

# **CORPORATE HOUSEKEEPING**

## **Eliminating the Dealbreakers**

A corporate practitioner's guide to how to help your client prepare for a transaction and convince them the work is necessary.

**Monday, August 11, 2008: 11:00 a.m. to 12:30 p.m.**  
**Committee Forum: Committee on Middle Market and Small Business**

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Ms. Shulman frequently lectures on business, tax and corporate law topics affecting smaller publicly traded and closely held businesses, including an American Bar Association presentation "Breaking Up Is(n't) Hard to Do" on buyouts of closely held entities and presentations on mergers and acquisitions, limited liability companies and estate planning. She is a graduate of New York University School of Law (J.D. cum laude and L.L. M Taxation) and a member of the New York Bar.

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# **CORPORATE HOUSEKEEPING: ELIMINATING THE DEALBREAKERS**

by  
Madelyn Spatt Shulman, Esq. and Heather J. Haase, Esq.

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Introduction: Too many corporate attorneys, and their clients, have had the experience of trying to “clean up” a company on the eve, or even in the midst, of a transaction. Last minute cleanup is expensive, can kill a deal and can lead to mistrust by the potential acquirer or investor. The Target – your client– looks disorganized and incompetent – and so do you.

Why not start the “deal cleanup” process months or a year ahead – and not when you receive a due diligence request list. Even if there is no “deal” your client will feel “in charge” of its destiny and ready to quickly take advantage of any opportunity that arises.

The following terms are used in this Outline:

“Target” refers to your client, the company which may be sold, acquired, or be the subject of investment;

“Subsidiary” refers to a subsidiary of Target, which may be a corporation, limited liability company or other type of entity;

“Affiliated Entity” refers to a company with common or interlocked ownership to Target which will be involved in any transaction because of the business or ownership relationship.

“Target Entity” includes all of the above.

“Acquirer” may refer to an acquirer of stock or assets of either the entire Target or any part; the term is also used here to refer to a major investor with whom Target may enter a stock purchase agreement or a lender with whom it may enter a financing transaction. The “cleanup” requirements for many of these transactions are the same.

“Transaction” may refer to a transfer of control of the Target or any Target Entity either by purchase of stock or assets, a purchase of a substantial share interest in Target or any Target Entity, a major loan or financing transaction or any similar major transaction. Although beyond the scope of these materials, the same issues will apply to any securities offering.

The items listed in this outline are not exhaustive. They represent the experience of several attorneys on transactions. What is most important is that each Target recognize the importance of corporate cleanup before shopping for or entering into a Transaction.

**1. Qualification; Organization and Subsidiaries.**

*“Each of the Target and its Subsidiaries is a legal entity, duly organized, validly existing and in good standing under the laws of its respective jurisdiction and organization and has all requisite corporate or similar power...”*

1.1. Does the Target have a current copy of its and any Target Entity’s current Charter and all amendments to date (and similar documents for any LLC or other entity?)

1.2. Is there a file of Bylaws or Operating Agreements for each Target Entity?

- 1.2.1. Have the Bylaws and Operating Agreements been properly updated?
- 1.2.2. Do you have minute books with blank forms that have never been completed?
- 1.2.3. Do you have minutes documenting all transactions, officers, elections, etc?
- 1.2.4. For each Target Entity?

1.3. Is each Target Entity:

- 1.3.1. Duly organized with the proper jurisdiction – and do you have proof that is available immediately?
- 1.3.2. Validly existing
- 1.3.3. In good standing

1.4. Have you set up checklists, calendars and protocols for annual and other period reports for every Target Entity?

1.5. Is every Target Entity qualified to do business in every jurisdiction in which the nature of its business requires qualification?

*“Each of Target and its Subsidiaries is duly qualified to do business and is in good standing as a foreign corporation or other entity in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification and good standing...”*

- 1.5.1. If Target and/or Target Entities operate in more than one state, you and your client should review its operations with a competent accountant or other professional who is knowledgeable in the area of multistate taxation and determine what states require qualification. Then, you and your client must

ensure that the filings are made and kept up to date. If there are multiple jurisdictions, one of the filing services may be useful and cost effective.

1.5.2. For each jurisdiction in which any of your Target Entities must be qualified to do business, check the following:

1.5.2.1. Are all tax returns filed – for every entity which must be qualified. Note that LLC subsidiaries are not considered entities for tax purposes; filings for the parent entity may not show the names of the LLC subsidiaries.

1.5.2.2. Are all annual reports filed and current; are all addresses, officers and contact information current and correct.

## **2. Where are Target’s Shares and How Many Are Outstanding?**

*“The authorized capital stock of Target consists of \_\_\_ shares of Target Common Stock and \_\_\_ shares of preferred stock, par value \$.\_\_\_. As of the Transaction Date \_\_\_ shares of Target Common Stock were issued and \_\_\_ were outstanding...”*

2.1. For a Private Target...

2.1.1. Where are the share certificates?

2.1.2. Have Shares been acquired from previous owners and never documented?

Check the minute book; if a share was issued, make sure that it is accounted for and you know where it is located.

2.1.3. Do you have the signatures of previous owners?

2.1.4. Do you have affidavits of lost stock certificates, if required?

2.1.5. Does the Target have a minute book and has it ever been used?

2.2. Stock Options and Other Derivative Rights.

2.2.1. Are there options outstanding which should have been cancelled?

2.2.2. Are warrants current and documented?

2.2.2.1. Have any exercise prices changed?

2.3. Do you have a ledger to keep track of treasury shares and have they been deducted from the outstanding? Are these reconciled?

2.4. Stock – based incentive plans.

2.4.1. Do the Plan shares match the outstanding?

2.4.2. Do you have a full list of holders, copies of all options and restricted stock documents?

2.4.3. Are the numbers of outstanding shares (plan and outside) fully reconciled?

2.4.4. Have options terminated but still remain on the books?

2.4.5. Have employees left the Target, but their unvested restricted shares and/or options were never cancelled?

2.4.6. Have all shares and options which were awarded under Target's and Target Entities' stock based incentive plans been issued, proper agreements signed and the outstanding amounts properly accounted for?

2.5. Where there is a Transfer Agent:

2.5.1. Do the transfer agent's records match the Target's and its accountant's?

2.5.2. Do you have a full list of contacts at the transfer agent for all types of transactions?



2.5.3. Are the Target's transfer agent authorizations, addresses and contact information up to date?

2.6. Preferred Stock and Convertible Securities.

2.6.1. Have you reviewed the terms of any preferred, convertible preferred and stock dividend securities?

2.6.2. Are stock dividends being accrued?

2.6.3. Is a procedure in place, and being followed, to ensure that accrued stock dividends are being regularly issued so that the number of issued shares is always accurate and up to date.

**3. Corporate Authority and will not Constitute a Default...**

*“The Target has corporate authority....The Agreement has been duly and validly executed.... No consent or approval is necessary...Does not constitute a material default or result in acceleration...”*

These representations require research and analysis of every legal requirement or material contract which affects the Target or a Target Entity to determine what actions, consents or applications are required for Target to enter into an Agreement.

3.1. What votes and consents are required for major Target transactions? Target management should always be familiar with what is required in their entity to approve major transactions – whether it is a specific shareholder vote, votes of different classes of stock or consents of third parties.

3.2. For outside entities, Target should maintain files of its leases and major contracts; along with notes of specific consent requirements in the event of

transactions. Any acquirer or investor will need to be comfortable that required consents can be obtained.

3.3. If Target is subject to government or securities regulation, it should be aware of regulatory requirements to which it is subject and any consents that would be required for a transaction. These may include:

3.3.1 Securities law requirements;

3.3.2 Antitrust requirements (even small companies in industries with violation histories may have special consent requirements);

3.3.3 Environmental regulation consents;

3.3.4 Industry regulation consents.

#### **4. Lawsuits and Contingencies.**

One of the most difficult issues to deal with in a transaction is how to deal with outstanding lawsuits, contingencies and threats. As an attorney, one of your most important roles is to analyze your client's litigation and contingencies, finish or settle the litigation or contingencies, if at all possible and obtain realistic and well-supported estimates of maximum exposure if you cannot reduce the contingency to a fixed amount.

4.1. If Target has outstanding litigation, now is the time to make an effort to settle; the cleaner the Target, the more attractive to an acquirer.

4.2. If Target has contingent payment obligations under various contracts, can it enter into fixed amount agreements, perhaps contingent on a transaction and with documents held in escrow.

4.3. Compile a file of litigation and settlement documents for every litigation or claim over the past six years or any applicable statutes of limitation.

- 4.4. If Target is indemnified or has insurance coverage for any litigation, make sure its files document those indemnifications and/or coverage; and that you have original documents in your possession, issued by the indemnitor or insurer, ready to deliver to a potential Acquirer.
- 4.5. For litigation or contingencies you cannot settle, make sure your files on each matter are complete and that Target has third party estimates or appraisals of the potential dollar threat for any of these litigations or claims.

**5. Licenses and Permits.**

Does Target and each Target Entity have all permits, authorizations, licenses and similar permissions it requires to conduct its business; is there a file of all such permits?

**6. Material Contracts.**

This will be a major issue in any agreement where the Acquirer will be assuming or relying upon Target's contracts. Does your Target have...

- 6.1. Accurate copies, with signatures of all material contracts – which will include all contracts above a certain dollar obligation and all important agreements such as leases, major customer contracts, employment agreements and similar agreements.
- 6.2. Copies of the most recent form of each contract, including all amendments and revisions as of the current date.
- 6.3. Signed copies – not just drafts.

**7. Environmental Laws and Regulations.**

As horror stories of environmental liabilities spread, environmental representations have become important for many companies, especially where they

conduct manufacturing obligations. These representations will cover both owned and leased properties.

7.1. Has Target received any notices that it has violated any environmental laws or regulations; if so, has it been answered and a file maintained?

7.2. Does Target have environmental assessments that it obtained when it purchased, leased, sold or vacated any of its properties? If so, do you have a file of all third party environmental assessments on property, either currently owned or leased or sold or vacated within statute of limitation periods?

## **8. Real Property.**

The Target should have detailed files for each piece of real property owned or leased, either directly or through any Target Entity.

8.1. For Property Owned:

8.1.1. Check the ownership for each piece of Property and pull a title report; you will frequently find title incorrectly reflected;

8.1.2. Are liens listed which are either outdated or not applicable to this owner? This is the time to file all corrective documents required to ensure the title is correct going forward.

8.1.3. Have all mortgages and liens that have been paid been satisfied and the satisfactions settled? Corrective deeds, satisfactions and similar documents can take weeks to prepare, circulate to the proper parties for signature and have filed; why not do it now.

8.1.4. Mortgages should be correctly reflected on the title reports; and a file set up with copies of all mortgage documents and current payoff

information; including current reach information for the individuals required to coordinate a payoff or negotiate any transfers or assumptions.

8.1.5. Have you reviewed all requirements for consents, transfers or assumptions of mortgages, including all documentation requirements.

## 8.2. For Leased Properties.

8.2.1. Are all the lease documents, including all amendments, located in an easily accessible file? Do you have all the documents for every lease?

8.2.2. If leases have been transferred among entities, do you have the transfer documents?

8.2.3. Have you reviewed the terms of each lease and all requirements for assignment, transfer or sublease; do changes of control constitute assignments which require landlord consent? Do you have a below market situation where the landlord will seek to deny consent?

8.2.4. For deposits and security, do you know the exact terms, amount, and depository?

8.2.5. If a letter of credit secures the lease, do you have copies of all documentation and all renewals? How is the letter of credit secured?

## 8.3. Permits and Certificates of Occupancy

8.3.1. Do you have a current file for each permit and each certificate of occupancy for every piece of Property used by any Target Entity, whether owned or leased?

8.3.2. Are there any problems with any permits or certificates of occupancy? If so, now is the time to work on them. Were any building

permits taken out and no signoffs completed so that no certificate of occupancy was issued? Does the certificate of occupancy reflect the correct type of business conducted at that premises?

**9. Company Benefit Plans.**

9.1 ERISA and other benefit laws and regulations are a “hot button” issue. No investor or acquirer wants to deal with potential transferee or other liability.

9.2 Review all pension plans, benefit plans, tax and ERISA filings. Make sure the lists of plans are complete and the files updated and easily accessible so that a schedule of the plans can be easily prepared.

9.3 Are the Plans fully funded and in compliance with all applicable regulations?

9.4 Would a third party review be worthwhile?

**10. Do you know what is filed against your Target?**

All of us have had the experience of closings where a routine search reveals information about an unexpected lien or filing that we have to rush to clear before a closing. UCC, lien and judgment searches cost money, but it may be worthwhile to run them prior to a transaction if you are worried about unknown filings. It is always better to know what is filed against your Target and Target Entities – and it give you time to clean up open issues in due course rather than at the last minute.

**11. Employee Confidentiality and Noncompetition Agreements.**

11.1. Many contracts will ask for a representation that all employees, or certain key employees such as sales personnel, officers and technical personnel, have executed confidentiality, noncompetition and/or nonsolicitation agreements.

11.2. These agreements are valuable to:

11.2.1. An Acquirer, which wants to be sure the customer list will not be raided by former employees;

11.2.2. The Target, especially where a Target is under pressure due to competitive forces in its industry, financial problems or reliance on important trademark, trade secrets or patent rights.

11.3. Drafting issues include enforceability under the laws of applicable states as to whether and under what circumstances noncompetition agreements are enforceable.

11.3.1. Several states require continued compensation to enforce noncompetition provisions; cases differ on enforceability of confidentiality and nonsolicitation;

11.3.2. Agreements should include assignment of intellectual property or systems developed by the employee to the Target; along with return of all proprietary documents and materials;

11.4. Execution of Noncompetition, Nonsolicitation, Confidentiality and Similar Agreements.

11.4.1. Counsel must ensure not only that the agreements are appropriate for the level of the employee and enforceable, but also that the Target understands the importance of having them executed and on file for every employee; or at the minimum for all client contact employees and all employees with access to intellectual property.

11.4.2. Client contact employees without agreements may have significant bargaining power during the process of negotiation of a transaction; the

Target must carefully plan how it obtains these agreements from its employees and contractors and what compensation it is prepared to offer;

11.4.3. Where possible, Target should institute a program to prepare these agreements and have them signed routinely, either as part of the hiring process or, in connection with benefit increases, bonuses and other compensation.

11.4.4. If Target's customer list or IP are important assets, they will have employees who can compromise those customers.

11.4.5. If an Acquirer is a "strategic" acquirer, it may plan to terminate many employees and roll the operation into its own business infrastructure.

11.4.6. If customers disappear after the transaction through the efforts of former employees, the transaction is likely to end in litigation, regardless of what representations are made in the agreements; properly signed noncompetition, confidentiality and nonsolicitation agreements can prevent that scenario.

## **12. Intellectual Property.**

*"As used herein "Intellectual Property" means all (i) patents and patent applications, together with reissues, continuations, continuations-in-part, revisions, divisionals, extensions and reexaminations thereof, (ii) trademarks, service marks, trade dress, logos, trade names and Internet domain names, and applications, registrations, and renewals in connection therewith, and all goodwill associated therewith, (iii) copyrightable works, copyright registrations and applications for registration thereof and renewals thereof), (iv) trade secrets, know-how, improvements and inventions, and*



*(v) computer software (including source code, data, databases and related documentation).”*

12.1. Does Target maintain an inventory of all Intellectual Property? Many acquirers will require lists of all of the above, including all licenses (given or purchased), to the detail of lists of “off the shelf” licenses for common office computer programs.

12.2. Run a status check for all of Target’s patents, trademarks and copyrights.

12.2.1. For trademarks and patents go to uspto.com for a search.

12.2.2. Look for the following common problems:

12.2.2.1. Lapsed registrations;

12.2.2.2. Registrations in the names of the wrong entities;

12.2.2.3. Assignments that may not have been done or may have been given as security under loan agreements which have since been satisfied or lapsed;

12.2.2.4. Section 8 and 15 affidavits which are due and have not yet been filed; so that registrations may still be valid but will lapse very shortly;

12.2.2.5. Outdated addresses for reach information, so that the Target does not receive proper notifications.

12.3. Make sure all trademarks and patents are properly filed, the applicable assignments and transfers properly recorded, that all required update and use documents have been filed and are listed as received and that correspondence information has been updated to make sure the proper people, and your firm, are notified of any lapses, challenges or problems.

12.4. Determine what additional Target trademarks, patents and copyrights should be filed, and do it.

12.4.1. Patent registrations require specialized preparation and filing; they are done by professionals in that area.

12.4.2. Does the Target use important marks and trade names for which trademark registration would be valuable and which have never been registered;

12.4.3. Figure out how to use the USPTO trademark website and online filing system, or find expert help; trademark searches and filings have been simplified and are done online;

12.4.4. Whether this is done “in house” or through special counsel, the better the registration and formal ownership of Target’s trademarks, trade names and other property, the more valuable its intellectual property is to an acquirer. It is corporate counsel’s job to convince Target management of this so that the work is done.

12.5. Websites and urls. For those of us who remain “low tech” a “url” is the internet address used for a website, such as [www.google.com](http://www.google.com) .

12.5.1. Check the registration of each Target website and url. Urls are registered and maintained through register.com, networksolutions.com, godaddy.com or one of their lesser known competitors. Most providers offer a “whosis” function which provides the registration, name of registrant and the amount of time left on each url registration. You can have a search

run or have an internet comfortable person in your office, or the Target's office, run the search themselves.

12.5.2. What to look for on each registration.

12.5.2.1. Is the registration current and not likely to lapse in a short amount of time; if it is due to lapse, have it renewed.

12.5.2.2. Is the registration held in the correct Target Entity name, and not in the personal name of Target's IP employee or an outside service company it owns.

12.5.2.3. Even if they use outside web providers, the url itself should always be registered in the name of a Target Entity and not in a third party's name; it is valuable Target intellectual property.

12.5.3. Does your Target need to register additional urls? For example, if Target owns and uses "Target.com" should it also acquire target.net, target.biz and other "secondary" urls; or should it acquire urls that are close to their key urls. Alternate urls can be acquired for small sums and any "hits" led into the Target websites. It is not necessary to post a website at each alternate url.

