreement (other than payments made with respect to holders of Options issued under the Stock Option Plan (and related bonus payments) and participants in the Equity Participation Plan) will not result in a liability for severance or termination pay or result in increased or accelerated employee benefits becoming payable to any of the employees of the Company or any Subsidiary; (vi) all contributions to Company Plans and Benefits Arrangements (including both employee and employer contributions), including premium payments, that are required to have been made, whether by virtue of the terms of the particular plan or arrangement or by operation of law, have been made by the due date thereof (including all applicable extensions); (vii) neither the Company nor any Subsidiary maintains any plan or arrangement which provides for retiree health or other welfare benefits, except as required by COBRA or other provision of law; and (viii) neither the Company nor any Subsidiary

participates in or has any liability (direct or indirect) with respect to a multiemployer plan, within the meaning of Section 3(37) or 4001(a)(3) of ERISA (a "**Multiemployer Plan**"). **Schedule 4.17(iv)** contains a complete list of all Company Plans currently maintained by the Company and each Subsidiary or in which the Company or any Subsidiary currently participates ("**Current Company Plans**") and all Benefits Arrangements. With respect to each Current Company Plan, the Company has made available to the Acquiror or its counsel a correct and complete copy of (1) the Plan document, (2) the summary plan description, (3) the most recent Annual Report (Form 5500 series) and accompanying Schedules, (4) the most recent certified financial statements, and (5) if applicable, the most recent actuarial valuation report (in each case, to the extent applicable). With respect to each Benefit Arrangement, the Company has delivered to the Acquiror a correct and complete copy of each applicable plan document, Agreement and/or summary description. Each Company Plan and Benefits Arrangement may be unilaterally terminated by the Company or a Subsidiary without penalty.

4.18. **Insurance**. Set forth on **Schedule 4.18** is a complete list of all insurance policies which the Company and each Subsidiary maintains with respect to the Business or the operations, properties or employees of the Company and each Subsidiary (including policies covering property, casualty, liability and workers' compensation and bond and surety arrangements). The Company and each Subsidiary has paid all premiums due under said policies and such policies are in full force and effect. Neither the Company nor any Subsidiary has received any notice of, and neither the Company nor any Subsidiary is otherwise aware of, any facts indicating a likelihood of the cancellation of any such insurance policy prior to its scheduled termination date. To the knowledge of the Company and its Subsidiaries, no event has occurred which, with notice or the lapse of time, would constitute a breach or default, or permit termination, modification or acceleration, under any insurance policy.

4.19. **Banks**. **Schedule 4.19** contains a complete and correct list of the names and locations of all banks in which the Company and each Subsidiary has accounts or safe deposit boxes, and the names of all persons authorized to draw thereon or to have access thereto. No Person holds a power of attorney to act on behalf of the Company or any Subsidiary.

4.20. **Books and Records**. The stock ledgers and stock transfer books of the Company and each Subsidiary are complete and accurate. The stock ledgers and stock transfer books and the minute book records of the Company and each Subsidiary relating to all issuances and transfers of stock by the Company and such Subsidiary and all proceedings of the Shareholders and the Board of Directors and committees thereof since the date of incorporation or formation, as applicable, made available to the Acquiror, are the original stock ledgers and stock transfer books and minute book records of the Company or such Subsidiary or exact copies thereof.

4.21. **Business Relationships**. **Schedule 4.21(i)** contains a true and complete list of the Company's ten (10) largest customers (by dollar amount of sales) and the dollar amount of such sales to each such customer for the nine (9) month period ended October 2, 2004. Except as set forth on Schedule 4.21(i), the Company has not received any notification of, or otherwise has any knowledge of, any intention of any such customer to terminate or materially reduce its ongoing commercial relationship with the Company or its Subsidiaries. **Schedule 4.21(ii)** contains a true and complete list of the Company's ten (10) largest suppliers (by dollar amount of purchases) and the dollar amount of such purchases from each such supplier for the nine (9)

month period ended October 2, 2004. Except as set forth on Schedule 4.21(ii), the Company has not received any notification of, or otherwise has any knowledge of, any intention of any such supplier to (A) terminate or materially reduce its ongoing commercial relationship with the Company or its Subsidiaries or (B) cancel, reduce or otherwise modify any trade credit terms extended by such supplier to the Company or its Subsidiaries in any manner adverse to the Company or its Subsidiaries.

4.22. **Real Property**. **Schedule 4.22** sets forth all real property owned, used or occupied by the Company and each Subsidiary (the "**Real Property**"), including a description of all land, and all encumbrances, easements or rights of way of record (or, if not of record, of which the Company or such Subsidiary has notice) granted on or appurtenant to or otherwise affecting such Real Property, the zoning classification thereof, and all plants, buildings or other structures located thereon. To the extent certificates of occupancy are required, there are now in full force and effect duly issued certificates of occupancy permitting the Real Property and improvements located thereon to be legally used and occupied as the same are now constituted. No fact or condition exists which would prohibit or materially adversely affect the ordinary rights of access to and from the Real Property or from and to the existing highways and roads, and there is no pending or, to the knowledge of the Company or any Subsidiary, threatened restriction or denial, governmental or otherwise, upon such ingress and egress. To the knowledge of the Company or any Subsidiary, there is not (i) any claim of adverse possession or prescriptive rights involving any of the Real Property, (ii) any structure located on any Real Property which encroaches on or over the boundaries of neighboring or adjacent properties or (iii) any structure of any other party which encroaches on or over the boundaries of any such Real Property. None of the Real Property is located in a flood plain, flood hazard area, wetland or lakeshore erosion area within the meaning of any Law. No public improvements have been commenced and to the knowledge of the Company or any Subsidiary, none are planned which in either case may result in special assessments against or otherwise materially adversely affect any Real Property. None of the Company or any Subsidiary has knowledge of (i) any planned or proposed increase in assessed valuations of any Real Property, (ii) Order requiring repair, alteration, or correction of any existing condition affecting any Real Property or the systems or improvements thereat, or (iii) condition or defect which could give rise to an Order of the sort referred to in (ii) above.

4.23. **Intellectual Property**.

(a) **Schedule 4.23(a)** sets forth a true and complete list of all Intellectual Property Rights, specifying as to each, as applicable: (i) the nature and subject matter of such Intellectual Property Right; (ii) the owner of such Intellectual Property Right; (iii) the jurisdictions by or in which such Intellectual Property Right has been issued or registered or in which an application for such issuance or registration has been filed; (iv) the application, registration or patent number, the filing date and the issue or registration date related to such Intellectual Property Right, as applicable, and (v) all licenses, sublicenses and other agreements pursuant to which any Person is authorized to use such Intellectual Property Right. Except as set forth on **Schedule 4.23(a)**, all Intellectual Property Rights have been duly registered or filed, if applicable, with all appropriate Governmental Entities and no item required to be listed on such schedule has lapsed, expired or been abandoned or cancelled or is subject to any pending, or to the knowledge of the Company or any Subsidiary, threatened in writing, opposition, cancellation,

interference, domain name dispute or other proceeding. The Intellectual Property Rights shall remain substantially unchanged immediately following the Closing. The Intellectual Property Rights constitute all of the intellectual property rights necessary for the conduct of the Business by the Company after the Closing in the same manner as currently conducted by the Company. With respect to all software used by the Company which is material to the Business and not readily commercially available, the Company is in possession of all source and object codes related to each piece of software or is the beneficiary of a source code escrow agreement, each such source code escrow agreement being listed on **Schedule 4.23(a)**.

(b) Within the last five (5) years, (or prior thereto if the same is still pending or subject to appeal or reinstatement) neither the Company nor any Subsidiary has been sued or charged in writing with or been a defendant in any claim, suit, action or proceeding that involves a claim of infringement or other violation of any Intellectual Property Right, and none of the Company or any Subsidiary have any knowledge of any other claim or action currently pending or threatened in writing which asserts that the Company or any Subsidiary is infringing or otherwise violating intellectual property of any Person. No action by the Company or any Subsidiary is currently pending or threatened in writing which asserts that any Person is infringing or otherwise violating any Intellectual Property Right, and neither the Company nor any Subsidiary has knowledge of any current or continuing infringement or other violation by any other Person of any Intellectual Property Right.

(c) Except as set forth on **Schedule 4.23(c)** hereof, and to the knowledge of the Company or any Subsidiary, (i) the current use by the Company and its Subsidiaries of the Intellectual Property Rights does not infringe, and (ii) the use by the Company or any of its Subsidiaries of the Intellectual Property Rights after the Closing will not infringe, the rights of any other Person in a manner that will have a Material Adverse Effect.

4.24. **Acquisitions**. **Schedule 4.24** sets forth a true and complete list of all transactions in which the Company or any of its Subsidiaries either (i) acquired a majority of the equity of another entity, (ii) acquired any assets from another entity not in the ordinary course of business, or (iii) merged or consolidated with or into another entity. The Company has provided the Acquiror with copies of all such Contracts, including all exhibits, schedules and any material document or instrument executed or delivered in connection therewith, pursuant to which such transactions described in the preceding sentence were consummated and such copies are true, complete and correct in all respects.

4.25. **Warranties**. The Acquiror has been furnished with complete and correct copies of the standard terms and conditions of sale or lease, if any, of each of the products of the Company and its Subsidiaries. Except as set forth on **Schedule 4.25** and other than in the ordinary course, there are no pending, or to the knowledge of the Company, threatened product warranty or liability claims or any other liability arising out of any injury to individuals or property as a result of the ownership, possession or use of any product manufactured, sold, leased or delivered by and of the Company or its Subsidiaries against the Company or any of its Subsidiaries.

4.26. **Accounts and Notes Receivable**. Except as set forth on **Schedule 4.26(i)**, all notes and accounts receivable of the Company and its Subsidiaries shown on the Financial

Statements ("**Accounts Receivable**") have arisen in the ordinary course of business and, except as set forth on **Schedule 4.26(ii)**, the Company has received no written notice that an account party intends to discount or offset any Account Receivable. Except as set forth on **Schedule 4.26(iii)**, to the knowledge of the Company and the Subsidiaries, there are no facts or other information that indicate that the reserves and accruals reflected in the Financial Statements are inadequate as of the date thereof. The Company has not factored or agreed to factor or discounted or agreed to discount any Accounts Receivable. The amounts at which the Accounts Receivable are carried on the Financial Statements (other than with respect to the unaudited Financial Statements dated as of the Balance Sheet Date) reflect the Accounts Receivable policy of the Company which is in accordance with GAAP, consistently applied.

