BROADWIND ENERGY, INC.

FORM 8-K
(Current report filing)

Filed 08/24/07 for the Period Ending 08/20/07

Address	3240 S. CENTRAL AVENUE CICERO, IL 60804
Telephone	708-780-4800
CIK	0001120370
Symbol	BWEN
SIC Code	3360 - Nonferrous Foundries (castings)
Industry	Misc. Capital Goods
Sector	Capital Goods
Fiscal Year	12/31

TOWER TECH HOLDINGS INC.

FORM 8-K
(Current report filing)

Filed 8/24/2007 For Period Ending 8/20/2007

Address	980 MARITIME DRIVE SUITE 6
	MANITOWOC, Wisconsin 54220
Telephone	(920) 684-5531
CIK	0001120370
Fiscal Year	12/31

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

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

Date of Report (Date of earliest event reported): **August 20, 2007**

Tower Tech Holdings Inc.

(Exact name of Registrant as Specified in its Charter)

Nevada
(State or Other Jurisdiction of Incorporation)

0-31313	**88-0409160**
(Commission File Number)	(IRS Employer Identification No.)

101 South 16 th Street, P.O. Box 1957
Manitowoc, Wisconsin 54221-1957
(Address of Principal Executive Offices and Zip Code)

(920) 684-5531
(Registrant's telephone number, including area code)

(Former Name or Former Address, if Changed Since Last Report)

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

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

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

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

☐ Pre-commencement communications pursuant to Rule 13e-14(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry into a Material Definitive Agreement

Brad Foote Gear Works, Inc. Acquisition

On August 22, 2007, Tower Tech Holdings Inc. (the "Company") entered into a Stock Purchase Agreement (the "Agreement") with Brad Foote Gear Works, Inc. ("Brad Foote") and the shareholders of Brad Foote pursuant to which the Company agreed to purchase all of the outstanding capital stock of Brad Foote. Brad Foote manufactures and repairs gear sets at two locations in Cicero, Illinois and one location in Pittsburgh, Pennsylvania. Pursuant to the transaction, the Company will also acquire Brad Foote's option to purchase two of its facilities that are currently leased. The Brad Foote acquisition was unanimously approved by the Company's Board of Directors on August 20, 2007.

The purchase price for the Brad Foote acquisition consists of cash and stock. The cash portion of the purchase price is approximately $64 million plus an amount equal to the tax cost of the Brad Foote shareholders making an election under Section 338(h)(10) of the Internal Revenue Code. The stock portion of the purchase price is fixed at 16,036,450 shares of Company Common Stock, which was calculated based on a price per share of $4.00, which represented a discount to the market price as of the date of signing. Because the number of shares to be issued at closing has been fixed, the stock portion of the purchase price will reflect the market value of the shares issued at closing. Completion of the acquisition is subject to customary closing conditions.

In connection with the acquisition of Brad Foote, the Company will assume approximately $22 million of senior debt from Brad Foote. In addition, the Company will enter into an employment agreement with Brad Foote CEO, J. Cameron Drecoll, who will assume chief executive responsibilities for the combined company. The Company has agreed to seek approval of an amendment to its bylaws to increase the number of members of its Board of Directors, at which point Mr. Drecoll will be appointed to the Board of the combined company.

The Company has also agreed to file a registration statement with the Securities and Exchange Commission in order to provide certain demand and piggyback registration rights with respect to resale of the shares issued to the Brad Foote shareholders under the Agreement. The terms of the Company's obligation to register these shares will be set forth in a registration rights agreement that the Company and the Brad Foote shareholders will execute upon consummation of the acquisition.

The foregoing summary of the Brad Foote acquisition does not purport to be complete and is qualified in its entirety by reference to the Agreement, a copy of which is attached hereto as Exhibit 2.1 and is incorporated herein by reference.

Tontine Capital Partners Financing

On August 22, 2007, the Company entered into a private placement with Tontine Capital Partners, L.P. and Tontine Capital Overseas Master Fund, L.P. (together, "Tontine"), pursuant to which Tontine has agreed to purchase 12,500,000 shares of Company Common Stock in a private placement at $4.00 per share for a total purchase price of $50,000,000, and to provide

interim debt financing of $25,000,000 in exchange for senior subordinated convertible promissory notes (the "Securities Purchase Agreement"). The Company will use the proceeds to finance the Brad Foote acquisition. The closing of the transactions contemplated by the Securities Purchase Agreement with Tontine will take place in connection with the consummation of the Brad Foote acquisition.

Prior to this transaction, Tontine owned approximately 26% of the Company's issued and outstanding Common Stock, pursuant to a private placement to Tontine that occurred on March 1, 2007 (the "March 2007 Agreement"), the terms of which are described in the Company's Current Report on Form 8-K filed March 5, 2007. In addition to the rights granted to Tontine in connection with the March 2007 Agreement, the Company agreed under the Securities Purchase Agreement that (i) for so long as Tontine or its affiliates hold at least 20% of the then issued and outstanding Common Stock, Tontine shall have the right to appoint three members of the Company's Board of Directors, and (iii) it would not revoke its approval of the acquisition of up to 40% of Company Common Stock on a fully-diluted basis by Tontine. The Company and Tontine will also amend the existing Registration Rights Agreement (which was entered into in connection with the March 2007 Agreement) with Tontine, pursuant to which the Company will register for resale the shares issued to Tontine. The purpose of the amendment is to extend the deadline for the Company's obligation to file the registration statement and include additional Tontine affiliates as parties. The foregoing summary of the financing does not purport to be complete and is qualified in its entirety by reference to the Securities Purchase Agreement, a copy of which is attached hereto as Exhibit 10.1 and is incorporated herein by reference. A copy of the form of Amended and Restated Registration Rights Agreement and the Form of Note are attached as exhibits to the Securities Purchase Agreement.

On August 22, 2007, the Company issued a press release regarding the execution of agreements with Brad Foote and Tontine and related matters. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities

On August 20, 2007, the Company granted to Steven A. Huntington an incentive stock option for 50,000 shares under the Company's 2007 Equity Incentive Plan, which was approved by the Company's Board on August 20, 2007 but is subject to shareholder approval (the "2007 Plan"). The option will vest ratably over a five-year period and expires August 20, 2017. The exercise price is equal to the fair market value on the date of the grant, which was $4.60 per share. The options were granted in reliance on the exemption from registration provided by Section 4(2) of the Securities Act of 1933, as amended, since the issuance did not involve a public offering, the recipient took the securities for investment and not resale and the Company took appropriate measures to restrict transfer. The Company intends to file a form of incentive option agreement for grants under the 2007 Plan with its next periodic report.

The information set forth in Item 1.01 above with respect to the proposed sale of 16,036,450 shares of Company Common Stock to Brad Foote shareholders and 12,500,000 shares of Company Common Stock to Tontine in transactions that are not registered under the Securities Act of 1933, as amended, is incorporated herein by reference. The shares will be issued in

reliance on the exemption from registration provided by Section 4(2) of the Securities Act of 1933, as amended, since the issuances will not involve a public offering, the recipients will take the shares for investment and not resale and the Company will take appropriate measures to restrict transfer. The Company will not pay underwriter discounts or commissions in connection with either transaction.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

(b)

On August 20, 2007, the Board of Directors accepted the resignation of Christopher C. Allie as a director and Chairman of the Board.

(e)

The information set forth in Item 3.02 above with respect to the grant of an incentive stock option to Steven A. Huntington is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

2.1 Stock Purchase Agreement dated August 22, 2007 among the Company, Brad Foote Gear Works, Inc. and the shareholders of Brad Foote Gear Works, Inc. Pursuant to item 601(b)(2) of Regulation S-K, and subject to claims of confidentiality pursuant to Rule 24B-2 under the Securities Exchange Act of 1934, upon the request of the Commission, the Registrant undertakes to furnish supplementally to the Commission a copy of any schedule or exhibit to the Stock Purchase Agreement as follows:

Exhibit A	Form of Escrow Agreement
Exhibit B	Sellers' Release
Exhibit C	Employment Agreement
Exhibit D	Registration Rights Agreement
Exhibit E	Agreement by and among Buyer, Tontine Capital Partners, LP., and Tontine Capital Overseas Master Fund, L.P.
Schedule 4.1(a)	Organization and Good Standing
Schedule 4.2(b)	No Conflict
Schedule 4.3	Required Consents
Schedule 4.4	Capitalization
Schedule 4.7	Title to Properties; Shares; Encumbrances
Schedule 4.8	Accounts Receivable
Schedule 4.11	Indebtedness
Schedule 4.12	Taxes - Government Audits
Schedule 4.14(a)	Employee Benefits — List of Plans

Schedule 4.14(e)	Employee Benefits - Prohibited Transactions, Legal Actions, Ability to Amend, and Deductibility
Schedule 4.14(f)	Employee Benefits — Title IV of ERISA
Schedule 4.14(g)	Employee Benefits — Change in Control - Disqualified Individuals
Schedule 4.15(a)	Compliance with Legal Requirements; Governmental Authorizations
Schedule 4.15(b)	Compliance with Legal Requirements; Governmental Authorizations
Schedule 4.16(a)	Legal Proceedings
Schedule 4.17	Absence of Certain Changes and Events
Schedule 4.18(a)	Contracts; No Defaults - Material Contracts
Schedule 4.18(b)	Contracts; No Defaults - Compliance
Schedule 4.19	Insurance
Schedule 4.20	Real Property - Leased Facilities
Schedule 4.21	Environmental Matters
Schedule 4.22	Employees
Schedule 4.22(b)	Employees — Claims Against Employees
Schedule 4.22(c)	Employees — Notice of Employee Termination
Schedule 4.22(d)	Employees — Retired Employees & Directors
Schedule 4.23	Labor Relations; Compliance
Schedule 4.24	Intellectual Property
Schedule 4.25	Customers and Suppliers
Schedule 4.26	Relationships With Related Persons
Schedule 4.27	Credit, Rebate, Product Warranties and Related Matters
Schedule 5.2(b)	No Conflict
Schedule 5.3	Consents
Schedule 5.5	Legal Proceedings
Schedule 5.7	SEC Filings
Schedule 5.9	Ability to Close
Schedule 5.11	Compliance With Legal Requirements
Schedule 5.12	Capitalization
Schedule 6.10	Purchase Price Allocation

10.1 Securities Purchase Agreement dated August 22, 2007 among the Company, Tontine Capital Partners, L.P. and Tontine Capital Overseas Master Fund, L.P.

99.1 Press Release dated August 22, 2007

SIGNATURES

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

Date: August 24, 2007

TOWER TECH HOLDINGS INC.

By: /s/Steven A. Huntington
Steven A. Huntington
Chief Financial Officer

EXHIBIT INDEX

Exhibit Number	Description
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	Schedule 5.3	Consents
	Schedule 5.5	Legal Proceedings
	Schedule 5.7	SEC Filings
	Schedule 5.9	Ability to Close
	Schedule 5.11	Compliance With Legal Requirements
	Schedule 5.12	Capitalization
	Schedule 6.10	Purchase Price Allocation
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99.1	Press Release dated August 22, 2007	

Exhibit 2.1

STOCK PURCHASE AGREEMENT

by and among

TOWER TECH HOLDINGS INC.,

BRAD FOOTE GEAR WORKS, INC.

and

the SHAREHOLDERS OF BRAD FOOTE GEAR WORKS, INC.

Dated as of August 22, 2007

Schedules:

STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (" *Agreement* ") is made as of August 22, 2007 (the " *Effective Date* "), by and among TOWER TECH HOLDINGS INC., a Nevada corporation (" *Buyer* "), BRAD FOOTE GEAR WORKS, INC., an Illinois Corporation (the " *Company* "), J. Cameron Drecoll, an individual resident in Illinois (" *Mr. Drecoll* "), Patrick Rosmonowski an individual resident in Illinois (" *Mr. Rosmonowski* "), Dennis Palmer, an individual resident in Florida (" *Mr. Palmer* ") and Noel Davis, an individual resident in Indiana (" *Mr. Davis* ") (Messers Drecoll, Rosmonowski, Palmer and Davis are hereinafter collectively referred to as the " *Sellers* ").

RECITALS

A. The Company is engaged in the manufacturing and sale of gear sets for wind turbines and oil and gas exploration equipment (the " *Business* ").

B. Sellers own all of the outstanding capital stock of the Company.

C. Sellers desire to sell, and Buyer desires to purchase, all of the issued and outstanding shares (the " *Shares* ") of capital stock of the Company, for the consideration and on the terms set forth in this Agreement.

AGREEMENT

In consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer, the Company and Sellers agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Certain Definitions . For purposes of this Agreement, the following terms have the following meanings:

" *Adverse Consequence* " means any loss, Liability, claim, damage (including consequential damages which are reasonably foreseeable but excluding consequential damages which are not reasonably foreseeable and special, punitive, exemplary or incidental damages, unless such consequential, special, punitive, exemplary or incidental damages shall be payable to a third party other than Buyer, in which event such damages shall be deemed included within the definition of Adverse Consequence), expense (including costs of investigation and defense and reasonable attorneys' fees) diminution of value, or costs of cleanup, containment, or other remediation, whether or not involving a third party claim.

" *Affiliate* " of a specified Person means a Person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person.

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

A " *Breach* " of a representation, warranty, covenant, obligation, or other provision of this Agreement or any instrument delivered pursuant to this Agreement will be deemed to have occurred if there is or has been any inaccuracy in or breach of, or any failure to perform or comply with, such representation, warranty, covenant, obligation, or other provision.

" *Buyer Common Stock* " means the common stock, $0.001 par value, of the Buyer.

" *Buyer Indemnified Persons* " means Buyer and its Representatives, Related Persons and Affiliates, including, from and after the Closing, the Company.

" *Buyer's Disclosure Schedule* " means the disclosure schedule attached hereto and delivered by Buyer to Sellers in connection with this Agreement.

" *Closing Date* " means the date and time as of which the Closing actually takes place.

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

" *Contemplated Transactions* " means all of the transactions contemplated by this Agreement, including: (a) the sale of the Shares by Sellers to Buyer; (b) the issuance of Buyer Common Stock to the Sellers, (c) the execution, delivery, and performance of the Drecoll Agreement, the Rosmonowski Agreement, the Palmer Agreement, the Registration Rights Agreement and the Escrow Agreement; and (d) the performance by Buyer and Sellers of their respective covenants and obligations under this Agreement and any agreement executed and delivered pursuant to the terms hereof and Sellers' Closing Documents.

" *Contract* " means any agreement, contract, obligation, promise, or undertaking (whether written or oral and whether express or implied) that is legally binding.

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

" *Enforceability Exceptions* " means (a) bankruptcy, insolvency, reorganization, moratorium or other similar Laws now or hereafter in effect affecting the enforceability of creditors' rights generally, and (b) general principles of equity which may limit the availability of remedies (regardless of whether enforceability is considered in a proceeding in equity or at law)

" *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 and consisting of or relating to: (a) any environmental, health, or safety matters or conditions (including on-site or off-site contamination, occupational safety and health, and regulation of chemical substances or products); (b) fines, penalties, judgments, awards, settlements, legal or administrative proceedings, damages, losses, claims, demands and response, investigative, remedial, or inspection costs and expenses arising under Environmental Law or Occupational Safety and Health Law; (c) financial responsibility under Environmental Law or Occupational Safety and Health Law for cleanup costs or corrective action, including any investigation, cleanup, removal, containment, or other remediation or response actions (" *Cleanup* ") required by applicable Environmental Law or Occupational Safety and Health Law (whether or not such Cleanup has been required or requested by any Governmental Body or any other Person) and for any natural resource damages; or (d) any other compliance, corrective, investigative, or remedial measures required under Environmental Law or Occupational Safety and Health Law. The terms "removal," "remedial," and "response action," include the types of activities covered by the United States Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., as amended (" *CERCLA* ").

" *Environmental Law* " means any Legal Requirement which both has been adopted and is effective prior to the Closing Date 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 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) protecting resources, species, or ecological amenities; (f) reducing to acceptable levels the risks inherent in the transportation of hazardous substances, pollutants, oil, or other potentially harmful substances; (g) cleaning up pollutants that have been released,

preventing the threat of release, or paying the costs of such clean up or prevention; or (h) making responsible parties pay private parties, or groups of them, for damages done to their health or the Environment, or permitting self-appointed representatives of the public interest to recover for injuries done to public assets.

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

" *Facilities* " means any real property, leaseholds, or other interests currently or formerly owned or operated by the Company and any buildings, plants, structures, or fixtures thereon.

" *Financial Statements* " means, collectively, the Reviewed Financial Statements and the Audited Financial Statements.

" *GAAP* " means generally accepted United States accounting principles, applied on a basis consistent with the basis on which the Financial Statements were prepared.

" *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, state, province, county, city, town, village, district, or other jurisdiction of any nature; (b) federal, state, provincial, 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, including any admixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefor, silica or silica-containing materials and asbestos or asbestos-containing materials.

" *Income Taxes* " means all Taxes based upon or measured by gross or net receipts or gross or net income, including Taxes in the nature of minimum taxes, tax preference

items, and alternative minimum taxes, and Taxes on capital or net worth or capital stock, but excluding Taxes that are in the nature of sales, use, property, Transfer, recording, or similar Taxes.

" *Indebtedness* " of any Person means the principal of, premium, if any, and unpaid interest on (a) indebtedness for money borrowed from others; (b) indebtedness guaranteed, directly or indirectly, in any manner by such Person, or in effect guaranteed, directly or indirectly, in any manner by such Person through an agreement, contingent or otherwise, to supply funds to, or in any other manner invest in, the debtor, or to purchase indebtedness, or to purchase and pay for property if not delivered, or pay for services if not performed, primarily for the purpose of enabling the debtor to make payment of the indebtedness or to assure the owners of the indebtedness against loss; (c) all indebtedness secured by any Encumbrance upon property or assets owned by such Person, even though such Person has not in any manner become liable for the payment of such indebtedness; (d) all indebtedness or other liabilities of such Person created or arising under any capitalized lease, conditional sale, lease (intended primarily as a financing device) or other title retention or security agreement with respect to property acquired by such Person even though the rights and remedies of Seller, lessor or lender under such agreement or lease in the event of default may be limited to repossession or sale of such property; and (e) renewals, extensions and refundings of any such indebtedness.

" *Intellectual Property* " means (a) patents, patent applications and inventions and discoveries that may be patentable, (b) trademarks, service marks, trade names, fictional business names, service marks, trade dress and domain names, together with the goodwill associated therewith, (c) copyrights, including copyrights in computer software, (d) all rights in mask works, (e) confidential and proprietary information, including trade secrets, know-how, customer lists, software, technical information, data, process technology, plans, drawings, and blue prints, (f) registrations and applications for registration of the foregoing, and (g) all causes of action, if any, for infringement, conversion or misuse of any of the foregoing, and all rights of recovery related thereto.

" *Inventory* " means all inventories of raw materials, work in process, component parts and finished goods (including goods in transit from or to the locations at which the Business is conducted), including any of the foregoing purchased subject to conditional sales or title retention agreements in favor of any third party.

" *IRC* " or " *Code* " means the Internal Revenue Code of 1986, as amended, or any successor law, and regulations issued by the IRS pursuant to the Internal Revenue Code or any successor law.

" *IRS* " means the United States Internal Revenue Service or any successor agency, and, to the extent relevant, the United States Department of the Treasury.

" *Knowledge* " when used (i) in relation to the Company means the actual knowledge (excluding thereby any implied, imputed, constructive or other type of knowledge) of a particular fact or other matter being possessed as of the pertinent date by

any officer or director of the Company, and (ii) in relation to the Buyer means the actual knowledge of a particular fact or other matter being possessed as of the pertinent date by any officer or director of the Buyer.

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

" *Liability* " means, with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

" *Material Adverse Effect* " means when used with respect to the Company or the Buyer, any change or effect that, individually or taken together with all other such changes or effects that have occurred prior to the date of determination of the Material Adverse Effect, is materially adverse to the Business, assets, financial condition or results of operations of the Company considered as a whole; or Buyer and its subsidiaries considered as a whole; provided , however , that in no event shall any of the following, alone or in combination, be deemed to constitute, nor shall any of the following be taken into account in determining whether there has been, or will be, a Material Adverse Effect: (a) changes in general economic conditions; (b) changes that are generally applicable to the industry in which the Company or Buyer, as the case may be, operates (which changes do not affect the Company or Buyer, as the case may be, in a materially disproportionate manner); (c) changes resulting from or related to the transactions contemplated hereby including any loss, diminution or disruption of existing or prospective employee, customer, distributor or supply relationships; (d) any failure of the Company to meet internal financial projections or forecasts for any period ending on or after the date of this Agreement; (e) changes in GAAP or any interpretation thereof; or (f) the Buyer's failure or inability to obtain any concession from any labor union. In determining whether a Material Adverse Effect has occurred such determination shall be made on an after-tax basis and in addition an item of loss, expenses or liability shall be disregarded to the extent (i) of the aggregate reserve for the category of such item established in the Audited Financial Statements of the Company, (ii) such item is covered by insurance or any other third party indemnification, contribution or reimbursement obligation and the insurance carrier or third party, as the case may be, has acknowledged the coverage or indemnification, contribution or reimbursement obligation, as the case may be, or (iii) disclosure of such item has been made in the Company's Disclosure Schedule or, with respect to Buyer, in Buyer's Disclosure Schedule.