12.5.4. Make sure Target has a databank of its urls which is under the control of the proper corporate officer.

12.5.4.1. The person with control (registrant on the web service, passwords and entry codes) is not your IT person, web service or somebody's assistant.

12.5.4.2. A full list of all accounts to which urls are registered, passwords, payment and access information should be maintained with the proper corporate officer as an important Target and Target Entity document; Target should have the ability to immediately change codes and passwords in the event it terminates its website contractor or an IP employee, and to transfer these codes, accounts and passwords to a potential acquirer.

## 12.6. Programs and Software.

In this age of computers, many agreements require a listing of all programs and software, owned, leased and used by the Target Entities and a representation that all are properly licensed and registered. Have Target and the Target entities start compiling this list, and keep it updated, along with a complete file of all licenses and registrations.

12.6.1. Make sure all major office programs are licensed for every computer on which they are run; no acquirer wants to inherit a lawsuit with Microsoft, Intuit or any other major software provider.

12.6.2. If Target has proprietary or custom software for its business, compile a file of all program material and licenses.

12.6.2.1. Documentation and transfer requirements are key; documents should be reviewed for consents or other restrictions on or requirements for transfer of ownership and/or use.

12.6.2.2. Codes and controls should be held by a key corporate officer, who has the power to change entry codes and passwords if an employee leaves.

**13. Loans and Financing Agreements.**

- 13.1. Are all financing documents compiled and easily accessible?
- 13.2. Have all financing documents been reviewed for technical defaults and such defaults corrected.
- 13.3. Review all loan documents for transfer and assumption provisions.
- 13.4. All equipment leases should be reviewed as well.
- 13.5. Make sure that the Target still owns each piece of equipment for which a lease is outstanding; if not, have the sale or disposition transaction and the reasons documented.

**14. Employees.**

For most private and many public transactions, Target will be asked for a full list of employees, with complete information such as tenure, salary, earnings history and a complete list of accrued benefits.

- 14.1. Is Target's employee information up to date.
- 14.2. Has each employee been informed of his or her accruals and agrees with the Target's calculations?
- 14.3. Would it be advisable to accelerate accrued vacation benefits or require employees to take accrued vacation prior to the end of the calendar year in order to minimize accruals on the books?
- 14.4. Union and Termination Obligations
  - 14.4.1. If Target has employment agreements, are there termination and/or change of control provisions?

14.4.2. If Target has union contracts, what are the provisions dealing with transfers, facility shutdowns and similar items.

**15. Taxes.**

*“As used in this Agreement, (i) “Tax” or “Taxes” means (A) any and all United States or foreign, federal, state, local or other taxes of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any Governmental Entity, including taxes on or with respect to income, franchises, windfall or other profits, gross receipts, property, sales, use, escheat, capital stock, payroll, employment, unemployment, social security, workers’ compensation or net worth, and taxes in the nature of excise, withholding, ad valorem or value added, whether disputed or not and including any obligations to indemnify or otherwise assume or succeed to the tax liability of any other person and (B) any liability for the payment of any amount of the type described in the immediately preceding clause (A) as a result of (1) being a “transferee” of another person, (2) being a member of an affiliated, combined, consolidated or unitary group, or (3) any contractual liability and (ii) “Tax Return” means any return, report or similar filing (including the attached schedules) required to be filed with respect to Taxes, including any information return or declaration of estimated Taxes. It is agreed and understood that no representation or warranty is made in respect of Tax matters in any Section of this Agreement other than this Section\_\_.”*

15.1. Does Target have a complete file of all taxes, returns, schedules, audits and other documents for a period which goes back through the statutes of limitations?

15.2. Are there any audits or examinations which are pending?

- 15.3. Is a Target officer knowledgeable and prepared to answer any of these questions, or does Target rely on its accountants?
- 15.4. Has Target utilized any ruling requests, private letter rulings, entered into closing or settlement agreements for any audit? If so, does Target have a complete file?
- 15.5. If Target is an audited entity, which utilizes GAAP, are there material differences between its tax reporting and GAAP. This is common, but unusual transactions must be documented.
- 15.6. If Target or any Target Entity is an “S” corporation, have they analyzed the impact of the transaction on both the corporation and its pass through shareholders?

**16. Insurance.**

- 16.1. Does Target maintain complete and updated files of its insurance policies?
- 16.1.1. Are the insurance files organized and accessible?
- 16.1.2. Are files maintained for pending claims?
- 16.1.3. Does Target maintain complete files for claims which have been settled, including litigation for which the obligations were paid by the insurance company?
- 16.2. Has Target undergone any audits or examinations?
- 16.2.2. Common audits and examinations include audits of workmen’s compensation and disability rates and liabilities by various states.

16.3. Will any potential transaction disrupt Target's insurance coverage, require transfers or require replacement? If so, how hard will these transfers and/or replacements be to obtain?

16.4. Do Target and all Target Entities have correct and accurate insurance coverage on all of its properties, vehicles and exposure? This may be the time for an insurance audit.

16.5. Do Target and/or its entities maintain directors and officers liability insurance? If not, should a policy be put in place prior to any transactions?





capital stock, including phantom stock and conversion rights.

1.4 A list of states and countries in which the Company, each Subsidiary and each Joint Venture are qualified as a foreign corporation or other foreign entity or otherwise licensed to do business.

1.5 Materials (including financial projections), to the extent available, distributed to Boards of Directors of the Company, each Subsidiary and each Joint Venture, or any committees thereof, in connection with meetings of such Boards or such committees.

1.6 Corporate management organization chart including title, function and responsibility, listing, among others, all directors and officers.

1.7 List and description of current operations of each key business unit showing:

- a. business purpose(s)
- b. key manager(s)
- c. key markets served(s)
- d. key facilities

1.8 A list of all Subsidiaries showing for each such Subsidiary the equity percentage owned by the Company and each other Subsidiary of the Company.

## II. Securities and Exchange Commission Filings and Related Documents

2.1 Officers' and directors' questionnaires prepared in connection with the most recent proxy statement.

2.2 Any internal certifications prepared for use in connection with the certification of filings (or financial statements contained therein) made by the Company, any Subsidiary or any Joint Venture or any officer, director or employee thereof with the Securities and Exchange Commission.

2.3 Written presentations to securities analysts since January 1, 2007 and securities analyst research reports since January 1, 2007.

## III. Stockholders

3.1 All stockholder agreements, LLC operating agreements and partnership agreements with respect to the Company, any Subsidiary or any Joint Venture.

3.2 Any stock purchase or subscription agreements with stockholders or prospective stockholders.

3.3 Any agreements relating to preemptive rights or other preferential rights of stockholders.

3.4 Any agreements restricting the sale or other disposition of capital stock.

3.5 Any agreements or plans concerning outstanding or proposed stock options, warrants or rights, excluding any employee stock ownership plans.

3.6 Any agreements relating to registration rights of stockholders.

3.7 Any claims, liens, encumbrances, security interests, options, charges or restrictions related to capital stock.

3.8 Any other agreements that define or limit the rights of stockholders, including restrictions on voting rights and all outstanding proxies.

3.9 If available to the Company, applicable trust agreements and other similar documents if any shares of capital stock of the Company, any Subsidiary or any Joint Venture are held on behalf of stockholders in a fiduciary capacity.

#### IV. Financial Information and Accountants' and Auditors' Reports

4.1 Reports ("management letters" and "audit letters") of the independent auditors employed by the Company, the Subsidiaries and the Joint Ventures relating to management and accounting procedures for the Company, the Subsidiaries and the Joint Ventures and matters which arose during the course of audits.

4.2 Management replies to accountants' management letters and audit letters.

4.3 Letters to the independent auditors from lawyers with respect to the lawyers' work on matters for the Company, the Subsidiaries and the Joint Ventures ("audit response letters").

4.4 Audited financial statements for the last five fiscal years for the Company and, to the extent available, each Subsidiary and each Joint Venture. If audited financial statements are unavailable, please supply unaudited financial statements, to the extent available.

4.5 Internal financial projections (profit and loss, capital expenditures, etc.), and all supporting information for most recent 5 years.

4.6 Copies of all current budgets, forecasts and business plans.

4.7 Summary of sales volume for most recent 2 years by:

- a. product/service segment;
- b. geographic segment;
- c. channel of distribution; and
- d. major customers (percent of sales to top 10 customers by product segment).

4.8 List of any off-balance sheet liabilities not appearing in the most recent financial statements (including the notes thereto).

4.9 Summary of accounting policies to the extent not disclosed in the financial statements.

## V. Litigation

5.1 Summaries or memoranda regarding all threatened, outstanding and concluded litigation and arbitration proceedings to which the Company, any Subsidiary, any Joint Venture, any officer or any director is or was a party during the last 5 years containing the following information: parties, description of claim or threatened claim, nature of proceeding, date and method commenced, amount of damages or other relief sought and, if applicable, paid or granted.

5.2 To the extent available, summaries or memoranda regarding all governmental and administrative investigations, proceedings and arbitrations, whether pending, threatened or concluded during the last five years involving the Company, any Subsidiary, any Joint Venture, any officer or any director.

5.3 Pleadings and other material documents in pending material litigation, arbitration and investigations and other proceedings involving the Company, any Subsidiary, any Joint Venture, any officer or any director.

5.4 All consent decrees, court or administrative judgments or orders, settlements, etc., requiring or prohibiting future activities of the Company, any Subsidiary or any Joint Venture.

5.5 Opinions or other assessments (other than audit response letters provided pursuant to Item 4.3 above) of the Company's, any Subsidiary's or any Joint Venture's counsel as to any pending or threatened litigation against the Company, any Subsidiary or any Joint Venture.

## VI. Contracts and Agreements

Copies of all material contracts of the Company, the Subsidiaries and the Joint Ventures, including:

6.1 Contracts relating to the acquisition or sale of any properties or equipment during the last ten years for consideration exceeding [\$100,000 in value].

6.2 Contracts contemplating an aggregate exchange of value of \$[100,000] or more.

6.3 Material equipment leases.

6.4 Material guarantees and similar agreements.

6.5 Material agreements relating to product warranties.

6.6 Material sales representative, marketing, agency or distributorship agreements.

6.7 Material advertising agreements.

6.8 Material manufacturing agreements.

6.9 Material government contracts, including contract number, name of program, product description, backlog, whether sole source or not and period of performance.

6.10 Agreements entered into or expected to be entered into for material capital expenditures.

6.11 Agreements relating to restrictions upon competition or restricting or purporting to restrict the ability of the Company, any Subsidiary or any Joint Venture to engage in any type of business or to operate in any geographic area.

6.12 Indemnification agreements for directors and officers.

6.13 Agreements relating to the purchase or sale by the Company, any Subsidiary or any Joint Venture of securities (equity or debt) of the Company, any Subsidiary or any Joint Venture.

6.14 Secrecy, confidentiality, nondisclosure and standstill agreements.

6.15 Partnership, joint venture, co-development, cooperation and similar agreements.

6.16 Contracts (excluding employment agreements and other benefits arrangements but including loan agreements) with officers, directors, employees or any significant stockholder of the Company, any Subsidiary or any Joint Venture.

6.17 Samples of all form purchase and sales orders, invoices and other forms of agreements and instruments regularly used by the Company, any Subsidiary or any Joint Venture.

6.18 Contracts containing termination or other provisions triggered by a change of control or disposition of assets of the Company, any Subsidiary or any Joint Venture and contracts requiring the consent of any third party in the event of a sale of the Company, any Subsidiary or any Joint Venture or of assets of the Company, any Subsidiary or any Joint Venture.

6.19 Material computer (hardware and software) contracts and similar arrangements.

6.20 License, royalty and franchise agreements.

6.21 Contracts with financial advisors for the sale of the Company, any Subsidiary any Joint Venture or any of their assets.

6.22 Agreements between the Company and any Joint Venture or Subsidiary, or between any such Subsidiaries or Joint Ventures.

6.23 Material sales contracts, purchase contracts for raw materials, supplies, services and inventory between the Company, any Subsidiary or any Joint Venture and third parties (including all sole source sales or purchase contracts) and all other contracts relating to the supply, storage, service, management, license, research and development or distribution of the Company's, the Subsidiaries' or the Joint Ventures' products, goods, services, equipment or property, including all dealer arrangements and blanket or open purchase orders.

6.24 Agreements to provide goods or services at or below cost (other than promotional arrangements entered into in the ordinary course of business).

6.25 Commodity, interest rate and currency exchange agreements and all other derivatives and financial products, and a schedule showing current exposures thereunder.

6.26 All employment agreements, including those agreements which provide for a fee to be paid to the employee in connection with the possible acquisition of the Company, any Subsidiary or any Joint Venture.

6.27 All other material contracts and agreements not otherwise covered by the foregoing, including sale and lease-back arrangements and construction contracts.

6.28 Any material correspondence relating to any items in this Section VI.

## VII. Regulatory Matters

7.1 All regulatory filings, licenses, permits, consents and regulatory approvals required to enable the Company, each Subsidiary and each Joint Venture to conduct their respective businesses.

7.2 Material correspondence, if any, alleging violation of or requesting compliance by the Company, any Subsidiary or any Joint Venture with laws, regulations, etc. or requests for information pursuant to interstate commerce laws, antitrust laws, securities laws, environmental laws, worker safety laws (OSHA), etc.

7.3 List of any violations of governmental laws or regulations currently pending as well as all such violations for most recent 3 years.

7.4 Material reports to governmental agencies for most recent 3 years (e.g., EPA, OSHA).

7.5 List of all governmental filings and consents required for a purchase of the stock or assets of the Company, any Subsidiary or any Joint Venture.

7.6 Copies of correspondence between Federal or state government agencies and the Company, any Subsidiary or any Joint Venture for the most recent 3 years (e.g., EPA, OSHA).

## VIII. Debt Arrangements

8.1 A schedule summarizing short-term and long-term debt (other than intercompany debt) and capital lease obligations of the Company, each Subsidiary and each Joint Venture (setting forth the obligor, the lender, principal amounts outstanding, interest rates and maturity dates, or, in the case of capital lease obligations, payment schedules, for each such item).

8.2 All documentation relating to actual or contingent indebtedness (including all letters of credit, surety bonds, loan guarantees, bankers acceptances, swaps and similar arrangements) of the Company, each Subsidiary and each Joint Venture (including any

amendments, waivers or consents relating thereto) which is in a principal amount equal to or in excess of \$[100,000].

8.3 The results of any lien search recently conducted with respect to the Company, any Subsidiary or any Joint Venture.

8.4 A schedule summarizing all intercompany indebtedness (setting forth the information requested in Item 8.1 above).

## IX. Collective Bargaining Agreements and Employee Benefit Plans

9.1 Collective bargaining agreements, all other consulting, termination and severance agreements (including agreements that expired within the last six months), and all other written arrangements with regard to non-union employees evidencing an other than at-will employment relationship.

9.2 Schedules of salaried and hourly employees showing their current compensation rates and breaking out employees by:

- a. geographic location
- b. function
- c. age
- d. years with company
- e. union vs. non-union
- f. participation in employee benefit plans
- g. part-time vs. full-time

9.3 Employee turnover and absentee history.

9.4 Employee benefit plans (including retirement, pension, supplemental retirement savings, stock option and other health benefit and welfare plans), together with trust agreements and the most recent actuarial report as to funding of the plans, etc. All annual reports relating to such plans.

9.5 Deferred compensation and similar agreements.

9.6 Internal Revenue Service (“IRS”) determination letters for any of the foregoing plans.

9.7 All notices to the Pension Benefit Guaranty Corporation (“PBGC”) concerning reportable events under the Employee Retirement Income Security Act (“ERISA”).

9.8 List of any “reportable events,” “prohibited transactions,” “complete withdrawals,” and “partial withdrawals” with respect to all pension plans.

9.9 Documentation of any audits, investigations or reviews being conducted by the IRS, Department of Labor or PBGC with respect to any plan and any administrative proceedings in connection therewith.

9.10 Employee Handbook(s) (Policies and Procedures).

9.11 All bonus and incentive plans, including:

- a. Plan document and amendments;
- b. List of employees entitled to bonus and amount of award;
- c. Form of agreement under plans;
- d. Accounting statements; and
- e. Latest registration statement (if any) with the Securities and Exchange Commission (Form S-8).

9.12 A description of any and all strikes, lockouts, slowdowns and other labor disruptions at any of the Company's, any of the Subsidiaries' or any of the Joint Ventures' facilities in the last [5] years and any claim of unfair labor practices or petitions filed with the National Labor Relations Board with respect to workers at the Company's, any of the Subsidiaries' or any of the Joint Ventures' facilities in the last [5] years.

9.13 Financial Accounting Statement 106 Reports and retiree welfare plans.

## X. Real Property

10.1 List of all plants, offices, retail outlets, distribution centers, storage centers and other facilities with locations thereof (including age, size and whether owned or leased) and a description of the business purpose of each such facility (e.g., manufacturing, warehousing, office space).

10.2 Leases and rental agreements, including subleases and concession agreements, brokerage agreements, non-disturbance and attornment agreements and related assignments, letters of credit, if any, consents granted, estoppel letters, list of security deposits and all amendments, in respect of real property owned or leased by the Company, any Subsidiary or any Joint Venture.

10.3 Deeds related to all real property owned by the Company, any Subsidiary or any Joint Venture.

10.4 Surveys, legal descriptions, title policies (including copies of all documents of record), and appraisals with respect to all real property owned or leased by the Company, any Subsidiary or any Joint Venture.

10.5 To the extent not provided in response to other items, copies of all notices of municipal violations affecting any property owned or leased by the Company, any Subsidiary or any Joint Venture.

11.6 Evidence as to the zoning status of the properties and subdivision compliance for any property owned or leased by the Company, any Subsidiary or any Joint Venture.



11.7 To the extent not provided in response to other items, copies of all loan agreements, mortgages, assignments, security agreements, and UCC-1's, if any, encumbering any property owned or leased by the Company, any Subsidiary or any Joint Venture.