4.27. **Inventories**. Except as set forth on **Schedule 4.27** and except for normal waste and defects and materials which may become obsolete, the inventories of the Company and its Subsidiaries reflected on the Financial Statements consist of items of quality and quantity usable and salable in the ordinary course of business of the Company and its Subsidiaries at an aggregate value at least equal to the value at which such inventories are reflected in the Financial Statements as at the date of such financial statements. Except as set forth on **Schedule 4.27**, the method of valuing such inventories in such financial statements is consistent with past practice and in conformity with GAAP, consistently applied. The value of inventories known to be obsolete, slow moving or known to be below standard quality has been written down on the books of the Company to estimated realizable market value or reserves estimated to be sufficient therefor have been established on the Financial Statements. The amounts at which the inventories are carried on the Financial Statements reflect the inventory valuation policy of the company of stating inventory at the lower of cost (FIFO method) or estimated realizable market value in accordance with GAAP, consistently applied.

4.28. **Disclosure**. No representation or warranty by the Company contained in or connected to this Agreement, nor any written statement or certificate furnished or to be furnished by or on behalf of the Company to the Acquiror or any representatives of the Acquiror in connection herewith or pursuant hereto or listed on any Schedule hereto, contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact required to make the statements herein or therein contained not misleading or omits any material facts necessary in order to provide the Acquiror with adequate information as to the Company and its Subsidiaries and its condition (financial and otherwise), operations, properties, assets and liabilities, and the Company has disclosed to the Acquiror in writing all material facts known to them relating to the same.

4.29. **No Liabilities**. Except as set forth on **Schedule 4.29**, on the Closing Date, after giving effect to the transactions contemplated hereby, neither the Company nor any Subsidiary shall have any Indebtedness (other than in respect of the Financing) or any Restrictions other than Permitted Liens on its Assets.

ARTICLE V

REPRESENTATIONS AND WARRANTIES AS TO MERGER SUB

Acquiror and Merger Sub jointly and severally represent and warrant to the Company as follows:

5.1. **Organization and Qualification.**

Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation. Merger Sub was formed solely for the purpose of engaging in the transactions contemplated by this Agreement. As of the date of this Agreement, except for obligations or liabilities incurred in connection with its incorporation or organization and the transactions contemplated by this Agreement, Merger Sub has not incurred, directly or indirectly, any obligations or liabilities or engaged in any business activities or entered into any agreements or arrangements with any person.

5.2. **Certificate of Incorporation and Bylaws.**

Merger Sub has heretofore made available to the Company a complete and correct copy of the certificate of incorporation and the bylaws of Merger Sub. Such certificate of incorporation and bylaws are in full force and effect. Merger Sub is not in violation of any of the provisions of its certificate of incorporation or bylaws.

5.3. **Authority.**

Merger Sub has the necessary corporate power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by Merger Sub and the consummation by Merger Sub of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action and no other corporate proceedings on the part of Merger Sub are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by Merger Sub and assuming the due authorization, execution and delivery by the Company and Acquiror, constitutes a legal, valid and binding obligation of Merger Sub, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability relating to or affecting creditors' rights generally and by the application of general principles of equity.

5.4. **No Conflict; Required Filings and Consents.**

(a) The execution and delivery of this Agreement by Merger Sub do not, and the performance by Merger Sub of its obligations under this Agreement will not, (i) conflict with or violate the certificate of incorporation or bylaws of Merger Sub, (ii) subject to compliance with the requirements set forth in Section 5.4(b) below, conflict with or violate any law, statute, ordinance, rule, regulation, order, judgment or decree applicable to Merger Sub or by which any of its properties is bound or affected, or (iii) result in any breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others

any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Encumbrance on any of the properties or assets of Merger Sub pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Merger Sub is a party or by which Merger Sub or any of its properties or assets is bound or affected, except, in the case of clauses (ii) and (iii) above for any such conflicts, violations, breaches, defaults or other alterations or occurrences that would not prevent or delay consummation of the Merger in any material respect, or otherwise prevent Merger Sub from performing its obligations under this Agreement in any material respect.

(b) The execution and delivery of this Agreement by Merger Sub does not, and the performance of this Agreement by Merger Sub will not, require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity, except (i) the filing and recordation of appropriate merger documents as required by Florida Law and (ii) where failure to obtain such consents, approvals, authorizations or permits, or to make such filings or notifications, would not prevent or delay consummation of the Merger in any material respect.

5.5. **Vote Required**.

The affirmative vote of Acquiror, the sole stockholder of Merger Sub, is the only vote of the holders of any class or series of Merger Sub capital stock necessary to approve any of the transactions contemplated hereby.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES AS TO ACQUIROR

Acquiror represents and warrants to the Company as follows:

6.1. **Organization**.

Acquiror is a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation. Acquiror is duly qualified to conduct its business, and is in good standing, in such jurisdiction.

6.2. **Authority**.

Acquiror has the necessary limited liability company power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by Acquiror and the consummation by Acquiror of the transactions contemplated hereby have been duly and validly authorized by all necessary limited liability company action and no other proceedings on the part of Acquiror are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by Acquiror and, assuming the due authorization, execution and delivery by the Company, constitutes a legal, valid and binding obligation of Acquiror, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and

other similar laws of general applicability relating to or affecting creditors' rights generally and by the application of general principles of equity.

6.3. **No Conflict; Required Filings and Consents**.

(a) The execution and delivery of this Agreement by Acquiror do not, and the performance by Acquiror of its obligations under this Agreement will not, (i) conflict with or violate the Operating Agreement or any other organizational documents of Acquiror, (ii) subject to compliance with the requirements set forth in Section 6.3(b) below, conflict with or violate any law, statute, ordinance, rule, regulation, order, judgment or decree applicable to Acquiror or by which any of its properties is bound or affected, or (iii) result in any breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Restriction on any of the properties or assets of Acquiror pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Acquiror is a party or by which Acquiror or any of its properties or assets is bound or affected, except, in the case of clauses (ii) and (iii) above, for any such conflicts, violations, breaches, defaults or other alterations or occurrences which, individually or in the aggregate, are not reasonably expected to have an Material Adverse Effect on the Acquiror.

(b) The execution and delivery of this Agreement by Acquiror does not, and the performance of this Agreement by Acquiror will not, require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity, except (i) the filing and recordation of appropriate merger documents as required by Florida Law and (ii) where failure to obtain such consents, approvals, authorizations or permits, or to make such filings or notifications, individually or in the aggregate, would not have an Material Adverse Effect on the Acquiror.

6.4. **Vote Required**.

Other than any such vote or consent that shall have already been obtained, no vote of the shareholders of Acquiror is necessary to approve any of the transactions contemplated hereby.

6.5. **Financing**.

The Acquiror has received written commitment letters (the "**Commitment Letters**") to borrow, subject to the terms and conditions set forth therein, the funds necessary for the consummation of the transactions contemplated hereby (true, correct and complete copies of the Commitment Letters are attached hereto as **Exhibit E**).

6.6. **Absence of Litigation**.

There are (a) no claims, actions, suits, investigations, or proceedings pending or, to Acquiror's knowledge, threatened against Acquiror or any of its properties or assets before any court, administrative, governmental, arbitral, mediation or regulatory authority or body, domestic or foreign, that challenge or seek to prevent, enjoin, alter or materially delay the

transactions contemplated hereby, and (b) no judgments, decrees, injunctions or orders of any Governmental Entity or arbitrator outstanding against Acquiror or any of its properties or assets.

6.7. **Brokers.**

Other than in connection with the Financing (and the agreements and arrangements entered into in connection with the Financing, including, without limitation, the Advisory Agreement), no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Acquiror.

ARTICLE VII

COVENANTS

7.1. **Covenants of the Shareholders' Representative.**

In the event that the Surviving Corporation or any of its Subsidiaries is obligated to make any payments (a "**Section 10(c)(i) Payment**") to either Larry Schnell and/or Dennis Cooley pursuant to Section 10(c)(i) of their respective employment agreements with the Operating Company, as amended by letter agreements dated as of December 15, 2004, the Shareholders' Representative, on behalf of the Shareholders, hereby covenants and agrees that upon receipt of written notice thereof from the Surviving Corporation, the Shareholders' Representative shall promptly, but in any event within five (5) Business Days of receipt of such notice, pay to the Surviving Corporation an amount equal to any such Section 10(c)(i) Payment.

7.2. **Mutual Covenants.**

(a) **Taxes.**

(i) The Acquiror shall prepare (or cause to be prepared) on a timely basis (taking into account valid extensions of time to file) and file (or cause to be filed) all Tax Returns of the Company and its Subsidiaries that are due after the Closing Date for taxable periods ending on or before the Closing Date. Such Tax Returns shall be true, correct and complete in all material respects, shall be prepared on a basis consistent with the similar Tax Returns for the immediately preceding taxable period unless otherwise required by applicable Law, and shall not make, amend, revoke or terminate any tax election without the prior consent of the Shareholders' Representative, which consent shall not unreasonably be withheld, delayed or conditioned. At least thirty (30) days before the due date (including extensions) for filing any such income Tax Return and within a reasonable time before the due date (including extensions) for filing any other such Tax Return, the Acquiror shall give a copy of each such Tax Return to the Shareholders' Representative for its review and comment prior to filing. In the event that the Shareholders' Representative shall object to any matter contained in such Tax Return at least twenty (20) days before the due date for the filing of such Tax Return, the Shareholders' Representative and the Acquiror shall proceed in good faith to attempt to reach a resolution of such objection. In the event that the Shareholders' Representative and the Acquiror shall fail to reach a resolution on such objection at least fifteen (15) days before the due date for the filing of such Tax Return, the Shareholders' Representative and the Acquiror shall seek the advice of

PricewaterhouseCoopers in connection with the outstanding objection. Not later than two (2) Business Days before the due date for payment of Taxes (other than estimated Taxes) with respect to any such Tax Returns, the Shareholders shall pay to the Company or its Subsidiary an amount equal to that portion, if any, of the Taxes shown on such Tax Return for which the Shareholders have an obligation to indemnify the Acquiror pursuant to the provisions of Section 8.1(a)(iii).