" *Neutral Accountant* " means, unless otherwise agreed in writing by Sellers' Representative and Buyer, an accountant mutually satisfactory to Sellers' Representative and Buyer who satisfies each of the following requirements (unless otherwise agreed by Sellers' Representative and Buyer): (i) neither the accountant nor the firm that employs the accountant shall have performed any accounting or consulting services for any party

or any Affiliate of any party at any time during the three year period prior to the date of this Agreement; (ii) the accountant is not related in any way by blood or marriage to any party or any executive officer or director of any party or any Affiliate of such party; (iii) the accountant has been a certified public accountant duly licensed to practice in the state where he or she has his or her primary office for a period of not less than ten years; and the accountant is willing to accept engagement as a Neutral Accountant on the terms and conditions of this Agreement.

" *Occupational Safety and Health Law* " means any Legal Requirement which both has been adopted and is effective prior to the Closing Date and which is 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.

" *Ordinary Course of Business* " means an action taken by a Person will be deemed to have been taken in the "Ordinary Course of Business" only if 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.

" *Organizational Documents* " means (a) the articles or certificate of incorporation and the bylaws of a corporation; (b) any charter or similar document adopted or filed in connection with the creation, formation, or organization of a corporation; (c) any agreements relating to the ownership of the capital stock of a corporation and/or the governance of such corporation to which shareholders of such corporation are parties; and (d) any amendment to any of the foregoing.

" *Permitted Encumbrances* " means (a) liens for Taxes, assessments or government charges not yet due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings and which are subject to reasonable reserves; (b) mechanics, materialmen's, carriers, warehouseman's, repairman's and similar Encumbrances incurred in the ordinary course of business consistent with past practice securing amounts not yet due and payable or being contested in good faith by appropriate proceedings; (c) zoning, entitlement, building and other land use regulations that are not violated by the current use and operation of such real property; (d) covenants, conditions, restrictions, easements and other similar matters that appear in the title commitments or insurance policies regarding real property that do not, individually or in the aggregate, materially impair the ownership, occupancy, use, or insurability of such real property as currently owned, used and operated by the Companies ; (e) any pledge or deposit made in the ordinary course of business in compliance with workers' compensation, unemployment insurance or other social security laws or other statutory obligations of Seller or the Company; (f) any cash deposit or right of set-off to secure the performance of bids, tenders, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds, government contracts and other obligations of a like nature, in each case imposed in the ordinary course of business; (g) any Encumbrance

created by Buyer and (h) those Encumbrances listed in Section 4.7 of the Sellers' Disclosure Schedule.

" *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.

" *Price Per Share* " means a fixed amount to be determined immediately prior to the execution of this Agreement based on the following formula: 0.80 multiplied by the average of the closing sale price of the Buyer's common stock for the 30 trading days immediately preceding the Effective Date as such price is quoted on the over the counter quotation service or any national public market or exchange on which the Buyer's common stock is then registered and sold; provided, however that in no event shall the Price Per Share be less than $3.50 or greater than $4.00 .

" *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.

" *Reference Date* " means December 31, 2004.

" *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); (b) with respect to a specified Person other than an individual, (i) any Person that directly or indirectly controls, is directly or indirectly controlled by, or is directly or indirectly under common control with such specified Person; (ii) any Person that holds a Material Interest in such specified Person; (iii) each Person that serves as a director, officer, partner, executor, or trustee of such specified Person (or in a similar capacity); (iv) any Person in which such specified Person holds a Material Interest; (v) any Person with respect to which such specified Person serves as a general partner or a trustee (or in a similar capacity); and (vi) any Related Person of any individual described in clause (ii) or (iii). For purposes of this definition, (x) the " *Family* " of an individual includes (i) the individual, (ii) the individual's spouse and children who reside with such individual, and (y) " *Material Interest* " means direct or indirect beneficial ownership (as defined in Rule 13d-3 under the Securities Exchange Act of 1934) of voting securities or other voting interests representing at least 10% of the outstanding voting power of a Person or equity securities or other equity interests representing at least 10% of the outstanding equity securities or equity interests in a Person.

" *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.

" *Section 338(h)(10) Adjustment* " means the additional amount of Tax payable by Sellers as a result of making the 338(h)(10) Election hereunder when compared to the amount of Tax payable by Sellers if Sellers had sold the Shares to Buyer hereunder without making the 338(h)(10) Election assuming, for calculation purposes, that each Seller is in the highest marginal tax bracket for local, state and federal Tax purposes.

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

" *Seller Indemnified Persons* " means Sellers and their Representatives, Related Persons and Affiliates, including, prior to the Closing, the Company.

" *Seller's Disclosure Schedule* " means the disclosure schedule attached hereto and delivered by Sellers to Buyer in connection with this Agreement.

" *Subsidiary* " means with respect to any Person (the " *Owner* "), 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 (other than securities or other interests having such power only upon the happening of a contingency that has not occurred) are held by the Owner or one or more of its Subsidiaries; when used without reference to a particular Person, "Subsidiary" means a Subsidiary of the Company.

" *Tax* " means all taxes, charges, fees, levies or other similar assessments or liabilities, including, without limitation, income, gross receipts, ad valorem, premium, value-added, excise, real property, personal property, sales, use, services, transfer, withholding, employment, payroll and franchise taxes imposed by the United States of America or any state, province, government, foreign taxing authority or any agency thereof, and any interest, fines, penalties, assessments or additions to tax resulting from, attributable to or incurred in connection with any tax or any contest or dispute thereof.

" *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.

" *Threat of Release* " means a substantial likelihood of a Release that may require action in order to prevent or mitigate damage to the Environment that may result from such Release.

" *Threatened* " means a claim, Proceeding, dispute or audit will be deemed to have been "Threatened" if any demand or statement has been made in writing or any notice has been given in writing that would lead a prudent Person to reasonably conclude that such a claim, Proceeding, dispute or audit is likely to be asserted, commenced, taken, or otherwise pursued prior to expiration of any applicable statute of limitations.

" *Threshold Amount* " means $100,000.

1.2 Glossary of Other Defined Terms . The following sets forth the location of definitions of capitalized terms defined in the body of this Agreement:

" *Accounts Receivable* "	Section 4.8
" *Agreement* "	Preamble
"Audited Balance Sheet"	Section 4.5(b)
"Audited Financial Statements"	Section 4.5(b)
"Auditor Consent"	Section 4.5(b)
" *Buyer* "	Preamble
" *Buyer Consents* "	Section 5.3
" *Buyer's Advisors* "	Section 6.1
" *Cash Purchase Price* "	Section 2.3(a)
"Claim Notice"	Section 11.6(b)
" *Closing* "	Section 3.1
" *Company* "	Recitals
" *Company Benefit Plan* "	Section 4.14
"Competing Business"	Section 4.26
"Drecoll Agreement"	Section 3.2(a)(iv)
" *Effective Date* "	Preamble
" *ERISA Affiliate* "	Section 4.14
" *Escrow Account* "	Section 2.3(c)
" *Escrow Agent* "	Section 2.3(c)
" *Escrow Agreement* "	Section 2.3(c)
" *Escrow Amount* "	Section 2.3(c)
" *Escrow Period* "	Section 2.3(c)
" *Foreign Plans* "	Section 4.14
"Indemnified Party"	Section 11.6(a)
"Indemnifying Party"	Section 11.6(a)
"Indemnity Basket"	Section 11.4(b)
"Indemnity Cap"	Section 11.4(a)
"Leased Real Property "	Section 4.20(a)
" *Material Contracts* "	Section 4.15(a)
" *Materiality Qualifier* "	Section 8.1

"Mr. Drecoll"	Preamble
"Mr. Rosmonowski "	Preamble
"Mr. Palmer"	Preamble
" *Multiemployer Plan* "	Section 4.14
" *Notice of Indemnifiable Loss* "	Section 11.6(a)
"Owned Real Property"	Section 4.20(a)
" *Purchase Price* "	Section 2.2
"Real Property"	Section 4.20(a)
" *Required Consents* "	Section 4.3
" *Reviewed Balance Sheet* "	Section 4.5(a)
"Reviewed Financial Statements"	Section 4.5(a)
" *Scheduled Debt* "	Section 4.11
" *Sellers* "	Preamble
" *Sellers' Closing Documents* "	Section 4.2(a)
" *Sellers' Releases* "	Section 3.2(a)(iii)
"Sellers' Representative"	Section 12.5
" *Shares* "	Recitals
"Stock Purchase Price"	Section 2.3(b)
"Survival Period"	Section 11.1(a)
"Taxable Income Distribution Amount"	Section 2.6(a)

ARTICLE 2
SALE AND TRANSFER OF SHARES; PURCHASE PRICE; SECTION 338(H)(10) ADJUSTMENT

2.1 **Shares** . Subject to the terms and conditions of this Agreement, at the Closing, Sellers will sell and transfer the Shares to Buyer, and Buyer will purchase the Shares from Sellers.

2.2 **Purchase Price** . The purchase price (the " *Purchase Price* ") for the Shares is One Hundred Twenty Eight Million Two Hundred Ninety One Thousand Six Hundred Two and 88/100 Dollars ($128,291,602.88) plus the Final Section 338(h)(10) Adjustment.

2.3 **Payment of Purchase Price** . The Purchase Price shall be paid by Buyer as follows:

(a) Cash Purchase Price . At the Closing, Buyer shall pay to Sellers in cash the sum of Sixty Four Million One Hundred Forty Five Thousand Eight Hundred One and 44/100 Dollars ($64,145,801.44), (" *Cash Purchase Price* "), Five Million Dollars ($5,000,000) of which Sellers authorize Buyer to deposit in the Escrow Account on behalf of Sellers pursuant to Section 2.3(c) below (the " *Cash Escrow Deposit* "), plus the Estimated Section 338(h)(10) Adjustment.

(b) Stock Purchase Price . Subject to the provisions of Section 2.3(c) below, at the Closing Buyer shall deliver to Sellers a number of shares of Buyer Common Stock

equal to the sum of Sixty Four Million One Hundred Forty Five Thousand Eight Hundred One and 44/100 Dollars ($64,145,801.44) divided by the Price Per Share, which the parties acknowledge and agree is Four Dollars ($4.00) per share and shall result in the issuance of Sixteen Million Thirty Six Thousand Four Hundred Fifty (16,036,450) shares of Buyer Common Stock to Sellers at Closing, adjusted proportionately for any stock dividends, stock splits, combination of shares or other change in Buyer's capital structure between the date hereof and the Closing Date. The aggregate value of such Buyer Common Stock delivered to the Sellers at Closing combined with the aggregate value of Buyer common stock deposited directly in the Escrow Account is referred to herein as the " *Stock Purchase Price* ", with such value being determined by multiplying the number of shares of Buyer Common Stock so delivered or deposited by the Per Share Price.

(c) Escrow Amount . To secure and to serve as a fund in respect of the indemnification obligations of Sellers under this Agreement, Buyer, Sellers and Wells Fargo Bank, N.A., as Escrow Agent, (the " *Escrow Agent* "), at Closing shall enter into an Escrow Agreement substantially in the form annexed hereto as Exhibit A (the " *Escrow Agreement* "). At the Closing, Buyer shall deposit (i) Ten Million Dollars ($10,000,000) of Buyer Common Stock (based upon the determination of Price Per Share at Closing without the application of the 0.80 multiplier), and (ii) the Cash Escrow Deposit (the " *Escrow Amount* ") with the Escrow Agent to be held in an account (collectively, the " *Escrow Account* ") pursuant to the terms of the Escrow Agreement. Except with respect to amounts that have been previously paid from the Escrow Account to Buyer pursuant to the joint written instruction of Sellers and Buyer, and except with respect to indemnity claims duly made in accordance with ARTICLE 11 on or before the eighteen (18) month anniversary date of the Closing Date, all amounts in the Escrow Account (with any interest or other earnings paid thereon) shall be distributed to Sellers in accordance with the Escrow Agreement within five (5) business days after the expiration of said eighteen (18) month escrow period (the " *Escrow Period* ").

(d) Method of Cash Payment . All cash payments made under this Section 2.3 shall be made by wire transfer of immediately available funds to an account designated by the recipient.

(e) Each Seller . As between Sellers, any Purchase Price payable to Sellers, or payments payable to Sellers from the Escrow Account, shall be paid pro rata among the Sellers based on such Seller's equity ownership percentage of the Company immediately prior to the Closing. No fractional shares of Buyer Common Stock will be issued to the Sellers. Sellers shall receive cash in lieu of any fractional shares of Buyer Common Stock to which any such Seller would otherwise have been entitled pursuant to the Contemplated Transactions at the Price Per Share without the 0.80 multiplier applied.

2.4 Code Section 338(h)(10) Election . Buyer and Sellers will join in making, and will take any and all action necessary to effect, a timely and irrevocable election under Section 338(h)(10) of the Code (and the Treasury Regulations and administrative pronouncements thereunder) and any comparable provision of state, local, or foreign Tax law. Buyer and Seller shall file all Tax Returns in a manner consistent with such Section 338(h)(10) election and will not take any position contrary thereto.

2.5 Payment of Section 338(h)(10) Adjustment .

(a) Closing Date Payment . At the Closing, Buyer shall pay to Sellers in cash the estimated amount of Section 338(h)(10) Adjustment as of the Closing Date as calculated in writing by Sellers and delivered to Buyer not less than two (2) business days prior to the Closing Date (the " *Estimated Section 338(h)(10) Adjustment* ").

(b) Post Closing Reconciliation . As soon as practicable after the Closing, but in no event more than sixty (60) days after the Closing Date, Buyer and Sellers shall mutually determine the final Section 338(h)(10) adjustment (the " *Final Section 338(h)(10) Adjustment* "). In the event the Final Section 338(h)(10) Adjustment exceeds the Estimated Section 338(h)(10) Adjustment, then Buyer shall pay such excess to Sellers promptly in cash. In the event the Final Section 338(h)(10) Adjustment is less than the Estimated Section 338(h)(10) Adjustment then Sellers shall pay Buyer the amount by which the Estimated Section 338(h)(10) Adjustment exceeds the Final Section 338(h)(10) Adjustment promptly in cash. If Buyer and Sellers are unable to agree to the amount of the Final Section 338(h)(10) Adjustment within said sixty (60) day period, such determination shall be made by the Neutral Accountants, whose determination shall be final and binding upon the parties.

2.6 Consideration for Non-Competition . Sellers acknowledge and agree that a portion of the Purchase Price equal to Five Thousand Dollars ($5,000.00) represents consideration for the restrictive covenants contained in Section 7.1 of this Agreement.

ARTICLE 3
CLOSING

3.1 Closing . The purchase and sale (the " *Closing* ") provided for in this Agreement will take place at the offices of DLA Piper US LLP at Suite 1900, 203 North LaSalle Street, Chicago, Illinois 60601, commencing at 10:00 a.m. (local time) on the date that is three (3) business days following the satisfaction or waiver of the conditions set forth in ARTICLE 8 and ARTICLE 9 (other than delivery of items to be delivered at the Closing and other than satisfaction of those conditions that by their nature are to be satisfied at the Closing, it being understood that the occurrence of the Closing shall remain subject to the delivery of such items and satisfaction or waiver or such conditions at the Closing), or at such other time and place as the parties may agree. By agreement of the parties the Closing may take place by delivery of this Agreement and the other documents to be delivered at the Closing by facsimile or other electronic transmission. Subject to the provisions of ARTICLE 10 , failure to consummate the purchase and sale provided for in this Agreement on the date and time and at the place determined pursuant to this Section 3.1 will not result in the termination of this Agreement and will not relieve any party of any obligation under this Agreement.

3.2 Closing Obligations. At the Closing:

(a) **Deliveries by Sellers.** Sellers will deliver, or cause to be delivered, to Buyer:

(i) the Escrow Agreement executed by Sellers;

(ii) certificates representing the Shares, duly endorsed (or accompanied by duly executed stock powers);

(iii) releases executed by Sellers in the form of Exhibit B attached hereto (collectively, " *Sellers' Releases* ");

(iv) an Employment Agreement substantially in the form attached hereto as Exhibit C executed by Mr. Drecoll (the " *Drecoll Agreement* ");

(v) executed letters of resignation from all officers and directors of the Company, effective upon the Closing, in forms reasonably acceptable to Buyer;

(vi) a certificate signed by Sellers, certifying to the fulfillment of the conditions specified in Section 8.1 and Section 8.2 ;

(vii) an opinion of counsel to Sellers and the Company, each dated the Closing Date, in forms reasonably acceptable to Buyer;

(viii) the Registration Rights Agreement substantially in the form attached hereto as Exhibit D ;

(ix) the Audited Financial Statements;

(x) the Required Consents;

(xi) executed copies of Section 338 Election Forms;

(xii) the Auditor Consent.

(b) Deliveries by Buyer . Buyer will deliver to Sellers:

(i) the Escrow Agreement, executed by Buyer;

(ii) the payments to be made at Closing pursuant to Section 2.3 ;

(iii) the Drecoll Agreement, executed by Buyer;

(iv) the Registration Rights Agreement, executive by Buyer;

(v) an opinion of counsel to Buyer, dated the Closing Date, in a form reasonably acceptable to Sellers;

(vi) a certificate signed by Buyer, certifying to the fulfillment of the conditions specified in Section 9.1 and Section 9.2; and

(vii) a true, correct and complete copy of resolutions of the Board of Directors of Buyer duly authorizing and approving the execution and delivery of this Agreement and the various transaction documents referred to herein that require the signature of Buyer, the consummation of the transactions provided for

herein and in such other transaction documents, and the appointment of Mr. Drecoll to the office of Director on the Board of Directors of Buyer effective immediately upon the effectiveness of the amendment to the Buyer's bylaws increasing the size of Buyer's Board of Directors, which resolutions shall be duly certified in writing on the Closing Date by the President or Secretary of Buyer as being duly adopted, unamended and in full force and effect.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF THE SELLERS

Each of the Sellers jointly and severally represents and warrants to Buyer that the statements contained in this ARTICLE 4 are true and correct as of the date of this Agreement and as of the Closing Date, except as set forth in the section of the Sellers' Disclosure Schedule numbered to correspond to the Section of this Article 4 to which such exception relates and except as to any representation or warranty respecting title to Shares, or the representations and warranties set forth in Section 4.2 , Section 4.12 , Section 4.26 and Section 4.28 below, as they or any of them relate to a Seller, and with respect to which such Seller shall be solely responsible:

4.1 Organization and Good Standing .

(a) Good Standing . Section 4.1(a) of the Sellers' Disclosure Schedule contains a complete and accurate list for the Company of its name, its jurisdiction of incorporation and other jurisdictions in which it is authorized to do business. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois, 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 Applicable Contracts. The Company is duly qualified to do business as a foreign corporation and is in good standing under the laws of each state or other jurisdiction where the failure to be so qualified would have a Material Adverse Effect.

(b) Organizational Documents . Sellers have made available to Buyer true and complete copies of the Organizational Documents of the Company, as currently in effect.

(c) Subsidiaries . The Company has no subsidiaries. The Company does not own directly or indirectly any equity ownership interest in any other Person.

4.2 Authority; No Conflict .

(a) Enforceability. This Agreement constitutes the legal, valid and binding obligation of Company and Sellers, enforceable against Company and Sellers in accordance with its terms, except that such enforceability may be limited by the Enforceability Exceptions. Upon the execution and delivery by Sellers of the Escrow Agreement, the Drecoll Agreement, the Rosmonowski Agreement, the Palmer Agreement, the Registration Rights Agreement and Sellers' Releases (collectively, the " *Sellers' Closing Documents* ") and the Sellers' Closing Documents will constitute the legal, valid and binding obligations of Sellers, enforceable against Sellers in accordance

with their respective terms, subject to the Enforceability Exceptions. Sellers have the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement, Sellers' Closing Documents and to perform their obligations under this Agreement, Sellers' Closing Documents.

(b) No Conflict . Except as set forth in Section 4.2(b) of the Sellers' Disclosure Schedule, neither the execution and delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time): (i) contravene, conflict with, or result in a violation of (A) any provision of the Organizational Documents of the Company, or (B) any resolution adopted by the board of directors or the stockholders of the Company; (ii) contravene, conflict with, or result in a violation of, or give any Governmental Body or other Person the right to challenge any of the Contemplated Transactions or to exercise any remedy or obtain any relief under, any Legal Requirement to which the Company or either Seller, or any of the assets owned or used by the Company, may be subject; (iii) 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; (iv) cause Buyer or the Company to become subject to, or to become liable for the payment of, any Tax; (v) 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 (vi) result in the imposition or creation of any Encumbrance upon or with respect to any of the assets owned or used by the Company.