11.8 Itemized list of all easements, liens, restrictions, violations, covenants and agreements of any kind affecting any property owned or leased by the Company, any Subsidiary or any Joint Venture, together with copies thereof.

11.9 To the extent not provided in response to other items, copies of all certificates of occupancy, fire underwriters' certificates and other licenses and permits affecting any property owned or leased by the Company, any Subsidiary or any Joint Venture.

## XI. Personal Property

11.1 List of all fixtures, machinery and equipment material to the operations of the Company, any Subsidiary or any Joint Venture, including computers and other data processing equipment.

11.2 Leases and rental agreements, including subleases, concession agreements, assignments, letters of credit, if any, consents granted and all amendments, in respect of personal property.

11.3 Warranties and guarantees still in effect with respect to material personal property owned by the Company, any Subsidiary or any Joint Venture.

## XII. Intellectual Property

12.1 A list of all copyrights, trademarks, service marks, patents, domain names and other material intellectual property (including all applications therefor) owned or licensed by or to the Company, any Subsidiary or any Joint Venture and copies of all agreements and instruments relating to the acquisition, assignment, licensing, ownership and registration thereof.

12.2 A list of all know-how, trade secrets, technology, technical information and computer software owned or licensed by or to the Company, the Subsidiaries and the Joint Ventures.

12.3 List and description of material pending or threatened claims by or against the Company, the Subsidiaries or the Joint Ventures for infringement or other violations of proprietary rights.

12.4 Agreements, policies or other arrangements relating to proprietary rights of employees in products of the Company, any Subsidiary or any Joint Venture (including royalty or other fee arrangements).

12.5 List and description of all investigations, proceedings, actions, claims and arbitrations, whether pending, threatened or concluded during the last five years involving any intellectual property of the Company, any Subsidiary or any Joint Venture.

12.6 Agreements with consultants, service providers or other parties under which any intellectual property was developed or created for, on behalf of, or for delivery to the Company, any Subsidiary or any Joint Venture.

XIII. Market Information

13.1 Studies and reports regarding the Company, any Subsidiary or any Joint Venture and any industry in which the Company, any Subsidiary or any Joint Venture operate prepared by investment banking firms, securities analysts, management consultants or other consultants.

13.2 Internal reports and studies concerning matters which are material to the ongoing business of the Company, the Subsidiaries and the Joint Ventures.

XIV. Miscellaneous

14.1 All press releases issued by the Company, any Subsidiary or any Joint Venture.

14.2 Any additional documents that are material to the Company, any Subsidiary or any Joint Venture.

## SCHEDULE I

### List of Subsidiaries

[Target] Americas, Inc. (Delaware)  
[Target] Properties, Inc. (Delaware)  
Target LLC I (Delaware)  
Target LLC II

**SAMPLE REPRESENTATIONS AND WARRANTIES OF MID-MARKET PUBLIC  
COMPANY ACQUIRED BY MERGER**

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**AGREEMENT AND PLAN OF MERGER**, dated as of August \_\_, 2008 (the “Agreement”), among **HOLDINGS, INC.**, a Delaware corporation (“Parent”), **MERGER, INC.**, a Delaware corporation and a direct wholly owned subsidiary of Parent (“Merger Sub”), and **TARGET, INC.**, a Delaware corporation (the “Company”). Each of Parent, Merger Sub and the Company is referred to herein as a “Party” and together they are referred to herein as “Parties”).

**WHEREAS**, the Company, Parent and Merger Sub each desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe certain conditions to the Merger, as set forth herein.

**NOW, THEREFORE**, in consideration of the premises, and of the representations, warranties, covenants and agreements contained herein, the Parties agree as follows:

## **ARTICLE I**

### **THE MERGER**

Section 1.1. The Merger. At the Effective Time, upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the applicable provisions of the DGCL, Merger Sub shall be merged with and into the Company, whereupon the separate corporate existence of Merger Sub shall cease and the Company shall continue as the surviving corporation of the Merger (the “Surviving Corporation”) and a wholly owned subsidiary of Parent.

Section 1.2. Closing. The closing of the Merger (the “Closing”) shall take place on a day that is a Business Day at the offices of Counsel LLP, New York, New York at 10:00 a.m., local time, on a date to be specified by the Parties, which shall be no later than the third Business Day after the satisfaction or waiver (to the extent permitted by applicable Law) of the conditions set forth in ARTICLE V (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), or at such other place, date and time as the Company and Parent may agree in writing. The date on which the Closing shall occur is referred to herein as the “Closing Date”.

Section 1.3. Effective Time. Subject to the provisions of this Agreement, at the Closing, the Company will cause a certificate of merger (the “Certificate of Merger”) to be executed, acknowledged and filed with the Secretary of State of the State of Delaware in accordance with Section 251 of the DGCL. The Merger will become effective at such time as the Certificate of Merger has been duly filed with the Secretary of State of the State of Delaware or at such later date or time as may be agreed by the Company and Merger Sub in writing and specified in the Certificate of Merger in accordance with the DGCL (the effective time of the Merger being hereinafter referred to as the “Effective Time”).

## **ARTICLE II**

### **REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

Except as disclosed (i) in the Company SEC Documents that were publicly available at least two Business Days prior to the date of this Agreement (other than disclosures in “Risk Factors” sections thereof and any other disclosures that are predictive or forward looking in nature) or (ii) in the disclosure schedule of even date herewith delivered by the Company to Parent immediately prior to the execution of this Agreement (the “Company Disclosure Schedule”), the Company represents and warrants to Parent and Merger Sub as follows:

Section 2.1. Qualification; Organization, Subsidiaries, etc.

(a) Each of the Company and its Subsidiaries is a legal entity duly organized, validly existing and in good standing under the Laws of its respective jurisdiction of organization and has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted. Each of the Company and its Subsidiaries is duly qualified to do business and is in good standing as a foreign corporation or other entity in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification and good standing, except where the failure to be so qualified or in good standing, individually or in the aggregate, would not have a Company Material Adverse Effect. The Company has made available to Parent prior to the date of this Agreement a true and complete copy of the Company’s certificate of incorporation (the “Company Charter”) and the Company’s bylaws (the “Company Bylaws”), each as amended through the date of this Agreement. The Company Charter, the Company Bylaws and the certificate of incorporation and bylaws (or equivalent organizational documents) of each of the Company’s Subsidiaries (the “Subsidiary Governance Documents”) are in full force and effect. None of the Company or any of its Subsidiaries is in violation of any provision of the Company Charter, the Company Bylaws or the Subsidiary Governance Documents.

(b) Section 2.1(b) of the Company Disclosure Schedule lists each Subsidiary of the Company and its jurisdiction of organization. All the outstanding shares of capital stock or other ownership interests of each Subsidiary of the Company have been validly issued and are fully paid and nonassessable and are owned by the Company, by another Subsidiary of the Company or by the Company and another Subsidiary of the Company, free and clear of all Liens. Except for its interests in the Subsidiaries of the Company set forth in Section 2.1(b) of the Company Disclosure Schedule, the Company does not own, directly or indirectly, any capital stock, membership interest, partnership interest, joint venture interest or other equity interest in any person.

(c) As used in this Agreement, any reference to any fact, circumstance, event, change, effect or occurrence having a “Company Material Adverse Effect” means any fact, circumstance, event, change, effect or occurrence (each, an “Effect”) that, individually or in the aggregate with all other Effects, has had or would reasonably be expected to have a material adverse effect on the assets, liabilities, business, results of operations or financial condition of the Company and its Subsidiaries, taken as a whole; provided, however, that in no event shall any of the following Effects, alone or in combination, be deemed to constitute, or be taken into account, in determining whether there is a Company Material Adverse Effect: (A) any change in general economic, business, financial, credit or market conditions; (B) any action taken by the Company that is expressly permitted or required by this Agreement; (C) any occurrence generally affecting the graphics and visual communications services industries or other industries

in which the Company or any of its Subsidiaries operate in the United States; (D) any change in GAAP or applicable Law or the interpretation thereof; (E) any act of terrorism, war (whether or not declared), national disaster or any national or international calamity affecting the United States; (F) any change in the price or trading volume of the Company Common Stock in and of itself (provided that the underlying causes of such change may be taken into account in determining whether there is a Company Material Adverse Effect); or (G) any effect resulting from the announcement of this Agreement; or (H) any action taken at the written request of Parent or any of its affiliates or mutually agreed to in writing by the parties to this Agreement that, if taken without the written consent of Parent, would have been prohibited by the terms of this Agreement; except, in the case of the foregoing clauses (A), (C), (D) or (E), to the extent such Effect has a disproportionate impact on the Company and its Subsidiaries, taken as a whole, relative to the other participants in the industries in which they operate.

## Section 2.2. Capitalization.<sup>1</sup>

(a) The authorized capital stock of the Company consists of 30,000,000 shares of Company Common Stock and 1,000,000 shares of preferred stock of the Company, par value \$0.01 per share, (“Company Preferred Stock”, and collectively with the Company Common Stock, “Company Capital Stock”). As of [●], 2008, (i) [8,453,863] shares of Company Common Stock were issued and [8,037,983] shares of Company Common Stock (including [404,988] Restricted Shares) were outstanding, (ii) [415,880] shares of Company Common Stock were held in treasury, (iii) 300,200 Company Stock Options were outstanding, the holders and exercise prices of which are set forth in Section 2.2(a)(iii) of the Company Disclosure Schedule, (iv) 300,200 shares of Company Common Stock were reserved for issuance upon the exercise of stock options held by employees or directors of the Company pursuant to the employee and director stock plans of the Company (the “Company Stock Plans”) and (v) [150,000] shares of Company Preferred Stock, all of which were shares of convertible preferred stock, par value \$0.01 per share, of the Company (“Company Convertible Preferred Stock”), were issued or outstanding, and related thereto, [●] shares of Company Convertible Preferred Stock were reserved for issuance in respect of accrued dividends on such shares of Company Convertible Preferred Stock, and [●] shares of Company Common Stock were reserved for issuance upon the conversion of such shares of Company Convertible Preferred Stock. All outstanding shares of Company Capital Stock and all shares of Company Capital Stock reserved for issuance as noted in clauses (iv) and (v) when issued in accordance with the respective terms thereof, are or will be duly authorized, validly issued, fully paid and non-assessable and free of pre-emptive rights, rights of first refusal or any similar rights. All Restricted Shares were issued pursuant to the Company’s 1997 Stock Award and Incentive Plan (the “1997 Plan”) and the form of the Award Agreement hereunder, copies of which are attached to Section 2.2(a) of the Company Disclosure Schedule.

(b) Except as set forth in subsection (a) above, as of the date of this Agreement, (i) the Company does not have any shares of its capital stock issued or outstanding other than shares of Company Common Stock that have become outstanding after [●], 2008, but were reserved for issuance as set forth in subsection (a) above, and (ii) there are no outstanding

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<sup>1</sup> **Note: Company/RMNto confirm all capitalization numbers.**



subscriptions, options, warrants, calls, convertible securities or other similar rights, agreements or commitments relating to the issuance of capital stock to which the Company or any of its Subsidiaries is a party obligating the Company or any of its Subsidiaries to (A) issue, transfer or sell any shares of capital stock or other equity interests of the Company or any Subsidiary of the Company or securities convertible into or exchangeable for such shares or equity interests, (B) grant, extend or enter into any such subscription, option, warrant, call, convertible securities or other similar right, agreement or arrangement, (C) redeem or otherwise acquire any such shares of capital stock or other equity interests, or (D) provide a material amount of funds to, or make any material investment (in the form of a loan, capital contribution or otherwise) in, any Subsidiary.

(c) Except for awards to acquire or receive shares of Company Common Stock under the Company Convertible Preferred Stock and the Company Stock Plans, neither the Company nor any of its Subsidiaries has outstanding bonds, debentures, notes or other obligations, the holders of which have the right to vote (or which are convertible into or exercisable for securities having the right to vote) with the stockholders of the Company on any matter.

(d) Pursuant to the terms of the Support Agreement and notwithstanding anything to the contrary set forth in the terms of the Company Convertible Preferred Stock, at the Effective Time, the Company Convertible Preferred Stock shall be redeemed in exchange for the payment of an amount not in excess of \$ [●](the “Redemption Amount”).

(e) There are no voting trusts or other agreements or understandings to which the Company or any of its Subsidiaries is a party with respect to the voting of the capital stock or other equity interest of the Company or any of its Subsidiaries.

### Section 2.3. Corporate Authority Relative to This Agreement; No Violation.

(a) The Company has requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby subject, in the case of the consummation of the Merger, to receipt of the Company Stockholder Approval. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Company Board (after the recommendation of the Special Committee) and, except with respect to the Merger for the Company Stockholder Approval, no other corporate proceedings on the part of the Company are necessary to authorize the consummation of the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by the Company and, assuming this Agreement has been duly executed and delivered by Parent and Merger Sub, constitutes the valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except that (i) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws, now or hereafter in effect, relating to creditors’ rights generally and (ii) equitable remedies of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought (the “Bankruptcy and Equity Exception”).

(b) The Company Board has unanimously (i) determined that this Agreement and the transactions contemplated hereby, including the Merger, are advisable and fair to, and in the best interests of, the Company and its stockholders, (ii) adopted and declared advisable this Agreement and the transactions contemplated hereby, including the Merger, (iii) directed that this Agreement be submitted to the Company's stockholders for their approval and (iv) resolved to recommend that the Company's stockholders adopt this Agreement (collectively, the "Recommendation").

(c) Other than in connection with or in compliance with (i) the DGCL, (ii) the Securities Exchange Act of 1934, as amended (the "Exchange Act") or any applicable state securities or "blue sky" Laws and (iii) the approvals set forth on Section 2.3(c) of the Company Disclosure Schedule (collectively, the "Company Approvals"), and subject to the accuracy of the representations and warranties of Parent and Merger Sub in Section 3.9, no authorization, consent or approval of, or filing with, any United States or foreign federal, state or local governmental or regulatory agency, commission, court, body, entity or authority (each, a "Governmental Entity") is necessary, under applicable Law, for the consummation by the Company of the transactions contemplated by this Agreement, except for such authorizations, consents, approvals or filings that, if not obtained or made, would not have, individually or in the aggregate, a Company Material Adverse Effect.

(d) The execution and delivery by the Company of this Agreement does not, and, except as described in Section 2.3(c) or set forth on Section 2.3(d) of the Company Disclosure Schedule, the consummation of the transactions contemplated hereby and compliance by the Company with the provisions of this Agreement will not (i) result in any material violation of, or material default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any material obligation or to the loss of a material benefit under any loan, guarantee of indebtedness or credit agreement, note, bond, mortgage, indenture, lease, sublease or similar arrangement, agreement, contract, instrument, permit, concession, franchise, right or license binding upon the Company or any of its Subsidiaries or to which any of them is a party or result in the creation of any liens, claims, mortgages, encumbrances, pledges, security interests, equities or charges of any kind (each, a "Lien"), other than any such Lien (A) for Taxes or governmental assessments, charges or claims of payment not yet due or being contested in good faith or for which adequate accruals or reserves have been established, (B) which is a carriers', warehousemen's, mechanics', materialmen's, repairmen's or other similar lien arising in the ordinary course of business, (C) which is disclosed on the most recent consolidated balance sheet of the Company or notes thereto or securing liabilities reflected on such balance sheet) or (D) which was incurred in the ordinary course of business since the date of the most recent consolidated balance sheet of the Company (each of the foregoing, a "Permitted Lien"), upon any of the properties or assets of the Company or any of its Subsidiaries, (ii) conflict with or result in any violation of any provision of the Company Charter or the Company Bylaws or any Subsidiary Government Document or (iii) conflict with or violate, in any material respect, any applicable Laws that are material to the Company and its Subsidiaries.

#### Section 2.4. SEC Reports and Financial Statements.

(a) Except as set disclosed on Section 2.4 of the Company Disclosure Schedule, the Company has filed or furnished (as applicable) all reports, forms, schedules, statements, certifications and other documents required to be filed or furnished with or to the United States Securities and Exchange Commission (the “SEC”) from January 1, 2006 (the “Company SEC Documents”). As of their respective dates, or, if amended, as of the date of the last such amendment, the Company SEC Documents complied in all material respects with the applicable requirements of the Securities Act of 1933, as amended (the “Securities Act”), and the Exchange Act at the time they were filed (or, if amended at the time of such amendment), as the case may be, and the applicable rules and regulations promulgated thereunder, and none of the Company SEC Documents contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The consolidated financial statements (including all related notes and schedules) of the Company included in the Company SEC Documents (i) fairly present in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries, as at the respective dates thereof, and the consolidated results of their operations and their consolidated cash flows for the respective periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein, including the notes thereto) and (ii) were prepared in conformity with United States generally accepted accounting principles (“GAAP”) (except, in the case of the unaudited statements, as permitted by the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto).

(c) The Company has made available to Parent true, correct and complete copies of the consolidated financial statements for the months of October, November and December of 2007 [2008]<sup>2</sup>, and such consolidated financial statements (i) fairly present the consolidated financial position of the Company and its consolidated Subsidiaries, as at the respective dates thereof, and the consolidated results of their operations and their consolidated cash flows for the respective periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein, including the notes thereto) and (ii) were prepared in conformity with GAAP applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto).

(d) The Company SEC Documents include all certificates required to be included therein pursuant to Sections 302 and 906 of the Sarbanes Oxley Act of 2002, as amended, and the rules and regulations promulgated thereunder (“SOX”), and the internal control report and attestation of the Company’s outside auditors required by Section 404 of SOX. To the knowledge of the Company, the Company has implemented and maintains disclosure controls and procedures (as defined in Rule 13a-15(e) of the Exchange Act) to ensure that material information relating to the Company, including its consolidated Subsidiaries, is made known to the chief executive officer and the chief financial officer of the Company by others within those entities. As of the date of this Agreement, the Company’s principal executive officer and principal financial officer have no knowledge of any fraud that involves management

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<sup>2</sup> **Company to confirm.**

or other employees who have a significant role in the Company's internal controls over financial reporting. As of the date of this Agreement, the Company has not identified any material weaknesses in the design or operation of its internal controls over financial reporting.