(ii) The Acquiror shall prepare (or cause to be prepared) and file (or cause to be filed) on a timely basis (taking into account valid extensions of time to file) all Tax Returns of the Company and its Subsidiaries for taxable periods that include but do not end on the Closing Date. Such Tax Returns shall be true, correct and complete in all material respects, shall be prepared on a basis consistent with the similar Tax Returns for the immediately preceding taxable period, and shall not make, amend, revoke or terminate any tax election without the prior consent of the Shareholders' Representative, which consent shall not unreasonably be withheld, delayed or conditioned. At least thirty (30) days before the due date (including extensions) for filing any such income Tax Return and within a reasonable time before the due date (including extensions) for filing any other such Tax Return, the Acquiror shall give the Shareholders' Representative a pro forma of each such Tax Return for the Pre-Closing Period ended on the Closing Date determined in accordance with Section 8.5(b), together with a detailed computation showing the Tax for such period for which the Shareholders are liable pursuant to Section 8.1(a)(iii), for the Shareholders' Representative's review and comment prior to filing. In the event that the Shareholders' Representative shall object to any matter contained in such Tax Return at least twenty (20) days before the due date for the filing of such Tax Return, the Shareholders' Representative and the Acquiror shall proceed in good faith to attempt to reach a resolution of such objection. In the event that the Shareholders' Representative and the Acquiror shall fail to reach a resolution on such objection at least fifteen (15) days before the due date for the filing of such Tax Return, the Shareholders' Representative and the Acquiror shall seek the advice of PricewaterhouseCoopers in connection with the outstanding objection. Not later than two (2) Business Days before the due date for payment of Taxes (other than estimated Taxes) with respect to any such Tax Returns, the Shareholders shall pay to the Company an amount equal to that portion, if any, of the Taxes shown on such Tax Return for which the Shareholders have an obligation to indemnify the Acquiror pursuant to the provisions of Section 8.1(a)(iii).

(iii) All transfer, documentary, sales, use, stamp, registration and other such Taxes incurred in connection with the transactions contemplated by this Agreement shall be borne by the Acquiror and the Shareholders 50/50, when due, and the Acquiror shall (or shall cause the Company), at its expense, to prepare and file all necessary Tax Returns and other documentation with respect to all such transfer, documentary, sales, use, stamp, registration and other similar Taxes and, if required by applicable Law, the Shareholders and the Acquiror will join in the execution of any such Tax Returns and other documentation. Acquiror shall (or shall cause the Company to) deliver copies of all such Tax Returns and filings and proof of payment of such Taxes to the Shareholders' Representative promptly after the filing thereof.

(iv) The Surviving Corporation may prepare and file additional Tax Returns (including amended Tax Returns, claims for refund or credit, carrybacks and adjustments) for the Company or any of its Subsidiaries with respect to a taxable period that

ended on or before the Closing Date, which additional Tax Returns shall, in the event such Returns would result in a reduction in Merger Consideration hereunder, be subject to the Shareholders' Representative's consent, which consent shall not unreasonably be withheld, delayed or conditioned. The cost of preparing any such additional Tax Returns shall be borne by the Surviving Corporation.

(v) In the event that the Surviving Corporation or its Subsidiaries actually realizes a Transaction Tax Benefit, the Acquiror or the Surviving Corporation shall pay, within ten (10) days following the date that the Surviving Corporation or such Subsidiary actually realizes such Transaction Tax Benefit, to the Shareholders the amount of such Transaction Tax Benefit, which amount shall be payable as follows:

(A) The Acquiror or the Surviving Corporation shall pay to each Delivered Holder an amount equal to the product of (x) the amount of such Transaction Tax Benefit times (y) such Delivered Holder's Pro Rata Share, which amount shall be payable in immediately available funds in accordance with the payment instructions set forth in such Delivered Holder's Letter of Transmittal or Option Release, as applicable; and

(B) The remaining portion of the Transaction Tax Benefit shall be retained by the Acquiror or Surviving Corporation for the future payment of the applicable Pro Rata Share of the amount of such Transaction Tax Benefit to any Undelivered Holder that shall, after the date that the Surviving Corporation or such Subsidiary shall actually realize such Transaction Tax Benefit, deliver to the Surviving Corporation a completed and duly executed Letter of Transmittal (together with applicable stock certificates) or Option Release.

For the purposes of this clause (v), a Transaction Tax Benefit shall be considered actually realized by the Surviving Corporation or a Subsidiary on the date that the Company or such Subsidiary receives a Tax refund or files a Tax Return claiming a Tax credit, or a Tax refund due to the Company or any such Subsidiary is applied by any taxing authority to satisfy a Tax obligation of the Company or any such Subsidiary, in each case, in respect of such Transaction Tax Benefit. In the event that (i) any such Transaction Tax Benefit or any portion thereof is required to be repaid to the relevant taxing authority or (ii) the amount of any Transaction Tax Benefit paid pursuant to this Section 7.2(a)(v) is decreased due to the payment of any Excess Amount, then the Shareholders agree to promptly return such Shareholder's Pro Rata Share of the amount required to be paid to the relevant taxing authority or the amount by such Transaction Tax Benefit is decreased, as applicable. In connection with any payment by, or repayment to, the Surviving Corporation of any portion of a Transaction Tax Benefit pursuant to this clause (v), the Surviving Corporation shall provide to the Shareholders' Representative such supporting documentation in connection with the calculation of any such amounts as the Shareholders' Representative shall reasonably request.

(vi) To the extent any Tax refund is received by the Surviving Corporation or any of its Subsidiaries that is attributable to a Pre-Closing Period (other than in connection with any Transaction Tax Benefit, which is governed by clause (v) above), such Tax refund shall be for the account of the Shareholders except to the extent such Tax refund was

taken into account in computing the Working Capital Adjustment; provided, however, that the Acquiror, the Surviving Corporation and its Subsidiaries shall be entitled to any refund of Taxes attributable to the carryback of a loss of all taxable years ending on or after the Closing Date. The Acquiror shall pay to the Shareholders (to be allocated among and paid to, or withheld for the future payment to, the Shareholders on the same basis as any Transaction Tax Benefit would be so allocated, paid or withheld as provided in clause (v) above) within ten (10) days after its receipt by the Company or any Subsidiary; provided that any payment under this subparagraph (vi) shall be net of any actual Tax payable by the Company or the Subsidiary with respect to its receipt of such refund.

(vii) Following the Closing, the Acquiror shall not cause or permit the Company or any of its Subsidiaries to file a Tax Return with respect to a taxable period that ended on or prior to the Closing Date without the Shareholders' Representative's consent, which consent shall not unreasonably be withheld, delayed or conditioned.

(viii) The Acquiror shall retain (or cause the Company and its Subsidiaries to retain) all books and records of the Company and its Subsidiaries with respect to Tax matters for Pre-Closing Periods until sixty (60) days after the expiration of the applicable statute of limitations, including any extensions or waivers thereof, and to abide by all record retention agreements entered into by or with respect to the Company or any of its Subsidiaries with any Governmental Entity.

(ix) Prior to the Closing Date, neither the Company nor any Subsidiary shall, without the Acquiror's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned, adopt, make or change any material Tax election, or change any annual Tax accounting period, adopt or change any method of Tax accounting, file any amended Tax Return, enter into any closing agreement, settle any material Tax claim or assessment, surrender any right to claim a Tax refund, consent to the extension or waiver of the limitations period applicable to any Tax claim or assessment, or other than in the ordinary course and consistent with their prior practices or as contemplated by this Agreement or any other Transaction Document incur any Taxes.

(b) **Confidentiality**. Without the prior written Consent of the other party, Company, the Shareholders' Representative, the Acquiror and the Merger Sub (the Surviving Corporation on and after the Effective Time) each agree, that neither it nor its Affiliates shall use or disclose any confidential information which the Company or any Subsidiary, on the one hand, and the Acquiror and Merger Sub, on the other hand, any of their respective officers, directors, employees, counsel, agents, investment bankers, or accountants, may now possess or may hereafter create or obtain relating to the financial condition, results of operations, business, properties, assets, liabilities, future prospects or policies or procedures of the Company or any Subsidiary, on the one hand, and the Acquiror and the Merger Sub, on the other hand, and such information shall not be published, disclosed, or made accessible by any of them to any other Person or entity or used by any of them, provided that such party may disclose or use any such information (i) as has become generally available to the public other than through a breach of this Agreement by such party or any of its Affiliates and representatives, (ii) as becomes available to such party on a non-confidential basis from a source other than any other party hereto or such other party's Affiliates or representatives, provided that such source is not known

or reasonably believed by such party to be bound by a confidentiality agreement or other obligations of secrecy, (iii) as may be required in any report, statement or testimony required to be submitted to any Governmental Entity having or claiming to have jurisdiction over it, or as may be otherwise required by applicable Law, or as may be required in response to any summons or subpoena or in connection with any litigation, (iv) as may be required to obtain any governmental approval or Consent required in order to consummate the transactions contemplated by this Agreement, or (v) as may be necessary to establish such party's rights under this Agreement; provided, further, that in the case of clauses (i), (iii), and (iv), the Person intending to disclose confidential information will promptly notify the party to whom it is obliged to keep such information confidential and, to the extent practicable, provide such party a reasonable opportunity to prevent public disclosure of such information. In the event the transactions contemplated hereby are not consummated and this Agreement is terminated pursuant to Section 10.1, each party hereto shall return all confidential materials to the appropriate other party or destroy such confidential materials (and certify in writing the destruction thereof) exchanged in connection with this Agreement. Each party acknowledges responsibility for disclosures caused by such party and any of its respective Affiliates and representatives. Notwithstanding the foregoing, the Shareholders' Representative and its Affiliates may disclose the Merger and summary details thereof to investors in Canterbury Mezzanine Capital L.P. and to potential investors in Canterbury Mezzanine Capital III, L.P. as long as such investors and potential investors are obligated to Canterbury Mezzanine Capital III, L.P. to maintain the confidentiality thereof.