4.3 Required Consents . Except as set forth in Section 4.3 of the Sellers' Disclosure Schedule, neither any of the Sellers nor 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 the consummation or performance of any of the Contemplated Transactions (the matters set forth in Section 4.3 of the Sellers' Disclosure Schedule, the " *Required Consents* ").

4.4 Capitalization . The authorized equity securities of the Company consist of One Hundred Thousand (100,000) shares of common stock, no par value, of which One Thousand (1,000) shares are issued and outstanding and constitute the Shares. Sellers own the Shares in the proportions set forth in Section 4.4 of the Sellers' Disclosure Schedule. 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, or transfer of any equity securities or other securities of the Company. There are no options, warrants, convertible securities or other rights, agreements, arrangements or commitments relating to the capital stock of the Company or obligating either a Seller or the Company to issue, sell or redeem any equity interests in 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, or have any Contract to acquire, any equity securities or other securities of any Person (other than the Company) or any direct or indirect equity or ownership interest in any other business.

4.5 Financial Statements.

(a) Sellers have made available to Buyer: (i) reviewed unaudited balance sheets of the Company as of December 31, 2004, 2005 and 2006, and the related statements of income, statements of stockholders' equity, and cash flow for each of the fiscal years then ended, together with the notes thereto and the report thereon, and (ii) an unaudited balance sheet of the Company as of June 30, 2007 (the " *Reviewed Balance Sheet* "), and related statement of income for the six month period then ending (all financial statements referenced in this Section 4.5(a) collectively, including the Reviewed Balance Sheet, the " *Reviewed Financial Statements* ").

(b) Sellers shall deliver to Buyer prior to the Closing: (i) audited balance sheets of the Company as of December 31, 2004, 2005 and 2006, and the related statements of income, statements of stockholders' equity, and cash flow for each of the fiscal years then ended, together with the notes thereto and the report thereon, (ii) an audited balance sheet of the Company as of June 30, 2007 (the " *Audited Balance Shee* t"), and the related statement of income for the six month period then ending (all financial statements referenced in this Section 4.5(b) collectively, including the Audited Balance Sheet, the " *Audited Financial Statements* ") and (iii) a consent from the Company's independent auditor consenting to incorporation of the Audited Financial Statements in any document filed by the Buyer with the SEC (the " *Auditor Consent* ").

(c) The Reviewed Financial Statements, and, upon delivery to Buyer the Audited Financial Statements will, fairly present in all material respects the financial condition and the results of operations, stockholders' equity and cash flow of the Company as at the respective dates of and for the periods referred to in such financial statements, the Reviewed Financial Statements, and, upon delivery to Buyer the Audited Financial Statements will, reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such financial statements. No financial statements of any Person other than the Company are required by GAAP to be included in the financial statements of the Company.

4.6 Books and Records . The books of account, minute books, stock record books, and other records of the Company, all of which have been made available to Buyer, have been maintained in accordance with sound business practices from and after the Reference Date. The minute books of the Company contain accurate and complete records of all meetings held of, and corporate action taken by, the stockholders, the Board of Directors, and committees of the Board of Directors of the Company from and after the Reference Date, and no meeting of any such stockholders, Board of Directors, or committee has been held from and after the Reference Date 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, or under the control of, of the Company.

4.7 Title To Properties; Shares; Encumbrances . The Company owns subject only to the matters permitted by the following sentence) all of the properties and assets (whether real, personal, or mixed and whether tangible or intangible) that they purport to own located in the facilities owned or operated by the Company or reflected as owned in the books and records of

the Company, including all of the properties and assets reflected in the Reviewed Balance Sheet (except for assets held under capitalized leases disclosed in Section 4.7 of the Sellers' Disclosure Schedule and personal property sold since the date of the Reviewed Balance Sheet, as the case may be, in the Ordinary Course of Business), and all of the properties and assets purchased or otherwise acquired by the Company since the date of the Reviewed Balance Sheet (except for personal property acquired and sold since the date of the Reviewed Balance Sheet in the Ordinary Course of Business and consistent with past practice), which subsequently purchased or acquired properties and assets with a book value in excess of the Threshold Amount (other than inventory and short-term investments) are listed in Section 4.7 of the Sellers' Disclosure Schedule. All material properties and assets reflected in the Reviewed Balance Sheet are free and clear of all Encumbrances other than Permitted Encumbrances. Each Seller is the lawful record and beneficial owner of the Shares transferred hereby. The Shares represent all of the issued and outstanding capital stock of the Company. Each Seller owns the Shares transferred by such Seller hereby free and clear of all Encumbrances except for restrictions on transfer under federal and state securities laws.

4.8 **Accounts Receivable** . All accounts receivable of the Company that are reflected on the Reviewed 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 of a Company customer owed to the Company arising from sales actually made or services actually performed in the Ordinary Course of Business. To the knowledge of Sellers, there is no contest, claim, or right of set-off, other than returns in the Ordinary Course of Business, under any Contract with any obligor of an Accounts Receivable relating to the amount or validity of such Accounts Receivable. Section 4.8 of the Sellers' Disclosure Schedule contains a complete and accurate list of all Accounts Receivable as of the date of the Reviewed Balance Sheet, which list sets forth the aging of such Accounts Receivable.

4.9 **Inventory** . All Inventory of the Company, whether or not reflected in the Reviewed Balance Sheet, consists of a quality and quantity usable and salable in the Ordinary Course of Business, except for obsolete items and items of below-standard quality, all of which have been written off or written down to net realizable value in the Reviewed Balance Sheet or on the accounting records of the Company as of the Closing Date, as the case may be.

4.10 **No Undisclosed Liabilities** . The Company has no Liabilities which are required under GAAP to be disclosed in the Financial Statements of the Company except for Liabilities reflected or reserved against in the Reviewed Balance Sheet and reflected in the notes to the Reviewed Financial Statements, Liabilities incurred in the Ordinary Course of Business since the respective dates thereof and Liabilities under any of the transaction documents relating to any of the Contemplated Transactions.

4.11 **Indebtedness** . Section 4.11 of the Sellers' Disclosure Schedule sets forth all of the outstanding Indebtedness of the Company (the " *Scheduled Debt* ") as of the date hereof, together with any prepayment or other penalties that would result from the prepayment or refinancing of such Indebtedness. All of the Scheduled Debt has been incurred in the Ordinary Course of Business and has been used for valid corporate purposes.

4.12 Taxes .

(a) Compliance . The Company has timely filed or timely requested extensions to file those Tax Returns which are currently due or, if not yet due, will timely file or timely request extensions to file with the appropriate Governmental Bodies all Tax Returns required to have been filed by the Closing, the information included in the Tax Returns filed is or will be when filed, complete and accurate in all material respects, and the Company has paid all Taxes shown to be due and payable on such returns. All Taxes for which the Company is obligated and which are attributable to fiscal periods ending on or before the Closing Date (including, without limitation, any built-in gain tax that will be incurred by the Company as a result of the Closing and any Taxes attributable to the portion of any fiscal period that precedes, but does not end on, the Closing Date) have either been paid or are reflected as a liability on the books and records of the Company. The Company has, within the time and manner prescribed by applicable law, rules and regulations, withheld and paid over to proper taxing or other Governmental Bodies all Taxes required to be withheld and paid over.

(b) Audits . Subsequent to the Reference Date the Company has not received any written notice that any deficiencies for Taxes have been claimed, proposed, or assessed by any Governmental Body with respect to the Company for any period ending before the Closing Date that have not been resolved, and the Company has not received any written notice that there are any pending or, to the Knowledge of Sellers and the Company, Threatened, audits, investigations, or claims for or relating to any liability of the Company in respect of Taxes. Audits of federal, state, and local Tax Returns of the Company, if any, by the relevant Governmental Bodies have been completed for each period set forth in Section 4.12 of the Sellers' Disclosure Schedule. No extension or waiver of a statute of limitations relating to Taxes is in effect with respect to any Company Tax Return.

(c) Valid S Election . The Company has been a validly electing Subchapter S corporation under Section 1362 of the Code continuously since at least January 1, 1997.

(d) Other . The Company has not applied for any Tax ruling or entered into a closing agreement as described in Section 7121 of the Code (or any similar provision of state, local or foreign Tax law), or any other Contract related to Taxes with any Governmental Authority, which may be binding on the Company following the Closing Date taking into account the effect of the Section 338(h)(10) election provided for in Section 2.4 above.

4.13 No Material Adverse Effect . Since December 31, 2006, there has not been any Material Adverse Effect on the Company.

4.14 Employee Benefits .

(a) List of Plans . Section 4.14(a) of the Sellers' Disclosure Schedule sets forth a complete list of each "employee benefit plan" as defined in Section 3(3) of the ERISA (whether or not subject to ERISA) and any other plan, policy, program practice, agreement, understanding or arrangement (whether written or oral) providing compensation or other benefits to any current or former director, officer, employee or

consultant (or to any dependent or beneficiary thereof of the Company or any ERISA Affiliate (as defined below)), which are now, or were within the past six (6) years, maintained, sponsored or contributed to by the Company or any ERISA Affiliate, or under which the Company or any ERISA Affiliate has any obligation or liability, whether actual or contingent, including, without limitation, all incentive, bonus, deferred compensation, vacation, holiday, cafeteria, medical, disability, stock purchase, stock option, stock appreciation, phantom stock, restricted stock or other stock-based compensation plans, policies, programs, practices or arrangements (each, a " *Company Benefit Plan* "). For purposes of this Section 4.14 , " *ERISA Affiliate* " means any entity (whether or not incorporated) other than the Company that, together with the Company, is (or at the relevant time was) considered under common control and treated as one employer under Section 414(b), (c), (m) or (o) of the Code, including any of the Company's Subsidiaries.

(b) Deliveries . With respect to the Company Benefit Plan, the Company has made available to Buyer complete copies of (i) the Company Benefit Plan (or, if not written a written summary of its material terms), including, without limitation, all plan documents, trust agreements, insurance contracts or other funding vehicles and all amendments thereto, (ii) all summaries and summary plan descriptions, including any summary of material modifications (iii) the most recent annual reports (Form 5500 series) filed with the IRS with respect to such Company Benefit Plan (and, if the most recent annual report is a Form 5500R, the most recent Form 5500C filed with respect to such Company Benefit Plan), (iv) the most recent actuarial report or other financial statement relating to such Company Benefit Plan, (v) the most recent determination or opinion letter, if any, issued by the IRS with respect to the Company Benefit Plan and any pending request for such a determination letter, (vi) the most recent nondiscrimination tests performed under the Code (including 401(k) and 401(m) tests) for the Company Benefit Plan, (vii) all filings, other than routine tax return filings, made with any Governmental Bodies, including, but not limited to, any filings under the Voluntary Compliance Resolution or Closing Agreement Program or the Department of Labor Delinquent Filer Program.

(c) General Compliance . The Company Benefit Plan has been administered in all material respects in accordance with its terms and all applicable Laws, including ERISA and the Code, and contributions required to be made under the terms of any of the Company Benefit Plans as of the date of this Agreement have been timely made or, if not yet due, have been properly reflected on the most recent consolidated balance sheet filed or incorporated by reference in the financial statements of the Company prior to the date of this Agreement. All Tax, annual reporting and other governmental filings required by ERISA and the Code have been timely filed with the appropriate Governmental Body and all notices and disclosures have been timely provided to participants.

(d) Tax Qualification of Plans . Each Company Benefit Plan which is intended to qualify under Section 401(a), Section 401(k), Section 401(m) or Section 4975(e)(6) of the Code has either (i) received a favorable determination letter from the IRS as to its qualified status and the tax-exempt status of the related trust, (ii) may rely upon a prototype opinion letter or (iii) the remedial amendment period for such Company

Benefit Plan has not yet expired, and each trust established in connection with the Company Benefit Plan which is intended to be exempt from federal income taxation under Section 501(a) of the Code is so exempt.

(e) Prohibited Transactions, Legal Actions, Ability to Amend, and Deductibility . Except as set forth on Section 4.14 of the Sellers' Disclosure Schedule, (i) to the Knowledge of Sellers and the Company, there has been no prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code and other than a transaction that is exempt under a statutory or administrative exemption) with respect to the Company Benefit Plan that could result in liability to the Company or an ERISA Affiliate, (ii) the Company Benefit Plan can be amended, terminated or otherwise discontinued after the Closing Date in accordance with its terms, without liability (other than (A) liability for ordinary administrative expenses typically incurred in a termination event or (B) if the Company Benefit Plan is a pension benefit plan subject to Part 2 of Title I of ERISA, liability for the accrued benefits as of the date of such termination (if and to the extent required by ERISA) to the extent that either there are sufficient assets set aside in a trust or insurance contract to satisfy such liability or such liability is reflected on the most recent balance sheet included in the financial statements of the Company prior to the date of this Agreement), (iii) no suit, administrative proceeding, action or other litigation has been brought, or to the Knowledge of Sellers and the Company, is Threatened, against or with respect to any such Company Benefit Plan, including any audit or inquiry by the IRS or United States Department of Labor (other than routine benefits claims), and (iv) to the Knowledge of Sellers and the Company, (A) none of the Company or any ERISA Affiliate has any liability under ERISA Section 502, (B) all contributions and payments to such Company Benefit Plan are deductible and have been deductible under Code sections 162 or 404, and (C) no excise tax could be imposed upon the Company under Chapter 43 of the Code.

(f) Title IV of ERISA . Except as set forth in Section 4.14 of the Sellers' Disclosure Schedule, no Company Benefit Plan is a multiemployer pension plan (as defined in Section 3(37) of ERISA) (" *Multiemployer Plan* ") or other pension plan subject to Title IV of ERISA and neither the Company nor any ERISA Affiliate has sponsored or contributed to or been required to contribute to a Multiemployer Plan or other pension plan subject to Title IV of ERISA. No material liability under Title IV of ERISA has been incurred by the Company or any ERISA Affiliate that has not been satisfied in full, and no condition exists that presents a material risk to the Company or any ERISA Affiliate of incurring or being subject (whether primarily, jointly or secondarily) to a material liability thereunder. None of the assets of the Company or any ERISA Affiliate is, or may reasonably be expected to become, the subject of any lien arising under ERISA or Section 412(n) of the Code.

(g) Change in Control . Except as set forth in Section 4.14 of the Sellers' Disclosure Schedule, no amount that has been or could be received (whether in cash or property or the vesting of property), by any employee, officer or director of the Company or any of its Subsidiaries who is a "disqualified individual" (as such term is defined in Treasury Regulation Section 1.280G-1) under the Company Benefit Plan could be characterized as an "excess parachute payment" (as defined in Section 280G(b)(1) of the

Code), as a result of the consummation of the Contemplated Transactions. Set forth in Section 4.14 of the Sellers' Disclosure Schedule is (i) the estimated maximum amount that could be paid to any disqualified individual as a result of the Contemplated Transactions under all employment, severance and termination agreements, other compensation arrangements and Company Benefit Plans currently in effect, and (ii) the "base amount" (as defined in Section 280G(b)(e) of the Code) for each such individual as of the date of this Agreement.

(h) Retiree Health/COBRA . Except as set forth in Section 4.14 of the Sellers' Disclosure Schedule, no Company Benefit Plan provides any of the following retiree or post-employment benefits to any Person: medical, disability or life insurance benefits. No Company Benefit Plan is a voluntary employee benefit association under Section 501(a)(9) of the Code. The Company and the ERISA Affiliates are in material compliance with (i) the requirements of the applicable health care continuation and notice provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and the regulations (including proposed regulations) thereunder and any similar state Law and (ii) the applicable requirements of the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations (including the proposed regulations) thereunder.

(i) 409A / Deferred Compensation/Backdating . No payment or benefit provided pursuant to the Company Benefit Plan between the Company and any "service provider" (as such term is defined in Section 409A of the Code and the Treasury Regulations and Internal Revenue Service guidance thereunder), including the grant, vesting or exercise of any option to purchase capital stock of the Company or stock appreciation right, will or may provide for the deferral of compensation subject to Section 409A of the Code, whether pursuant to the execution and delivery of this Agreement by Sellers or the consummation of the Contemplated Transactions (either alone or upon the occurrence of any additional or subsequent events) or otherwise. The Company option and stock appreciation right was granted in compliance with applicable Law and with an exercise price that was not less than the fair market value of the underlying Company common stock on the date the option or right was granted based upon a reasonable valuation method. No Company is a party to, or otherwise obligated under, the Company Benefit Plan, that provides for the gross-up of the Tax imposed by Section 409A(a)(1)(B) of the Code. The execution and delivery of this Agreement and the consummation of the Contemplated Transactions will not (either alone or upon the occurrence of any additional or subsequent events) constitute an event under the Company Benefit Plan or Contract that will or may result in any payment of deferred compensation which will not be in compliance with Section 409A of the Code.

(j) Unfunded Liabilities . Except as set forth in Section 4.14 of the Sellers' Disclosure Schedule, neither the Company nor any of its ERISA Affiliates has any unfunded Liabilities pursuant to the Company Benefit Plan that is not intended to be qualified under Section 401(a) of the Code and is an employee pension benefit plan within the meaning of Section 3(2) of ERISA, a nonqualified deferred compensation plan or an excess benefit plan. No Company Benefit Plan is a "nonqualified deferred compensation plan" (as defined under Section 409A(d)(1) of the Code).

4.15 Compliance with Legal Requirements; Governmental Authorizations .

(a) Compliance . Except as set forth in Section 4.15(a) of the Sellers' Disclosure Schedule the Company is, and at all times since the Reference Date has been, in compliance in all material respects with each Legal Requirement 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, including, without limitation, all applicable import and export control laws.

(b) Governmental Authorizations . Section 4.15(b) of the Sellers' Disclosure Schedule contains a complete and accurate list of each Governmental Authorization that is held by the Company. Each Governmental Authorization listed or required to be listed in Section 4.15(b) of the Sellers' Disclosure Schedule is valid and in full force and effect. Except as set forth in 4.15(b) of the Sellers' Disclosure Schedule the Company is, and at all times since the Reference Date has been, in material compliance with all of the material terms and requirements of each Governmental Authorization identified or required to be identified in Section 4.15(b) of the Sellers' Disclosure Schedule. The Governmental Authorizations listed in Section 4.15(b) of the Sellers' Disclosure Schedule collectively constitute all of the Governmental Authorizations necessary to permit the Company to lawfully conduct and operate its business in the manner it currently conducts and operates such business and to permit the Company to own and use its assets in the manner in which it currently owns and uses such assets.

4.16 Legal Proceedings . Except as set forth in Section 4.16 of the Sellers' Disclosure Schedule, Sellers have not received any written notice there is pending any Proceeding: (i) that has been commenced by or against the Company seeking or asserting damages in excess of the Threshold Amount or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal, or otherwise interfering with, any of the Contemplated Transactions. To the Knowledge of Sellers and the Company, no such Proceeding has been Threatened. Sellers have made available to Buyer copies of all pleadings, correspondence, and other documents relating to each Proceeding listed in Section 4.16 of the Sellers' Disclosure Schedule.

4.17 Absence of Certain Changes and Events . Except as set forth in Section 4.17 of the Sellers' Disclosure Schedule, since the date of the Reviewed Balance Sheet, the Company has conducted its business only in the Ordinary Course of Business in all material respects and there has not been any: (a) event that has had a Material Adverse Effect; (b) 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 other than distributions to Sellers to enable Sellers to pay all Tax due with respect to the income of the Company; (c) amendment to the Organizational Documents of the Company; (d) payment or increase by the Company of any bonuses, salaries, or other compensation to any stockholder, director, officer, or (except in the Ordinary Course of Business) employee or entry into any employment, severance, or similar Contract with any director, officer, or employee; (e) 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 other than pursuant to the terms of such plan; (f) damage to or destruction or loss of any asset or property of the Company in excess of the Threshold Amount, whether or not covered by insurance; (g) 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 the Threshold Amount; (h) sale (other than sales of Inventory in the Ordinary Course of Business and disposal of obsolete, damaged or defective Inventory or other assets in the Ordinary Course of Business), 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; (i) cancellation or waiver of any claims or rights with a value to the Company in excess of the Threshold Amount; (j) material change in the accounting methods used by the Company; or (k) agreement, whether oral or written, by the Company to do any of the foregoing.