(e) The Company has made available to Parent true, correct and complete copies of all material written correspondence between the SEC, on the one hand, and the Company and any Subsidiary of the Company, on the other hand, since December 1, 2006. As of the date of this Agreement, there are no outstanding or unresolved comments in comment letters received from the SEC staff with respect to the Company SEC Documents. To the knowledge of the Company, none of the Company SEC Documents is the subject of ongoing SEC review or outstanding SEC comment.

Section 2.5. No Undisclosed Liabilities. Except (a) as reflected or reserved against in the Company's consolidated balance sheets (or the notes thereto) included in the Company SEC Documents that were publicly available at least two Business Days prior to the date of this Agreement, (b) permitted or contemplated by this Agreement, (c) for liabilities and obligations incurred in the ordinary course of business since September 30, 2007, (d) liabilities or obligations which have been discharged or paid in full in the ordinary course of business, (e) [the draft, provided to Parent on or prior to the date hereof, of the Form 10-K to be filed by the Company with the SEC for the fiscal year ended December 31, 2007 (the "Draft 10-K")]<sup>3</sup> and (f) set forth on Section 2.5 of the Company Disclosure Schedule, as of the date of this Agreement, neither the Company nor any Subsidiary of the Company has any liabilities or obligations of any nature, whether or not accrued, contingent or otherwise, that would be required by GAAP to be reflected on a consolidated balance sheet of the Company and its Subsidiaries (or in the notes thereto).

Section 2.6. Absence of Certain Changes or Events. From September 30, 2007 through the date of this Agreement:

(a) except as contemplated by this Agreement, the businesses of the Company and its Subsidiaries have been conducted, in all material respects, in the ordinary course of business consistent with past practice;

(b) there has not been any event, development or state of circumstances that has had, individually or in the aggregate, a Company Material Adverse Effect;

(c) except as set forth in Section 2.6 of the Company Disclosure Schedule, there has not been any declaration, setting aside or payment of any dividend or other distribution (whether in cash, stock or property) with respect to any Company Capital Stock or any repurchase for value by the Company of any Company Capital Stock;

(d) there has not been any split, combination or reclassification of any Company Capital Stock or any issuance or the authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares of Company Capital Stock;

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<sup>3</sup> **To be discussed with the Company.**

(e) except as set forth in Section 2.6 of the Company Disclosure Schedule, there has not been any sale, lease (as lessor), assignment, license, failure to maintain or other disposition of any material properties or assets, except in the ordinary course of business;

(f) there have not been any amendments to or changes in the Company Charter, Company Bylaws or Subsidiary Governance Documents;

(g) there has not been any change in accounting methods, principles or practices by the Company or any Subsidiary materially affecting the consolidated assets, liabilities or results of operations of the Company, except insofar as may have been required by a change in GAAP;

(h) to the knowledge of the Company, there have not been any claims, charges or grievances filed with any Governmental Entity by any individual, or asserted or threatened by any individual, Governmental Entity or any workers' representative organization, bargaining unit or union regarding any unfair labor practice, claim of wrongful discharge or other unlawful employment or labor practice or action with respect to the Company or any Subsidiary;

(i) except as required pursuant to any existing contract set forth in Section 2.8 of the Company Disclosure Schedule, in the ordinary course of business, or set forth in Section 2.6 of the Company Disclosure Schedule, there has not been any increase in or other change to the salary, bonus or other compensation payable or to become payable by the Company to any of its officers, directors, employees or advisors, any execution of or amendment to any Employee Agreement, or any declaration, payment or commitment or obligation of any kind for the payment (whether in cash or equity) by the Company of a severance payment, change in control payment, termination payment, bonus or other additional salary or compensation (including any equity-based compensation) to any such person;

(j) except as set forth in Section 2.6 of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries has commenced, settled or, to the knowledge of the Company, been named a party to any lawsuit, and neither the Company nor any of its Subsidiaries has received written notice of any threat of any lawsuit or proceeding or other investigation against the Company or any of its Subsidiaries or relating to any of their businesses, properties or assets;

(k) except as set forth in Section 2.6 of the Company Disclosure Schedule, there has not been any issuance, grant, delivery, sale or purchase, or contract or agreement to issue, grant, deliver, sell or purchase, by the Company or any of its Subsidiaries, any shares of Company Common Stock or securities convertible into, or exercisable or exchangeable for, shares of Company Common Stock, or any subscriptions, warrants, options, rights or securities to acquire any of the foregoing;

(l) except as set forth in Section 2.6 of the Company Disclosure Schedule, there has not been any grant by the Company or any of its Subsidiaries of any severance, change-in-control or termination pay (in cash or otherwise) to any employee, including any officer;

(m) to the knowledge of the Company, there has not been any material damage to, destruction or loss of any material asset of the Company or any of its Subsidiaries (whether or not covered by insurance);

(n) there has not been any revaluation by the Company or any of its Subsidiaries of any of its assets, including the writing off of any notes or accounts receivable other than in the ordinary course of business; and

(o) there has not been any authorization, commitment or agreement to take, any of the foregoing actions.

#### Section 2.7. Compliance with Law; Permits.

(a) The Company and each of its Subsidiaries are in compliance with and are not in default under or in violation of any applicable federal, state, local, municipal, foreign or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, rule, regulation, ruling, judgment, order, injunction, decree or agency requirement issued, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity (collectively, “Laws” and each, a “Law”), except where such non-compliance, default or violation would not be material to the Company and its Subsidiaries, taken as a whole. Notwithstanding anything contained in this Section 2.7, no representation or warranty shall be deemed to be made in this Section 2.7 in respect of the matters referenced in Section 2.4, Section 2.5 or Section 2.6 or in respect of environmental matters (which are addressed exclusively in Section 2.9), employee benefits matters (which are addressed exclusively in Section 2.10), labor matters (which are addressed exclusively in Section 2.11), tax matters (which are addressed exclusively in Section 2.13) or intellectual property matters (which are addressed exclusively in Section 2.14).

(b) The Company and its Subsidiaries are in possession of all franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals and orders of any Governmental Entity necessary for the Company and its Subsidiaries to own, lease and operate their properties and assets or to carry on their businesses as they are now being conducted (the “Company Permits”). The Company and each of its Subsidiaries are in compliance, in all material respects, with and are not in default under or in violation, in all material respects, of any Company Permit. All Company Permits are in full force and effect, except where the failure to be in full force and effect would not have, individually or in the aggregate, a Company Material Adverse Effect. No suspension or cancellation of any of the Company Permits is pending or, to the knowledge of the Company, threatened, except where such suspension or cancellation, individually or in the aggregate, would not have a Company Material Adverse Effect.

#### Section 2.8. Material Contracts.

(a) Except for this Agreement, the Company Benefit Plans or as filed with the SEC, Section 2.8(a) of the Company Disclosure Letter sets forth a correct and complete list of each contract (whether written or oral) to which the Company or any of its Subsidiaries is a party

or by which any of them is bound which (all contracts of the type described in this Section 2.8 being referred to herein as “Company Material Contracts”):

(i) contains outstanding obligations in excess of two hundred fifty thousand dollars (\$250,000) in any twelve (12)-month period or is otherwise material (as such term is defined in Item 601(b)(10) of Regulation S-K under the Securities Act) to the business of the Company and its Subsidiaries taken as a whole as currently conducted that cannot be terminated without penalty upon sixty (60) days’ prior written notice;

(ii) contains covenants limiting, in any material respect, the freedom of the Company or any of its Subsidiaries to engage in any line of business or to provide any products or services generally or in any market segment or in any geographic area, or to compete with any Person or restricting, in any material respect, the ability of the Company or any of its Subsidiaries to acquire equity securities of any Person;

(iii) provides that the Company or any of its Subsidiaries has (A) incurred, or may incur, any indebtedness for borrowed money or (B) given any guarantee in respect of indebtedness for borrowed money;

(iv) provides for a joint venture or partnership (without regard to legal form);

(v) is a standby letter of credit, performance or payment bond, or surety bond of any nature;

(vi) relates to an acquisition, divestiture, merger or similar transaction;

(vii) obligates the Company to make any capital commitment or expenditure (including pursuant to any joint venture) in excess of \$250,000;

(viii) is a contract with any Material Customer or Material Supplier;

(ix) is an agreement under which the Company or any Subsidiary of the Company (A) grants to a third party any licenses or covenants not to sue or (B) is granted by a third party any licenses or covenants not to sue, in each case with respect to any Intellectual Property material to the Company or its Subsidiaries;

(x) is a contract, agreement or commitment with any employee, individual consultant, contractor, or salesperson of the Company or any of its Subsidiaries that (a) provides for annual compensation in excess of \$50,000, (b) is not terminable at-will or (c) includes any obligation to provide severance benefits, termination pay (in cash, equity or otherwise), indemnification or advance notice of termination of the employment or consulting relationship;

(xi) is an agreement or plan, including any stock option plan, stock appreciation rights plan or stock purchase plan, any of the benefits of which will be increased, or the vesting of benefits of which will be accelerated, by the occurrence of any of the transactions

contemplated by this Agreement or the value of any of the benefits of which will be calculated on the basis of any of the transactions contemplated by this Agreement;

(xii) restricts or prohibits, in any material respect, the Company or any Subsidiary from hiring or soliciting for hire any individual to perform employment or consulting services for the Company or any of its Subsidiaries; and

(xiii) [provides for the settlement or release of any litigation or dispute involving the Company or any of its Subsidiaries.] [To be discussed.]

(b) Neither the Company nor any Subsidiary of the Company is in breach of or default under the terms of any Company Material Contract in any material respect. To the knowledge of the Company, no other party to any Company Material Contract is in breach of or default under the terms of any Company Material Contract in any material respect. Each Company Material Contract is a valid and binding obligation of the Company or the Subsidiary of the Company which is party thereto and, to the knowledge of the Company, of each other party thereto, and is in full force and effect, subject to the Bankruptcy and Equity Exception.

(c) The Company has filed with the SEC each contract required to be filed by the Company as a “material contract” pursuant to Item 601(b)(10) of Regulation S-K under the Securities Act or disclosed by the Company on a Current Report on Form 8-K.

#### Section 2.9. Environmental Laws and Regulations.

(a) Except as set forth on Section 2.9 of the Company Disclosure Schedule, (i) the Company and each of its Subsidiaries is in compliance, in all material respects, with all applicable Environmental Laws; (ii) the Company and each of its Subsidiaries possess and are in compliance, in all material respects, with all Company Permits required pursuant to Environmental Laws; (iii) none of the Company or any of its Subsidiaries has received any written claim or notice of violation from any Governmental Entity alleging that the Company or any of its Subsidiaries is in material violation of, or liable under, any Environmental Law that is otherwise unresolved; and (iv) there are no Actions pending (or, to the knowledge of the Company, threatened) against the Company or any of its Subsidiaries and there are no Orders of, or before, any Governmental Entity which are binding upon the Company or any of its Subsidiaries, in each case, relating to Environmental Laws, except, in each case, as would not be material to the Company and its Subsidiaries taken as a whole. This Section 2.9 sets forth the sole representation and warranty of the Company relating to environmental, health and safety matters, including those relating to Environmental Laws.

(b) As used herein, “Environmental Law” means any Law relating to (i) human health or safety as related to environmental protection or the protection or pollution of the environment (including air, water vapor, surface water, groundwater, drinking water supply, surface land or subsurface land) or (ii) the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of Hazardous Substances, in each case as in effect at the date of this Agreement.

(c) As used herein, “Hazardous Substance” means any substance, material or waste that is regulated, classified or otherwise characterized under, or pursuant to, an



Environmental Law as “hazardous,” “toxic,” a “pollutant,” a “contaminant” or a “regulated substance.”

Section 2.10. Employee Benefit Plans.

(a) Section 2.10(a) of the Company Disclosure Schedule sets forth a true and complete list of each “employee benefit plan” (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”)), and each employment, severance, consulting or similar contract, plan, arrangement or policy and each other material employee benefit, pension, profit-sharing, savings, deferred compensation, bonus, incentive stock option, and welfare plan and program, whether or not subject to ERISA, of the Company or its Subsidiaries or any person that, together with the Company or any of its Subsidiaries, is treated as a single employer under Section 414(b), (c), (m) or (o) of the Code (an “ERISA Affiliate”) for the benefit of current or former employees, directors, or consultants of the Company or any of its Subsidiaries (the “Company Benefit Plans”).

(b) The Company has made available to Parent true and complete copies of each of the Company Benefit Plans and related documents, including (i) each writing constituting a part of such Company Benefit Plan (or in the case of an unwritten Company Benefit Plan, a written description thereof), including all amendments thereto and trust documents (if applicable); (ii) the three most recent Annual Reports (Form 5500 Series) and accompanying schedules, if any; and (iii) the most recent determination letter from the IRS (if applicable) for such Company Benefit Plan. Each of the Company Benefit Plans that is intended to be qualified under Section 401(a) of the Code and each trust established in connection with any such Company Benefit Plan that is intended to be exempt from federal income taxation under Section 501(a) of the Code has received a favorable determination letter from the Internal Revenue Service (the “IRS”) and the Company is not aware of any reason why any such determination letter should be revoked or not be reissued.

(c) (i) Each of the Company Benefit Plans has been operated and administered in all material respects in accordance with its terms and the requirements of applicable Laws, including ERISA and the Code, (ii) no “prohibited transaction” within the meaning of Section 4975 of the Code or Sections 406 or 407 of ERISA and not otherwise exempt under Section 408 of ERISA that would result in material liability has occurred with respect to any Company Benefit Plan, (iii) there are no actions pending, or, to the knowledge of the Company, threatened or anticipated (other than routine claims for benefits in the ordinary course) by, on behalf of or against any of the Company Benefit Plans which could reasonably be expected to result in any material liability to the Company or any of its Subsidiaries and (iv) no administrative investigation, audit or other administrative proceeding by any Governmental Entity with respect to a Company Benefit Plan is pending, in progress, or, to the knowledge of the Company, threatened with respect to any Company Benefit Plan. In all material respects, all contributions (including all employer contributions and employee salary reduction contributions) required to have been made under any Company Benefit Plan to any funds or trusts established thereunder or in connection therewith have been timely made by the due date thereof.

(d) Neither the Company, any of its Subsidiaries or any ERISA Affiliate has, at any time within the last six years, maintained, contributed to, or had any obligation to

contribute to, or has any liability (fixed or contingent) with respect to, any plan described in Section 413 of the Code, subject to Section 302 or Title IV of ERISA or to the funding requirements of Section 412 of the Code including any plan which constituted a “multiemployer plan” as defined in Section 3(37) or 4001(a)(3) of ERISA or a plan maintained in connection with any trust described in Section 501(c)(9) of the Code.

(e) Except as set forth on Section 2.10(e) of the Company Disclosure Schedule, the consummation of the transactions contemplated by this Agreement will not, alone or in combination with another event, (i) entitle any current or former employee, consultant, director, or officer of the Company or any of its Subsidiaries to severance pay, unemployment compensation or any other payment, except as expressly provided in this Agreement or under applicable Law, (ii) accelerate the time or payment of vesting, or increase the amount of compensation due any such employee, consultant, director or officer or result in any payment or funding of compensation or benefits under any of the Company Benefit Plans, except as expressly provided in this Agreement, or (iii) give rise to the payment of any amount that would not be deductible pursuant to Section 280G or Section 162(m) of the Code.

(f) Except as disclosed in Schedule 2.10(f) of the Company Disclosure Schedule, each Company Benefit Plan that is a “nonqualified deferred compensation plan” (as defined for purposes of Section 409A(d)(1) of the Code) has been operated since January 1, 2005 in good faith compliance with Section 409A of the Code and all applicable IRS guidance promulgated thereunder.

#### Section 2.11. Labor Matters.

(a) Neither the Company nor any of its Subsidiaries is a party to, or bound by, any collective bargaining agreement, contract or other agreement or understanding with a labor union or labor organization. There are no labor unions or other or other organizations that have filed a petition with the National Labor Relations Board or any other government entity since January 1, 2005 seeking certification as the collective bargaining representative of any employee of the Company or any of its Subsidiaries. Since January 1, 2005, there has not been, and there is not pending or, to the knowledge of the Company, threatened, any (i) strike, lockout, slowdown, picketing or work stoppage with respect to any current or former employee of the Company or any Subsidiary or (ii) unfair labor practice charge, grievance or complaint filed or pending against the Company or any of the Subsidiaries. To the knowledge of the Company, there are no organizational efforts with respect to the formation of a collective bargaining unit presently being made or threatened involving employees of the Company or any of its Subsidiaries.

(b) Section 2.11(b) of the Company Disclosure Schedule contains a true and correct list of each employee of the Company and its Subsidiaries (the “Business Employees”) and, for each such Business Employee, Section 2.11(b) of the Company Disclosure Schedule identifies the following information: (i) employer; (ii) job title; (iii) job location; (iv) date of hire; (v) amount of current base salary or hourly rate of pay (as applicable); (vi) target incentive compensation for 2007 (commission and/or bonus, as applicable); (vii) total compensation received in 2006; (viii) any other special compensation or perquisites (e.g. automobile allowance); (ix) status as exempt or non-exempt from applicable overtime Laws; (x) accrued but

unused vacation or paid time off; and (xi) whether such person is on a leave of absence and, if so, the type of leave of absence and the expected date of return from such leave of absence.

(c) There are no claims pending or, to the knowledge of the Company, threatened before any Governmental Entity or arbitral forum against the Company or any of its Subsidiaries asserting any breach of contract, tort, or violation of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Equal Pay Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the Fair Labor Standards Act, ERISA or any other similar federal, state or local employment Law.

(d) Since January 1, 2005, neither the Company nor any of its Subsidiaries has effectuated (i) a “plant closing” (as defined in the Worker Adjustment and Retraining Notification Act (the “WARN Act”) (or any similar state, local or foreign law)) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of the Company or any Subsidiary or (ii) a “mass layoff” (as defined in the WARN Act (or any similar state, local or foreign law)) affecting any site of employment or facility of the Company or any of the Subsidiaries.