7.3. **Covenants of the Acquiror**.

(a) **Access to Books**. From the Effective Time until the later of (x) December 31, 2005 and (y) if any Notes and/or Equity shall be issued pursuant to Section 3.4, the last day that any Shareholder shall hold any Notes and/or Equity:

(i) The Acquiror and the Surviving Corporation shall at all times keep accurate and complete books, records and accounts with respect to all of its business activities, in accordance with GAAP, consistently applied.

(ii) The Acquiror and the Surviving Corporation shall afford to the Shareholders' Representative and its officers, employees, accountants, consultants, legal counsel, and other representatives of the Shareholders' Representative reasonable access during normal business hours to the properties, executive personnel and all information concerning the business, properties, contracts, records and personnel of the Acquiror and the Surviving Corporation as the Shareholders' Representative may reasonably request.

(b) **Financial Information**.

(i) From the Effective Time until December 31, 2005, the Acquiror and the Surviving Corporation shall deliver to the Shareholders' Representative no later than forty-five (45) days after the end of each of Acquiror's and the Surviving Corporation's fiscal quarters, unaudited quarterly financial statements of Acquiror and the Surviving Corporation on a consolidated and consolidating basis.

(ii) In the event that any Notes and/or Equity are issued to any Shareholder pursuant to Section 3.4 with an aggregate "value" (as such term is calculated in accordance with Section 3.4(c)(iii)(C)) of at least $500,000, from and after the date of issuance thereof until the date on which such Shareholder shall cease to hold unpaid Notes and/or Equity having an aggregate "value" (as such term is calculated in accordance with Section 3.4(c)(iii)(C)) of at least $500,000, the Acquiror and the Surviving Corporation, as applicable, shall, to the extent that the Acquiror and the Surviving Corporation are then delivering such financial information to the lenders under the Financing Loan Documents, deliver to such Shareholder the following financial information, all of which shall be prepared in accordance with GAAP, consistently applied: (a) no later than thirty (30) days after each calendar month, copies of internally prepared financial statements of the Acquiror and the Surviving Corporation on a monthly and year-to-date basis, including, without limitation, balance sheets and statements of income, retained earnings and cash flow of the Acquiror and the Surviving Corporation, certified by the chief financial officer of each such entity and (b) no later than one hundred twenty (120) days after the end of each of Acquiror's and the Surviving Corporation's fiscal years, annual financial statements of Acquiror and the Surviving Corporation on a consolidated and consolidating basis, audited by an independent certified public accountants.

(iii) In the event that any Notes and/or Equity are issued to any Shareholder pursuant to Section 3.4, from and after the date of issuance thereof until the date on which such Shareholder shall cease to hold any unpaid Notes and/or Equity, the Acquiror and the Surviving Corporation, as applicable, shall, to the extent that the Acquiror and the Surviving Corporation are then delivering such financial information to the lenders under the Financing Loan Documents, deliver to such Shareholder no later than one hundred twenty (120) days after the end of each of Acquiror's and the Surviving Corporation's fiscal years, annual financial statements of Acquiror and the Surviving Corporation on a consolidated and consolidating basis, audited by an independent certified public accountants.

(c) **Indemnification and Insurance**.

(i) The certificate of incorporation and bylaws of the Surviving Corporation shall contain the provisions with respect to indemnification set forth in the certificate of incorporation and bylaws of the Company on the date of this Agreement, which provisions shall not be amended, repealed or otherwise modified for a period of six (6) years after the Effective Time in any manner that would adversely affect the rights thereunder of persons who at any time prior to the Effective Time were identified as prospective indemnities under the certificate of incorporation or bylaws of the Company in respect of actions or omissions occurring at or prior to the Effective Time (including, without limitation, the transactions contemplated by this Agreement), unless such modification is required by applicable law.

(ii) Acquiror shall cause to be maintained in effect for not less than six (6) years after the Effective Time the current policies of directors' and officers' liability insurance and fiduciary liability insurance maintained by the Company with respect to matters occurring prior to the Effective Time; provided, however, that (A) Acquiror may substitute therefor policies of substantially the same coverage containing terms and conditions that are substantially the same for the Indemnified Parties to the extent reasonably available and

(B) Acquiror shall not be required to pay an annual premium for such insurance in excess of Forty-Five Thousand Dollars ($45,000), but in such case shall purchase as much coverage as possible for such amount.

(iii) This Section 7.3(c) is intended to be for the benefit of, and shall be enforceable by, the Indemnified Parties referred to herein, their heirs and personal representatives and shall be binding on Acquiror and Merger Sub and the Surviving Corporation and their respective successors and assigns. Acquiror hereby guarantees the Surviving Corporation's obligations pursuant to this Section 7.3.

(d) **IPT**. The Acquiror and the Surviving Corporation shall in good faith use commercially reasonable efforts to consummate the transaction with IPT as set forth in **Schedule 4.24** in a timely manner such that IPT earnings will be included in EBITDA for purposes of determining the Contingent Purchase Price; provided, that, the Acquiror and the Surviving Corporation shall not be required to consummate such transaction if doing so would, in the good faith judgment of the Acquiror's board of managers, not be in the best interests of the Acquiror's members or would constitute a breach of the fiduciary duty of the Acquiror's managers.

(e) **Severance Payments**. The Surviving Corporation or any of its Subsidiaries shall pay to Larry Schnell and/or Dennis Cooley severance amounts due to either or both of them, if any severance payments to Cooley and Schnell pursuant to Section 10(c)(ii) of their respective employment agreements with the Company as amended by the letter agreements dated as of December 15, 2004.

ARTICLE VIII

INDEMNITY

8.1. Indemnification.

(a) Subject to the other provisions of this Article VIII, after the Closing, each Shareholder agrees to indemnify and hold the Acquiror, the Surviving Corporation and their managers, members, officers, directors, partners, employees, Affiliates, agents, successors and assigns (collectively, the "**Acquiror Indemnified Parties**") harmless from and against:

(i) any and all Losses (calculated in accordance with Section 8.5) based upon, attributable to, arising by reason of, related to or resulting from the breach of any representation or warranty of the Company set forth in Article IV or in any other agreement or certificate delivered by the Company pursuant to this Agreement to be true and correct in all material respects as of the date made;

(ii) any and all Losses based upon, attributable to, arising by reason of, related to or resulting from the breach of any covenant or other agreement on the part of the Company under this Agreement;

(iii) except to the extent Taxes are reserved for or accrued on the Actual Closing Balance Sheet, any and all Taxes imposed upon the Company or any of its Subsidiaries, with respect to a Pre-Closing Period;

(iv) any and all amounts payable by Acquiror or the Surviving Corporation to any Shareholder holding Dissenting Shares upon the exercise of such Shareholder's appraisal rights under Section 607.1302 of Florida Law in excess of the portion of the Merger Consideration that would have otherwise been paid to such Shareholder under Article III had such Shareholder voted in favor of, or consented to, the Merger and not exercised its appraisal rights in respect of the Dissenting Shares, together with all costs incurred by Acquiror or the Surviving Corporation in connection with any related appraisal process; and

(v) any and all Seller Transaction Costs.

(b) Subject to the other provisions of this Article VIII, after the Closing, the Acquiror and the Surviving Corporation hereby agrees to indemnify and hold harmless the Shareholders and their respective successors and assigns (collectively, the "**Seller Indemnified Parties**") harmless from and against:

(i) any and all Losses based upon, attributable to or resulting from the breach of any representation or warranty of the Acquiror or the Merger Sub set forth in Article V or any representation or warranty contained in any certificate delivered by or on behalf of the Acquiror or the Merger Sub pursuant to this Agreement, to be true and correct in all material respects as of the date made; and

(ii) any and all Losses based upon, attributable to or resulting from the breach of any covenant or other agreement on the part of the Acquiror or the Merger Sub under this Agreement.

(c) Subject to the provisions of this Article VIII, after the Closing, each Shareholder, severally and not jointly, agrees to indemnify and hold the Acquiror Indemnified Parties harmless from and against any and all Losses based upon, attributable to, arising by reason or, related to or resulting from any Title Claims relating to such Shareholder.

8.2. **Limitations on Acquiror's Indemnification**.

(a) With respect to indemnification payable under Section 8.1(a):

(i) except as provided in this Section 8.2(a), no Acquiror Indemnified Party shall be entitled to indemnification under this Article VII unless the aggregate amount of Losses to all Acquiror Indemnified Parties exceeds One Hundred Fifty Thousand Dollars ($150,000) (the "**Shareholders Basket**");

(ii) notwithstanding Section 8.2(a)(i), once the amount of Losses exceeds the Shareholders Basket, the Acquiror Indemnified Parties shall be entitled to be indemnified for the entire amount of Losses incurred (including any Losses comprising a portion of the Shareholders Basket);

(iii) notwithstanding anything to the contrary contained in this Agreement (except as provided in the proviso at the end of this clause (iii)), no amounts of indemnity shall be payable by the Shareholders which exceed in the aggregate Three Million Dollars ($3,000,000) (the "**Shareholder Indemnity Cap**"); provided, however the Shareholders Indemnity Cap shall be deemed to be the net proceeds of the Merger Consideration paid to the Shareholders to the extent any Claims or Losses are based upon, attributable to, arising by reason of, related to or resulting from the breach of any representation or warranty set forth in Sections 4.1(b) and (c) and 4.6; provided, further, that (A) the Shareholders Indemnity Cap shall not apply to any indemnification amounts payable pursuant to clauses (iii) and (iv) of Section 8.1(a) and (B) with respect to indemnification pursuant to Section 8.1(c), such indemnification shall be only from the related Shareholder subject to Section 11.10;

(iv) notwithstanding Section 8.1(a)(iii), the Acquiror Indemnified Parties shall be entitled to indemnification hereunder of not more than fifty percent (50%) of any Losses with respect to Taxes described in Section 7.2(a)(iii).