4.18 Contracts; No Defaults .

(a) Material Contracts . Section 4.15(a) of the Sellers' Disclosure Schedule contains a complete and accurate list, and Sellers have made available to Buyer true and complete copies, of the following Contracts (the " *Material Contracts* ") to which the Company is a party or is bound as of the date hereof:

(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 the Threshold Amount and is not terminable on notice or thirty (30) days or less;

(ii) any Applicable Contract of an amount or value in excess of the Threshold Amount for the purchase of any materials, supplies, equipment, merchandise or services that contains an escalation clause or that obligates the Company to purchase all or substantially all of its requirements of a particular product or service from a supplier or to make periodic minimum purchases of a particular product or service from a supplier;

(iii) any Applicable Contract of an amount or value in excess of the Threshold Amount for the sale of any of the assets, properties or securities of the Company other than in the Ordinary Course of Business or for the grant to any Person of any option, right of first refusal or preferential or similar right to purchase any such assets, properties or securities;

(iv) any Applicable Contract relating to the acquisition by the Company of any operating business or the equity of any other Person;

(v) any Applicable Contract of an amount or value in excess of the Threshold Amount with customers or suppliers that contains provisions for rebates, credits, discounts or the sharing of fees (but excluding Applicable

Contracts containing such provisions relating only to prompt payment of amounts due thereunder);

(vi) any Applicable Contract obligating the Company to deliver future product enhancements or containing a "most favored nation " pricing clause;

(vii) 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, any real or personal property (except personal property leases and installment and conditional sales agreements having a value per item or aggregate payments of less than the Threshold Amount and with terms of less than one year);

(viii) each licensing agreement or other Applicable Contract with respect to patents, trademarks, copyrights, or other intellectual 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, and any Applicable Contract involving the assignment, transfer pledge or encumbrance of any of the Intellectual Property Assets;

(ix) each employment contract binding on the Company which requires the Company to make annual payments in excess of the Threshold Amount;

(x) each collective bargaining agreement and other Applicable Contract with any labor union or other employee representative of a group of employees;

(xi) 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;

(xii) 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 or in any geographic area;

(xiii) 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 and other than as provided for in Section 4.18(xvii) below;

(xiv) 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;

(xv) each Applicable Contract for capital expenditures in excess of the Threshold Amount;

(xvi) each written warranty or guaranty with respect to contractual performance extended by the Company other than in the Ordinary Course of Business;

(xvii) any Applicable Contract requiring the payment to any Person of a brokerage or sale commission or a finder's or referral fee (other than arrangements to pay commissions or fees to employees, agents or recruiters in the Ordinary Course of Business); and

(xviii) any Applicable Contract relating to or evidencing the Scheduled Debt.

(b) Compliance . Except as set forth in Section 4.15(b) of the Sellers' Disclosure Schedule, each Contract identified or required to be identified in Section 4.15(a) of the Sellers' Disclosure Schedule is in full force and effect and is valid and enforceable in accordance with its terms, except as such enforceability may be limited by the Enforceability Exceptions. Except as set forth in Section 4.15(b) of the Sellers' Disclosure Schedule:

(i) the Company is not in default under or in breach of the material terms of any Material Contract.

(ii) to the Knowledge of Sellers no other Party to any Material Contract is in breach of or default under any such Material Contract; and

(iii) no written termination notice has been delivered by any party to any other party with respect to any Material Contract.

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

4.19 Insurance . Set forth in Section 4.19 of the Sellers' Disclosure Schedule is a complete and accurate list and description of all insurance policies, including life, fire, liability, product liability, workers compensation, health and other forms of insurance, currently issued to the Company or paid for by the Company for the benefit of the Sellers with respect to the Business, including any self-insurance arrangement by or affecting the Company, any contract or arrangement, other than a policy of insurance, for the transfer or sharing of any risk by the Company, and all obligations of the Company to third parties with respect to insurance (including such obligations under leases and service agreements) (collectively, the " *Insurance Policies* "), which description includes the following: the name, address, and telephone number of the agent; the name of the insurer, the name of the policyholder, the name of each covered insured; the policy number and the period of coverage. Sellers have made available to Buyer true and complete copies of the Insurance Policies. With respect to each Insurance Policy, and except as set forth in Section 4.19 of the Sellers' Disclosure Schedule, (a) the policy is legal, valid, binding and in full force and effect and (b) the Company is not in Default under the policy in any material respect. The Company has given notice to the insurer of all claims that may be

insured thereby, and there is no claim by the Company pending under any such policies as to which such Company has received written notice that coverage has been questioned, denied or disputed by the underwriters of such policies. Section 4.19 of the Sellers' Disclosure Schedule sets forth a summary of the loss experience under each Insurance Policy since the Reference Date and a statement describing each claim under an insurance policy since the Reference Date for an amount in excess of the Threshold Amount. The Insurance Policies, taken together, are sufficient for compliance with all Legal Requirements and Contracts which specify specific insurance coverage requirements to which the Company is a party or by which it is bound and will continue in full force and effect following the consummation of the Contemplated Transactions. The Company has paid all premiums due, and have otherwise performed all of its material obligations, under each policy to which the Company is a party or that provides coverage to the Company or any officer or director thereof.

4.20 Real Property .

(a) Real Property . The Company owns or leases the Facilities identified as being so owned or leased on Section 4.20 of the Sellers' Disclosure Schedule (as appropriate, the " *Owned Real Property* " and the " *Leased Real Property* ", and collectively, the " *Real Property* "). Except as set forth on Section 4.20 of the Sellers' Disclosure Schedule, neither Sellers nor the Company have received written notice that there are any pending or, to the Knowledge of Sellers and the Company, Threatened, condemnation or other Proceedings relating to the Real Property or other matters adversely affecting the current use or occupancy of the Real Property. To the Knowledge of Sellers, the Company has received all requisite approvals of Governmental Bodies (including licenses and permits) required in connection with the ownership or operation of the Real Property and neither the Sellers nor the Company have received written notice that the Real Property has not been operated and maintained in all material respects in accordance with applicable Laws. The Company has not entered into any leases, subleases, licenses, concessions, or other agreements, written or oral, granting to any party the right of use or occupancy of any portion of the Real Property. There are no outstanding options or rights of first refusal to purchase the Owned Real Property, or any portion thereof or interest therein. Sellers have made available to Buyer copies of the title insurance policy and survey in the possession of Sellers or the Company and relating to the Owned Real Property.

(b) Improvements . Except as is set forth on the survey respecting the Owned Real Property, to the Knowledge of Sellers, all of the improvements on the parcel constituting the Owned Real Property lie wholly within the boundaries of and building line restrictions relating to such parcels and no improvements located on adjoining lands encroach upon the Owned Real Property. To the Knowledge of Sellers, no portion of the improvements on any such parcel is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto or similar foreign authority as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended, or any successor or similar foreign law, or, if located within any such area, said improvements are covered by a policy of flood insurance in an amount at least equal to the replacement value of said

improvements, or, if less, the maximum amount that may be obtained under the National Flood Insurance Act of 1968.

(c) Operation and Use of the Real Property . All Real Property has access to public roads and streets. The Real Property is supplied with utilities and other services necessary for the operation of such Real Property, including gas, electricity, water, telephone, sanitary sewer, and storm sewer.

(d) Except as is set forth in Section 4.20(d) of Sellers' Disclosure Schedule or the survey for the Owned Real Property, there are no (i) unrecorded agreements between the Company and any third parties or Governmental Bodies which affect any of the Owned Real Property; (ii) variances or special or conditional use permits with respect to any of the Owned Real Property, (iii) unrecorded restrictions, easements, licenses, conditions, limitations or covenants which have been imposed upon the Owned Real Property and/or the Company by any third party or Governmental Body, whether imposed in connection with platting, subdivision, zoning, issuance of permits or certificates of occupancy or otherwise, (iv) wells on the Owned Real Property, (v) underground or above ground storage tanks on any Owned Real Property, or (vi) private sewage disposal systems on any Owned Real Property. All of the assets of the Company are located at the Real Property, other than with respect to Inventory in transit or machinery, equipment or other assets which are being maintained or repaired at the location of a third party.

4.21 Environmental Matters . Except as disclosed in Section 4.21 of the Sellers' Disclosure Schedule or any environmental engineering report made available to Buyer by the Company or any Seller:

(a) To the Knowledge of the Sellers, the Company is, and at all times has been, in material compliance with, and has not been and is not in material violation of or liable under, any Environmental Law except for such violations as would not reasonably be expected to result in expenditures in excess of the Threshold Amount. The Company has not received, in writing, 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 by the Company to comply with any Environmental Law, or of any actual or Threatened obligation of the Company 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, or with respect to any property or Facility at or to which Hazardous Materials were generated, manufactured, refined, transferred, imported, used, or processed by the Company, or any other Person for whose conduct the Company is responsible, or from which Hazardous Materials have been transported, treated, stored, handled, transferred, disposed, recycled, or received.

(b) Neither the Company nor the Sellers have received written notice that there are any pending or, to the Knowledge of Sellers and the Company, Threatened claims or Encumbrances 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) owned or operated by the Company.

(c) Since the Reference Date neither Sellers nor the Company has received, any written citation, directive, inquiry, notice, Order, summons, warning, or other communication that relates to Hazardous Activity, Hazardous Materials, or any alleged, actual, or potential material violation or failure to comply with any Environmental Law, or of any alleged, actual, or potential material 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) owned or operated by the Company, or with respect to any property or facility to which Hazardous Materials generated, manufactured, refined, transferred, imported, used, or processed by the Company, or any other Person for whose conduct it is responsible, have been transported, treated, stored, handled, transferred, disposed, recycled, or received.

(d) To the Knowledge of Sellers, there are no Hazardous Materials present at the Facilities or any facility or property leased or operated by the Company that give rise to any current obligation under any Environmental Law. To the Knowledge of Sellers neither the Company nor any other Person for whose conduct they are or may be held responsible, or to the Knowledge of Sellers and the Company, any other Person, has permitted or conducted any Hazardous Activity conducted since the Reference Date with respect to the Facilities or any facility or property leased or operated by the Company that give rise to any current obligation under any Environmental Law.

(e) To the Knowledge of the Sellers, the Company has not treated, stored, disposed of, transported, handled or released any Hazardous Materials except in material compliance with Environmental Laws.

(f) Sellers have made available to Buyer true and complete copies of any reports, studies, analyses, tests, or monitoring possessed or initiated by Sellers or the Company pertaining to Hazardous Materials or Hazardous Activities in, on, or under the Facilities, or concerning compliance by the Company or any other Person for whose conduct it is responsible, with Environmental Laws since the Reference Date.

4.22 Employees .

(a) Section 4.22(a) of the Sellers' Disclosure Schedule contains a list of a recent date of the following information for each Person who is a director, officer, manager or other salaried employee of the Company, including each employee on leave of absence or layoff status: name; job title; current compensation paid or payable and any change in compensation since December 31, 2004; vacation accrued; 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), termination notice or pay, severance pay, insurance, medical, welfare, vacation plan or any other employee benefit plan. For any employee who is on leave of absence, Section 0(a) of the Sellers' Disclosure Schedule indicates

the reason for absence and the expected duration. Other than any limitations imposed under the collective bargaining agreements set forth in Section 0(a) of the Sellers' Disclosure Schedule, except as is set forth in Section 4.22(a) of the Sellers' Disclosure Schedule, all employees of the Company are employees at will, and no severance or other amounts are payable to such employees upon termination of employment, other than with respect to vested rights under the Company Benefit Plans.

(b) The Company is in compliance in all material respects with all applicable Laws relating to employment and employment practices, workers' compensation, terms and conditions of employment, worker safety, pay equity, employment insurance, wages and hours and the Worker Adjustment and Retraining Notification Act. Except as set forth in Section 4.22(b) of the Sellers' Disclosure Schedule, since the Reference Date, there have been no claims of harassment, discrimination, retaliatory act or similar actions filed against any officer, director or employee of the Company. The Company has made all required payments to its unemployment compensation reserve accounts with the appropriate governmental departments of the states where it is required to maintain such accounts, and each of such accounts has a positive balance. The Company has made available to Buyer copies of, all reports of the Company required since the Reference Date under the Federal Occupational Safety and Health Act of 1970, as amended, and under all other applicable health and safety Laws and regulations. The deficiencies, if any, noted on such reports or any reports prepared by independent consultants have been corrected or otherwise resolved to the satisfaction of the Governmental Body that gave notice of such deficiency, which satisfaction has been confirmed in writing by such applicable Governmental Body and copies of which have been made available to Buyer.

(c) Except as set forth in Section 4.22(c) of the Sellers' Disclosure Schedule, since December 31, 2006, the Company has not received written notice that any employee identified in Section 4.22(a) of the Sellers' Disclosure Schedule intends to terminate his employment with the Company.

(d) Section 0(d) of the Sellers' Disclosure Schedule also 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.

4.23 Labor Relations; Compliance . Section 4.23 of the Sellers' Disclosure Schedule identifies every collective bargaining or other labor Contract to which the Company is a party at the date hereof. Except as is set forth in Section 4.23 of the Sellers' Disclosure Schedule, since the Reference Date, there has not been, and the Company has not received written notice that there is presently pending or existing, and to the Knowledge of Sellers and the Company there is not Threatened, (a) any strike, slowdown, picketing, work stoppage, or employee grievance process, (b) any Proceeding against or affecting the Company relating to the alleged violation of any Legal Requirement pertaining to labor relations or employment matters, including any charge or complaint filed by an employee or union with the National Labor Relations Board, the Equal Employment Opportunity Commission, or any comparable Governmental Body, organizational activity, or other labor or employment dispute against or affecting any of the

Company or its premises, or (c) any application for certification of a collective bargaining agent. The Company is not currently engaged in bargaining with a bargaining agent or other representative of a group of employees. There is no currently pending lockout of any employees by the Company, and no such action is contemplated by the Company. The Company has complied in all material respects with all Legal Requirements relating to employment, equal employment opportunity, nondiscrimination, immigration, wages, hours, benefits, collective bargaining, the payment of social security and similar taxes, occupational safety and health, pay equity, workers' compensation, and plant closing.

4.24 Intellectual Property .

(a) Sufficiency . The Company owns or has the right to use pursuant to licenses or sublicenses, all Intellectual Property necessary for the operation of their respective businesses. Each item of Intellectual Property owned or used by the Company immediately prior to the Closing will be owned or available for use by Buyer on identical terms and conditions immediately subsequent to the Closing. The Company has taken reasonable action to maintain and protect each item of Intellectual Property that they own.

(b) Non-Interference . To the Knowledge of Sellers, since the Reference Date, the Company has not knowingly interfered with, infringed upon, misappropriated, or otherwise come into conflict with any Intellectual Property of third parties, received any written charge, complaint, claim, demand, or notice alleging any such interference, infringement, misappropriation, or violation (including any claim that the Company must license or refrain from using any Intellectual Property of any third party). To the Knowledge of Sellers and the Company, no third party has interfered with, infringed upon, misappropriated, or otherwise come into conflict with any Intellectual Property owned by the Company.

(c) Owned Intellectual Property . Section 4.24 of the Sellers' Disclosure Schedule sets forth a true and complete list of (i) each registration that has been issued to the Company with respect to any of its Intellectual Property, (ii) each outstanding application for registration that the Company has made with respect to any of its Intellectual Property, and (iii) each outstanding license or sublicense that the Company has granted to any third party with respect to any of its Intellectual Property (together with any exceptions). Sellers have made available to Buyer true, correct and complete copies of all such registrations, applications, licenses or sublicenses (as amended to date) have made available to Buyer true, correct and complete copies of all other written documentation evidencing ownership and prosecution (if applicable) of each such item. Section 4.24 of the Sellers' Disclosure Schedule also sets forth a true and complete list of each trade name or unregistered trademark now owned by the Company and used in connection with the Business. With respect to each item of Intellectual Property owned by the Company and required to be identified in Section 4.24 of the Sellers' Disclosure Schedule, except as set forth in such Section 4.24 , the Company:

(i) possesses all right, title, and interest in and to the item, free and clear of any Lien, license or other restriction other than a Permitted Encumbrance;

(ii) has not received any written notice that action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand is pending or, to the Knowledge of Sellers and the Company, is Threatened, that challenges the legality, validity, enforceability, use, or ownership of the item; and

(iii) except for any express warranties with respect to products sold, has no outstanding obligations to indemnify any Person for or against any interference, infringement, misappropriation, or other conflict with respect to the item.

(d) Intellectual Property Licensed to the Company . Section 4.24 of the Sellers' Disclosure Schedule sets forth a true and complete list of each item of Intellectual Property that any third party owns and that the Company uses pursuant to license or sublicense granted to the Company; provided , however , that Section 4.24 of the Sellers' Disclosure Schedule need not identify licenses for commercially available personal computer software. Sellers have made available to Buyer true, correct and complete copies of all such licenses and sublicenses, as amended to date. With respect to each item of Intellectual Property licensed by the Company and required to be identified in Section 4.24 of the Sellers' Disclosure Schedule, and except as specified in such Section 4.24 , (i) the Company is not Default thereunder in any material respect; (ii) the license or sublicense covering the item is legal, valid, binding, enforceable against the Company, and in full force and effect; and (iii) no third party to the license or sublicense is in Default thereunder in any material respect.

4.25 Customers and Suppliers . Section 4.25 of the Sellers' Disclosure Schedule sets forth (a) the ten (10) largest customers of the Company, on the basis of revenues for goods sold or services provided for the most recent fiscal year ending December 31, 2006, and states the approximate total sales by the Company to each such customer during such period, and (b) the ten (10) largest suppliers to each of the Company, on the basis of cost of goods or services purchased for the fiscal year ending December 31, 2006. Neither Sellers nor the Company have received any written notice indicating a plan or intention of any of such customers or suppliers to terminate, cancel or otherwise adversely modify its relationship with the Company or to decrease materially or limit any of its products or services to the Company or its usage or purchase of any of the services or products of the Company, or to change the prices at which such products are purchased or sold.

4.26 Relationships With Related Persons . Except as set forth in Section 4.26 of the Sellers' Disclosure Schedule, no Seller or any Related Person of Sellers or of the Company has any interest in any property (whether real, personal, or mixed and whether tangible or intangible), used in or pertaining to the Business. Except as set forth in Section 4.26 of the Sellers' Disclosure Schedule, no Seller or any Related Person of Sellers or of the Company is, or since the Reference 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 other than business dealings or transactions conducted in the Ordinary Course of Business with the Company at substantially prevailing market prices and on substantially prevailing market terms, or (ii) engaged in competition with the Company with respect to any line of the products or services of the

Company (a " *Competing Business* ") in any market presently served by such Company except for less than one percent (1%) of the outstanding capital stock of any Competing Business that is publicly traded on any recognized exchange or in the over-the-counter market. Except as set forth in Section 4.26 of the Sellers' Disclosure Schedule, no Seller or any Related Person of Sellers or of the Company is a party to any Contract with, or has any claim or right against, the Company.

4.27 Credit, Rebate, Product Warranties and Related Matters . Section 4.26 of the Sellers' Disclosure Schedule contains a true, correct and complete (a) list of the names and amounts of credits and rebates with any customers totaling more than the Threshold Amount per customer in 2005, 2006 or 2007, and the current credit and rebate policies of the Company, (b) list of the names and amounts of rebates received from any supplier of the Company totaling more than the Threshold Amount per supplier in 2005, 2006 or 2007, and (c) a copy of the Company' standard warranty or warranties for sales of products and any return, repair or replacement policies for products. Except as set forth in Section 4.26 of the Sellers' Disclosure Schedule and for manufacturer warranties passed through to customers, there are no warranties, commitments or obligations with respect to the return, repair or replacement of any products manufactured, distributed or sold by the Company by reason of alleged overshipments, defective merchandise or otherwise, or of merchandise in the hands of wholesalers, distributors, retailers or customers under an understanding that such merchandise would be returnable. Section 4.26 of the Sellers' Disclosure Schedule sets forth the aggregate annual cost to Seller of performing warranty obligations, returns, repairs or replacements for customers for each of the three (3) preceding fiscal years and the current fiscal year.

4.28 Brokers or Finders . Except for Houlihan Lokey Howard & Zukin, the fees and expenses of which shall be solely the responsibility of Sellers, neither the Company nor Sellers or their agents have incurred any Liability for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF BUYER

Except as disclosed in the Buyer's Disclosure Schedule, Buyer represents and warrants to Sellers as follows:

5.1 Organization and Good Standing . Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Nevada. Buyer is duly qualified or licensed to do business and is in good standing, in each jurisdiction where the assets and properties owned, leased or operated by it or the nature of its business make such qualification or licensing necessary, except for failures to be so qualified or licensed and in good standing that do not have a Material Adverse Effect on Buyer.