(e) Except as set forth in Section 2.11(e) of the Company Disclosure Schedule, since January 1, 2005, the Company and each of the Subsidiaries has complied in all material respects with all Laws relating to the hiring of employees and the employment of labor, including provisions thereof relating to the calculation and payment of wages, hours, classification as exempt or non-exempt from applicable minimum wage and overtime Laws, equal opportunity, employment discrimination, harassment, and retaliation, disability rights or benefits, employee leave issues, immigration, occupational safety and health, collective bargaining and the payment of social security and other Taxes.

(f) In all material respects, the Company and each of the Subsidiaries currently, and since January 1, 2005, has completed and maintain in its files Form I-9s with respect to each of its employees. Since January 1, 2005, neither the Company nor any of its Subsidiaries has received any notice from any Governmental Entity that any of its employees has a name or social security number that does not match the name or social security number maintained by any Governmental Entity.

(g) The Company and each of the Subsidiaries has no material liability for (i) any arrears of wages, severance pay or any penalty relating thereto for failure to comply with withholding and reporting all material amounts required by applicable Law or by agreement to be withheld and reported with respect to wages, salaries and other payments or (ii) with respect to any misclassification of any person as (A) an independent contractor rather than as an employee or (B) an employee exempt from state or federal minimum wage or overtime Laws.

(h) Except as set forth in Section 2.11(h) of the Company Disclosure Schedule, neither the Company nor any Subsidiary is a party to any contract, agreement, or arrangement with any employee or independent contractor receiving in excess of \$50,000 of annual compensation from the Company or any Subsidiary that (i) restricts the right of the Company or any Subsidiary to terminate such person’s employment or consulting relationship without cause or without a specified notice period, or (ii) obligates the Company or any

Subsidiary to pay severance equivalent to more than two weeks' of such person's base compensation or to provide vesting acceleration on shares, stock options, or other securities of the Company or any Subsidiary upon either a termination of such person's employment or consulting relationship with the Company or any Subsidiary, or upon a change in control of the Company or any Subsidiary.

(i) To the knowledge of the Company, no officer, key employee, or group of employees of the Company or any Subsidiary has as of the date hereof given notice or indicated any intent to terminate their employment before the Closing Date or as a result of the transactions contemplated by this Agreement.

Section 2.12. Investigations; Litigation. Except as set disclosed on Section 2.12 of the Company Disclosure Schedule, as of the date of this Agreement, (a) to the knowledge of the Company, there is no investigation, inquiry or review pending or threatened by any Governmental Entity with respect to the Company or any of its Subsidiaries and (b) there are no material Actions pending (or, to the knowledge of the Company, threatened) against or affecting the Company or any of its Subsidiaries, or any of their respective properties, at law or in equity before, and there are no Orders of, or before, any Governmental Entity.

Section 2.13. Tax Matters.

(a) Except as disclosed on Section 2.13 of the Company Disclosure Schedule, (i) the Company and each of its Subsidiaries have prepared and timely filed (taking into account any extension of time within which to file) all income Tax Returns and other material Tax Returns required to be filed by any of them as of the date of this Agreement and all such tax returns are true, correct and complete in all material respects, (ii) the Company and each of its Subsidiaries have paid all Taxes required to be paid by it (whether or not shown on any Tax Return), except Taxes which have not yet accrued or otherwise become due or that are being contested in good faith by appropriate proceedings, (iii) as of the date of this Agreement there are not pending or, threatened in writing, any audits, examinations, investigations, claims, disputes, actions or other proceedings in respect of Taxes against the Company or any of its Subsidiaries and since January 1, 2005 no claim for the assessment or collection of any Taxes has been asserted in writing against the Company or any of its Subsidiaries that has not been settled with all amounts due having been paid, (iv) neither the Company nor any of the Subsidiaries are presently the beneficiary of any extension of time within which to file any Tax Return, (v) no written claim, or written notice of claim, has been made since January 1, 2005, by an authority in a jurisdiction where the Company or any of the Subsidiaries do not file Tax Returns, that the Company or any of the Subsidiaries is or may be subject to taxation by that jurisdiction, (vi) there are no liens for Taxes (other than Permitted Liens) upon any of the assets of the Company or any of the Subsidiaries, (vii) the Company and each of the Subsidiaries have delivered to Parent true, correct and complete copies of all Tax Returns, ruling requests, private letter rulings, closing agreements, settlement agreements, tax opinions, examination reports and statements of deficiencies filed or received since January 1, 2005 (viii) neither the Company nor any of the Subsidiaries have waived any statute of limitations in respect of material Taxes or agreed to any extension of time with respect to any material Tax payment, assessment, deficiency or collection, (ix) since January 1, 2005, neither the Company nor any of the Subsidiaries has been a member of an affiliated group of corporations within the meaning of

Section 1504(a) of the Code filing a consolidated federal income Tax Return nor does the Company or any of the Subsidiaries have any liability for Taxes of any other Person under Treasury Regulations § 1.1502-6 (or any similar provision of foreign, state or local Law), other than the consolidated group of which the Company is currently the parent corporation, (x) the Company has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code, (xi) neither the Company nor any of the Subsidiaries is a party to any Tax allocation, indemnity or sharing arrangement (other than agreements among the Company and any of its Subsidiaries and other than customary Tax indemnifications contained in credit or other commercial agreements the primary purpose of which does not relate to Taxes), (xii) the Company and each of the Subsidiaries has disclosed to the IRS all positions taken on their federal income Tax Returns which could give rise to a substantial understatement of Tax under Section 6662 of the Code and the Company and each of the Subsidiaries have not engaged in any transaction that could give rise to a disclosure obligation as a “listed transaction” under Section 6011 of the Code and Treasury Regulations promulgated thereunder during the three (3) year period ending on the date hereof, (xiii) neither the Company nor any of the Subsidiaries has any material income or gain reportable for a taxable period ending after the Closing Date but attributable to (A) a transaction occurring in, or (B) a change in accounting method made for, a taxable period beginning prior to the Closing Date which resulted in a deferred reporting of material income or gain from such transactions, a timing difference in the reporting of material income or gain between Tax and GAAP accounting methods or from such change in accounting method, (xiv) neither the Company nor any of the Subsidiaries has distributed stock of another entity, and have not had its stock distributed by another entity, in a transaction that was purported or intended to be governed in whole or in part by Section 355 or 361 of the Code, (xv) neither the Company nor any of the Subsidiaries are currently subject to a limitation pursuant to Section 382 or 383 of the Code or similar provisions of state, local or foreign law, other than with respect to the “ownership change” (within the meaning of Section 382 of the Code or a similar concept under the relevant state, local or foreign law) which occurred in 1997, and (xvi) to the knowledge of the Company, nothing has come to its attention that would cause it to believe that the representations set forth in sections 2.13(a)(iii), 2.13(a)(v), 2.13(a)(ix) and 2.13(a)(xii) are inaccurate in any material respect for taxable periods ended on or prior to December 31, 2004.

(b) As used in this Agreement, (i) “Tax” or “Taxes” means (A) any and all United States or foreign, federal, state, local or other taxes of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any Governmental Entity, including taxes on or with respect to income, franchises, windfall or other profits, gross receipts, property, sales, use, escheat, capital stock, payroll, employment, unemployment, social security, workers’ compensation or net worth, and taxes in the nature of excise, withholding, ad valorem or value added, whether disputed or not and including any obligations to indemnify or otherwise assume or succeed to the tax liability of any other person and (B) any liability for the payment of any amount of the type described in the immediately preceding clause (A) as a result of (1) being a “transferee” of another person, (2) being a member of an affiliated, combined, consolidated or unitary group, or (3) any contractual liability and (ii) “Tax Return” means any return, report or similar filing (including the attached schedules) required to be filed with respect to Taxes, including any information return or declaration of estimated Taxes. It is agreed and understood that no representation or warranty is made in respect of Tax matters in any Section of this Agreement other than this Section 2.13.

Section 2.14. Intellectual Property.

(a) Section 2.14(a) of the Company Disclosure Schedule contains a list of all of the following that are owned by either the Company or a Subsidiary of the Company: (i) registered trademarks and applications for registration of trademarks; (ii) issued patents and pending patent applications; (iii) registered copyrights and (iv) Internet domain names, in each case in U.S. and foreign jurisdictions (collectively, "Company Registered Intellectual Property"). Section 2.14(a) of the Company Disclosure Schedule also contains a list of any (y) proceedings or actions pending as of the date of this Agreement before any court, arbitrator or mediator, and (z) any adversarial proceedings in the United States Patent and Trademark Office (including inter partes proceedings) related to any of the Company Registered Intellectual Property.

(b) Either the Company or a Subsidiary of the Company owns, or is licensed or otherwise possesses legally enforceable rights to use, all Intellectual Property used in their respective businesses as currently conducted (collectively, the "Company Intellectual Property").

(c) Except as set forth on Section 2.14(c) of the Company Disclosure Schedule, the Company has not received written notice of any pending claims and, to the knowledge of the Company, there are no threatened claims by any person alleging infringement by the Company or any of its Subsidiaries of any third-party Intellectual Property.

(d) Except as set forth on Section 2.14(d) of the Company Disclosure Schedule, the conduct of the business of the Company and its Subsidiaries as currently conducted does not infringe, and the conduct of the business of the Company and its Subsidiaries has not at any time since January 1, 2005 infringed, any Intellectual Property of any person.

(e) Except as set forth on Section 2.14(e) of the Company Disclosure Schedule, neither the Company, its Subsidiaries, nor any of its or their employees or representatives has received from any Person any (i) written notice claiming that any operation, act, product, technology or service of the Company or its Subsidiaries (including products, technologies and services currently under development) infringes or misappropriates the Intellectual Property of any Person or constitutes unfair competition or trade practices under any Law or (ii) written notice of third party patent or other Intellectual Property rights from a putative or potential licensor of such rights.

(f) To the knowledge of the Company, no person is infringing any Company Intellectual Property.

(g) The Company and its Subsidiaries have taken commercially reasonable steps (i) to protect and preserve ownership of all Company Intellectual Property that is owned or purported to be owned by the Company or any of its Subsidiaries and (ii) to protect their rights in confidential information and trade secrets of the Company. Without limiting the generality of the foregoing, the Company and its Subsidiaries have, and enforce, a policy requiring each employee, consultant and independent contractor of the Company and its Subsidiaries (including all consultants and employees who contributed to the creation or development of the Company Intellectual Property) to execute proprietary information, confidentiality and invention and copyright assignment agreements in a form set forth in Section 2.14(g) of the Company

Disclosure Schedule, and all current and former employees, consultants and independent contractors of the Company and its Subsidiaries have executed such an agreement.

(h) As used herein “Intellectual Property” means all (i) patents and patent applications, together with reissues, continuations, continuations-in-part, revisions, divisionals, extensions and reexaminations thereof, (ii) trademarks, service marks, trade dress, logos, trade names and Internet domain names, and applications, registrations, and renewals in connection therewith, and all goodwill associated therewith, (iii) copyrightable works, copyright registrations and applications for registration thereof and renewals thereof), (iv) trade secrets, know-how, improvements and inventions, and (v) computer software (including source code, data, databases and related documentation).

Section 2.15. Real Property. Except as set forth in Section 2.15 of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries owns or has owned any real property since March 1, 2005. Section 2.15 of the Company Disclosure Schedule contains a complete and accurate list as of the date of this Agreement of all leases, subleases or other similar arrangements pursuant to which the Company or any of its Subsidiaries leases any interest in real property (the “Leases”). True, correct and complete copies of the Leases have been provided to Parent prior to the date of this Agreement. The Company or a Subsidiary of the Company has valid leasehold interests in all of its leased properties, free and clear of all Liens (except for Permitted Liens and all other title exceptions, defects, encumbrances and other matters, whether or not of record, which do not materially affect the continued use of the property for the purposes for which the property is currently being used by the Company or a Subsidiary of the Company as of the date of this Agreement). The Leases constitute the valid and binding obligations of the Company or its Subsidiaries, as applicable, as tenants, enforceable in accordance with their terms, subject to the Bankruptcy and Equity Exception. To the knowledge of the Company, no condemnation or similar proceeding has been commenced or threatened against the real property subject to the Leases. To the knowledge of the Company, none of the real property subject to the Leases has been materially damaged or destroyed, and the real property subject to the Leases, together with all fixtures and improvements thereon, are in good working order and condition. The Company and its Subsidiaries that are the applicable tenants under the Leases (i) are not in material breach under Leases to which they are parties, and to their knowledge, the landlords are not in material breach under the Leases to which they are parties, (ii) have not prepaid any rents or other amounts payable under the Leases more than 30 days in advance, and have not paid any security deposits and (iii) have obtained all necessary material certificates, permits, licenses and other approvals, governmental and otherwise, necessary for the use, occupancy and operation of the leased premises and the conduct of their business (including certificates of completion and certificates of occupancy) and all required zoning, building code, land use and other similar permits or approvals, all of which are in full force and effect as of the date of this Agreement and not subject to revocation, suspension, forfeiture or modification.

Section 2.16. Assets; Personal Property. The Company or a Subsidiary of the Company is in possession of and has good title to, or valid leasehold interests in or valid rights under contract to use, such machinery, equipment, furniture, fixtures and other tangible personal property and assets owned, leased or used by the Company or its Subsidiaries that are material to the Company or its Subsidiaries, free and clear of all Liens other than Permitted Liens.

Section 2.17. Customers and Suppliers. Section 2.17 of the Company Disclosure Schedule sets forth a list of names of (i) the twenty largest customers of the Company in terms of sales for the calendar year ended December 31, 2007 (each, a “Material Customer”) and (ii) the ten largest suppliers of the Company in terms of purchases for the calendar year ended December 31, 2007 (each, a “Material Supplier”) and includes the net sales or purchases by the Company attributable to each such customer or supplier for such period. To the knowledge of the Company, no Material Customer or Material Supplier intends or expects to (x) cease doing business with the Company, (y) materially decrease the amount of business it does with the Company or (z) materially and adversely modify the nature and type of the business it does with the Company.

Section 2.18. Key Salespersons. Section 2.18 of the Company Disclosure Schedule sets forth a list of names of (a) the top [●] salespersons of the Company and its Subsidiaries (determined by sales volume for 2007) in the imaging business and (b) the top [●] salespersons of the Company and its Subsidiaries (determined by sales volume for 2007) in the prototype business (collectively, “Key Salespersons”), together with the sales generated by each Key Salesperson for the year ended December 31, 2007. To the knowledge of the Company, no Key Salesperson intends or expects to cease working for the Company.

Section 2.19. Information in Proxy Statement. None of the information contained or incorporated by reference in the Proxy Statement as of the date it is first mailed to holders of Company Common Stock, and at the time of the Company Meeting, or in any amendment or supplement thereto, as of the date it is filed with the SEC, will contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading, except that no representation is made by the Company with respect to statements made therein based on information supplied in writing by Parent or Merger Sub for inclusion or incorporation by reference in the Proxy Statement. The Proxy Statement will comply as to form in all material respects with the Exchange Act.

Section 2.20. Insurance. Section 2.20 of the Company Disclosure Schedule lists all of the Company’s and its Subsidiaries’ material insurance policies relating to the assets, business, officers or directors of the Company and its Subsidiaries. All fire and casualty, general liability, business interruption, product liability, sprinkler and water damage insurance policies and other forms of insurance maintained by Company or any of its Subsidiaries are, in all material respects, in character and amount and with such deductibles and retained amounts as are generally carried by persons engaged in similar businesses and subject to the same or similar perils or hazards. Since March 1, 2005, to the knowledge of the Company, the Company has maintained such policies and other forms of insurance continuously and without interruption. There is no material claim pending under any of such policies as to which, to the knowledge of the Company, coverage has been questioned, denied or disputed by the underwriters of such policies or in respect of which, to the knowledge of the Company, such underwriters have reserved their rights. All premiums due and payable under all such policies have been paid and, to the knowledge of the Company, as of the date hereof, except as set forth on Section 2.20 of the Company Disclosure Schedule, there are no unresolved audits or investigations by any carrier with respect to the amount of premiums due under any policy. The Company is in compliance in



all material respects with the terms of such policies. The Company has no knowledge of any threatened termination of, or material premium increase with respect to, any of such policies.

Section 2.21. Required Vote of the Company Stockholders. Except as set forth on Section 2.21 of the Company Disclosure Schedule, subject to the accuracy of the representations and warranties of Parent and Merger Sub contained in Article III hereof, the affirmative vote of the holders of a majority of the outstanding shares of Company Common Stock on the record date of the Company Meeting, voting together as a single class, to adopt this Agreement and the Merger is the only vote of holders of securities of the Company necessary to approve this Agreement and the Merger (the “Company Stockholder Approval”).

Section 2.22. Affiliate Transactions. Except for the Support Agreement and any employment, severance, retention or similar agreements disclosed in Section 2.8 of the Company Disclosure Schedule, there are no transactions, agreements, arrangements or understandings between (i) the Company or any of its Subsidiaries, on the one hand, and (ii) any director, officer, employee, stockholder or affiliate of the Company or any of its Subsidiaries, on the other hand.

Section 2.23. Finders or Brokers. Except for \_\_\_\_\_, neither the Company nor any of its Subsidiaries has employed any investment banker, broker or finder in connection with the transactions contemplated by this Agreement who is entitled to any fee or any commission in connection with the Merger and the other transactions contemplated by this Agreement.

Section 2.24. State Anti-Takeover Statutes. The Company Board has taken all necessary actions so that the restrictions on business combinations set forth in Section 203 of the DGCL, any other similar applicable Law, or in the Company Charter or Company Bylaws, are not applicable to this Agreement and the transactions contemplated hereby, including the Merger. No other “moratorium,” “control share acquisition,” “business combination,” “fair price” or other form of anti-takeover Law or regulation of any jurisdiction is, or at the Effective Time will be, applicable to the Company, the execution and delivery of this Agreement, the Support Agreement, the Merger or the other transactions contemplated by this Agreement or the Support Agreement.