8.3. **Right of Set-off of Earnout**. During the three (3) year period after the Closing and in the event that the Escrow Amount has been reduced to zero (whether in the form of cash, Notes or Equity, or any combination thereof), subject to the provisions of this Article VIII of this Agreement, the Acquiror shall be entitled, as an additional remedy for any breach of this Agreement, to offset any Claim for such breach against the Contingent Purchase Price payments described in Section 3.4 whether such payments are in the form of cash, Notes or Equity otherwise payable under this Agreement in respect of any Losses with respect to which the Acquiror Indemnified Parties are entitled to indemnification pursuant to this Article VIII of this Agreement arising from any breach of any representation or warranty of the Company contained in this Agreement or any breach of any covenant of the Company contained in this Agreement. Any such set-off or satisfaction will be credited or made (a) first to or from the Notes, on a dollar-for-dollar basis against the initial principal amount of such Note, (b) second, to or from the cash, on a dollar-for-dollar basis against amounts actually payable by Acquiror to the Shareholders and (c) third to or from the Equity, on a dollar-for-dollar basis against the valuation of such Equity as determined pursuant to the definition of "Equity". Notwithstanding the foregoing, such rights of offset on the part of the Acquiror Indemnified Parties shall not be automatic and the resolution of any Claims by the Acquiror and remedies against any such cash, Notes and/or Equity shall be subject to the provisions of this Article VIII of this Agreement (including, without limitation, (i) the Shareholders Basket and the Shareholder Indemnity Cap to the extent the Shareholders Basket and the Shareholder Indemnity Cap are applicable to such Claim, (ii) the pro rata liability of the Shareholders as set forth in Section 11.10 hereof and (iii) the procedural provisions set forth in Section 8.4 hereof) and with the dispute resolution provisions of the Escrow Agreement which shall apply thereto *mutatis mutandis*.

8.4. **Indemnification Procedures**.

(a) In the event that any Claim shall be asserted by any Person in respect of which payment may be sought under Section 8.1 of this Agreement, the indemnified party shall promptly cause written notice of the institution or assertion of such Claim, detailing with reasonable specificity the nature and amount of such damages or of such Claim that is covered by this indemnity, to be forwarded to the indemnifying party; provided, however, that a Acquiror

Indemnified Party shall be deemed to have given such notice to each Shareholder if such Acquiror Indemnified Party gives such notice to the Shareholders' Representative. If the indemnifying party agrees in writing that the indemnification obligations set forth in this Article VIII apply to it with respect to a particular Claim, the indemnifying party, at its election, shall, subject to compliance with the provisions of this Section 8.4, have the absolute and exclusive right to defend against, contest (in a forum of its choice), appeal, negotiate, settle, compromise or otherwise deal with a Claim (provided, however, that such indemnifying party may not so settle, compromise or deal with such Claim, or otherwise acknowledge or admit the validity of such Claim or any liability in respect thereof, without the prior written consent of the Acquiror Indemnified Party or the Seller Indemnified Party, as applicable, if such settlement, compromise, deal, acknowledgement or admission (i) would impose any equitable, injunctive or similar relief against any Acquiror Indemnified Party or the Seller Indemnified Party, as applicable, (ii) would give rise to any liability on the part of any Acquiror Indemnified Party or the Seller Indemnified Party, as applicable for which the indemnifying party shall have not agreed in writing that such indemnifying party is solely obligated to satisfy and discharge or (iii) could, in the reasonable opinion of an Acquiror Indemnified Party or the Seller Indemnified Party, as applicable, have a material adverse effect on such Acquiror Indemnified Party or the Seller Indemnified Party, as applicable) (each of such actions for the purposes of this Section 8.4 being referred to as "defending" a Claim or the "defense" of a Claim), and shall have the right, at its sole option and expense, to be represented by counsel of its choice, which must be reasonably satisfactory to the Acquiror or the Shareholders' Representative, as the case may be, and each indemnified party agrees to cooperate, at the indemnifying party's expense if such expense is an out-of-pocket expense to any Acquiror Indemnified Party or Shareholder Indemnified Party, as the case may be, and in no event shall the indemnifying party be required to pay any indemnified party's per diem, hourly fees or other compensation related to such cooperation, reasonably with such defense; provided, however, no indemnifying party shall be entitled to assume the defense of any Claim, or otherwise have any of the other rights specified above in this sentence with respect to any Claim, to the extent that such Claim (i) involves a criminal prosecution against any Acquiror Indemnified Party or Shareholder Indemnified Party, as the case may be, (ii) seeks any equitable, injunctive or similar relief against any Acquiror Indemnified Party to the extent that the aggregate Losses to the Acquiror Indemnified Parties in the event that such equitable, injunctive or similar relief were to be imposed would be in excess of the aggregate amount of Losses for which the Acquiror Indemnified Parties would be entitled to seek indemnification from the Shareholder hereunder, or (iii) involves a potential liability to the Acquiror Indemnified Parties in excess of the aggregate amount of Losses for which the Acquiror Indemnified Parties would be entitled to seek indemnification from the Shareholder hereunder; provided, further, that the indemnifying party shall engage in the defense, settlement or disposition of such Claim solely in a good faith manner consistent with the past practices of the Company and its Subsidiaries as of the date hereof. If the indemnifying party elects to defend such Claim, it shall within fifteen (15) Business Days of the written notice in the first sentence of this Section 8.4(a) (or sooner, if the nature of the Claim so requires) notify in writing the indemnified party of its intent to do so.

If the indemnifying party elects to defend such Claim, the Acquiror or the Shareholders' Representative, as the case may be, may be present at all meetings and legal proceedings, at his or its own expense, but may not participate in the defense of such Claim; provided, however, that the indemnifying party shall pay for separate counsel for the indemnified parties, if (i) the indemnified party is requested by the indemnifying party to participate in any

meeting or Legal Proceeding or (ii) in the reasonable opinion of counsel to the indemnified party, a conflict or potential conflict exists between the indemnified party and the indemnifying party that would make separate representation advisable; provided, further, that the indemnifying party shall not be required to pay for more than one such counsel in any single jurisdiction for all indemnified parties in connection with any Claim. If the indemnifying party (A) elects not to defend such Claim, (B) fails to notify the indemnified party of its election as herein provided, or (C) contests its obligation to indemnify the indemnified party for such Losses under this Agreement, the indemnified party may defend such Claim. If the indemnified party so defends any Claim, then the indemnifying party shall within five (5) Business Days reimburse the indemnified party for the expenses of defending such Claim upon submission of periodic bills. The parties hereto agree to cooperate reasonably with each other in connection with any Claim. Each party shall provide the other party, copies of all notices, correspondence, or other communications received by that party with respect to the determination of the Claim promptly upon receipt thereof but in any event within five (5) Business Days of receipt.

(b) After any final Order shall have been rendered by a court, arbitration board or administrative agency of competent jurisdiction and the expiration of the time in which to appeal therefrom, or a settlement shall have been consummated, or the indemnified party and the indemnifying party shall have arrived at a mutually binding agreement with respect to a Claim hereunder, the indemnified party shall forward to the indemnifying party notice of any sums due and owing by the indemnifying party pursuant to this Agreement with respect to such matter and the indemnifying party shall be required to pay all of the sums so due and owing to the indemnified party by wire transfer of immediately available funds within ten (10) Business Days after the date of such notice.

(c) Subject to clause (i) of this paragraph (c), in the case of any amount payable to any indemnified party, the indemnified party shall forward to the indemnifying party notice of any sums due and owing by the indemnifying party pursuant to this Agreement with respect to such matter and the Claim shall be satisfied as follows:

(i) In the case of any amount payable to an Acquiror Indemnified Party, (i) such amount shall be satisfied, subject to the dispute resolution provisions of the Escrow Agreement, from the Escrow Amount and, if such amount has been exhausted, then (ii) subject to the other provisions of this Article VIII, the indemnifying party shall be required to pay all of the sums so due and owing to the indemnified party by wire transfer of immediately available funds within ten (10) Business Days after the date of such notice.

(ii) In the case of any amount payable to a Seller Indemnified Party the indemnifying party shall be required to pay all of the sums so due and owing to the indemnified party by wire transfer of immediately available funds within ten (10) Business Days after the date of such notice.

(d) The failure of the indemnified party to give reasonably prompt notice of any Claim shall not release, waive or otherwise affect the indemnifying party's obligations with respect thereto except to the extent that the indemnifying party can demonstrate actual loss and material prejudice as a result of such failure.

(e) Notwithstanding anything in this Section 8.4 to the contrary, no indemnifying party shall be liable for any settlement of any Claim effected without its written Consent, which Consent shall not be unreasonably withheld or delayed. If the indemnifying party shall have the exclusive authority to defend such Claim under this Section 8.4, and the indemnified party nevertheless shall settle such Claim, the indemnifying party shall have no liability with respect to such settlement.

(f) Notwithstanding anything in this Section 8.4 to the contrary, no indemnifying party may settle any Claim without the prior written consent of the indemnified party, which shall not be unreasonably withheld or delayed.

(g) Notwithstanding anything in this Section 8.4 to the contrary, the Shareholders' Representative and the Acquiror jointly shall represent the interests of the Company or any of the Subsidiaries in any Tax Proceeding relating to any taxable period of the Company or any of its Subsidiaries that includes but does not end on the Closing Date if the Claim affects the Tax allocable to both the Pre-Closing Period and the balance of the taxable period. In such case, each party may retain counsel, reasonably acceptable to the other party. Each party shall bear the costs, fees and expenses of its counsel. Any other costs, fees and expenses paid to third parties in the course of such proceeding shall be borne by the Shareholders and the Acquiror in proportion to their respective responsibility for payment of the Taxes asserted by the Governmental Entity in such Claim if such Claim were sustained in its entirety.

8.5. **Treatment of Indemnity Payments**. The parties agree to treat any indemnity payment made pursuant to this Article VIII as an adjustment to the Merger Consideration.

8.6. **Calculation of Losses**. Subject to the other provisions of this Article VIII:

(a) **Insurance**. Any insurance proceeds actually received by any indemnified party with respect to any Losses shall reduce the amount payable to such indemnified party under the indemnification provisions of this Article VIII; provided, however, that in no event shall this clause (a) be deemed to require any Acquiror Indemnified Party to procure or maintain any particular type or level of insurance coverage. The Acquiror Indemnified Party shall in good faith seek recovery under any related insurance policy; provided that it need not bring any lawsuit or effect any other extraordinary action to seek recovery from any of its insurance providers for any such Losses.