5.2 Authority; No Conflict .

(a) Enforceability . Buyer has all necessary corporate power and authority to execute and deliver this Agreement and the other transaction documents relating to any of

the Contemplated Transactions to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated by this Agreement and relating to any of the Contemplated Transactions have been duly and validly authorized by all necessary corporate action on the part of Buyer, and no other corporate proceedings on the part of Buyer are necessary to authorize this Agreement or transactions contemplated by this Agreement and relating to any of the Contemplated Transactions. This Agreement and such other transaction documents have been or will be duly executed and delivered by Buyer and, assuming the due authorization, execution and delivery by Sellers and the Company, this Agreement constitutes, and each other transaction document upon execution will constitute, a legal, valid and binding obligation of Buyer enforceable against Purchaser in accordance with its terms, subject to the effect of any Enforceability Exceptions. Upon the execution and delivery by Buyer of the Escrow Agreement, the Drecoll Agreement, the Rosmonowski Agreement, the Mr. Y Agreement and the Registration Rights Agreement (collectively, the " Buyer's Closing Documents "), Buyer's Closing Documents will constitute the legal, valid, and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms, subject to the Enforceability Exception. Buyer has the absolute and unrestricted right, power, and authority to execute and deliver this Agreement and Buyer's Closing Documents and to perform its obligations under this Agreement and Buyer's Closing Documents.

(b) No Conflict . The execution and delivery of this Agreement by buyer do not, and the performance by Buyer of its obligations hereunder and the consummation of any of the Contemplated Transactions will not: (a) conflict with or violate any provision of the certificate of incorporation or by-laws of Buyer; (b) assuming that all required filings and notifications have been made, conflict with or violate any law or order applicable to Buyer or by which Buyer or any of its assets or properties is bound or affected; or (c) result in any breach of or constitute a default under, or require notice or consent under, any mortgage, indenture, deed of trust, lease, contract, agreement, license or other instrument to which Buyer is a party or by which any of Buyer's assets or properties are bound, or result in the creation of a material Encumbrance on any asset or property of Buyer.

5.3 **Consents** . Except for such Consents as Buyer may be required to obtain prior to Closing and described in Section 5.3 of Buyer's Disclosure Schedule (the " *Buyer Consents* "), Buyer is not and will not be required to obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

5.4 **Investment Intent** . Buyer is acquiring the Shares for its own account and not with a view to their distribution within the meaning of the Securities Act.

5.5 **Legal Proceedings** . Except as set forth in Section 5.5 of the Buyer's Disclosure Schedule, Buyer has not received any written notice there is pending any Proceeding: (i) that has been commenced by or against Seller seeking or asserting damages in excess of the Threshold Amount, or (ii) that challenges, or that may have the effect of preventing, delaying, making

illegal, or otherwise interfering with, any of the Contemplated Transactions. To the Knowledge of Buyer, no such Proceeding has been Threatened.

5.6 **Brokers or Finders** . Buyer and its officers and agents have incurred no Liability for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement or any of the Contemplated transactions.

5.7 **SEC Filings.** Buyer has made available to the Sellers or the Sellers have had access through the EDGAR filing system to accurate and complete copies (excluding copies of exhibits) of each report, registration statement (on a form other than Form S-3 or S-8) and definitive proxy statement filed by Buyer with the Securities and Exchange Commission (the *"SEC"*) between January 1, 2006 and the date of this Agreement (the " *Buyer SEC Documents* "). As of the time it was filed with the SEC (or, if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing): (i) each of the Buyer SEC Documents complied in all material respects with the applicable requirements of the Securities Act or the Exchange Act, as the case may be; and (ii) none of the Buyer SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances Buyer SEC Documents: (i) complied as to form in all material respects with the published rules and regulations of the SEC applicable thereto; (ii) were prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods covered, except as may be indicated in the notes to such financial statements and (in the case of unaudited statements) as permitted by Form 10-Q, and except that unaudited financial statements may not contain footnotes and are subject to year-end audit adjustments; and (iii) fairly present the consolidated financial position of the Buyer as of the respective dates thereof and the consolidated results of operations of the Buyer for the periods covered thereby.

5.8 **Valid Issuance.** The Buyer Common Stock to be issued in the Contemplated Transactions has been duly authorized and will, when issued in accordance with the provisions of this Agreement, be validly issued, fully paid and nonassessable and will not be subject to any restriction on resale under the Securities Act, other than restrictions imposed by Rules 144 and 145 under the Securities Act and restrictions imposed in the Registration Rights Agreement.

5.9 **Reserved** .

5.10 **No Material Adverse Effect** . Since December 31, 2006 there has not been any Material Adverse Effect on the Buyer or any of its Subsidiaries.

5.11 **Compliance with Legal Requirements** . Except as set forth in Section 5.11 of the Buyer's Disclosure Schedule, Buyer and each of its Subsidiaries is, and at all times since December 31, 2006 has been, in material compliance with each Legal Requirement that is or was applicable to it or to the conduct or operation of its business or the business of any of its Subsidiaries, or the ownership or use of any of its assets or the assets of any of its Subsidiaries.

5.12 **Capitalization** . The authorized equity securities of the Buyer consist of 100,000,000 shares of common stock, par value $0.001 per share, of which 47,724,464 shares were issued and outstanding as of August 14, 2007. 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, or transfer of any equity securities or other securities of the Buyer. There are no options, warrants, convertible securities or other rights, agreements, arrangements or commitments relating to the capital stock of the Buyer or obligating Buyer to issue, sell or redeem any equity interests in the Company. None of the outstanding equity securities or other securities of the Buyer was issued in violation of the Securities Act or any other Legal Requirement. Except as disclosed in Section 5.12 of the Buyer's Disclosure Schedule, the Buyer does not own, or have any Contract to acquire, any equity securities or other securities of any Person (other than the current Subsidiaries of the Buyer) or any direct or indirect equity or ownership interest in any other business.

5.13 **No Undisclosed Liabilities**. The Buyer has no Liabilities which are required under GAAP to be disclosed in its Financial Statements of the Buyer except for Liabilities reflected or reserved against in the consolidated financial statements of the Buyer dated , 2007 and reflected in the notes thereto and Liabilities incurred in the Ordinary Course of Business since such date and Liabilities under any of the transaction documents relating to any of the Contemplated Transactions.

5.14 **Tontine Financing**. Attached hereto as Exhibit E is a true, correct and complete copy (including all schedules, exhibits, riders or amendments thereto) of the duly executed and delivered Securities Purchase Agreement (the "Tontine SPA") by and among Tontine Capital Partners, L.P., Tontine Capital Overseas Master Fund, L.P. (collectively "Tontine") and Buyer pursuant to which (i) Tontine has agreed to purchase from Buyer, and Buyer has agreed to sell to Tontine prior to or contemporaneously with the Closing on the Closing Date hereunder, Twelve Million Five Hundred Thousand (12,500,000) shares of Buyer Common Stock at a purchase price of $4.00 per share (the "Equity Purchase") and (ii) Tontine has agreed to provide interim debt financing to the Buyer in the aggregate amount of Twenty-Five Million Dollars ($25,000,000) in exchange for Senior Subordinated Promissory Notes from the Buyer in like principal amount (the "Loan").

ARTICLE 6
PRE-CLOSING COVENANTS

6.1 **Access and Investigation**. Between the date of this Agreement and the Closing Date, Sellers and the Company, on the one hand, and Buyer, on the other hand, will, and will cause each of their respective Representatives to, (a) afford the other party and its Representatives and prospective lenders and their Representatives (collectively, "*Advisors*"), upon reasonable advance notice and during regular business hours, and subject to any required approval of any landlord of any of the Leased Real Property full and free access to the Company's or Buyer's (and each of its Subsidiaries), as the case may be, personnel, properties, contracts, books and records, and other documents and data, (b) furnish the other party and its Advisors with copies of all such contracts, books and records, and other existing documents and data as the other party may reasonably request, and (c) furnish the other party Buyer and its Advisors with such additional financial, operating, and other data and information as the other party may reasonably request.

6.2 Operation of the Businesses of the Company .

(a) Ordinary Course . Except as expressly provided or permitted herein, or as consented to in writing by Buyer, as it relates to the Company, or Sellers, as it relates to Buyer or any of its Subsidiaries, during the period commencing on the date of this Agreement and ending on the Closing Date or such earlier date as this Agreement may be terminated in accordance with its terms (the " *Pre-Closing Period* "), Buyer and its Subsidiaries and the Company shall act and carry on their respective businesses in the Ordinary Course of Business and shall use commercially reasonable efforts to maintain and preserve their business organization, assets and properties, preserve their business relationships with customers, strategic partners, suppliers, distributors and others having business dealings with it and keep available the services of its present officers, employees and consultants. Without limiting the generality of the foregoing, except as expressly provided or permitted herein, or pursuant to the terms of any Applicable Contract which is disclosed in a Disclosure Schedule during the Pre-Closing Period, neither the Company nor Buyer or any of its Subsidiaries shall directly or indirectly, do any of the following without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed), provided that Section 6.2(a)(viii) shall not apply with respect to actions taken by the Buyer:

(i) declare, set aside or pay any distributions or dividends on, or make any other distributions (whether in cash, securities or other property) in respect of, any of its capital stock or other equity securities, except that the Company may make distributions to the Sellers in sufficient amount to pay federal, state and local income taxes, at the highest marginal tax rates applicable to such Sellers on the net distributive share of the Company's income, losses, deductions and credits that have been separately stated and passed through to the Sellers under Section 1366 of the Code, provided that the Buyer shall be notified in advance of such distributions; split, combine or reclassify any of its capital stock or other equity securities or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for capital stock or any of its other securities; or purchase, redeem or otherwise acquire any capital stock or any of its other securities or any rights, warrants or options to acquire any such capital stock or other securities;

(ii) issue, deliver, sell, grant, pledge or otherwise dispose of or encumber any capital stock, any other voting securities or any securities convertible into or exchangeable for, or any rights, warrants or options to acquire, any such capital stock, voting securities or convertible or exchangeable securities (other than the issuance of shares of capital stock upon the exercise of options or warrants outstanding on the date of this Agreement);

(iii) amend any of the Organizational Documents or other comparable charter or organizational documents or enter into any new line of business or discontinue any existing line of business; provided, however, that Sellers acknowledge and agree that Buyer may amend its bylaws as contemplated by Section 6.14 of this Agreement;

(iv) acquire by merging or consolidating with, or by purchasing all or a substantial portion of the assets or any stock of, or by any other manner, any business or any corporation, partnership, joint venture, limited liability company, association or other business organization or division thereof, or any assets that are material, in the aggregate, to the Company or Buyer, as the case may be; provided, however, that Sellers acknowledge and agree that Buyer may purchase RBA, Inc. for $5 million in cash;

(v) sell, lease, license, pledge, or otherwise dispose of or encumber any material properties or material assets of the Company or Buyer or any of its Subsidiaries, as the case may be, other than in the Ordinary Course of Business;

(vi) knowingly or irrevocably waive any material right of such company under any Material Contract;

(vii) (A) incur any Indebtedness other than draws under such company's existing line of credit in the Ordinary Course of Business, make any payments on any existing Indebtedness other than regular payments made pursuant to the terms of such existing Indebtedness, or pay any guaranty fees or other fees to any guarantor of any Indebtedness of such company, (B) issue, sell or amend any debt securities or warrants or other rights to acquire any debt securities of such company, guarantee any debt securities of another Person, enter into any "keep well" or other agreement to maintain any financial statement condition of another Person or enter into any arrangement having the economic effect of any of the foregoing, (C) make any loans, advances or capital contributions to, or investment in, any other Person; provided , however , that such company may, in the Ordinary Course of Business, invest in debt securities maturing not more than ninety (90) days after the date of investment, or (iv) other than in the Ordinary Course of Business, enter into any hedging agreement or other financial agreement or arrangement designed to protect such company against fluctuations in commodities prices or exchange rates;

(viii) make any capital expenditures or other expenditures with respect to property, plant or equipment in excess of $100,000 in the aggregate;

(ix) make any changes in accounting methods, principles or practices, except insofar as may have been required by a change in GAAP;

(x) except as required to comply with applicable Law or agreements, plans or arrangements existing on the date hereof, (A) adopt, enter into, terminate or materially amend any employment, severance or similar agreement or material benefit plan for the benefit or welfare of any current or former director, officer or employee, (B) increase in any material respect the compensation or fringe benefits of, or pay any bonus to, any director, officer or employee, (C) accelerate the payment, right to payment or vesting of any material compensation or benefits, including any outstanding options or restricted equity awards, other than as contemplated by this Agreement, (D) grant any options to purchase capital

stock, equity appreciation rights, equity based or equity related awards, performance units or restricted equity, or (E) take any action other than in the Ordinary Course of Business to fund or in any other way secure the payment of compensation or benefits under any Benefit Plan of such Company;

(xi) make or change any election in respect of Taxes, adopt or change any accounting method in respect of Taxes, file any amendment to a Tax Return, settle any claim or assessment in respect of Taxes, or consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes;

(xii) enter into or amend any contract or agreement other than in the Ordinary Course of Business or terminate any Material Contract or amend any of its material terms (other than amendments designed to remedy defaults thereunder);

(xiii) commence, pay, discharge, settle or satisfy any lawsuits, claims, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction in the Ordinary Course of Business of liabilities reflected or reserved against in the Reviewed Balance Sheet (as it relates to the Company) or the Buyer's most recent financial statements referred to above or subsequently incurred in the Ordinary Course of Business, or waive any material benefits of any confidentiality, standstill or similar agreements to which such company is a party;

(xiv) permit any material increase in the number of employees employed by such company on the date hereof;

(xv) terminate or fail to renew any Governmental Authorization that is required for continued operations;

(xvi) enter into any collective bargaining agreement or union contract with any labor organization or union;

(xvii) accelerate or defer any obligation or payment by or to such company, or not pay any accounts payable or other obligation of such company when due and other than in the Ordinary Course of Business;

(xviii) decrease or defer in any material respect the level of training provided to the employees of such Company or the level of costs expended in connection therewith; and

(xix) fail to maintain insurance at levels at least comparable to current levels or otherwise in a manner inconsistent with past practice.

6.3 Required Approvals.

(a) Sellers . As promptly as practicable after the date of this Agreement, Sellers and the Company will make all filings required by Legal Requirements to be made by them in order to consummate the Contemplated Transactions. Between the date of this Agreement and the Closing Date, Sellers and the Company will (a) cooperate with Buyer with respect to all filings that Buyer elects to make or is required by Legal Requirements to make in connection with the Contemplated Transactions, (b) cooperate with Buyer in obtaining all consents required by Buyer to consummate the Contemplated Transactions, and (c) take all actions necessary to obtain the Required Consents.

(b) Buyer . As promptly as practicable after the date of this Agreement, Buyer will, and will cause each of its Related Persons to, make all filings required by Legal Requirements to be made by them to consummate the Contemplated Transactions. Between the date of this Agreement and the Closing Date, Buyer will, and will cause each Related Person to, (a) cooperate with Sellers and the Company with respect to all filings that Sellers are required by Legal Requirements to make in connection with the Contemplated Transactions, and (b) reasonably cooperate with Sellers and the Company in obtaining all Required Consents; provided , that this Agreement will not require Buyer to dispose of or make any change in any portion of its business to obtain a Governmental Authorization.

6.4 Efforts to Satisfy Conditions .

(a) Sellers . Sellers and the Company will use commercially reasonable efforts to cause the conditions in ARTICLE 8 and ARTICLE 9 to be satisfied.

(b) Buyer . Except as set forth in the proviso to Section 6.3(b) , between the date of this Agreement and the Closing Date, Buyer will use commercially reasonable efforts to cause the conditions in ARTICLE 8 and ARTICLE 9 to be satisfied.

6.5 Notices of Certain Events . Prior to the Closing Date, each of Sellers and Buyer shall promptly notify the other of:

(a) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Contemplated Transactions.

(b) any written notice or other communication from any Governmental Authority in connection with any of the Contemplated Transactions; and

(c) any change that would reasonably be expected to have a Material Adverse Effect, or would reasonably be expected to materially delay or impede the ability of either Sellers or Buyer to perform its obligations under this Agreement and to consummate the Contemplated Transactions.

6.6 No Negotiation . Until such time, if any, as this Agreement is terminated pursuant to ARTICLE 10 , Sellers and the Company and each of their respective Representatives shall not, directly or indirectly solicit, initiate, or encourage any inquiries or proposals from, discuss or negotiate with, provide any non-public information to, or consider the merits of any unsolicited

inquiries or proposals from, any Person (other than Buyer) relating to any transaction involving the sale of the business or assets (other than in the Ordinary Course of Business) of the Company, or any of the capital stock of the Company, or any merger, consolidation, business combination, or similar transaction involving the Company. Sellers and the Company will promptly forward to Buyer copies of any such inquiries or proposals received from any Person.

6.7 Bank Accounts; Powers of Attorney . As of the Closing, at Buyer's request, Sellers and the Company shall cause Buyer's designees to be added, and the Company's designees to be removed, as signatories with respect to each of the Company's bank accounts and to terminate any powers of attorney.

6.8 Supplements to Disclosure Schedule . Both Sellers and Buyer shall have the right until the Closing Date to amend or supplement their respective Disclosure Schedules with respect to any matter hereafter arising (excluding matters existing as of the date hereof). No information provided pursuant to this Section 6.8, however, shall be deemed modify, or to cure any breach of, any representation, warranty or covenant in this Agreement existing at the date hereof.

6.9 Owned Real Property Obligations; Title Objections . From and after the date of this Agreement, the Company shall remain current with respect to all payment and other obligations arising in connection with any Indebtedness secured by the Owned Real Property and in material compliance with all other obligations of the Company arising out of or in connection with any easements, covenants, conditions, restrictions, zoning and land use laws and ordinances, and any and all other agreements affecting ownership or use of the Owned Real Property. Neither Sellers nor the Company shall take any action or permit any occurrence which would constitute a material event of default under the documents creating or securing any Indebtedness secured by the Owned Real Property or which would have the effect of increasing the outstanding balance of any such Indebtedness or the interest rate applicable thereto.

6.10 Certain Tax Matters.

(a) Tax Status and Elections . Sellers shall cause the Company to maintain its status as a Subchapter S corporation under Section 1362 of the Code. For tax purposes the financial books of the Company shall be deemed closed as of the close of business on the day immediately preceding the Closing Date. Sellers and the Company shall cause all tax sharing agreements or similar arrangements with respect to or involving the Company to be terminated as to such entity as of the Closing Date, and, after the Closing Date, the Company shall not be bound thereby or have any liability thereunder. No new elections, and no changes in current elections, with respect to Taxes affecting the Company shall be made after the date of this Agreement without the prior written consent of Buyer. Sellers shall provide Buyer, on or prior to the Closing Date, with an affidavit stating Sellers' and the Company's United States taxpayer identification numbers and that none of the Sellers nor the Company is a foreign person pursuant to Section 1445(b)(2) of the Code.

(b) Pre-Closing Tax Returns . Sellers shall prepare (or cause to be prepared for the Company) all Tax Returns of the Company required to be filed prior to Closing. All such Tax returns shall be prepared in accordance with past practice (unless a contrary

position is required by Law), to the extent any position taken in such returns may affect the tax liability of Buyer and the Company after the Closing. Sellers shall timely pay, or cause to be paid, all Taxes relating to such Tax Returns. Seller shall provide Buyer or its designee the opportunity to review a substantially completed draft of each pre-Closing Tax Return reasonably prior to the filing of the applicable pre-Closing Tax Return, and reasonable access to the Person(s) actually responsible for preparing the same; provided , however , that the foregoing rights provided to Buyer (or its designee) will in no way affect (whether or not and regardless of the extent to which Buyer exercises such rights) the nature and scope of any of the representations, warranties, covenants and indemnities of Sellers contained in this Agreement.

6.11 Section 338(h)(10) Election.

(a) Buyer and Sellers shall jointly make an election under Section 338(h)(10) of the Code (and any comparable election under state or local law) with respect to the acquisition of Shares. Buyer and Sellers will cooperate fully with each other in the making of such election including the filing of all required IRS forms and related forms under state and local law. Buyer and Sellers will endeavor in good faith to agree on an allocation of the Purchase Price for Tax purposes among the assets of the Company for purposes of Section 338 of the Code using the methodology set forth in Schedule 6.10, and Buyer and Sellers will each file their Tax returns in a manner consistent with such allocation. In the event such allocation shall not be agreed upon such allocation shall be determined by the Neutral Accountant whose decision shall be final and binding on the parties without further recourse.

(b) Sellers will pay all Taxes (i) attributable to the making of the Section 338(h)(10) election, including any federal, state, local or foreign Tax attributable to an election under federal, state, local or foreign law similar to the election available under Section 338(h)(10) of the Code (including but not limited to any Tax imposed under Section 1374 of the Code), or (ii) attributable to the sale of the Shares (including transfer Taxes). Sellers shall jointly and severally indemnify defend and hold harmless Buyer, the Company and each of their successors, assigns and Affiliates from and against any liability arising out of any failure to pay any such Tax.