Section 2.25. No Additional Representations. Other than representations or warranties made in this Article II, the Company makes no other representations or warranties with respect to the transactions contemplated by this Agreement. The representations and warranties set forth in this Article II are made solely by the Company, and no representative of the Company or any Affiliate thereof shall have any responsibility or liability related thereto.

### **ARTICLE III**

#### **REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB**

Parent and Merger Sub represent and warrant to the Company as follows:

## SAMPLE SMALL PRIVATE COMPANY STOCK PURCHASE AGREEMENT

STOCK PURCHASE AGREEMENT, dated as of July 31, 2008 (this "Agreement"), by and between Seller I ("Seller I") and John Seller II ("Seller II") and Scott Seller III ("Seller III") (collectively referred to as the "Sellers"), and Acquiror Inc., a California corporation ("Purchaser").

### RECITALS

WHEREAS, Sellers are the owners of all of the issued and outstanding shares of capital stock (the "Shares") of Holdings, Inc., a California corporation (the "Company").

WHEREAS, Purchaser desires to acquire the Shares from Sellers and Sellers desire to Purchase the Shares from Sellers on the terms and conditions set forth below.

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound hereby, agree as follows:

**"Accounts Receivable"** has the meaning ascribed to such term in the Agreement.

**"Adjusted Working Capital"** has the meaning ascribed in this Agreement.

**"Agreement"** means this Stock Purchase Agreement as originally executed, including the Schedules and Exhibits attached to this Stock Purchase Agreement.

**"Annual Budgets"** has the meaning ascribed to such term in the Agreement.

**"Applicable Contract"** means any Contract (a) under which the Company has or may acquire any rights, (b) under which the Company has or may become subject to any Liability, or (c) by which the Company or any of the assets owned or used by it is or may become bound.

**"Auditors"** has the meaning ascribed to such term in the Agreement.

**"Breach"** means, with respect to any representation, warranty, covenant, obligation, or other provision of this Agreement or any instrument delivered pursuant to this Agreement, (a) any inaccuracy in or breach of, or any failure to perform or comply with, such representation, warranty, covenant, obligation, or other provision, or (b) any claim (by any Person) or other occurrence or circumstance that is or was inconsistent with such representation, warranty, covenant, obligation, or other provision.

**"Closing"** has the meaning ascribed to such term in the Agreement.

**"Closing Date"** has the meaning ascribed to such term in the Agreement.

**“Closing Documents”** means this Agreement, the Non Competition Agreement and the Employment Agreements.

**“Closing Payment”** has the meaning ascribed to such term in the Agreement.

**“Closing Statements”** has the meaning ascribed to such term in the Agreement.

**“Code”** means the Internal Revenue Code of 1986 or any successor law, and regulations issued by the IRS (or any successor agency), and, to the extent relevant, the US Department of the Treasury.

**“Company”** means Seller I Brown Holdings, Inc. d/b/a Seller I & Partners, a California corporation.

**“Company Plan”** means all Plans of which the Company is or was a Plan Sponsor, or to which the Company otherwise contributes or has contributed, or in which the Company otherwise participates or has participated.

**“Consent”** means any approval, consent, ratification, waiver, or other authorization (including any Governmental Authorization).

**“Contract”** means any contract, agreement, obligation, promise, undertaking, indenture, note, bond, loan, instrument, lease, conditional sales contract, mortgage, license, franchise, insurance policy, commitment or other arrangement or agreement (whether written or oral and whether express or implied) that is legally binding.

**“Copyrights”** means all copyrights in both published works and unpublished works owned, used, or licensed by the Company as licensee or licensor.

**“CPA Firm”** has the meaning ascribed to such term in the Agreement.

**“Damages”** means any loss, liability, claim, damage (including incidental and consequential damages), fine, penalty, expense (including costs of investigation and defense and reasonable attorneys’ fees) or diminution of value, whether or not involving a third-party claim.

**“Earnings Before Tax”** means Company gross revenues minus expenses (excluding Tax).

**“Earnings Before Tax Margin”** shall mean the Earnings Before Tax divided by the gross revenue.

**“Earnout”** has the meaning ascribed to such term in the Agreement.

**“Earnout Period”** has the meaning ascribed to such term in the Agreement.

**“Effective Date”** has the meaning ascribed to such term in the Agreement.

**“Employment Agreements”** has the meaning ascribed to such term in the Agreement.

**“Encumbrance”** means any charge, claim, community property interest, condition, equitable interest, lien, option, pledge, security interest, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership.

**“Environment”** means soil, land surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins, and wetlands), groundwaters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life, and any other environmental medium or natural resource.

**“Environmental, Health, and Safety Liabilities”** means any cost, damages, expense, liability, obligation, or other responsibility arising from or under Environmental Law or Occupational Safety and Health Law.

**“Environmental Law”** means any Legal Requirement that requires or relates to (a) advising appropriate authorities, employees, and the public of intended or actual releases of pollutants or hazardous substances or materials, violations of discharge limits, or other prohibitions and of the commencements of activities, such as resource extraction or construction, that could have significant impact on the Environment, (b) preventing or reducing to acceptable levels the release of pollutants or hazardous substances or materials into the Environment, (c) reducing the quantities, preventing the release, or minimizing the hazardous characteristics of wastes that are generated, (d) assuring that products and services are designed, formulated, packaged, and used so that they do not present unreasonable risks to human health or the Environment when used or disposed of, (e) reducing to acceptable levels the risks inherent in the transportation of hazardous substances, pollutants, oil, or other potentially harmful substances

**“ERISA”** means the Employee Retirement Income Security Act of 1974 or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

**“Estimated Working Capital”** has the meaning ascribed in this Agreement.

**“Facilities”** means any real property, leaseholds, or other interests currently or formerly owned, occupied, or operated by the Company (or any predecessor Person) and any buildings, plants, structures, or equipment (including motor vehicles, tank cars, and rolling stock) currently or formerly owned, occupied, or operated by the Company.

**“Final Working Capital”** has the meaning ascribed in this Agreement.

**“GAAP”** means US generally accepted accounting principles applied on a consistent basis.

**“Governmental Authorization”** means any approval, consent, license, permit, waiver, or other authorization issued, granted, given, or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

**“Governmental Body”** means any (a) nation or government, state, county, city, town, village, district, or other jurisdiction of any nature, (b) federal, state, local, municipal, foreign, or other government, (c) governmental or quasi-governmental authority of any nature (including

any governmental agency, branch, department, official, or entity and any court or other tribunal), (d) multi-national organization or body, or (e) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature.

**“Hazardous Activity”** means the distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, Release, storage, transfer, transportation, treatment, or use (including any withdrawal or other use of groundwater) of Hazardous Materials in, on, under, about, or from the Facilities or any part thereof into the Environment.

**“Hazardous Materials”** means any waste or other substance that is listed, defined, designated, or classified as, or otherwise determined to be, hazardous, radioactive, or toxic or a pollutant or a contaminant under or pursuant to any Environmental Law.

**“Incorporation Date”** has the meaning ascribed to such term in the Agreement.

**“Indemnified Party”** has the meaning ascribed to such term in the Agreement.

**“Indemnifying Party”** has the meaning ascribed to such term in the Agreement.

**“Insolvent”** means, for any Person, that the sum of the present fair saleable value of its assets does not and will not exceed its debts and other probable liabilities.

**“Intellectual Property Assets”** means the Patents, the Marks, the Copyrights and the Trade Secrets.

**“Interim Balance Sheet”** has the meaning ascribed to such term in the Agreement.

**“Interim Financial Statements”** has the meaning ascribed to such term in the Agreement.

**“IRS”** means the US Internal Revenue Service.

**“Knowledge”** means, (a) in the case of an individual, if (i) such individual is actually aware of a particular fact or other matter, or (ii) a prudent individual could be expected to discover or otherwise become aware of such fact or other matter in the course of conducting a reasonably comprehensive investigation concerning the existence of such fact or other matter, and (b) in the case of a Person other than an individual, if (i) any individual who is serving or who has ever served as a director, officer, partner, executor, or trustee of such Person (or in any similar capacity) is actually aware of a particular fact or other matter, or (ii) a prudent individual serving in any such position could be expected to discover or otherwise become aware of such fact or other matter in the course of conducting a reasonably comprehensive investigation concerning the existence of such fact or other matter.

**“Legal Requirement”** means any federal, state, local, municipal, foreign, international, multinational, or other administrative order, constitution, law, ordinance, principle of common law, regulation, statute, or treaty.

**“Liability”** means any liability or obligation of any kind or nature which relates to payment, performance or otherwise (whether known or unknown, absolute, accrued, contingent, fixed, matured or unmatured, unaccrued, unliquidated, unasserted, conditional, secondary, potential or otherwise), whether at the present, future or otherwise.

**“Marks”** means the name of the Company, both by itself and in connection with any other word, symbol, mark or phrase, and all fictional business names, trading names, logos, registered and unregistered trademarks, service marks and applications owned, used, or licensed by the Company as licensee or licensor.

**“Multi-Employer Plan”** has the meaning ascribed to such term in ERISA § 3(37)(A).

**“Net Working Capital”** shall be defined as the Company’s current assets minus its current liabilities, in each case calculated in accordance with GAAP.

**“Non Competition Agreement”** has the meaning ascribed to such term in the Agreement.

**“Objection Notice”** has the meaning ascribed to such term in the Agreement.

**“Objection Period”** has the meaning ascribed to such term in the Agreement.

**“Occupational Safety and Health Law”** means any Legal Requirement designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, and any program, whether governmental or private (including those promulgated or sponsored by industry associations and insurance companies), designed to provide safe and healthful working conditions.

**“Order”** means any award, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any court, administrative agency, or other Governmental Body or by any arbitrator.

**“Ordinary Course of Business”** means any action taken by a Person, but only if: (a) such action is consistent with the past practices of such Person and is taken in the ordinary course of the normal day-to-day operations of such Person; (b) such action is not required to be authorized by the board of directors of such Person.

**“Organizational Documents”** means (a) the articles or certificate of incorporation and the bylaws of a corporation, (b) the partnership agreement and any statement of partnership of a general partnership, (c) the limited partnership agreement and the certificate of limited partnership of a limited partnership, (d) any charter or similar document adopted or filed in connection with the creation, formation, or organization of a Person, and (e) any amendment to any of the foregoing.

**“Other Benefit Obligations”** means all Company obligations, arrangements, or customary practices, whether or not legally enforceable, to provide benefits, other than salary, as compensation for services rendered, to present or former directors, employees, or agents, other than obligations, arrangements, and practices that are Plans. Other Benefit Obligations include

consulting agreements under which the compensation paid does not depend upon the amount of service rendered, sabbatical policies, severance payment policies, and fringe benefits within the meaning of Section 132 of the Code.

**“Patents”** means all patents, patent applications, and inventions and discoveries that maybe patentable owned, used, or licensed by the Company as licensee or licensor.

**“Pension Plan”** has the meaning ascribed to such term in ERISA § 3(2)(A).

**“Person”** means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or Governmental Body.

**“Plan”** has the meaning ascribed to such term in ERISA § 3(3).

**“Plan Sponsor”** has the meaning ascribed to such term in ERISA § 3(16)(B).

**“Proceeding”** means any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative, investigative, or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

**“Professional Fee Revenue”** means fees charged to clients of the Company for public relations services (together with markups directly related to such fees) which are directly attributable to work performed by Company employees only. All other costs or fees charged by the Company shall be excluded, including but not limited to such Company expenses or third party expenses of the Company (and related markup) which are charged to the client.

**“Proprietary Rights Agreement”** means any agreement or arrangement, including any confidentiality, noncompetition, or proprietary rights agreement, between an employee or director of the Company and any other Person.

**“Purchase Price”** has the meaning ascribed to such term in the Agreement.

**“Qualified Plan”** means any Plan that meets or purports to meet the requirements of Section 401(a) of the Code.

**“Related Person”** means (a) with respect to a particular individual:(i) each other member of such individual’s family; (ii) any Person that is directly or indirectly controlled by such individual or one or more members of such individual’s family; (iii) any Person in which such individual or members of such individual’s family hold (individually or in the aggregate) a material interest; and (iv) any Person with respect to which such individual or one or more members of such individual’s family serves as a director, officer, partner, executor, or trustee (or in a similar capacity).

**“Release”** means any spilling, leaking, emitting, discharging, depositing, escaping, leaching, dumping, or other releasing into the Environment, whether intentional or unintentional.

**“Representative”** means, with respect to a particular Person, any director, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants, and financial advisors.

**“Securities Act”** means the Securities Act of 1933, as amended, or any successor law, and the regulations and rules issued pursuant to such Act or any successor law.

**“Sellers”** has the meaning ascribed to such term in the Agreement.

**“Share Certificates”** means share certificate nos. \_\_\_\_, \_\_\_\_, and \_\_\_\_ of the Company.

**“Software”** has the meaning ascribed to such term in the Agreement.

**“Subsidiary”** means with respect to any Person, any corporation or other Person of which securities or other interests having the power to elect a majority of that corporation’s or other Person’s board of directors or similar governing body, or otherwise having the power to direct the business and policies of that corporation or other Person are held by the owner or one or more of its Subsidiaries.

**“Tax”** means any tax, levy, assessment, tariff, duty (including any customs duty), deficiency, or other fee, and any related charge or amount (including any fine, penalty, interest, or addition to tax), imposed, assessed, or collected by or under the authority of any Governmental Body or payable pursuant to any tax-sharing agreement of any other Contract relating to the sharing or payment of any such tax, levy, assessment, tariff, duty, deficiency, or fee.

**“Tax Return”** means any return (including any information return), report, statement, schedule, notice, form, or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection, or payment of any Tax or in connection with the administration, implementation, or enforcement of or compliance with any Legal Requirement relating to any Tax.

**“Third Party Software”** has the meaning ascribed to such term in the Agreement.

**“Threatened”** means if any demand or statement has been made (orally or in writing) or any notice has been given (orally or in writing), or if any other event has occurred or any other circumstances exist, that would lead a prudent Person to conclude that a claim, Proceeding, dispute, action, or other matter is likely to be asserted, commenced, taken, or otherwise pursued in the future.

**“Title IV Plan”** means all Pension Plans that are subject to Title N of ERISA, 29 U.S.C. § 1301 et seq., as amended, other than Multi-Employer Plans.

**“Trade Secrets”** means all know-how, trade secrets, confidential information, customer lists, software (including all source codes and object codes), products, processes, methods, plans, research data, marketing plans and strategies, forecasts, technical information, data, process



technology, plans, drawings, and blue prints owned, used, or licensed by the Company as licensee or licensor.

“**Year-End Balance Sheet**” has the meaning ascribed to such term in the Agreement.

## ARTICLE I

### PURCHASE AND SALE

SECTION 1.1 Purchase and Sale. Upon the terms set forth in this Agreement, at the Closing, Sellers shall sell, assign, transfer and deliver to Purchaser, and Purchaser shall purchase from Sellers, the Shares, free and clear of all Encumbrances.

SECTION 1.2 Purchase Price. In consideration for the sale, assignment, delivery and transfer of the Shares to Purchaser, Purchaser shall pay to Sellers an aggregate purchase price of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) (the “**Purchase Price**”) The Purchase Price shall be paid to Sellers in proportion to their ownership of the Company as set forth in Section 2.4. Purchaser shall pay the Purchase Price with the Closing Payment, as provided in Section 1.2(a).

(a) Closing Payment. At Closing, Purchaser will pay Sellers, via wire transfer or certified check, \_\_\_\_\_ dollars (\$ \_\_\_\_\_) (the “**Closing Payment**”).

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES OF SELLERS

In order to induce Purchaser to enter into this Agreement, the Employment Agreements, and the Non Competition Agreement, Sellers jointly and severally represent and warrant to Purchaser as follows:

#### SECTION 2.1 Organization.

(a) Schedule 2.1(a) contains a complete and accurate list for the Company of its name and assumed business names, its jurisdiction of incorporation, other jurisdictions in which it is authorized to do business, and its capitalization (including the identity of each stockholder or other interest holder and the number of shares or other interests held by each). The Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of California, with full corporate power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all of its obligations under all Applicable Contracts. The Company is duly qualified to do business as a foreign corporation and is in good standing under the laws of each jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification.

(b) the Sellers have delivered to Purchaser copies of the Organizational Documents of the Company.

(c) Each of the Sellers is an individual who is married.

SECTION 2.2 Authorization. This Agreement constitutes the legal, valid, and binding obligation of each the Sellers, enforceable against each the Sellers on a joint and several basis in accordance with its terms. Upon the execution and delivery by each of the Sellers of the other Closing Documents to which it is a party, such other Closing Documents will constitute the legal, valid, and binding obligations of each the Sellers, enforceable against each the Sellers in accordance with their respective terms. Each Seller has the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and the other Closing Documents to which it is a party and to perform its obligations under this Agreement and the other Closing Documents to which it is a party.

SECTION 2.3 No Conflict. Except as otherwise set forth on Schedule 2.3, neither the execution and delivery of this Agreement or the other Closing Documents to which each the Sellers is a party, or the consummation or performance of any of the transactions contemplated thereby, will directly or indirectly (with or without notice or lapse of time):

(a) contravene, conflict with, or result in a violation of any provision of any Organizational Document of the Company, or any resolution adopted by the board of directors or the shareholders of the Company;

(b) contravene, conflict with, or result in a violation of, or give any Governmental Body 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 the Sellers, the Company, or any of the assets owned or used by the Company may be subject;

(c) contravene, conflict with, or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate, or modify, any Governmental Authorization that is held by the Company or that otherwise relates to the business of, or any of the assets owned or used by, the Company;

(d) cause Purchaser or the Company to become subject to, or to become liable for the payment of, any Tax;

(e) 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 Applicable Contract; or

(f) result in the imposition or creation of any Encumbrance upon or with respect to any of the assets owned or used by the Company.