(b) **Taxes**. To the extent permitted by applicable law, the parties shall elect (and shall cause the Company and its Subsidiaries to elect) to treat the taxable period that includes but does not end on the Closing Date with respect to any Tax of the Company or any of its Subsidiaries as ending at the end of the day on the Closing Date, and shall take such steps as may be necessary therefor. For purposes of this Agreement, any Tax for a taxable period that includes but that does not end on the Closing Date shall be allocated between the Pre-Closing Period and the balance of the taxable period based on an interim closing of the books as of the end of the Closing Date; provided, however, that any real or personal property Tax, fixed dollar franchise Tax and annual exemption amount deductions shall be allocated based on the relative number of days in the Pre-Closing Period and the balance of the taxable period.

8.7. **Survival of Representations and Warranties**. All representations and warranties of the Shareholders contained in this Agreement shall survive the Closing and any investigation made by or on behalf of any party hereto until the third (3rd) anniversary of the Closing Date; provided, however, that the representations and warranties set forth in Section 4.1 (Authority, Capitalization/Ownership of Securities and Enforceability) and Section 4.6 (Taxes) of this Agreement shall survive until the expiration of the applicable statute of limitations for the applicable underlying claim, including any extensions and waivers thereof. A written Claim for indemnification under this Article VIII for breach of a representation or warranty may be brought at any time, provided that the representation or warranty on which such Claim is based continues to survive under this Section 8.7 at the time notice of such Claim is given in accordance with Section 11.1 hereof, and if such written notice is given within such period, all rights to indemnification with respect to such claim shall continue in force and effect. Any remaining portion of the Escrow Amount, plus any interest earned thereon (but less a reserve for any pending indemnification claims), will be paid by the Escrow Agent to the Shareholders' Representative on the third (3rd) anniversary of the Closing Date, in accordance with the Escrow Agreement.

8.8. Additional Indemnification. Subject to the other provisions of this Article VIII, but in addition to the obligation of Canterbury Mezzanine Capital, L.P. ("**Canterbury**") to contribute its Pro Rata Share of any other obligation to indemnify the Acquiror Indemnified Parties under the other provisions of this Article VIII, with respect to any Losses with respect to which (i) the Shareholders have pro rata liability hereunder and (ii) the Shareholder Indemnity Cap does not apply, Canterbury agrees to indemnify the Acquiror Indemnified Parties for any Losses with respect to which the Acquiror Indemnified Parties are entitled to indemnification under this Article VIII in an aggregate amount equal to the amount of the Company's repayment of Indebtedness to Canterbury on the Closing Date, i.e., in an aggregate amount up to $3,748,570; provided, however, that before Canterbury shall have any such additional indemnification obligation under this Section 8.8 (i) the Escrow Amount (including any Notes or Equity which may have been included therein) shall have been reduced to zero, (ii) the Acquiror Indemnified Parties shall have first exercised all of their offset rights against the cash, Notes and Equity pursuant to Section 8.3 hereof, and (iii) the other Shareholders shall have contributed to the indemnification obligation to the extent of their Pro Rata Share thereof up to the net proceeds of the Merger Consideration received by each such Shareholder.

ARTICLE IX

CLOSING CONDITIONS

9.1. **Conditions to Obligations of Acquiror, Merger Sub and the Company to Effect the Merger**.

The respective obligations of Acquiror, Merger Sub and the Company to effect the Merger shall be subject to the satisfaction at or prior to the Effective Time of the following conditions, any or all of which may be waived, in whole or in part, by the parties hereto.

(a) **No Order**. No Governmental Entity or federal or state court of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule,

regulation, executive order, decree, judgment, injunction or other order (whether temporary, preliminary or permanent), in any case which is in effect and which prevents or prohibits consummation of the Merger or any other transactions contemplated in this Agreement; provided, however, that the parties shall use their reasonable efforts to cause any such decree, judgment, injunction or other order to be vacated or lifted.

9.2. **Additional Conditions to Obligations of Acquiror**.

The obligations of Acquiror to effect the Merger are also subject to the following conditions, any or all of which may be waived, in whole or in part, by the Acquiror:

(a) **Representations**. The representations and warranties of the Company contained in this Agreement shall be true in all material respects at and as of the Effective Time with the same effect as though such representations and warranties were made at and as of the Closing Date.

(b) **Compliance with all Agreements**. The Company shall have performed and complied in all material respects with all agreements and conditions contained in this Agreement that are required to be performed or complied with by them prior to or at the Closing.

(c) **Closing Certificate**. The Acquiror shall have received from the Company, a certificate (dated the Closing Date and in form and substance reasonably satisfactory to the Acquiror) signed by an authorized officer of the Company, certifying that the conditions specified in subsection (a) and (b) of this Section 9.2 have been fulfilled.

(d) **Termination of Shareholders Agreement**. The Acquiror shall have received satisfactory evidence of the termination of the Shareholders Agreement.

(e) **Secretary's Certificate**. The Company shall have delivered to the Acquiror a certificate of the Secretary of the Company (dated the Closing Date and in form and substance reasonably satisfactory to the Acquiror) certifying and setting forth (i) the names, signatures and positions of the officers of the Company authorized to execute any agreements contemplated herein to which the Company is a party, (ii) a copy of the Articles of Incorporation and By-laws, and all amendments thereto of the Company and (iii) a copy of the resolutions adopted by the board of directors of the Company authorizing the execution, delivery and performance of any agreement contemplated herein to which the Company is a party and the transactions contemplated thereby.

(f) **Good Standing Certificate**. The Company shall have delivered to the Acquiror a good standing certificate or the U.K. equivalent, as applicable, with respect to the Company and each Subsidiary as of a date no more than seven (7) days prior to the Closing Date, issued by the Secretary of State or equivalent officer of the states of such entity's incorporation.

(g) **Organizational Documents**. The Company shall have delivered to the Acquiror (i) a copy of its Articles of Incorporation, and all amendments thereto, certified by the Secretary of the State of Florida and (ii) a copy of the Articles of Incorporation of each Subsidiary, and all amendments thereto, certified by the Secretary of State of the state or

commonwealth of such entity's incorporation as of a date no more than seven (7) days prior to the Closing Date.

(h) **No Material Adverse Effect**. As of the Effective Time, no Material Adverse Effect shall have occurred.

(i) **No Liabilities or other Obligations of the Company or Restrictions on its Assets**. On the Closing Date and after giving effect to the transactions contemplated hereby neither the Company nor any Subsidiary shall have any Indebtedness or liabilities or any Restrictions other than Permitted Liens on its Assets except for (i) those listed on **Schedule 9.2(i)**, and (ii) liabilities and obligations of the Company and its Subsidiaries incurred in the ordinary course of business.

(j) **Required Consents**. All material Consents from Third Parties and all waiting periods required under any Agreement to which the Company or any Subsidiary is a party, including, in connection with real property leased by the Company or such Subsidiary, in each case required to enter into, and consummate the transactions contemplated by this Agreement, shall have been obtained, expired or the necessity for such Consent or waiting periods shall have been waived in writing by such Third Party.

(k) **Financing**. The Acquiror shall have received the proceeds of Financing in the amounts and substantially on the terms set forth in the Commitment Letters.

(l) **Termination of Stock Option Plan**. The Acquiror shall have received satisfactory evidence (i) of the termination of the Stock Option Plan, including resolutions of the Board of Directors of the Company, (ii) that all costs, fees and liabilities arising out of or related to the termination of the Stock Option Plan have been paid or discharged in full by the Shareholders without any cost or liability to the Company and (iii) of the termination of the Stock Option Agreements.

(m) **Escrow Agreement**. The Shareholders' Representative and the Escrow Agent shall have executed the Escrow Agreement and delivered executed counterparts thereof to the Acquiror (and the Acquiror and the Shareholders' Representative shall share any related escrow expenses equally).

(n) **Employment Agreement(s)**. The Employment Agreement(s) shall have been fully executed by Michael Vaden, J. William Dominick, Fred Shackelford, Daniel Sweem, Gary Davis, Randolph Miller and Poinzettia Stephens and delivered to the Acquiror.

(o) **Advisory Agreement**. The Acquiror shall have received a fully executed Advisory Agreement.

(p) **Outstanding Accounts Payable and Estimated Net Working Capital**. The outstanding accounts payable of the Company and its Subsidiaries as of the Closing Date shall not, in the aggregate, be in excess of $5,700,000. The Shareholders' Representative shall have delivered the Estimated Closing Balance Sheet to Acquiror at least five (5) Business Days prior to the Closing Date and the Estimated Net Working Capital set forth on the Estimated Closing Balance Sheet shall be equal to or greater than $6,500,000.

(q) **Third Party Consents**. No third party shall have failed to provide its consent to the Merger where (i) such consent is required pursuant to change in control/assignment provisions of other similar provisions of a contract, including leases and debt instruments and agreements, with such third party and the Company or any Subsidiary, or (ii) the failure to obtain such consents would be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect.

(r) **Resignations**. The Company shall have delivered to the Acquiror the written resignations of each of Patrick Turner and Andrew Bernstein pursuant to which each such individual shall resign from their positions on the boards of directors of the Company and each of the Subsidiaries. The Company shall have delivered to the Acquiror the written resignation of Patrick Turner pursuant to which such individual shall resign from his position as an officer of the Company and each of the Subsidiaries.

9.3. **Additional Conditions to Obligations of the Company**. The obligations of the Company to effect the Merger are also subject to the following conditions, any or all of which may be waived, in whole or in part, by the Shareholders' Representative.

(a) **Representations**. The representations and warranties of the Acquiror and Merger Sub contained in this Agreement shall be true in all material respects at and as of the Effective Time with the same effect as though such representations and warranties were made at and as of the Closing Date.

(b) **Compliance**. The Acquiror and Merger Sub shall have performed and complied in all material respects with all agreements and conditions contained in this Agreement that are required to be performed or complied with by them prior to or at the Closing.