(c) Sellers will cause each partnership or limited liability company that is at least fifty percent (50%) owned, either directly or indirectly, by the Company to make an election under Section 754 of the Code and Treasury Regulations Section 1.754-1 (b) to adjust the basis of the partnership or limited liability company property in the manner provided in Sections 734(b) and 743(b) of the Code and in accordance with Schedule 6.10, to be effective for the Tax year that includes the Closing Date.

(d) Buyer shall prepare IRS Form 8023 and any similar forms required by applicable state, local and foreign Tax laws or regulations (collectively, the “Section 338 Election Forms”). Sellers shall cooperate with Buyer in the preparation of the Section 338 election Forms and shall deliver duly completed, executed copies of such Section 338 Election Forms on the Closing Date.

6.12 **Audit.** The Company shall retain an registered independent auditing firm mutually acceptable to the Sellers and the Buyer and cause such auditing firm to prepare the Audited Financial Statements contemplated by Section 4.5 of this Agreement.

6.13 **Tontine Equity Purchase and Loan** . Between the date hereof through the consummation of the Closing on the Closing Date hereunder, (i) Buyer shall not in any manner without the prior written consent of the Sellers holding a majority of the Shares, which consent shall not be unreasonably withheld so long as such amendment or modification is not materially adverse to the interests of the Sellers, modify or amend any provisions respecting the Equity Purchase or the Loan which relate to (a) the amount thereof, (b) the date and other terms of, or conditions precedent to, payment, the valuation or number or class of shares to be issued or issuable pursuant to the Equity Purchase, (c) the interest rate or other compensation payable by Buyer under the Loan, (d) Tontine's right to convert any unpaid balance of the Loan into shares of Buyer Common Stock or the conversion rate or valuation of Buyer common stock applicable to any such conversion, or (e) any other material economic term which would provide Tontine with greater value or less economic cost or burden under the Equity Purchase or the Loan than exists on the date hereof; and (ii) neither the Equity Purchase nor the Loan shall be cancelled or terminated except pursuant to conditions precedent to any funding obligations set forth in the Tontine SPA or any exhibits thereto, attached hereto as Exhibit E. Buyer acknowledges and agrees that any amendment, modification, cancellation or termination entered into in violation of the foregoing restrictions shall be null and void and of no force or effect. In the event Buyer shall breach any of the covenants set forth in this Section 6.13 then, in addition to any other remedies Sellers may have at law or in equity, Buyer shall be obligated to provide to Sellers such additional shares of Buyer Common Stock or additional cash as shall be necessary to provide to Sellers the same economic terms made available to Tontine pursuant to the Equity Purchase or the Loan as a result of any amendment, modification or addition to the terms and conditions of the Tontine SPA or any exhibits thereto, attached hereto as Exhibit E.

6.14 **Bylaw Amendment .** Buyer shall take all necessary action to cause the approval an amendment to Buyer's bylaws increasing the size of its Board of Directors to facilitate the appointment of Mr. Drecoll to the Buyer's Board of Directors, including, without limitation, obtaining the written consent of a majority of Buyer's shareholders and filing an information statement with respect to the bylaw amendment with the SEC.

ARTICLE 7
POST-CLOSING COVENANTS

7.1 **Covenant Not to Compete** . From and after Closing, Sellers covenant and agree as follows:

(a) Restricted Period . As used in this Article 7, the term " Restricted Period " means the third anniversary of the Closing Date.

(b) Non-Competition; Non-Solicitation . In order to allow Buyer to realize the full benefit of its bargain in connection with the purchase of the Shares, none of the Sellers will at any time during the Restricted Period, directly or indirectly, acting alone or

as a member of a partnership or as a holder of any security of any class, or as an employee, consultant to or representative of, any corporation or other business entity:

(i) engage in, continue in or carry on any business which directly competes with the Business or the businesses conducted by Buyer or its Affiliates as of the Closing Date, including owning or controlling any financial interest in any corporation, partnership, firm or other form of business organization which is so engaged;

(ii) solicit any customers of the Company or of Buyer or its Affiliates for purposes of offering products that are directly competitive with the products offered by the Business or of Buyer or its Affiliates as of the Closing Date; or

(iii) hire, offer to hire, or solicit for employment any employee of the Company, Buyer or its Affiliates, without the prior consent of Buyer, until such employee has been separated from employment by the Company, Buyer or its Affiliates for at least one year.

(c) Severability; Reformation; Equitable Relief . Sellers acknowledge that if the scope of the covenants set forth in this Section 7.1 is deemed to be too broad in any court proceeding, the court may reduce the scope as it deems reasonable under the circumstances. Buyer would not have any adequate remedy at law for the breach or threatened breach by either Sellers or any of their respective Affiliates of the covenants and agreements set forth in this Section 7.1 and, accordingly, Buyer and the Company may, in addition to the other remedies which may be available to it hereunder, file suit in equity to enjoin the Sellers or any of their respective Affiliates from such breach or threatened breach and Sellers consent to the issuance of injunctive relief hereunder. The act of Buyer in entering into this Agreement, and Buyer's covenants and payments hereunder, constitute sufficient consideration for Sellers to agree not to compete against Buyer or the Company as set out in this Section 7.1 .

7.2 Certain Tax Matters.

(a) Income Tax Returns . Buyer shall prepare, or cause to be prepared, all Income Tax Returns of the Company required to be filed after Closing for all periods ending on or before the Closing Date, including all short taxable years ending on the Closing Date. Buyer shall provide Sellers or their designees the opportunity to review a substantially completed draft of each such Income Tax Return at least ten (10) business days prior to the filing of such Income Tax Return, and reasonable access to the Person (s) actually responsible for preparing such Income Tax Returns; provided , however , that the foregoing rights provided to Sellers or their designee will in no way affect (whether or not and regardless of the extent to which Sellers exercise such rights) the nature and scope of any of the representations, warranties, covenants and indemnities of Sellers contained in this Agreement. Sellers shall timely file such Income Tax Returns and pay (or cause to be paid) all Taxes relating to all periods ending on or before the Closing Date (including, without limitation, any built-in gain tax that will be incurred by the Company as a result of the Closing or the Section 338 (h)(10) election referenced in Section 2.4).

(b) Cooperation; Audit . After the Closing Date, Buyer and Sellers shall, and shall cause their respective Affiliates, including the Company, to, cooperate in the preparation of all Tax Returns and shall provide, or cause to be provided, to the requesting party any records or other information requested by such party in connection therewith as well as access to, and the cooperation of, the auditors of Buyer and Sellers. Sellers, on the one hand, and Buyer, on the other hand, shall give prompt notice to each other of any proposed adjustment to Taxes for periods ending on or before the Closing Date (or beginning on or before the Closing Date and ending after the Closing Date). Promptly upon receipt by either party of any notification or indication (whether written or oral) from the IRS or any state or other taxing authority that it intends to investigate or audit any pre-Closing Tax Return, the party receiving such information shall notify the other party and convey such information to the other party in writing. Each party shall cooperate with the other in connection with any Tax investigation, Tax audit, or other Tax proceeding. A party shall be reimbursed for reasonable out-of-pocket expenses incurred in taking any action requested by the other party or parties under this Section 7.2(b) ; provided , however , that the foregoing shall not alter any indemnification rights to which Buyer or Sellers are entitled under this Agreement, including, without limitation, under ARTICLE 11 .

(c) Post Closing Tax Payment . Within sixty (60) days after the Closing Date Buyer shall pay to Sellers in cash all Taxes for which Sellers are obligated with respect to their respective net distributable share of the Company's income for the period commencing July 1, 2007 and ending at the close of business on the day immediately preceding the Closing Date which is passed through to the Sellers under Section 1366 of the Code. For purposes of calculating the Tax payment to be made by Buyer to Sellers under this Section 7.2(c) each Seller shall be deemed to be in the highest marginal tax bracket for local, state and Federal Tax purposes.

7.3 Further Assurances . The parties agree (a) to furnish upon request to each other such further information, (b) to execute and deliver to each other such other documents, and (c) to do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the documents referred to in this Agreement.

7.4 Litigation Support . In the event and for so long as Buyer or Company is actively contesting or defending against any litigation or claim in connection with any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act or transaction existing or occurring on or prior to the Closing Date involving the Company or the Business, Sellers will cooperate in the contest or defense and provide such testimony as may be necessary in connection with the contest or defense, at the cost and expense of Buyer (unless and to the extent Buyer is entitled to indemnification therefor hereunder).

ARTICLE 8
CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE

Buyer's obligation to purchase the Shares and to take the other actions required to be taken by Buyer at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer, in whole or in part):

8.1 **Accuracy of Representations and Warranties** . The representations and warranties of Sellers contained in this Agreement that are qualified by a reference to materiality or a Material Adverse Effect (any such qualification referred to herein as a " *Materiality Qualifier* ") shall be true and correct in all respects when made and (after giving effect to any schedule updates deemed made or otherwise permitted under Section 6.8) on and as of the Closing as if made at and as of the Closing (other than representations and warranties which address matters only as of a certain date, which shall have been true and correct as of such certain date) and the representations and warranties of Sellers set forth in this Agreement that are not so qualified shall be true and correct in all material respects when made and (after giving effect to any schedule updates deemed made or otherwise permitted under Section 6.8) on and as of the Closing Date as if made on and as of such time (except for those representations and warranties that are not so qualified and relate to a particular date, which representations and warranties shall be true and correct in all material respects as of such date); except, in each case, for breaches that do not, when considered in the aggregate, have a Material Adverse Effect; provided that any breach of the Title and Authorization Warranties, Section 4.7 or Section 4.2(a) shall be deemed to be material and adverse to the Business.

8.2 **Sellers' Performance** .

(a) Covenants; Etc . All of the covenants and obligations that Sellers are required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been duly performed and complied with in all material respects, except for breaches that do not, when considered in the aggregate, have a Material Adverse Effect, it being understood and agreed that the consummation of the Closing shall not in any manner constitute a waiver or release by Buyer of any claim for breach against Sellers.

(b) Documents, Etc . Each document required to be delivered by Sellers pursuant to Section 3.2 must have been delivered.

8.3 **Consents** . Each of the Required Consents and the Buyer Consents must have been obtained and must be in full force and effect.

8.4 **No Proceedings** . Since the date of this Agreement, there must not have been commenced or Threatened against Buyer, or against any Person affiliated with Buyer, any Proceeding (a) involving any challenge to, or seeking damages or other relief in connection with, any of the Contemplated Transactions, or (b) that may have the effect of preventing, delaying, making illegal, or otherwise interfering with any of the Contemplated Transactions.

8.5 **No Claim Regarding Stock Ownership or Sale Proceeds** . There must not have been made or Threatened by any Person any claim asserting that such Person (a) is the holder or the beneficial owner of, or has the right to acquire or to obtain beneficial ownership of, any stock of, or any other voting, equity, or ownership interest in, the Company, or (b) is entitled to all or any portion of the Purchase Price payable for the Shares.

8.6 **No Prohibition** . Neither the consummation nor the performance of any of the Contemplated Transactions will materially contravene, or conflict with, or result in a material violation of, or cause Buyer or any Affiliate of Buyer to suffer any material adverse consequence under, (a) any applicable Legal Requirement or Order, or (b) any Legal Requirement or Order that has been published, introduced, or otherwise proposed by or before any Governmental Body.

8.7 **No Material Adverse Effect** . Since the date of this Agreement, there shall not have occurred any event or occurrence creating or reasonably likely to create a Material Adverse Effect respecting the Company.

8.8 **Confirmation of Audited Financial Statements.** The Sellers shall have delivered to the Buyer the Audited Financial Statements, which shall reflect no material adverse change to the financial condition of the Company from the financial condition of the Company reflected in the Reviewed Financial Statements.

ARTICLE 9
CONDITIONS PRECEDENT TO SELLERS' OBLIGATION TO CLOSE

Sellers' obligation to sell the Shares and to take the other actions required to be taken by Sellers at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Sellers, in whole or in part):

9.1 **Accuracy of Representations and Warranties** . The representations and warranties of Buyer contained in this Agreement that are qualified by a reference to a Materiality Qualifier shall be true and correct in all respects when made and (after giving effect to any schedule updates deemed made or otherwise permitted under Section 6.8) on and as of the Closing as if made at and as of the Closing (other than representations and warranties which address matters only as of a certain date, which shall have been true and correct as of such certain date), and the representations and warranties of Buyer set forth in this Agreement that are not so qualified shall be true and correct in all material respects when made and (after giving effect to any schedule updates deemed made or otherwise permitted under Section 6.8) on and as of the Closing Date as if made on and as of such time (except for those representations and warranties that are not so qualified and relate to a particular date, which representations and warranties shall be true and correct in all material respects as of such date); except, in each case, for breaches that do not, when considered in the aggregate, have a Material Adverse Effect on the ability of the Buyer to consummate the purchase of the Shares.

9.2 **Buyer's Performance** .

(a) Covenants; Etc . All of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been performed and complied with in all material respects, except for breaches that do not, when considered in the aggregate, have a Material Adverse Effect, it being understood and agreed that the consummation of the Closing shall not in any manner constitute a waiver or release by Sellers of any claim for breach against Buyer.

(b) Documents, Etc . Buyer must have delivered each of the documents required to be delivered by Buyer pursuant to Section 3.2 and must be prepared to make the cash payments required to be made by Buyer pursuant thereto.

9.3 No Injunction . There must not be in effect any Legal Requirement or any injunction or other Order that (a) prohibits the sale of the Shares by Sellers to Buyer, and (b) has been adopted or issued, or has otherwise become effective, since the date of this Agreement.

9.4 No Proceedings . Since the date of this Agreement, there must not have been commenced or Threatened against any buyer, or against any Person affiliated with Buyer, any Proceeding (a) involving any challenge to, or seeking damages or other relief in connection with, any of the Contemplated Transactions, or (b) that may have the effect of preventing, delaying, making illegal, or otherwise interfering with any of the Contemplated Transactions.

9.5 No Prohibition . Neither the consummation nor the performance of any of the Contemplated Transactions will materially contravene, or conflict with, or result in a material violation of, or cause the Company to suffer any material adverse consequence under, (a) any applicable Legal Requirement or Order, or (b) any Legal Requirement or Order that has been published, introduced, or otherwise proposed by or before any Governmental Body.

9.6 No Material Adverse Effect . Since the date of this Agreement, there shall not have occurred any event or occurrence creating or reasonably likely to create a Material Adverse Effect respecting the Buyer or any of its Affiliates for the Company.

ARTICLE 10
TERMINATION

10.1 Termination Events . This Agreement may, by notice given prior to or at the Closing, be terminated:

(a) Mutual Consent . By mutual written consent of Buyer and Sellers.

(b) after a date which is one hundred twenty (120) days after the date hereof by either Seller or Buyer if the Closing has not occurred by that date; provided , that the right to terminate this Agreement pursuant to this Section 10.1(b) shall not be available to a Party whose action or failure to act has been a principal cause of or resulted in the failure of the Closing to occur on or before such date and such action or failure to act constitutes a breach of this Agreement and provided, further that the terminating Party shall give the other Party not less than two Business Days notice of its intent to terminate this Agreement pursuant to this Section 10.1(b) and within such two Business Day period will discuss with the other Party the basis upon which such notice was given and shall explore possible alternatives, provided , however , that the decision to terminate shall rest solely in the discretion of the notifying Party.

(c) by Sellers, upon written notice, if one or more of the representations and warranties of Buyer shall have become untrue such that the condition set forth in Section 9.1 would not be satisfied or if Buyer shall have materially breached any agreement, obligation or covenant such that the condition set forth in Section 9.2 would

not be satisfied; provided , that if the inaccuracy in Buyer's representations and warranties or the breach of Buyer's agreement, obligation or covenant is curable through the exercise of Buyer's commercially reasonable efforts, then Sellers may not terminate this Agreement for fifteen (15) days after Sellers shall have given written notice of such inaccuracy or breach to Buyer (so long as Buyer continues to use commercially reasonable efforts to cure the inaccuracy or breach during such period), it being understood that Seller may not terminate this Agreement if Purchaser cures such inaccuracy or breach within such fifteen (15) day period; and provided , further , that the right to terminate this Agreement pursuant to this Section 10.1(c) shall not be available to Sellers if Sellers' breach of or failure to comply with its obligations under this Agreement is a principal cause of or resulted in the event giving rise to such termination right;

(d) by Buyer, upon written notice, if one or more of the representations and warranties of Sellers shall have become untrue such that the condition set forth in Section 8.1 would not be satisfied or if Sellers or the Company shall have materially breached any agreement, obligation or covenant such that the condition set forth in Section 8.2 would not be satisfied; provided that if the inaccuracy in Sellers' or the Company's representations and warranties or the breach of Sellers' or the Company's agreement, obligation or covenant is curable through the exercise of commercially reasonable efforts, then Buyer may not terminate this Agreement for fifteen (15) days after Buyer shall have given written notice of such inaccuracy or breach to Sellers (so long as Sellers and/or the Company continue to use commercially reasonable efforts to cure such inaccuracy or breach during such period), it being understood that Buyer may not terminate this Agreement if Sellers or the Company cures such inaccuracy or breach within such fifteen (15) day period; and provided , further , that the right to terminate this Agreement pursuant to this Section 10.1(d) shall not be available to Buyer if Buyer's breach of or failure to comply with its obligations under this Agreement is a principal cause of or resulted in the event giving rise to such termination event;

(e) by Buyer or Sellers if there shall be any law that makes consummation of the purchase of the shares illegal or otherwise prohibited, or if any order of any Governmental Authority enjoining Buyer or Sellers from consummating the purchase of the Shares is entered and such order shall have become final and nonappealable; provided that the Party seeking to terminate this Agreement pursuant to this provision shall have used all commercially reasonable efforts to remove or vacate such order; or

(f) by Buyer, in the event any amendment or supplement to Sellers' Disclosure Schedule delivered pursuant to Section 6.8 has or is likely to have a Material Adverse Effect with respect to the Company or by Sellers, in the event any amendment or supplement to Buyer's Disclosure Schedule delivered pursuant to Section 6.8 has or is likely to have a Material Adverse Effect with respect to the Buyer.

10.2 Effect of Termination . Each party's right of termination under Section 10.1 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 10.1 , all further obligations of the parties under this Agreement will terminate, except that the obligations in Section 12.1 and Section 12.3 will survive; provided , however , that if this

Agreement is terminated by a party because of the Breach of the Agreement by the other party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive such termination unimpaired.

ARTICLE 11
INDEMNIFICATION

11.1 **Survival** . Except as set forth below, all representations, warranties, covenants, and obligations in this Agreement, the Sellers' Disclosure Schedule, the supplements to the Sellers' Disclosure Schedule, any other certificate or document delivered pursuant to this Agreement will survive the Closing, provided, however, that from and after Closing, the Company shall not have any liability or obligation for any breaches on or before Closing of any its representations, warranties, covenants or agreements, and instead, the Sellers, jointly and severally, shall be liable for any such breaches by the Company as if such representations, warranties, covenants or agreements had been made by them.

(a) In General . Except as set forth below, all of the representations and warranties of Sellers and Buyer contained in this Agreement or any agreement or document executed and delivered pursuant to the terms of this Agreement shall survive the Closing hereunder and continue in full force and effect for a period of eighteen (18) months after the Closing Date (the " *Survival Period* ").

(b) Exceptions for Sellers . Notwithstanding the above, the Survival Period for the following representations and warranties of Sellers shall be as set forth below:

(i) the representations and warranties set forth in Section 4.12 (Taxes) shall survive the Closing hereunder and continue in full force and effect until the expiration of the applicable statute of limitations period;

(ii) the representations and warranties set forth in Section 4.20 (Environmental Matters) shall survive the Closing hereunder and continue in full force and effect for a period of three (3) years following after the Closing Date.

(iii) the representations and warranties set forth in Sections 4.2 (Authority; No Conflict) and 4.7 (Title to Properties; Shares; Encumbrances), shall survive the Closing hereunder without limitation as to time; and

(iv) claims for indemnification to the extent based on fraud by Sellers shall survive the Closing without limitation as to time.

(c) Covenants and Agreements . The covenants and agreements contained herein shall survive the Closing without limitation as to time unless the covenant or agreement specifies a term, in which case such covenant or agreement shall survive for such specified term.

11.2 Indemnification by Sellers . Sellers, jointly and severally, except for those representations and warranties deemed made solely by a Seller as to such Seller, (in which event such Seller shall be solely responsible for the indemnification obligation respecting any breach of such representation or warranty) will indemnify, defend and hold harmless the Buyer Indemnified Persons for, and will pay to the Buyer Indemnified Persons the amount of, any Adverse Consequences arising directly or from or in connection with:

(a) Representations and Warranties . Any Breach of any representation or warranty made by Sellers in this Agreement or the Registration Rights Agreement;

(b) Covenants and Obligations . Any Breach by Sellers of any covenant or obligation of such Seller in this Agreement;

(c) Brokers . Any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding alleged to have been made by any such Person with Sellers or the Company (or any Person acting on their behalf) in connection with any of the Contemplated Transactions.