Except as otherwise set forth on Schedule 2.3, neither the Sellers or the Company is or will be required to give any notice to or obtain any Consent from any Person in connection with the execution and delivery of this Agreement or any of the other Closing Documents to which the Sellers is a party, or the consummation or performance of any of the transactions contemplated thereby.

SECTION 2.4 Capitalization.

(a) The authorized equity securities of the Company consist of \_\_\_\_\_ shares of common stock, no par value per share, of which One Hundred Thousand (100,000) shares are issued and outstanding and constitute the Shares. The number of issued and outstanding shares of common stock held by each shareholder as of the Closing is as follows: Seller I holds Forty Five Thousand (45,000) shares and Seller II holds Forty Five Thousand (45,000) shares and Panksy holds Ten Thousand (10,000) shares. Each of the Sellers is the legal and beneficial owner and holder of the aforesaid Shares, free and clear of all Encumbrances. The Share Certificates are the only share certificates of the Company and collectively represent all of the Shares. There are no other outstanding securities (including derivative securities) of the Company. No legend or other reference to any purported Encumbrance appears upon any certificate representing equity securities of the Company. All of the outstanding equity securities of the Company have been duly authorized and validly issued and are fully paid and nonassessable. There are no Contracts relating to the issuance, sale, purchase, conversion, or transfer of any equity securities or other securities of the Company. None of the outstanding equity securities or other securities of the Company was issued in violation of the Securities Act or any other Legal Requirement. The Company does not own, nor does it have any Contract to acquire, any equity securities or other securities of any Person or any direct or indirect equity or ownership interest in any other business.

(b) Schedule 2.4(b) contains a complete and accurate list of (i) the Company, (ii) the authorized equity securities of the Company, (iii) the issued and outstanding shares of the Company, and (iv) the record and beneficial owners and holders of the shares of the Company.

SECTION 2.5 Financial Statements. The Sellers have delivered to Purchaser unaudited balance sheets of the Company as at December 31 in each of the years 2005 and 2006 and an audited balance sheet of the Company as at December 31 for the year 2007, and the related consolidated statements of income, and changes in stockholders' equity for each of the calendar years then ended, (b) an unaudited consolidated balance sheet of the Company as at June 30, 2008 (the "**Interim Balance Sheet**") and the related unaudited consolidated statements of income and changes in stockholders' equity for the six months then ended, including in each case the notes thereto (collectively the "**Interim Financial Statements**"). Such financial statements and notes fairly present the financial condition and the results of operations, and changes in stockholders' equity of the Company as at the respective dates of and for the periods referred to in such financial statements, all in accordance with GAAP, subject, in the case of interim financial statements, to normal recurring year-end adjustments (the effect of which will not, individually or in the aggregate, be materially adverse) and the absence of notes (that, if presented, would not differ materially from those included in the Year-End Balance Sheet). No financial statements of any Person other than the Company are required by GAAP to be included in the consolidated financial statements of the Company. The 2007 balance sheet and consolidated statements of income and the Interim Financial Statements were prepared using the same accounting methods, estimates, practices and policies as the Company's 2006 financial statements, and those methods and practices have been applied, consistently throughout the 2008 calendar year. Since the date of the Interim Balance Sheet, (i) the Company has conducted its operations only in the Ordinary Course of Business, (ii) there has not been any material change to the business of the Company, (iii) the Company has conducted its operations consistent with the 2008 Annual Budget, and (iv) to Sellers Knowledge, the Company's results for the calendar

year 2008 will not be materially different from the 2008 annual budget attached hereto as **Exhibit F**.

SECTION 2.6 Books and Records. The books of account and other records of the Company, all of which have been made available to Purchaser, are complete and correct and have been maintained in accordance with sound business practices. Except as set forth in Schedule 2.6, the minute books of the Company contain accurate and complete records of all meetings held of, and corporate action taken by, the stockholders, the boards of directors, and committees of the boards of directors of the Company, and no meeting of any such stockholders, board of directors, or committee has been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those books and records will be in the possession of the Company.

SECTION 2.7 Title to Assets; Encumbrances. Schedule 2.7 contains a complete and accurate list of all leaseholds, assets or other interests therein owned by the Company. The Company owns no real property interest nor has any deeds and other instruments (as recorded) by which the Company acquired such real property and interests. The Company owns all assets (whether personal, or mixed and whether tangible or intangible) that they purport to own located in the facilities operated by the Company or reflected as owned in the books and records of the Company, including all of the assets reflected in the Year-End Balance Sheet and the Interim Balance Sheet (except for assets held under capitalized leases disclosed or not required to be disclosed in Schedule 2.7 and personal property sold since the date of the Year-End Balance Sheet and the Interim Balance Sheet, as the case may be, in the Ordinary Course of Business), and all of the assets purchased or otherwise acquired by the Company since the date of the Year-End Balance Sheet (except for personal property acquired and sold since the date of the Year-End Balance Sheet in the Ordinary Course of Business and consistent with past practice), which subsequently purchased or acquired assets (other than short-term investments) are listed in Schedule 2.7. All assets reflected in the Year-End Balance Sheet and the Interim Balance Sheet are free and clear of all Encumbrances.

SECTION 2.8 Condition and Sufficiency of Assets. The buildings, equipment, and other tangible assets of the Company are structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such buildings and equipment, or other tangible assets is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The building and equipment, and other tangible assets of the Company are sufficient for the continued conduct of the Company' businesses after the Closing in substantially the same manner as conducted prior to the Closing.

SECTION 2.9 Accounts Receivable. The accounts receivable of the Company that are reflected on the Balance Sheet or the Interim Balance Sheet or on the accounting records of the Company as of the Closing Date (collectively, the "**Accounts Receivable**") represent or will represent valid obligations arising from orders actually accepted, sales actually made, or services actually performed in the Ordinary Course of Business. Except to the extent paid on or prior to the Closing Date, the Accounts Receivable are and will be as of the Closing Date current and collectible net of the respective reserves shown on the Year-End Balance Sheet or the Interim Balance Sheet or on the accounting records of the Company as of the Closing Date (which

reserves are adequate and calculated consistent with past practice and, in the case of the reserve as of the Closing Date, will not represent a greater percentage of the Accounts Receivable as of the Closing Date than the reserve reflected in the Interim Balance Sheet represented of the Accounts Receivable reflected therein and will not represent a material adverse change in the composition of such Accounts Receivable in terms of aging). To Sellers Knowledge, subject to such reserves, each of the Accounts Receivable either has been or will be collected in full, without any offset, within 90 days after the day on which it first becomes due and payable. There is no contest, claim, or right of set-off, other than returns in the Ordinary Course of Business of the Company, under any Contract with any obligor of an Accounts Receivable relating to the amount or validity of such Accounts Receivable. Schedule 2.9 contains a complete and accurate list of all Accounts Receivable as of the date of the Interim Balance Sheet, which list sets forth the aging of such Accounts Receivable.

SECTION 2.10 No Undisclosed Liabilities. Except as otherwise set forth on Schedule 2.10, the Company has no Liabilities except for Liabilities reflected or reserved against in the Balance Sheet or the Interim Balance Sheet and current liabilities incurred in the Ordinary Course of Business of the Sellers since the respective dates thereof.

SECTION 2.11 Taxes.

(a) The Company has filed or caused to be filed on a timely basis since Month 20, 2002 (the “**Incorporation Date**”) all Tax Returns that are or were required to be filed by or with respect to it, either separately or as a member of a group of corporations, pursuant to applicable Legal Requirements, the Sellers have delivered to Purchaser copies of, and Schedule 2.11 (a) contains a complete and accurate list of, all such Tax Returns filed since the Incorporation Date. The Company has paid, or made provision for the payment of, all Taxes that have or may have become due pursuant to those Tax Returns or otherwise, or pursuant to any assessment received by the Sellers or the Company, except such Taxes, if any, as are listed in Schedule 2.11(a) and are being contested in good faith and as to which adequate reserves (determined in accordance with GAAP) have been provided in the Year-End Balance Sheet and the Interim Balance Sheet.

(b) Schedule 2.11(b) contains a complete and accurate list of all audits of all such Tax Returns, including a reasonably detailed description of the nature and outcome of each audit. All deficiencies proposed as a result of such audits have been paid, reserved against, settled, or, as described in Schedule 2.11(b), are being contested in good faith by appropriate proceedings. Schedule 2.11(b) describes all adjustments to the United States federal income Tax Returns filed by the Company or any group of corporations including the Company for all taxable years since December 31, 2002, and the resulting deficiencies proposed by the IRS. Except as described in Schedule 2.11(b), neither of the Sellers nor the Company has given or been requested to give waivers or extensions (or is or would be subject to a waiver or extension given by any other Person) of any statute of limitations relating to the payment of Taxes of the Company or for which the Company may be liable.

(c) The charges, accruals, and reserves with respect to Taxes on the books of the Company are adequate (determined in accordance with GAAP) and are at least equal to the Company’s liability for Taxes. There exists no proposed tax assessment against the Company except as disclosed in the Year-End Balance sheet or Schedule 2.11(c). No consent to the

application of application of Section 341(f)(2) of the Code has been filed with respect to any property or assets held, acquired, or to be acquired by the Company. All Taxes that the Company is or was required by Legal Requirements to withhold or collect have been duly withheld or collected and, to the extent required, have been paid to the proper Governmental Body or other Person.

(d) All Tax Returns filed by (or that include on a consolidated basis) the Company are true, correct, and complete. There is no tax sharing agreement that will require any payment by the Company after the date of this Agreement. The Company is a “S” corporation.

(e) Since Incorporation Date, Sellers have filed, or caused to be filed, all Tax Returns that are or were required to be filed with respect to each Seller.

SECTION 2.12 Solvency. The Company is not now Insolvent, and will not be rendered Insolvent by any of the transactions contemplated by the Closing Documents.

SECTION 2.13 No Material Adverse Change. Since the date of the Year-End Balance Sheet, there has not been any material adverse change in the business, operations, properties, prospects, assets, or condition of the Company, and no event has occurred or, circumstance exists that may result in such a material adverse change.

SECTION 2.14 Employee Benefits. Except as set forth in Schedule 2.14 there are no Company Plans, Other Benefit Obligations, Pension Plans, Qualified Plans, Title IV Plans, Multi-Employer Plans or any other employee benefit plan.

SECTION 2.15 Compliance With Legal Requirements. Except as otherwise set forth on Schedule 2.15:

(a) the Company is, and at all times since the Incorporation Date has been, in full compliance with each Legal Requirement, including but not limited to copyright laws, that is or was applicable to it or to the conduct or operation of its business or the ownership or use of any of its assets;

(b) no event has occurred or circumstance exists that (with or without notice or lapse of time) (i) may constitute or result in a violation by the Company of, or a failure on the part of the Company to comply with, any Legal Requirement, or (ii) may give rise to any obligation on the part of the Company to undertake, or to bear all or any portion of the cost of, any remedial action of any nature; and

(c) the Company has not received, at any time since the Incorporation Date, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (i) any actual, alleged, possible, or potential violation of, or failure to comply with, any Legal Requirement, or (ii) any actual, alleged, possible, or potential obligation on the part of the Company to undertake, or to bear all or any portion of the cost of, any remedial action of any nature.

SECTION 2.16 Governmental Authorizations. Schedule 2.16 contains a complete and accurate list of each Governmental Authorization that is held by the Company or that otherwise

relates to the business of, or to any of the assets owned or used by, the Company. Each Governmental Authorization listed or required to be listed on Schedule 2.16 is valid and in full force and effect. Except as otherwise set forth on Schedule 2.16:

(a) the Company is, and at all times since the Incorporation Date has been, in full compliance with all of the terms and requirements of each Governmental Authorization identified or required to be identified on Schedule 2.16;

(b) no event has occurred or circumstance exists that may (with or without notice or lapse of time) (i) constitute or result directly or indirectly in a violation of or a failure to comply with any term or requirement of any Governmental Authorization listed or required to be listed on Schedule 2.16, or (ii) result directly or indirectly in the revocation, withdrawal, suspension, cancellation, or termination of, or any modification to, any Governmental Authorization listed or required to be listed on Schedule 2.16;

(c) the Company has not received, at any time since the Incorporation Date, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (i) any actual, alleged, possible, or potential violation of or failure to comply with any term or requirement of any Governmental Authorization, or (ii) any actual, proposed, possible, or potential revocation, withdrawal, suspension, cancellation, termination of, or modification to any Governmental Authorization;

(d) The Governmental Authorizations listed on Schedule 2.16 collectively constitute all of the Governmental Authorizations necessary to permit the Company to lawfully conduct and operate their businesses in the manner it currently conducts and to permit the Company to own and use their assets in the manner in which they currently own and use such assets.

#### SECTION 2.17 Proceedings; Orders.

(a) Except as otherwise set forth in Schedule 2.17(a), there is no pending Proceeding (i) that has been commenced by or against the Company or that otherwise relates to or may affect the business of, or any of the assets owned or used by, the Company, or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal, or otherwise interfering with any of the transactions contemplated by the Closing Documents. the Sellers have delivered to Purchaser copies of all pleadings, correspondence, any other documents relating to each Proceeding listed on Schedule 2.17(a). The Proceedings listed on Schedule 2.17(a) will not have a material adverse effect on the business, operations, assets, condition, or prospects of the Company.

(b) Except as otherwise set forth in Schedule 2.17(b), to the Knowledge of the Sellers and the Company, no such Proceeding has been Threatened, and no event has occurred or circumstance exists that may give rise to or serve as a basis for the commencement of any such Proceeding.

(c) Except as otherwise set forth on Schedule 2.17(c), (i) there is no Order to which the Company, or any of the assets owned or used by the Company, is subject, (ii) the Sellers is not subject to any Order that relates to the business or any of the assets owned or used by the Company, (iii) no officer, director, agent or employee of the Company is subject to any Order

that prohibits such officer, director, agent, or employee from engaging in or continuing any conduct, activity, or practice relating to the business, (iv) the Company is, and at all times since the Incorporation Date has been, in full compliance with all of the terms and requirements of each Order to which it, or any of the assets owned or used by it, is or has been subject, (v) no event has occurred or circumstance exists that may constitute or result in (with or without notice or lapse of time) a violation of or failure to comply with any term or requirement of any Order to which the Company or any of the assets owned or used by the Company is subject, and (vi) the Company has not received, at any time since the Incorporation Date, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding any actual, alleged, possible, or potential violation of, or failure to comply with, any term or requirement of any Order to which the Company, or any of the assets owned or used by the Company, is or has been subject.

SECTION 2.18 Absence of Certain Changes and Events. Except as otherwise set forth on Schedule 2.18, since the date of the Year-End Balance Sheet, the Company have conducted their businesses only in the Ordinary Course of Business and there has not been any:

(a) change in the Company's authorized or issued capital stock; grant of any stock option or right to purchase shares of capital stock of the Company; issuance of any security convertible into such capital stock; grant of any registration rights; purchase, redemption, retirement, or other acquisition by the Company of any shares of any such capital stock; or declaration or payment of any dividend or other distribution or payment in respect of shares of capital stock;

(b) amendment to the Organizational Documents of the Company;

(c) payment or increase by the Company of any bonuses, salaries, or other compensation to any director, officer, or employee or entry into any employment, severance, or similar Contract with any director, officer, or employee;

(d) adoption of, or increase in the payments to or benefits under, any profit sharing, bonus, deferred compensation, savings, insurance, pension, retirement, or other employee benefit plan for or with any employees of the Company;

(e) damage to or destruction or loss of any asset or property of the Company, whether or not covered by insurance, materially and adversely affecting the properties, assets, business, financial condition or prospects of the Company;

(f) entry into, termination of, or receipt of notice of termination of (i) any license, distributorship, dealer, sales representative, joint venture, credit, or similar agreement, or (ii) any Contract or transaction involving a total remaining commitment by or to the Company of at least \$5,000.00;

(g) sale, lease, or other disposition of any asset or property of the Company or mortgage, pledge, or imposition of any lien or other encumbrance on any material asset or property of the Company, including the sale, lease, or other disposition of any of the Intellectual Property Assets;



(h) cancellation or waiver of any claims or rights with a value to the Company in excess of \$5,000.00;

(i) material change in the accounting methods used by the Company; or

(j) agreement, whether oral or written, by the Company to do any of the foregoing.

**SECTION 2.19 Contracts; No Defaults.**

(a) Schedule 2.19(a) contains a complete and accurate list, and the Sellers have delivered to Purchaser true and complete copies, of (i) each Applicable Contract that involves performance of services or delivery of goods or materials by the Company of an amount or value in excess of \$5,000.00, (ii) each Applicable Contract that was not entered into in the Ordinary Course of Business and that involves expenditures or receipts of the Company in excess of \$5,000.00, (iii) each lease, rental or occupancy agreement, license, installment and conditional sale agreement, and other Applicable Contract affecting the ownership of, leasing of, title to, use of, or any leasehold or other interest in, real or personal property, (iv) each licensing agreement or other Applicable Contract with respect to patents, trademarks, copyrights, trade secrets, or other intellectual or proprietary property, including agreements with current or former employees, consultants, or contractors regarding the appropriation or the non-disclosure of any of the Intellectual Property Assets, (v) each joint venture, partnership, and other Applicable Contract (however named) involving a sharing of profits, losses, costs, or liabilities by the Company with any other Person, (vi) each Applicable Contract containing covenants that in any way purport to restrict the business activity of the Company or any affiliate of the Company or limit the freedom of the Company or any affiliate of the Company to engage in any line of business or to compete with any Person, (vii) each Applicable Contract providing for payments to or by any Person based on sales, purchases, or profits, other than direct payments for goods or services, (viii) each power of attorney that is currently effective and outstanding, (ix) each Applicable Contract entered into other than in the Ordinary Course of Business that contains or provides for an express undertaking by the Company to be responsible for consequential damages, (x) each Applicable Contract for capital expenditures in excess of \$5,000.00, (xi) each written warranty, guaranty, and or other similar undertaking with respect to contractual performance extended by the Company other than in the Ordinary Course of Business, and (xii) each amendment, supplement, and modification (whether oral or written) in respect of any of the foregoing.