(c) **Certificates**. The Shareholders' Representative shall have received from the Acquiror (dated the Closing Date and in form and substance reasonably satisfactory to the Shareholders' Representative), a certificate signed by the Acquiror certifying that the conditions specified in subsections (a) and (b) of this Section 9.3 as to the Acquiror have been fulfilled.

(d) **Officer's Certificate**. The Acquiror shall have delivered to the Company a certificate of an officer of the Acquiror (dated the Closing Date), certifying and setting forth (i) the names, signatures and positions of the Persons authorized to execute this Agreement and any other Transaction Documents to which the Acquiror and/or Merger Sub is a party on behalf of the Acquiror and/or Merger Sub and (ii) a copy of the resolutions of the Acquiror and Merger Sub authorizing the execution, delivery and performance of this Agreement.

(e) **Good Standing Certificate**. The Acquiror shall have delivered to the Company a good standing certificate for the Acquiror and Merger Sub as of a date no more than seven (7) days prior to the Effective Time, issued by the Secretary of State of their respective jurisdictions of incorporation.

(f) **Payment of the Closing Date Consideration Amount**. The Acquiror shall have paid the Closing Date Consideration Amount in accordance with Section 3.2 hereof.

(g) **Escrow Agreement**. The Acquiror shall have delivered the Escrow Amount to the Escrow Agent and the Acquiror and the Escrow Agent shall have executed the Escrow Agreement and delivered executed counterparts thereof to the Shareholders' Representative (and the Acquiror and the Shareholders' Representative shall share any related escrow expenses equally).

(h) **Employment Agreements**. The Employment Agreements shall have been fully executed by the Surviving Corporation and delivered to Michael Vaden, J. William Dominick, Fred Shackelford, Daniel Sweem, Gary Davis, Randolph Miller and Poinzettia Stephens.

ARTICLE X

TERMINATION, AMENDMENT AND WAIVER SECTION

10.1. **Termination**.

This Agreement may be terminated at any time prior to the Effective Time, whether before or after approval of this Agreement and the Merger by the Shareholders of the Company upon the earliest of the following (the "**Termination Date**"):

(a) by mutual written consent of each of Acquiror and the Company;

(b) by either the Company or Acquiror, if the other shall have breached, or failed to comply with, in any material respect, any of its obligations under this Agreement or any representation or warranty made by such other party, which breach, failure or misrepresentation, (i) would, individually or in the aggregate give rise to a failure of the conditions set forth in Section 9.2 or Section 9.3, as applicable, and (ii) has not been cured within thirty (30) days after written notice thereof or such breach, by its nature or timing, cannot be cured within such a 30-day period;

(c) by either Acquiror or the Company if any decree, permanent injunction, judgment, order or other action by any court of competent jurisdiction or any Governmental Entity preventing or prohibiting consummation of the Merger shall have become final and nonappealable;

(d) by either the Company or Acquiror, if the Merger shall not have been consummated by December 15, 2004; provided, however, that the right to terminate this Agreement under this Section 10.1(e) shall not be available to any party who is in breach of this Agreement or whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Effective Time to occur on or before the Termination Date;

(e) by Acquiror, if after the date hereof there shall have occurred and be continuing a Material Adverse Effect, upon written notice to the Company and subject to the following conditions: (i) in the event that either the Company or the Acquiror becomes aware of a Material Adverse Effect, such party shall immediately provide written notice of the specific Material Adverse Effect (the "**MAE Notice**") to the other party; (ii) upon either receipt or delivery of an MAE Notice, the Company shall have thirty (30) days to cure such Material

Adverse Effect; and (iii) if such Material Adverse Effect is not cured by the Company within such thirty-day period, then following thirty (30) days from receipt or delivery of the MAE Notice, Acquiror shall have a further thirty (30) days to terminate this Agreement or else shall be deemed to waive the right to terminate (or not consummate the transactions hereunder) as a result of such Material Adverse Effect that gave rise to the specific MAE Notice (for the avoidance of doubt, sixty (60) days from the receipt or delivery of the original MAE Notice);

10.2. **Effect of Termination**.

Except as provided in Section 9.2(b), Section 9.3 or Section 10.1, in the event of the termination of this Agreement pursuant to Section 9.1, this Agreement shall forthwith become void, there shall be no liability on the part of Acquiror, Merger Sub or the Company or any of their respective officers or directors to the other parties hereto and all rights and obligations of any party hereto shall cease, except for liability of any party then in breach of this Agreement.

10.3. **Expenses**.

Except as otherwise expressly provided herein, all expenses incurred by the parties hereto shall be borne solely by the party that has incurred such expenses, provided, that, if the Merger is not effected, the Company shall reimburse the Acquiror for its out-of-pocket costs (subject to a maximum of One Hundred Thousand Dollars ($100,000)) with respect to any of the Acquiror's accounting, environmental and appraisal reports (and in such event the Acquiror hereby agrees to deliver such reports to the Company); provided, further, that all Seller Transaction Costs shall be for the account of the Shareholders and the Shareholders' Representative and the Shareholders shall indemnify the Surviving Corporation and its Subsidiaries for any and all Seller Transaction Costs not paid at or prior to the Closing. The Company and its Subsidiaries hereby agree that any payments in respect of Seller Transactions Costs in excess of approximately $18,742 in the aggregate (which reflects payments of Seller Transaction Costs from October 2, 2004 until the Closing), shall be paid at the Closing by the Shareholders' Representative out of the proceeds of the Closing Date Consideration Amount.

10.4. **Amendment**.

This Agreement may be amended by the parties hereto by action taken by or on behalf of their respective Boards of Directors at any time prior to the Effective Time; provided, however, that, after approval of this Agreement and the Merger by the Shareholders of the Company, no amendment may be made which would reduce the amount or change the type of consideration into which each share of Common Stock shall be converted pursuant to this Agreement upon consummation of the Merger without the consent of the Shareholders' Representative. This Agreement may not be amended except by an instrument in writing signed by the parties hereto.

10.5. **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 party, (b) waive any inaccuracies in the representations and warranties contained in this Agreement or in any document delivered

pursuant to this Agreement and (c) waive compliance by the other party with any of the agreements or conditions contained in this Agreement. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

10.6. **Further Assurances**.

Each party hereto shall execute and deliver after the Closing such further certificates, Contracts and other documents and take such other actions as the other party may reasonably request to consummate or implement the transactions contemplated hereby or to evidence such events or matters.

ARTICLE XI

GENERAL PROVISIONS

11.1. **Notices**.

All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given or made as of the date delivered, mailed or transmitted, and shall be effective upon receipt, if delivered personally, mailed by registered or certified mail (postage prepaid, return receipt requested) to the parties at the following addresses (or at such other address for a party as shall be specified by like changes of address) or sent by electronic transmission to the telecopier number specified below:

(a) If to Acquiror or Merger Sub:

Rutland Holdings, LLC
c/o Laud Collier & Company, LLC
75 Livingston Avenue
Roseland, NJ 07068
Telecopier No. (973) 863-2041
Attention: Colby Collier

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

HSBC Capital (USA) Inc.
452 Fifth Avenue
New York, NY 10018
Telecopier No. (212) 525-8047
Attention: Paul Harrington

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

Mayer, Brown, Rowe & Maw LLP
1675 Broadway
New York, NY 10019-5820
Telecopier No. (212) 262-1910
Attention: Thomas M. Vitale, Esq.

(b) If to the Company:

Rutland Plastics, Inc.
10021 Rodney Street
Pineville, NC 28134
Telecopier No. (704) 643-5503
Attention: Mike Vaden

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

Loeb & Loeb LLP
345 Park Avenue
New York, New York 10154
Telecopier No. (212) 407-4990
Attention: Stan Johnson, Esq.

(c) If to the Shareholders' Representative:

Canterbury RP Management LLC
600 Fifth Avenue, 23rd Floor
New York, New York 10020
Telecopier No. (212) 332-1584
Attention: Patrick N.W. Turner

11.2. **Headings**.

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

11.3. **Severability**.

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of 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 transactions contemplated hereby 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 hereto 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 transactions contemplated hereby are fulfilled to the extent possible.

11.4. **Entire Agreement**.

This Agreement (together with the Exhibits, the Schedules and the other documents delivered pursuant hereto) and the Transaction Documents constitute the entire agreement of the parties and supersede all prior agreements and undertakings, both written and oral, between the parties, or any of them, with respect to the subject matter hereof and, except as otherwise expressly provided herein, are not intended to confer upon any other person any rights or remedies hereunder.

11.5. **Assignment.**

Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other party. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

11.6. **Third Party Beneficiaries.**

This Agreement shall be binding upon and inure solely to the benefit of each party hereto, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement except for the Indemnified Parties under Article VIII and the rights of the Shareholders to receive the Merger Consideration payable in the Merger pursuant to Article II, Article III and Section 11.9 hereof.

11.7. **Governing Law; Consent to Jurisdiction; Waiver of Jury Trial; No Punitive Damages.**

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, regardless of the laws that might otherwise govern under applicable principles of conflicts of law.

(b) The state or federal courts located within the State of New York will have exclusive jurisdiction over any and all disputes between the parties hereto, whether in law or equity, arising out of or relating to this Agreement and the agreements, instruments and documents contemplated hereby and the parties consent to and agree to submit to the jurisdiction of such courts. Each of the parties hereby waives and agrees not to assert in any such dispute, to the fullest extent permitted by applicable law, any claim that (i) such party is not personally subject to the jurisdiction of such courts, (ii) such party and such party's property is immune from any legal process issued by such courts or (iii) any litigation or other proceeding commenced in such courts is brought in an inconvenient forum. The parties hereby agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 10.2, or in such other manner as may be permitted by law, shall be valid and sufficient service thereof and hereby waive any objections to service accomplished in the manner herein provided.

(c) Each party hereto acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues, and therefore each party hereby irrevocably and unconditionally waives any right such party may have to a trial by jury in respect of any litigation, directly or indirectly, arising out of, or relating to, this Agreement, or the transactions contemplated by this Agreement. Each party certifies and acknowledges that (i) no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver, (ii) each party understands and has considered the implications of this waiver, (iii) each party makes this waiver voluntarily, and (iv) each party has been induced to

enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 11.9.