11.3 Indemnification by Buyer . Buyer will indemnify, defend and hold harmless the Seller Indemnified Persons for, and will pay to the Seller Indemnified Persons the amount of, any Adverse Consequences arising, directly or indirectly, from or in connection with:

(a) Representations and Warranties . Any Breach of any representation or warranty made by Buyer in this Agreement,

(b) Covenants and Obligations . Any Breach by Buyer of any covenant or obligation of Buyer in this Agreement.

(c) Brokers . Any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding alleged to have been made by such Person with Buyer (or any Person acting on its behalf) in connection with any of the Contemplated Transactions.

11.4 Limitations on Indemnification .

(a) Indemnity Cap . Sellers' liability for indemnification pursuant to Section 11.2(a) of this Agreement, and Buyer's liability for indemnification pursuant to Section 11.3(a) shall be limited in total and in the aggregate to Fifteen Million Dollars ($15,000,000) (the " *Indemnity Cap* "); provided , however , that the Indemnity Cap shall not apply to the breaches of the following representations and warranties of Sellers: 4.2 (Authority; No Conflict), 4.7 (Title to Properties; Encumbrances), Section 4.12 (Taxes), and 4.28 (Brokers or Finders), or to claims for indemnification to the extent based on fraud by Sellers; provided that Sellers shall not have any liability with respect to any breach of a representation or warranty if all Adverse Consequences or series of related Adverse Consequences arising from such breach and any related breach are less than Seven Thousand, Five Hundred Dollars ($7,500) for purposes of which any Materiality Qualifier contained in any representations, warranties or covenants shall be disregarded when determining the existence of a breach or the magnitude of such Adverse

Consequences; provided further, however, that all Adverse Consequences or series of related Adverse Consequences arising from or relating to the same event, occurrence or set of circumstances giving rise to any breach of a representation or warranty shall be aggregated for purposes of determining the Sellers' liability under this Section 11.

(b) Indemnity Basket . Buyer shall not assert claims for indemnification under Section 11.2(a) , and Sellers shall not assert claims for indemnification under Section 11.3(a) , unless and until the aggregate of Adverse Consequences exceeds Seven Hundred and Fifty Thousand Dollars ($750,000), for purposes of which any Materiality Qualifier contained in any representations, warranties or covenants shall be disregarded when determining the existence of a breach or the magnitude of such Adverse Consequences, at which point Sellers or Buyer, as the case may be, shall be obligated with respect to such Adverse Consequences in excess thereof (the " *Indemnity Basket* ") subject to the Indemnity Cap; provided , however , that the Indemnity Basket shall not apply to claims for indemnification based on breaches or inaccuracy of Sellers' representations and warranties contained in the following Sections: 4.2 (Authority; No Conflict), 4.7 (Title to Properties; Encumbrances), Section 4.12 (Taxes), and 4.28 (Brokers or Finders), or to claims for indemnification to the extent based on fraud by Sellers.

(c) The provisions of this Article 11 shall be the exclusive remedy available to the Seller Indemnitees and the Purchaser Indemnitees after the Closing in the event any such Person shall have a claim with respect to the matters covered by this Agreement. The preceding sentence shall not apply, however, to limit any claim or remedy which might be available to Buyer or Seller with respect to fraud committed against such party by the other party(ies) to this Agreement or their Affiliates in connection with this Agreement or the transactions contemplated hereby.

11.5 Procedure for Indemnification . Subject to the other terms of this ARTICLE 11:

(a) Notice of Indemnifiable Loss . In the event that a Person entitled to indemnification under this ARTICLE 11 (the " *Indemnified Party* ") shall suffer any Adverse Consequences in respect of which indemnification may be sought under this ARTICLE 11 against the party required to provide indemnification under this ARTICLE 11 (the " *Indemnifying Party* "), the Indemnified Party must assert a claim for indemnification within the applicable Survival Period by a written notice which contains reasonably sufficient detail and information of the Indemnifiable Losses as then known (the " *Notice of Indemnifiable Loss* ") to the Indemnifying Party. The Notice of Indemnifiable Loss must be provided to the Indemnifying Party as soon as practicable, but in no event later than 30 days after the Indemnified Party acquires knowledge of the basis for the claim for indemnification. Notwithstanding the foregoing, any failure to provide the Indemnifying Party with a Notice of Indemnifiable Loss in such a timely manner shall not relieve the Indemnifying Party from any liability that it may have to the Indemnified Party under this ARTICLE 11 except to the extent that the Indemnifying Party is materially prejudiced by the Indemnified Party's failure to give such Notice of Indemnifiable Loss in such a timely manner.

(b) Third Party Claims .

(i) In the event that any third party (including any Governmental Body) asserts a claim against an Indemnified Party for which such Indemnified Party intends to seek indemnity from the Indemnifying Party, then the Indemnified Party shall promptly notify the Indemnifying Party of such claim or demand and the amount thereof, if known, or an estimate thereof, if reasonably capable of estimation (the " *Claim Notice* "), but any failure to so notify the Indemnifying Party shall not relieve it from any liability that it may have to the Indemnified Party under this ARTICLE 11 except to the extent that the Indemnifying Party is materially prejudiced by the Indemnified Party's failure to give such notice.

(ii) The Indemnifying Party shall have fifteen (15) days from Claim Notice to undertake, conduct and control the defense of such third party claim; provided , that pending the Indemnifying Party's decision whether to exercise its right to undertake the conduct and control of the settlement or defense of any third party claim, the Indemnified Party shall undertake, conduct and control the settlement or defense thereof, through counsel of its own choosing if the failure to so act during such period might reasonably be expected to have a material adverse effect on the Indemnified Party, and provided further that (A) the Indemnifying Party notifies the Indemnified Party, in writing, within such 15 days that the Indemnifying Party will assume the defense of the third party claim and pay all attorneys' fees and other third party defense costs in connection therewith, (B) the Indemnifying Party provides the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that the Indemnifying Party will have the financial resources to defend against the third party claim and fulfill its indemnification obligations hereunder, (C) the third party claim involves only money damages and does not seek an injunction or other equitable relief, and (iv) the Indemnifying Party conducts the defense of the Third Party Claim actively and diligently.

(iii) All costs and expenses incurred by the Indemnifying Party in defending such third party claim shall be paid by the Indemnifying Party. If the Indemnifying Party assumes such defense, the Indemnified Party may participate in, but not control, any such defense or settlement, at its sole cost and expense. So long as the Indemnifying Party is defending such third party claim in good faith, the Indemnified Party shall not settle such claim and any settlement in violation of this restriction shall nullify and make void and unenforceable the Indemnifying Party's indemnification obligation hereunder. Notwithstanding the foregoing, the Indemnified Party shall have the right to pay or settle any such third party claim; provided , that in such event it shall waive any right to indemnity therefor by the Indemnifying Party.

(iv) If the Indemnifying Party does not notify the Indemnified Party within 30 days after the receipt of the Indemnified Party's Claim Notice that it elects to undertake the settlement or defense thereof, the Indemnified Party shall have the right to conduct and control the defense thereof and to contest, settle or

compromise the third party claim but shall not thereby waive any right to indemnity therefor pursuant to this Agreement.

(v) The Indemnifying Party shall not, without the prior written consent of the Indemnified Party, settle, compromise or offer to settle or compromise any third party claim unless: (x) such settlement or judgment includes as an unconditional term thereof the giving by the Person or Persons asserting such claim to all Indemnified Parties an unconditional release from all Liability with respect to such claim and (y) the relief provided in connection with such settlement or judgment effected by the Indemnifying Party is satisfied entirely by the Indemnifying Party. To the extent the Indemnifying Party shall control or participate in the defense or settlement of any third party claim or demand, the Indemnified Party will give to the Indemnifying Party and its counsel access to, during normal business hours, the relevant books and records, and shall permit them to consult with the employees and counsel of the Indemnified Party. The Indemnified Party, at its sole cost and expense, shall use commercially reasonable efforts to cooperate in the defense of all such claims.

(vi) With respect to any pending action or proceeding subject to indemnification under this ARTICLE 11 , the parties shall cooperate in such a manner as to preserve in full (to the extent possible) the confidentiality of all confidential business records and the attorney-client and work-product privileges. In connection therewith, (A) each party shall use its commercially reasonable efforts, in any action or proceeding in which he or it has assumed or participated in the defense, to avoid production of confidential business records (consistent with applicable law and rules of procedure), and (B) all communications between any party hereto and counsel responsible for or participating in the defense of any action or proceeding shall, to the extent possible, be made so as to reserve any applicable attorney-client or work-product privilege.

11.6 Additional Agreements Regarding Indemnity .

(a) Waivers . The waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, payment of Adverse Consequences, or other remedy based on such representations, warranties, covenants, and obligations.

(b) Reliance . The right to indemnification, payment of Adverse Consequences or other remedy based on such representations, warranties, covenants, and obligations will not be affected by any investigation conducted with respect to, or any Knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant, or obligation.

(c) Company . For the avoidance of doubt, from and after the Closing, the Company shall be Buyer Indemnified Persons and shall have no Liability to the Buyer Indemnified Parties with respect to any Adverse Consequences under this Agreement, and the Sellers shall have sole responsibility for any and all such Adverse Consequences. Sellers waive any subrogation or other claims against the Company with respect to Adverse Consequences under this Agreement.

11.7 Effect of Taxes, Insurance and Other Sources of Reimbursement . The amount of any Adverse Consequences for which indemnification is provided under this Article 11 shall be reduced by (i) the insurance proceeds received or receivable with respect to any such Adverse Consequence and (ii) any other amount, if any, recovered from third parties (as a result of indemnification, contribution, guarantee or otherwise) by the Indemnified Party (or its Affiliates) with respect to any Adverse Consequences. If any Indemnified Party shall have received any indemnification payment pursuant to this Article 11 with respect to any Adverse Consequence, such Indemnified Party shall, upon written request by the Indemnifying Party, assign to such Indemnifying Party (to the extent of the indemnification payment) any claim which such Indemnified Party may have under any applicable insurance policy or other Contract which provides coverage for such Adverse Consequence to the extent of such indemnification payment, net of any increase in premiums or other costs resulting solely from such payment. Such Indemnified Party shall reasonably cooperate (at the expense of the Indemnifying Party) to collect under such insurance policy or other Contract. If any Indemnified Party shall have received any payment pursuant to this Article 11 with respect to any Adverse Consequence and has or shall subsequently have received insurance proceeds or other amounts with respect to such Adverse Consequence, then such Indemnified Party shall promptly pay over to the Indemnifying Party the amount so recovered (after deducting the amount of the expenses incurred by it in procuring such recovery and any increase in premiums resulting solely from such recovery), but not in excess of the amount previously so paid by the Indemnifying Party. Payments received by any Party pursuant to this Article 11 shall be treated by the parties as an adjustment to the Purchase Price.

11.8 No Additional Warranties . THE REPRESENTATIONS AND WARRANTIES CONTAINED HEREIN ARE THE ONLY REPRESENTATIONS OR WARRANTIES GIVEN BY THE PARTIES. NEITHER SELLERS NOR THE COMPANY HAS MADE NOR HEREBY MAKES ANY WARRANTY OR REPRESENTATION WHATSOEVER REGARDING THE FITNESS FOR PARTICULAR PURPOSE, QUALITY OR MERCHANTABILITY OF THE COMPANY'S ASSETS OR ANY PORTION THEREOF.

11.9 Other Information . Buyer agrees that neither Sellers nor any of their Representatives will have or be subject to any liability to Buyer or any other Person resulting from the distribution to Buyer, or Buyer's use of, any information, document, or material made available to Buyer or its Representatives by Sellers, the Company or Houlihan Lokey Howard & Zukin in certain "data rooms" (electronic or otherwise) except to the extent set forth on the Schedules hereto. In connection with Buyer's investigation of the Company and the Business, Buyer may have received from or on behalf of Sellers or the Company certain projections, including projected statements of operating revenues and income from operations of the Company. Buyer acknowledges that there are uncertainties inherent in attempting to make such estimates, projections and other forecasts and plans, that Buyer is familiar with such

uncertainties, that Buyer is making its own evaluation of the adequacy and accuracy of all estimates, projections and other forecasts and plans so furnished to it (including the reasonableness of the assumptions underlying such estimates, projections and forecasts), and that Buyer shall have no claim against Sellers or their Affiliates or Representatives or the Company with respect thereto. Accordingly, Sellers make no representation or warranty with respect to such estimates, projections and other forecasts and plans (including the reasonableness of the assumptions underlying such estimates, projections and forecasts).

ARTICLE 12
GENERAL PROVISIONS

12.1 **Expenses**. Except as otherwise expressly provided in this Agreement, each of the and the Sellers will bear their respective investment banking, fairness opinion, legal, accounting, and other fees and expenses relating to the Contemplated Transactions. This shall include the fees of Houlihan Lokey, or any other investment banking firm retained by the Company or the Sellers in connection with the Contemplated Transactions and all expenses associated with the audit of the Company's financial statements required in connection with the Contemplated Transactions, each of which shall be paid by the Sellers.

12.2 **Public Announcements**. Any public announcement or similar publicity with respect to this Agreement or the Contemplated Transactions will be issued, if at all, at such time and in such manner as Buyer determines. Buyer shall provide the Sellers' Representative with a draft of any public announcement with respect to the Agreement or the Contemplated Transactions and a reasonable opportunity to comment on such public announcement. Unless consented to by Buyer in advance or required by Legal Requirements, prior to the Closing Sellers and the Company shall keep this Agreement strictly confidential and may not make any disclosure of this Agreement to any Person. Sellers, the Company and Buyer will consult with each other concerning the means by which the Company' employees, customers, and suppliers and others having dealings with the Company will be informed of the Contemplated Transactions, and Buyer will have the right to be present for any such communication.

12.3 **Confidentiality**. Between the date of this Agreement and the Closing Date, Buyer, Sellers and the Company will maintain in confidence, and will cause the directors, officers, employees, agents, and advisors of Buyer and the Company to maintain in confidence, any written, oral, or other information obtained in confidence from another party or the Company in connection with this Agreement or the Contemplated Transactions, unless (a) such information is already known to such party or to others not bound by a duty of confidentiality or such information becomes publicly available through no fault of such party, (b) the use of such information is necessary or appropriate in making any filing or obtaining any consent or approval required for the consummation of the Contemplated Transactions, or (c) the furnishing or use of such information is required by legal proceedings. If the Contemplated Transactions are not consummated, each party will return or destroy as much of such written information as the other party may reasonably request. Whether or not the Closing takes place, Sellers and the Company waive any cause of action, right, or claim arising out of the access of Buyer or its representatives to any trade secrets or other confidential information of the Company except for the intentional competitive misuse by Buyer of such trade secrets or confidential information.

12.4 **Notices** . All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by telecopier or other electronic transmission (with written confirmation of receipt), provided that a copy is mailed by registered mail, return receipt requested, or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and telecopier numbers set forth below (or to such other addresses and telecopier numbers as a party may designate by notice to the other parties):

Sellers and the Company:

J. Cameron Drecoll
1309 South Cicero Ave.
Cicero, IL 60804-3939
Attention: Mr. J. Cameron Drecoll
Facsimile No.:(708) 298-1012

with a copy to:

DLA Piper US LLP
203 N. LaSalle Street
Suite 1900
Chicago, IL 60601
Attention: Stephen A. Landsman, Esq.
Facsimile No.:(312) 630-6330

Buyer:

TOWER TECH HOLDINGS, INC.
980 Maritime Drive
Suite 6
Manitowoc, WI 54220
Attention: President
Facsimile No.: (920) 684-5579

with a copy to:
Mr. John Wurm, Esq.
Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402
Facsimile No.: (612) 492-7077

12.5 **Sellers' Representative.**

(a) Appointment . " *Sellers' Representative* " means Mr. Drecoll provided, that in the event of the death or resignation of him as Sellers' Representative, "Sellers' Representative" means Mrs. Joan Drecoll. Each Seller hereby irrevocably constitutes and

appoints the Sellers' Representative as such Seller's attorney-in-fact and agent to act in such Seller's name, place and stead in connection with all matters arising from and under this Agreement and the Escrow Agreement, and acknowledges that such appointment is coupled with an interest. Sellers' Representative hereby accepts such appointment and authorization.

(b) Authority . Each Seller agrees to be bound by all notices received or given by, and all agreements and determinations made by, and all documents executed and delivered by the Sellers' Representative under this Agreement; authorizes the Sellers' Representative to assert claims, make demands and commence actions on behalf of Sellers under this Agreement, dispute or to refrain from disputing any claim made by Sellers, negotiate and compromise any dispute that may arise under, and exercise or refrain from exercising remedies available to Sellers under, this Agreement, and to sign any releases or other documents with respect to such dispute or remedy (and to bind Sellers in so doing), give such instructions and do such other things and refrain from doing such things as the Sellers' Representative shall deem appropriate to carry out the provisions of this Agreement, give any and all consents and notices under this agreement, and perform all actions, exercise all powers, and fulfill all duties otherwise assigned to the Sellers' Representative in this Agreement. Each of the Sellers hereby expressly acknowledges and agrees that the Sellers' Representative has the sole and exclusive authority to act on such Sellers' behalf in respect of all matters arising under or in connection with this Agreement after execution of this Agreement, notwithstanding any dispute or disagreement among them, and that no Seller shall have any authority to act unilaterally or independently of the Sellers' Representative in respect to any such matter. Buyer and the Escrow Agent shall be entitled to rely on any and all actions taken by the Sellers' Representative under this Agreement and the Escrow Agreement without any liability to, or obligation to inquire of, any of Sellers. All notices, counter notices or other instruments or designations delivered by any Sellers in regard to this Agreement shall not be effective unless, but shall be effective if, signed by the Sellers' Representative, and if not, such document shall have no force or effect whatsoever and Buyer, the Escrow Agent and any other person or entity may proceed without regard to any such document. Buyer, the Escrow Agent and any other person or entity are hereby expressly authorized to rely on the genuineness of the signature of the Sellers' Representative, and upon receipt of any writing that reasonably appears to have been signed by the Sellers' Representative, they may act upon the same without any further duty of inquiry as to the genuineness of the writing. The authorizations of the Sellers' Representative shall be irrevocable and effective until the Sellers' Representative's rights and obligations under this Agreement terminate by virtue of the termination of all obligations of Sellers to Buyer, and Buyer to Sellers, under this Agreement. Buyer shall have no liability for any acts or omissions of the Sellers' Representative or otherwise with respect to any claim brought by any Seller against the other Seller.

12.6 Exhibits and Schedules . All Exhibits and Disclosure Schedules attached hereto and referred to herein are hereby incorporated herein and made a part of this Agreement for all purposes as if fully set forth herein. The inclusion of any item on any Disclosure Schedule attached hereto shall not constitute an admission that such item is material or that a violation, right of termination, default, liability or other obligation of any kind exists with respect to such item, but rather is intended only to qualify certain representations and warranties in this Agreement and to set forth other information required by the Agreement. The Disclosure Schedules attached hereto are qualified in their entirety by reference to specific provisions of this

Agreement. Summaries of, or references to, actual documents and other materials in the Disclosure Schedules are qualified in their entirety by the full text of such documents. Except as expressly set forth on the attached Disclosure Schedules, the definitions contained in the Agreement are incorporated therein by reference. The disclosures in the Disclosure Schedules, and those in any Supplement thereto, must relate only to the representations and warranties in the Section of the Agreement to which they expressly relate and not to any other representation or warranty in this Agreement. In the event of any inconsistency between the statements in the body of this Agreement and those in the Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules with respect to a specifically identified representation or warranty), the statements in the body of this Agreement will control.

12.7 **Governing Law; Submission to Jurisdiction**. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ILLINOIS OTHER THAN CONFLICT OF LAWS PRINCIPLES THEREOF DIRECTING THE APPLICATION OF ANY LAW OTHER THAN THAT OF ILLINOIS. COURTS WITHIN THE STATE OF ILLINOIS (LOCATED WITHIN THE CITY OF CHICAGO) WILL HAVE EXCLUSIVE JURISDICTION OVER ALL DISPUTES BETWEEN THE PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS. THE PARTIES HEREBY CONSENT TO AND AGREE TO SUBMIT TO THE JURISDICTION OF SUCH COURTS. EACH OF THE PARTIES WAIVES, AND AGREES NOT TO ASSERT IN ANY SUCH DISPUTE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM THAT (A) SUCH PARTY IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURTS; (B) SUCH PARTY AND SUCH PARTY'S PROPERTY IS IMMUNE FROM ANY LEGAL PROCESS ISSUED BY SUCH COURTS; OR (C) ANY LITIGATION COMMENCED IN SUCH COURTS IS BROUGHT IN AN INCONVENIENT FORUM.