(b) Except as otherwise set forth on Schedule 2.19(b), (i) the Sellers have not and will not (and no Related Person of the Sellers have or will) acquire any rights under, and the Sellers have not and will not become subject to any Liability under, any Contract that relates to the business of, or any of the assets owned or used by, the Company, and (ii) to the Knowledge of the Sellers and the Company, no officer, director, agent, employee, consultant, or contractor of the Company is bound by any Contract that purports to limit the ability of such officer, director, agent, employee, consultant, or contractor to (A) engage in or continue any conduct, activity, or practice relating to the business of the Company, or (B) assign to the Company or to any other Person any rights to any invention, improvement, or discovery.

(c) Except as otherwise set forth on Schedule 2.19(c), each Contract identified or required to be identified on Schedule 2.19(a) is in full force and effect and is valid and enforceable in accordance with its terms.

(d) Except as otherwise set forth on Schedule 2.19(d), (i) the Company is, and at all times since the Incorporation Date has been, in full compliance with all applicable terms and requirements of each Contract under which the Company has or had any Liability or by which the Company or any of the assets owned or used by the Company is or was bound, (ii) to the Knowledge of the Sellers and the Company, each other Person that has or had any obligation or liability under any Contract under which the Company has or had any rights is, and at all times since the Incorporation Date has been, in full compliance with all applicable terms and requirements of such Contract, (iii) no event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with, or result in a violation or breach of, or give the Company or other 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 Applicable Contract, and (iv) the Company has not given to or received from any other Person, at any time since the Incorporation Date, any notice or other communication (whether oral or written) regarding any actual, alleged, possible, or potential violation or breach of, or default under, any Contract.

(e) There are no renegotiations of, attempts to renegotiate, attempts to terminate or outstanding rights to renegotiate or terminate any material amounts paid or payable to the Company under current or completed Contracts with any Person and, to the Knowledge of the Sellers and the Company, no Person has made written demand for such renegotiation.

(f) The Applicable Contracts relating to the sale of products or services by the Company have been entered into in the Ordinary Course of Business and have been entered into without the commission of any act alone or in concert with any other Person, or any consideration having been paid or promised, that is or would be in violation of any Legal Requirement.

(g) To the Knowledge of the Sellers, there are no outstanding Contracts or bids or sales proposals that, individually or in the aggregate, will result in any loss to the Company upon completion or performance thereof

(h) Sellers have not received any notice to amend or any notice of any intention to terminate any Contract.

(i) Schedule 2.3 sets forth, among other things, all consents need for any Contract for the transaction contemplated by this Agreement, including, but not limited to, any consents needed from changing from an “S” corporation to a “C” corporation.

#### SECTION 2.20 Insurance.

(a) the Sellers have delivered to Purchaser (i) true and complete copies of all policies of insurance to which the Company is a party or under which the Company, or any director of the Company, is or has been covered at any time since December 31, 2005, (ii) true and complete copies of all pending applications for policies of insurance, and (iii) any statement by the auditor

of the Company's financial statements with regard to the adequacy of the Company's coverage or of the reserves for claims.

(b) Schedule 2.20(b) describes (i) any self-insurance arrangement by or affecting the Company, including any reserves established thereunder, (ii) any contract or arrangement, other than a policy of insurance, for the transfer or sharing of any risk, by the Company, and (iii) all obligations of the Company to third parties with respect to insurance (including such obligations under leases and service agreements) and identifies the policy under which such coverage is provided.

(c) Schedule 2.20(c) sets forth, by year, for the current policy year and each of the 3 preceding policy years, (i) a summary of the loss experience under each policy to which the Company is a party, (ii) a statement describing each claim under such insurance policy for an amount in excess of \$2,000.00, which sets forth (A) the name of the claimant, (B) a description of the policy by insurer, type of insurance, and period of coverage, and (C) the amount and a brief description of the claim, and (iii) a statement describing the loss experience for all claims that were self-insured, including the number and aggregate cost of such claims.

(d) Except as otherwise set forth on Schedule 2.20(d), to the Knowledge of the Sellers (i) all policies to which the Company is a party or that provide coverage to the Sellers, the Company, or any director or officer of the Company are valid, outstanding, and enforceable, (A) are issued by an insurer that is financially sound and reputable. (B) taken together, provide adequate insurance coverage for the assets and the operations of the Company for all risks normally insured against by a Person carrying on the same business as the Company for all risks to which the Company are normally exposed, (C) are sufficient for compliance with all Legal Requirements and Contracts to which the Company is a party or by which it is bound, (D) will continue in full force and effect following the consummation of the transactions contemplated by this Agreement, and (D) do not provide for any retrospective premium adjustment or other experienced-based liability on the part of the Company, (ii) neither the Sellers or the Company has received (A) any refusal of coverage or any notice that a defense will be afforded with reservation of rights, or (B) any notice of cancellation or any other indication that any insurance policy is no longer in full force or effect or will not be renewed or that the issuer of any policy is not willing or able to perform its obligations thereunder, (iii) the Company have paid all premiums due, and have otherwise performed all of their respective obligations, under each policy to which the Company is a party or that provides coverage to the Company or any director or officer thereof, and (iv) the Company have given notice to the insurer of all claims that may be insured thereby.

SECTION 2.21 Environmental Matters. Except as otherwise set forth on Schedule 2.21:

(a) The Company is, and at all times has been, in full compliance with, and has not been and is not in violation of or liable under, any Environmental Law. Neither the Sellers or the Company has any basis to expect, or has any of them or any other Person for whose conduct they are or may be held to be responsible received, any actual or Threatened Order, notice, or other communication from (i) any Governmental Body or private citizen acting in the public interest, or (ii) the current or prior owner or operator of any Facilities, of any actual or potential violation or failure to comply with any Environmental Law, or of any actual or Threatened obligation to

undertake or bear the cost of any Environmental, Health, and Safety Liabilities with respect to any of the Facilities or any other properties or assets (whether real, personal, or mixed) in which the Company has had an interest.

(b) There are no pending or, to the Knowledge of the Sellers and the Company, Threatened claims, Encumbrances, or other restrictions of any nature, resulting from any Environmental, Health, and Safety Liabilities or arising under or pursuant to any Environmental Law, with respect to or affecting any of the Facilities or any other properties and assets (whether real, personal, or mixed) in which the Sellers or the Company has or had an interest.

(c) Neither of the Sellers nor the Company has Knowledge of any basis to expect, or has any of them or any other Person for whose conduct they are or may be held responsible, received, any citation, directive, inquiry, notice, Order, summons, warning, or other communication that relates to Hazardous Activity, Hazardous Materials, or any alleged, actual, or potential violation or failure to comply with any Environmental Law, or of any alleged, actual, or potential obligation to undertake or bear the cost of any Environmental, Health, and Safety Liabilities with respect to any of the Facilities or any other properties or assets.

#### SECTION 2.22 Employees.

(a) Schedule 2.22(a) contains a complete and accurate list of the following information for each employee or director of the Company (including each employee on leave of absence or layoff status): name; current annual compensation rate (including bonus and commissions); job title; current compensation paid or payable and any change in compensation since December 31, 2005; current based salary rate; accrued bonus, accrued sick leave, accrued severance pay, and accrued vacation benefits; and service credited for purposes of vesting and eligibility to participate under the Company's pension, retirement, profit-sharing, thrift-savings, deferred compensation, stock bonus, stock option, cash bonus, employee stock ownership (including investment credit or payroll stock ownership), severance pay, insurance, medical, welfare or vacation plan, or any employee benefit plan or director plan.

(b) No employee or director of the Company is a party to, or is otherwise bound by, any Proprietary Rights Agreement, that in any way adversely affects or will affect (i) the performance of his or her duties as an employee or director of the Company, or (ii) the ability of the Company to conduct its business, including any Proprietary Rights Agreement with the Sellers or the Company by any such employee or director. To the Knowledge of the Sellers and the Company, no director, officer, or other key employee of the Company intends to terminate his or her employment with the Company.

(c) Schedule 2.22(c) contains a complete and accurate list of the following information for each retired employee or director of the Company, or their dependents, receiving benefits or scheduled to receive benefits in the future: name, pension benefit, pension option election, retiree medical insurance coverage, retiree life insurance coverage, and other benefits.

SECTION 2.23 Labor Relations; Compliance. The Company has not been and is not a party to any collective bargaining or other labor Contract. There has not been, there is not presently pending or existing, and to the Knowledge of the Sellers and the Company, there is not

Threatened, (i) any strike, slowdown, work stoppage, or employee grievance process, or (ii) any Proceeding against or affecting the Company relating to the alleged violation of any Legal Requirement pertaining to labor relations or employment matters. To the Knowledge of the Sellers and the Company, no event has occurred or circumstance exists that could provide the basis for any work stoppage or other labor dispute. The Company has complied in all respects with all Legal Requirements relating to employment, equal employment opportunity, nondiscrimination, immigration, wages, hours, benefits, the payment of social security and similar taxes, and occupational safety and health. The Company is not liable for the payment of any compensation, damages, taxes, fines, penalties, or other amounts, however designated, for failure to comply with any of the foregoing Legal Requirements.

#### SECTION 2.24 Intellectual Property.

(a) Schedule 2.24(a) contains a complete and accurate list and summary description, including any royalties paid or received by the Company of all Contracts relating to the Intellectual Property Assets to which the Company is a party or by which the Company is bound.

(b) Except as otherwise set forth on Schedule 2.24(b), all former and current employees of the Company have executed written Contracts with the Company that assigns to the Company all rights to any inventions, improvements, discoveries, or information relating to the business of the Company. No employee of the Company has entered into any Contract that restricts or limits in any way the scope or type of work in which the employee may be engaged or requires the employee to transfer, assign, or disclose information concerning his work to anyone other than one or more of the Company.

(c) Schedule 2.24(c) contains a complete and accurate list and summary description of all Patents, Marks and Copyrights. The Company is the owner of all right, title, and interest in and to each of the Patents, Marks and Copyrights, free and clear of all Encumbrances. None of the products or services provided or sold, or any process or know-how used, by the Company infringes or is alleged to infringe any patent or other proprietary right of any Person. None of the Marks used by the Company infringes or is alleged to infringe any trade name, trademark, or service mark of any Person. All products and materials containing a Mark bear a proper trademark notice. None of the subject matter of any of the Copyrights infringes or is alleged to infringe any copyright of any third party or is a derivative work based on the work of any Person. All works encompassed by the Copyrights have been marked with a proper copyright notice.

(d) With respect to each Trade Secret, the documentation relating to such Trade Secret is current, accurate, and sufficient in detail and content to identify and explain it and to allow its full and proper use without reliance on the knowledge or memory of any individual. The Sellers and the Company have taken all reasonable precautions to protect the secrecy, confidentiality, and value of their Trade Secrets. The Company has good title and an absolute (but not necessarily exclusive) right to use the Trade Secrets. The Trade Secrets are not part of the public knowledge or literature, and, to the Knowledge of the Sellers and the Company, have not been used, divulged, or appropriated either for the benefit of any Person (other than one or more of the Company) or to the detriment of the Company. No Trade Secret is subject to any adverse claim or has been challenged or Threatened in any way.

SECTION 2.25 Certain Payments. Except as otherwise set forth on Schedule 2.25, since the Incorporation Date, neither the Company, nor any director, officer, agent or employee of the Company or to the Knowledge of the Sellers and the Company, any other Person associated with or acting for or on behalf of the Company, has directly or indirectly (a) made any contribution, gift, bribe, rebate, payoff, influence payment, kickback, or other payment to any Person, private or public, regardless of form, whether in money, property, or services or (b) established or maintained any fund or asset that has not been recorded in the books and records of the Company.

SECTION 2.26 Relationship With Suppliers and Customers. The relationship of the Company with its suppliers and customers is satisfactory and neither of the Sellers nor the Company has received notice of any intention to terminate or adversely modify such relationships. To the Knowledge of the Sellers and the Company, the transactions contemplated by this Agreement will not adversely affect the ongoing relationship between the Company and any supplier or customer of the Company.

SECTION 2.27 Relationship With Related Persons. Neither of the Sellers nor any Related Person of the Sellers or of the Company has, or since the Incorporation Date has had, any interest in any property (whether real, personal, or mixed and whether tangible or intangible), used in or pertaining to the Company's businesses. Neither of the Sellers nor any Related Person of the Sellers or of the Company is, or since the Incorporation Date has owned (of record or as a beneficial owner) an equity interest or any other financial or profit interest in, a Person that has (i) had business dealings or a material financial interest in any transaction with the Company, or (ii) engaged in competition with the Company with respect to any line of the products or services of the Company in any market presently served by the Company (except for less than one percent of the outstanding capital stock of any Person that is publicly traded on any recognized exchange or in the over-the-counter market). Except as otherwise set forth on Schedule 2.27, neither of the Sellers nor any Related Person of the Sellers or of the Company is a party to any Contract with, or has any claim or right against, the Company.

SECTION 2.28 Certain Claims by Employees. Schedule 2.28 sets forth a complete and accurate list of all claims made or asserted either for disability or under any workers' compensation or other similar law or statute by employees of the Company since the Incorporation Date, and with respect to each such claim, the date made, the complained of disability, injury or condition, the status thereof, the amount paid in satisfaction or settlement thereof, and whether such claim remains open as of the date of this Agreement.

SECTION 2.29 Brokers and Finders. Except as otherwise set forth on Schedule 2.29, neither of the Sellers, the Company, or any of their respective Representatives has incurred any Liability for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement.

SECTION 2.30 Software.

(a) Schedule 2.30(a) contains a true, correct, complete and accurate list of all software owned or licensed by the Company (the "Software"), except for "shrink wrap"

software. Except as set forth on Schedule 2.30(a), the Company is the sole and exclusive owner of such Software.

(b) All software used or held for use by the Company that is not owned by the Company (the “**Third Party Software**”) (including any commonly available “shrink wrap” Software copyrighted by third parties) is used pursuant to an agreement or license and each such agreement or license is valid and enforceable and in full force and effect and neither the Company nor, to the Knowledge of the Sellers and the Company, any licensor is in material default under or in breach of any such license or agreement. Schedule 2.30(b) lists all of the material Third Party Software of the Company.

(c) The Software and the Third Party Software and the Company’s rights therein are sufficient and adequate to conduct the business to the full extent the business is conducted as of the date hereof and as such business will be conducted as of the Closing Date. Consummation of the transactions contemplated by this Agreement will not result in an impairment of the rights of Purchaser to any of the Software, or to any Third Party Software. Consummation of the transactions contemplated by this Agreement will not result in any increase of any license fees with respect to any of the Third Party Software. All Software and any Third Party Software that is incorporated into the Software perform in accordance with the documentation and other written material used in connection with the Software and Third Party Software, is in machine readable form and contains all current revisions of such Software and Third Party Software. The Software and, to the Knowledge of the Sellers and the Company, the Third Party Software, is free of material defects in operations. The Software and, to the Knowledge of the Sellers and the Company, the Third Party Software, contains no disabling devices.

(d) The source code for all Software will compile into object code or otherwise be capable of performing the functions described in the documentation pertaining to the Software in all material respects. All source code and other documentation concerning the Software is free of any defect which would prevent it from compiling or performing in all material respects.

**SECTION 2.32 Accuracy of Representations.** None of the representations or warranties of the Sellers contains any untrue statement of a material fact or omits or mistakes a material fact necessary in order to make the statements in this Agreement not misleading. Neither of the Sellers nor the Company has Knowledge of any fact that has resulted, or that in the reasonable judgment of the Sellers and the Company will result, in a material change in the financial condition of the Company that has not been set forth in this Agreement.



## Committee on Middle Market and Small Business

*“A Network of Lawyers Exchanging Ideas on Middle Market Business Organization, Finance, and Operation”*

The Committee on Middle Market and Small Business guides U.S. and international corporate and transactional lawyers who counsel clients ranging from private family and middle market enterprises to smaller public companies on the myriad of business "life cycle" issues they confront in their practices. These life cycle issues include (i) entity organization and owner agreements; (ii) capital formation, financing, and strategic partnering; (iii) employment and compensation matters; (iv) intellectual property protection; (v) corporate governance; (vi) securities law compliance; (vii) international expansion and cross-border transactions; and (viii) business combinations, restructurings, and breakups.

**We welcome your interest and invite you to join the committee.**

### Involvement

The committee maintains four substantive subcommittees: **Closely Held Business Entities; Emerging Companies; International Transactions;** and **Securities Regulation.** The committee has long been an advocate before the U.S. Securities and Exchange Commission, the Internal Revenue Service, and other regulatory agencies on reforms to address the special problems in capital formation confronted by small businesses, including smaller public companies. The annual Government-Business Forum on Small Business Capital Formation, sponsored by the SEC, is a result of past committee initiatives and was a leading force in the SEC's adoption of Regulation D. A present committee initiative, through the **Task Force on Private Placement Broker Dealer,** advocates a simplified registration system for finders of financing for early stage companies.

### Knowledge and Networking

**Materials and resources** used in continuing legal education programs during Section Spring Meetings and ABA Annual Meetings are accessible right at your fingertips any time you need them. Some of the committee's programs are sponsored jointly with other committees of the ABA Section of Business Law and other Sections of the ABA. The committee's **Business Visions e-Newsletter,** distributed via the **members-only listserve,** will keep you current on developments from fellow committee members on middle market business organization, finance, and operation; and you have the opportunity to contribute as well.

### Savings

Discounts on Committee and Section Publications and Products in the ABA Web Store, visit [www.ababooks.org](http://www.ababooks.org).

Discounted Registration to Committee and Section Meetings

- The committee will meet for its **Fall Stand-Alone Meeting** in Scottsdale, AZ on **January 14-16, 2009**
- **Section of Business Law Spring Meeting** will take place in Vancouver on **April 16-18, 2009.**

**<<< Join the committee! >>>**

Committee membership is free for Section of Business Law members.  
For immediate enrollment in the committee or Section, log in at [www.ababusinesslaw.org](http://www.ababusinesslaw.org).