(d) The parties to this Agreement expressly waive and forego any right to recover punitive, exemplary, lost profits, consequential or similar damages with respect to any Claim or Losses arising out of or relating to this Agreement or any Transaction Document or the transactions contemplated hereby or thereby.

11.8. **Counterparts**.

This Agreement may be executed and delivered in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed and delivered shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

11.9. **Shareholders' Representative**.

(a) **Appointment**. Each Shareholder hereby irrevocably constitutes and appoints Canterbury RP Management LLC, an affiliate of Canterbury Mezzanine Capital, L.P., as the Shareholders' Representative (the "**Shareholders' Representative**") and as its true and lawful agents and attorneys-in-fact with full power and authority to act, including full power of substitution, in its name and on its behalf with respect to all matters arising from or in any way relating to this Agreement, or the transactions contemplated hereby, to (i) represent, act for and on behalf of, and bind each of the Shareholders and the Company in the performance of all of their obligations arising from or relating to this Agreement, including (A) the execution and delivery of any certificate or Contract required under this Agreement to be delivered by the Shareholders or the Company at the Closing and (B) the making, negotiation and settlement of Claims of either the Acquiror or the Shareholders or the Company for indemnification pursuant to Article VIII of this Agreement; (ii) subject to Sections 3.5 and 3.8, accept delivery from the Escrow Agent of any Escrow Released Amount and any Released Holdback Amount; (iii) apply any Released Holdback Amount in accordance with Section 3.8(b)(ii); (iv) distribute any Escrow Released Amount and any Released Holdback Amount in accordance with Sections 3.5 and 3.8, respectively; (v) perform all acts of the Shareholders' Representative as set forth in Sections 3.3 and 3.4; (vi) give and receive notices and receive service of process under or pursuant to this Agreement; (vii) to represent, act for, and bind each of the Shareholders in the performance of all of their obligations arising from or related to indemnification in Article VIII, including, without limitation, in any arbitration or litigation in respect thereof; provided, that the Shareholders' Representative shall not be entitled to bind any Shareholder to any such indemnification obligation or other liability other than on a Pro Rata Share basis together with each of the other Shareholders (other than in connection with indemnification obligations in respect of Title Claims, for which only the applicable Shareholder shall be obligated to provide indemnification therefor pursuant to Section 8.1(c)); and (viii) to perform any and all other duties and acts contemplated to be performed by the Shareholders' Representative as set forth in this Agreement. Each Shareholder may be served legal process for any action arising under this Agreement by registered mail to the address of the Shareholders' Representative set forth in the Shareholders Agreement, or to such other address as the Shareholders' Representative may from time to time give written notice to the Acquiror, and that service in such manner shall be

adequate and sufficient in all respects for any legal purpose, and no Shareholder may raise any defense or claim in any court in any jurisdiction that service in such manner was not adequate or sufficient. This appointment of agency and this power of attorney is coupled with an interest and shall be irrevocable and shall not be terminated by any Shareholder or by operation of law, whether by the death or incapacity of any Shareholder that is an individual, termination of any trust or estate, the dissolution, liquidation or bankruptcy or any corporation, partnership or other entity or the occurrence of any other event, and any action taken by the Shareholders' Representative shall be as valid as if such death, incapacity, termination, dissolution, liquidation, bankruptcy or other event had not occurred, regardless of whether or not the Shareholders' Representative shall have received any notice thereof.

(b) **Reliance**. Any decision, act, consent or instruction of the Shareholders' Representative shall constitute a decision of the Shareholders and shall be conclusive and binding upon the Shareholders, and the Acquiror, Merger Sub and the Surviving Corporation may rely upon any such decision, act, consent or instruction of the Shareholders' Representative as being the decision, act, consent or instruction of the Shareholders; provided, however, that, the Shareholders' Representative shall not be authorized to agree or otherwise consent to any amendment, supplement or other modification to the provisions of Article VIII, this Section 11.9 or Section 11.10 without the prior written consent of each Shareholder. The Shareholders' Representative cannot be changed or substituted without the prior written consent of the Acquiror and a majority in interest of the Shareholders.

11.10. **Limitation of Liability**. Notwithstanding anything to the contrary contained in this Agreement, the liability of any Shareholder under this Agreement shall, except with respect to any Title Claim relating to such Shareholder, be limited to such Shareholder's Pro Rata Share of the Shareholders' collective liability under this Agreement and limited in the aggregate to the net proceeds of the Merger Consideration received by such Shareholder under Article III hereof in its capacity as a Shareholder; provided, however; that with respect to Canterbury its maximum aggregate liability under this Agreement shall be limited to the sum of (i) Canterbury's Pro Rata Share of the Shareholders' collective liability under this Agreement and limited in the aggregate to the net proceeds of the Merger Consideration received by it under Article III hereof in its capacity as a Shareholder plus (ii) subject to the provisions of Section 8.8 hereof, the amount set forth in Section 8.8 hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement and Plan of Merger to be executed and delivered as of the date first written above.

RUTLAND PLASTICS, INC.

By: ______________________________
Name:
Title:

RUTLAND HOLDINGS LLC

By: ______________________________
Name:
Title:

RUTLAND MERGER CORP.

By: ______________________________
Name:
Title:

CANTERBURY MEZZANINE CAPITAL L.P., solely with respect to Section 8.8 hereof by Canterbury Capital L.L.C., its General Partner

By: ______________________________
Name: Patrick N.W. Turner
Title: Manager

SHAREHOLDERS' REPRESENTATIVE, solely with respect to Section 11.9 hereof.

CANTERBURY RP MANAGEMENT LLC

By: ______________________________
Name:
Title:

SCHEDULES:

Schedule 1.103	Shareholders
Schedule 3.2(a)(ii)	Disbursements in Respect of In-The-Money Options
Schedule 3.2(a)(iii)	Equalization Bonus Payments
Schedule 4.1(i)	Organization; Capitalization
Schedule 4.1(ii)	Subsidiaries
Schedule 4.1(iii)	Formation
Schedule 4.1(iv)	Registered Name
Schedule 4.1(b)(i)	Contracts to Sell or Purchase Securities
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Schedule 4.6	Taxes
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Schedule 4.10(a)	Contracts
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Schedule 4.11	Litigation; Compliance
Schedule 4.12(a)(i)	Labor Disputes
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Schedule 4.13(i)	Conflicts
Schedule 4.13(ii)	Consent
Schedule 4.14(i)	Assets
Schedule 4.14(ii)	Condition of Assets
Schedule 4.14(iii)	Warehouses
Schedule 4.14(iv)	Leases
Schedule 4.14(v)	UCC's
Schedule 4.15(a)(i)	Environmental Laws
Schedule 4.15(a)(ii)	Environmental Disputes
Schedule 4.15(a)(iii)	Compliance
Schedule 4.15(b)	Environmental Law Permits
Schedule 4.15(d)	Release of Hazardous Material
Schedule 4.15(e)	Notification of Hazardous Material
Schedule 4.16	Company Brokerage
Schedule 4.17(i)	Employee Benefit Plans
Schedule 4.17(ii)	ERISA
Schedule 4.17(iii)	Claims
Schedule 4.17(iv)	Plans
Schedule 4.18	Insurance
Schedule 4.19	Banks
Schedule 4.21(i)	Customers
Schedule 4.21(ii)	Suppliers

Schedule 4.22	Real Property
Schedule 4.23(a)	Intellectual Property Rights
Schedule 4.23(c)	Intellectual Property Infringement
Schedule 4.24	Acquisitions
Schedule 4.25	Warranties
Schedule 4.26(i)	Accounts Receivable
Schedule 4.26(ii)	Discounts
Schedule 4.26(iii)	Reserves
Schedule 4.27	Inventories
Schedule 4.29	Liabilities
Schedule 9.2(a)(i)	Liabilities or Obligations of Company or Restrictions on Assets

EXHIBITS:

Exhibit A	Escrow Agreement
Exhibit B	Notes
Exhibit C	Letter of Transmittal
Exhibit D	Option Release
Exhibit E	Commitment Letters
Exhibit F	Operating Agreement
Exhibit G	Registration Rights Agreement
Exhibit H	Subordination Agreement

Attachment 2

Restated Articles of Incorporation

From and after the Effective Time of the Merger, the Articles of Incorporation of the Surviving Corporation are amended and restated in their entirety as follows:

ARTICLE I

The name of the Corporation is Rutland Plastics, Inc.

ARTICLE II

The street address and mailing address of the initial principal office of the Corporation is 10021 Rodney Street, Pineville, NC 28134.

ARTICLE III

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the laws of the State of Florida.

ARTICLE IV

The total number of shares of stock which the Corporation has authority to issue is ten (10) shares of Common Stock with a par value of $0.01 per share.

ARTICLE V

The Corporation is to have perpetual existence.

ARTICLE VI

In furtherance and not in limitation of the powers conferred by statute, the board of directors of the Corporation is expressly authorized to make, alter or repeal the by-laws of the Corporation.

ARTICLE VII

Meetings of stockholders may be held within or outside of the State of Florida, as the by-laws of the Corporation may provide. The books of the corporation may be kept outside the State of Florida at such place or places as may be designated from time to time by the board of directors in the by-laws of the Corporation. Election of the directors need not be by written ballot unless the by-laws of the Corporation so provide.

ARTICLE VIII

To the fullest extent permitted by the General Corporation Law of the State of Florida as the same exists or may hereafter be amended, a director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director. Any repeal or modification of this ARTICLE VIII shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE IX

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation in the manner now or hereafter prescribed herein and by the laws of the State of Florida, and all rights conferred upon stockholders herein are granted subject to this reservation.

ARTICLE X

The name and address of the Corporation's registered agent in the State of Florida is C T Corporation System, c/o C T Corporation System, 1200 South Pine Island Road, Plantation, Florida 33324.

CERTIFICATE OF DESIGNATION OF REGISTERED AGENT/REGISTERED OFFICE

1. The name of the Corporation is: Rutland Plastics, Inc.

2. The name and Florida street address of the registered agent and office are:

C T Corporation System
1200 South Pine Island Road
Plantation, FL 33324

Registered agent's acceptance:
Having been named as registered agent and to accept service of process for the above stated corporation at the place designated in this application, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

(Registered agent's signature)

Michael J. Mitchell
Assistant Secretary