12.8 **Waiver of Jury Trial**. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION OR AGREEMENT CONTEMPLATED HEREBY OR THE ACTIONS OF ANY PARTY HERETO IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

12.9 **No Third Party Beneficiaries**. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any Person other than the parties hereto and their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement, such third parties specifically including employees and creditors of the Company.

12.10 **Waiver**. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement or the documents referred to in

this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

12.11 **Entire Agreement and Modification**. Except for the Confidentiality Agreement between Tontine Capital Partners, LP and the Company dated May 16, 2007 and the Confidentiality Agreement between Tower Tech Systems, Inc. and the Company dated June 14, 2007, each of which shall not be deemed cancelled and superseded by this Agreement, this Agreement supersedes all prior agreements between the parties with respect to its subject matter (including the Letter of Intent among Buyer, Sellers and the Company dated July 20, 2007) and constitutes (along with the documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended except by a written instrument signed by Buyer and Sellers.

12.12 **Assignments and Successors**. No party may assign any of its rights under this Agreement without the prior consent of the other parties, except that Buyer may assign any of its rights under this Agreement to any Subsidiary of Buyer; provided, however, that no such assignment by Buyer shall release or relieve Buyer of any obligation or liability hereunder. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement.

12.13 **Severability**. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

12.14 **Interpretation and Rules of Construction**. In this Agreement, except to the extent otherwise provided or that the context otherwise requires: (a) when a reference is made in this Agreement to an Article, Section, Paragraph, Exhibit or Schedule, such reference is to an Article or Section or Paragraph of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated; the Exhibits and Schedules form part of and shall have effect as if set out in this Agreement and any reference to this "Agreement" includes the Exhibits and the Schedules; (b) the table of contents and headings for this Agreement, are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement; (c) whenever the words "include," "includes" or "including" are used in this Agreement, they are deemed to be followed by the words "without limitation"; (d) the words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement; (e) all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein; (f) the terms defined in the singular shall have a

comparable meaning when used in the plural, and vice versa; (g) references to a Person are also to its successors and permitted assigns; (h) the use of "or" is not intended to be exclusive unless expressly indicated otherwise; (i) the term "Dollars" or "$" shall refer to the currency of the United States of America; and (j) all references to time shall refer to Minneapolis, Minnesota time.

12.15 **Time of Essence** . With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

12.16 **Counterparts** . This Agreement may be executed in one or more counterparts (including by facsimile and electronic transmission), each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first set forth above.

TOWER TECH HOLDINGS INC.

By: /s/ Raymond L. Brickner, III
Name: Raymond L. Brickner, III
Title: President

BRAD FOOTE GEAR WORKS, INC.

By: /s/ J. Cameron Drecoll
Name: J. Cameron Drecoll
Title: Chief Executive Officer

SELLERS:

/s/ J. Cameron Drecoll
J. Cameron Drecoll

/s/ Patrick Rosmonowski
Patrick Rosmonowski

/s/ Dennis Palmer
Dennis Palmer

/s/ Noel Davis
Noel Davis

Exhibit 10.2

SECURITIES PURCHASE AGREEMENT

BY AND AMONG

TONTINE CAPITAL PARTNERS, L.P.,

TONTINE CAPITAL OVERSEAS MASTER FUND, L.P.,

AND

TOWER TECH HOLDINGS INC.

AUGUST 22, 2007

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SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT, dated as of August 22, 2007, is entered into by and among TOWER TECH HOLDINGS INC., a Nevada corporation (the " ***Company*** "), the investors identified on the signature page hereto and the additional Tontine fund investors, if any, that are identified on Schedule 1 hereto, pursuant to Section 2.5 (each a " ***Buyer*** " and collectively, the " ***Buyers*** ").

RECITALS :

A. The Buyers desire to provide financing to the Company, and the Company desires to obtain financing from the Buyers, upon the terms and conditions set forth in this Agreement, in connection with the Company's proposed acquisition of Brad Foote Gear Works, Inc. (" ***Target*** ");

B. The total financing being provided by the Buyers to the Company hereunder shall consist of the purchase by the Buyers of 12,500,000 shares (the " ***Shares*** ") of common stock, $0.001 par value per share at $4.00 per share, for a total purchase price of $50,000,000, and the provision by the Buyers of interim debt financing of $25,000,000, (the " ***Debt Financing*** "), in exchange for Senior Subordinated Convertible Promissory Notes from the Company in like principal amount, substantially in the form attached hereto as Exhibit A (individually, a " ***Note*** " and collectively, the " ***Notes*** ");

C. The Company and the Buyers are executing and delivering this Agreement in reliance upon the exemptions from securities registration afforded by Section 4(2) of the 1933 Act and Rule 506; and

D. At the Closing (as defined below), the parties hereto will execute and deliver an amendment to the Registration Rights Agreement (as defined below), in the form attached hereto as Exhibit B (the "RRA Amendment").

AGREEMEN T

NOW THEREFORE, the Company and the Buyers hereby agree as follows:

ARTICLE 1
DEFINITIONS

" ***1933 Act*** " means the Securities Act of 1933, as amended.

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

" ***2006-2007 SEC Documents*** " has the meaning set forth in Section 3.4 .

" ***Acquisition*** " means the proposed acquisition by the Company of the Target pursuant to that certain Stock Purchase Agreement dated August 22, 2007 among the Company, Target and the shareholders of the Target (the " ***Target SPA*** ").

" ***Action*** " means any action, suit claim, inquiry, notice of violation, proceeding (including any partial proceeding such as a deposition) or investigation against or affecting the Company, any of its Subsidiaries or any of their respective properties before or by any court, arbitrator, governmental or

administrative agency, regulatory authority (federal, state, county, local or foreign), public board, stock market, stock exchange or trading facility.

" ***Agreement*** " means this Securities Purchase Agreement.

" ***Buyer*** " and " ***Buyers*** " have the meaning set forth in the preamble.

"Claim" has the meaning set forth in Section 9.2.

" ***Closing*** " has the meaning set forth in Section 2.4 .

" ***Closing Date*** " has the meaning set forth in Section 2.4 .

"Code" has the meaning set forth in Section 4.13 .

" ***Common Stock*** " means the Company's common stock, $0.001 par value per share.

" ***Company*** " has the meaning set forth in the preamble.

"Debt Financing" has the meaning set forth in the Recitals.

" ***Environmental Laws*** " has the meaning set forth in Section 4.11 .

" ***ERISA*** " has the meaning set forth in Section 4.21 .

"GAAP" has the meaning set forth in Section 4.5 .

" ***Hazardous Materials*** " has the meaning set forth in Section 4.11 .

"Indemnified Party" has the meaning set forth in Section 9.2 .

" ***Initial Securities Purchase Agreement*** " means that certain Securities Purchase Agreement dated March 1, 2007 by and among the Company, TCP and TCOMF.

" ***Intellectual Property*** " has the meaning set forth in Section 4.8 .

" ***Investment Company*** " has the meaning set forth in Section 4.13 .

" ***Legal Requirement*** " means any federal, state, local, municipal, foreign, international, multinational or other law, rule, regulation, order, judgment, decree, ordinance, policy or directive, including those entered, issued, made, rendered or required by any court, administrative or other governmental body, agency or authority, or any arbitrator that has jurisdiction over the Company.

" ***Material Adverse Effect*** " means any material adverse effect on the business, operations, assets, financial condition or prospects of the Company.

"Note and Notes" have the meaning set forth in the Recitals

" ***NRS*** " has the meaning set forth in Section 4.20 .

"Per Share Price" means $4.00 per Share, which is equal to 80% of the of the average closing sale price of the Common Stock for the thirty (30) trading days immediately preceding the date hereof, provided that the price per share shall not be less than $3.50 and not more than $4.00.

" ***Permits*** " has the meaning set forth in Section 4.10 .

" ***Purchase Price"*** has the meaning set forth in Section 2.3 .

" ***Registration Rights Agreement*** " means the Registration Rights Agreement dated March 1, 2007 by and among the Company, TCP and TCOMF, pursuant to which the Company has agreed under certain circumstances to register the resale of the Shares under the 1933 Act and the rules and regulations promulgated thereunder, and applicable state securities laws.

"RRA Amendment" has the meaning set forth in the Recitals.

" ***Rule 506*** " means Rule 506 of Regulation D promulgated under the 1933 Act.

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

" ***SEC Documents*** " has the meaning set forth in Section 4.5 .

"Securities" means collectively the Shares and the Notes.

" ***Shares*** " has the meaning set forth in the Recitals.

" ***Subsidiaries*** " means with respect to the Company, Tower Tech Systems, Inc, a Wisconsin corporation.

"Target" has the meaning set forth in the Recitals.

"Target SPA" has the meaning set forth in the definition of Acquisition.

" ***TCOMF*** " means Tontine Capital Overseas Master Fund, L.P.

" ***TCP*** " means Tontine Capital Partners, L.P.

" ***Transaction Documents*** " means this Agreement, the RRA Amendment, the Notes and any other documents contemplated by this Agreement.

" ***Transfer Instructions*** " has the meaning set forth in Section 2.3 .

ARTICLE 2
PURCHASE AND SALE OF SHARES

2.1 Purchase of Shares . Subject to the terms and conditions of this Agreement, on the Closing Date, the Company shall issue and sell the Shares and the Buyers shall purchase the Shares. The number of Shares to be purchased by each Buyer shall be identified in Schedule 1 in accordance with Section 2.5 .

2.2 Issuance of Notes . Subject to the terms and conditions of this Agreement, on the Closing Date, each Buyer shall provide a portion of the Debt Financing to the Company in the amount that is set

forth in Schedule 1 in accordance with Section 2.5 , and the Company shall issue a Note in like principal amount to each such Buyer.

2.3 Purchase Price for Shares and Notes and Form of Payment; Delivery . On the Closing Date each Buyer shall pay the Per Share Price for the Shares and the amount of the Notes to be issued and sold to it at the Closing, for a total price of $50,000,000 for the Shares, and $25,000,000 for the Notes (the ***"Purchase Price")*** . The Purchase Price shall be paid by wire transfer of immediately available funds in accordance with the Company's written instructions. At the Closing, upon payment of the Purchase Price the Company shall issue and deliver to the appropriate Buyers the Notes in the principal amount of the total Debt Financing, and the Company will deliver irrevocable written instructions (" ***Transfer Instructions*** ") to the transfer agent for the Company's Common Stock to issue certificates representing the Shares registered in the name of each Buyer and to deliver such certificates to or at the direction of each Buyer. The Company shall not have the power to revoke or amend the Transfer Instructions without the written consent of the Buyers.

2.4 Closing Date . Subject to the terms of this agreement, the closing of the transactions contemplated by this Agreement shall be held on or before the later of (i) the date that is three (3) business days after the date that the last of the conditions in Article 6 and Article 7 have been satisfied, or such other time as may be mutually agreed upon by the parties to this Agreement; or (ii) the closing date of the Acquisition so long as all of conditions in Article 6 and Article 7 have been satisfied (the " ***Closing Date*** "), at the offices of Barack Ferrazzano Kirschbaum & Nagelberg LLP, 200 West Madison Street, Suite 3900, Chicago, Illinois 60606 or at such other location or by such other method (including exchange of signed documents) as may be mutually agreed upon by the parties to this Agreement (" ***Closing*** ").

2.5 Additional Buyers . The Company acknowledges and agrees that additional Tontine funds other than those identified on the signature page hereto may participate in the purchase of Securities hereunder; provided that each such additional Tontine fund shall execute and deliver a joinder to this agreement in the form of Exhibit C attached hereto. Prior to the Closing Date, the Buyers shall provide the Company with a final version of Schedule 1 that includes the following information for each Buyer hereunder: (a) such Buyer's name and jurisdiction of organization; (b) the number of Shares to be purchased by such Buyer and the Purchase Price; and (c) the portion of the Debt Financing to be provided by such Buyer.

ARTICLE 3
BUYERS' REPRESENTATIONS AND WARRANTIES

Each Buyer represents and warrants to the Company that:

3.1 Organization and Qualification . Each of the Buyers is an entity of the type identified on Schedule 1 attached hereto, duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, with full power and authority to purchase the Shares and provide the Debt Financing and otherwise perform its obligations under this Agreement and the other Transaction Documents.

3.2 Authorization; Enforcement . This Agreement and each of the other Transaction Documents to be executed by the Buyers and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by, and duly executed and delivered on behalf of, such Buyer. This Agreement and each of the other Transaction Documents to be executed by the Buyers constitutes the valid and binding agreement of such Buyer enforceable in accordance with its terms, except as such enforceability may be limited by: (i) applicable bankruptcy, insolvency, reorganization,

moratorium or other similar laws in effect that limit creditors' rights generally; (ii) equitable limitations on the availability of specific remedies; and (iii) principles of equity.

3.3 Securities Matters . In connection with the Company's compliance with applicable securities laws:

a. Such Buyer understands that the Securities are being offered and sold to it in reliance upon specific exemptions from the registration requirements of United States and state securities laws and that the Company is relying upon the truth and accuracy of, and such Buyer's compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Buyer set forth herein in order to determine the availability of such exemption and the eligibility of such Buyer to acquire the Securities.

b. Such Buyer is purchasing the Securities for its own account, not as a nominee or agent, for investment purposes and not with a present view towards resale, except pursuant to sales exempted from registration under the 1933 Act, or registered under the 1933 Act as contemplated by the Registration Rights Agreement.

c. Such Buyer is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D under the 1933 Act, and has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Securities. Such Buyer understands that its investment in the Securities involves a significant degree of risk. Such Buyer understands that no United States federal or state agency or any other government or governmental agency has passed upon or made any recommendation or endorsement of the Securities.

3.4 Information . Such Buyer has conducted its own due diligence examination of the Company's business, financial condition, results of operations, and prospects. In connection with such investigation, such Buyer and its representatives (i) have reviewed the Company's Form 10-KSB for the fiscal years ended December 31, 2005 and December 31, 2006, the Company's quarterly report on Form 10-QSB for the two most recently concluded interim periods and the Company's Current Reports on Form 8-K or Form 8-K/A filed in 2006 and 2007 (and all exhibits included therein and financial statements and schedules thereto and documents (other than exhibits to such documents) incorporated by reference therein, being hereinafter referred to herein as the " ***2006-2007 SEC Documents*** "), (ii) have participated in board of director meetings of the Company pursuant to its Observation Rights (as defined in the Initial Purchase Agreement) (iii) have been given an opportunity to ask questions, to the extent such Buyer considered necessary, and have received answers from, officers of the Company concerning the business, finances and operations of the Company and information relating to the offer and sale of the Securities, and (iv) have received or had an opportunity to obtain such additional information as they deem necessary to make an informed investment decision with respect to the purchase of the Securities.

3.5 Restrictions on Transfer . Such Buyer understands that except as provided in the Registration Rights Agreement, the issuance of the Securities has not been and is not being registered under the 1933 Act or any applicable state securities laws. Such Buyer may be required to hold the Securities indefinitely and the Securities may not be transferred unless (i) the Securities are sold pursuant to an effective registration statement under the 1933 Act, or (ii) such Buyer shall have delivered to the Company an opinion of counsel to the effect that the Securities to be sold or transferred may be sold or transferred pursuant to an exemption from such registration, which opinion shall be reasonably acceptable to the Company. Such Buyer understands that until such time as the resale of the Securities has been registered under the 1933 Act as contemplated by the Registration Rights Agreement, as it may be amended by the RRA Amendment, or otherwise may be sold pursuant to an exemption from registration,

certificates evidencing the Securities may bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of the certificates evidencing such Securities):

"THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "ACT"). THE SHARES MAY NOT BE OFFERED FOR SALE, SOLD, OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT, OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE ACT, THE AVAILABILITY OF WHICH IS TO BE ESTABLISHED TO THE SATISFACTION OF THE CORPORATION. **"**

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the Company's Disclosure Schedule attached hereto, the Company represents and warrants to the Buyers that:

4.1 Organization and Qualification . The Company has no subsidiaries other than the Subsidiaries. The Company and each of its Subsidiaries is a corporation, limited partnership, limited liability company, or joint venture as applicable, duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated or organized, with corporate, limited liability or limited partnership power and authority to own, lease, use and operate its properties and to carry on its business as now operated and conducted. The Company and each of its Subsidiaries is duly qualified as a foreign corporation, limited liability company or limited partnership to do business and is in good standing in each jurisdiction in which its ownership or use of property or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so qualified or in good standing would not have a Material Adverse Effect. Neither the Company nor any Subsidiary is in violation of any provision of its respective certificate or articles of incorporation, partnership agreement, bylaws or other organizational or charter documents, as the same may have been amended.

4.2 Authorization; Enforcement . The Company has all requisite corporate power and authority to enter into and perform this Agreement and each of the other Transaction Documents and to consummate the transactions contemplated hereby and thereby and to issue the Securities, in accordance with the terms hereof and thereof. The execution and delivery of this Agreement and each of the other Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby (including without limitation, the issuance of the Securities) have been duly authorized by the Company's Board of Directors and no further consent or authorization of the Company, its Board of Directors, or its stockholders is required. This Agreement and each of the other Transaction Documents have been duly executed and delivered by the Company. This Agreement and each of the other Transaction Documents will constitute upon execution and delivery by the Company, a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by: (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws in effect that limit creditors' rights generally; (ii) equitable limitations on the availability of specific remedies; (iii) principles of equity (regardless of whether such enforcement is considered in a proceeding in law or in equity); and (iv) to the extent rights to indemnification and contribution may be limited by federal securities laws or the public policy underlying such laws.

4.3 Capitalization; Valid Issuance of Securities . As of the date hereof, the authorized capital stock of the Company consists of 100,000,000 shares of Common Stock, of which 47,724,464 shares are issued and outstanding, and no shares are held by the Company as treasury shares, and 10,000,000 shares

of preferred stock, of which no shares are issued and outstanding. All of such outstanding shares of Common Stock are duly authorized, validly issued, fully paid and nonassessable. The Securities have been duly authorized and when issued pursuant to the terms hereof will be validly issued, fully paid and nonassessable and will not be subject to any encumbrances, preemptive rights or any other similar contractual rights of the stockholders of the Company or any other person. No shares of capital stock of the Company are subject to preemptive rights of the stockholders of the Company or any liens or encumbrances imposed through the actions or failure to act of the Company. As of the date of this Agreement, except to the extent described in the preceding sentence and Schedule 4.3 attached hereto, (i) there are no outstanding options, warrants, scrip, rights to subscribe for, puts, calls, rights of first refusal, agreements, understandings, claims or other commitments or rights of any character whatsoever relating to, or securities or rights convertible into or exchangeable for any shares of capital stock of the Company or any of its Subsidiaries, or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional shares of capital stock, (ii) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of its or their securities under the 1933 Act (except the Registration Rights Agreement) and (iii) there are no anti-dilution or price adjustment provisions contained in any security issued by the Company (or in any agreement providing rights to security holders other than the Initial Securities Purchase Agreement) that will be triggered by the issuance of the Shares or the Notes. Except as may be described in any documents which have been publicly filed by any of the Company's stockholders, to the Company's knowledge, there are no agreements between the Company's stockholders with respect to the voting or transfer of the Company's capital stock or with respect to any other aspect of the Company's affairs.

4.4 No Conflicts . The execution, delivery and performance of this Agreement and each of the other Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of Securities) will not (i) conflict with or result in a violation of any provision of the Articles of Incorporation, as amended, of the Company or the Bylaws, as amended, of the Company, (ii) violate or conflict with, or result in a breach of any provision of, or constitute a default (or an event which with notice or lapse of time or both could become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any material agreement, indenture, patent, patent license or instrument to which the Company or any of its Subsidiaries is a party, or (iii) result in a violation of any Legal Requirement (including federal and state securities laws and regulations and regulations of any self-regulatory organizations to which the Company or its securities are subject) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected (except for such conflicts, defaults, terminations, amendments, accelerations, cancellations and violations as would not, individually or in the aggregate, have a Material Adverse Effect). Except as set forth in Schedule 4.4 , neither the Company nor any of its Subsidiaries is in violation of its certificate or articles of incorporation, bylaws or other organizational documents and neither the Company nor any of its Subsidiaries is in default (and no event has occurred which with notice or lapse of time would result in a default) under, and neither the Company nor any of its Subsidiaries has taken any action or failed to take any action that would give to others any rights of termination, amendment, acceleration or cancellation of, any agreement or instrument to which the Company or any of its Subsidiaries is a party or by which any property or assets of the Company or any of its Subsidiaries is bound or affected, except for possible defaults as would not, individually or in the aggregate, have a Material Adverse Effect. Except with respect to any filings or notices related to the issuance of the Shares to be filed with the OTC Bulletin Board, if any, and as required under the 1933 Act and any applicable state securities laws, the Company is not required to obtain any consent, authorization or order of, or make any filing or registration with, any court, governmental agency, regulatory agency, self regulatory organization or stock market or any third party in order for it to execute, deliver or perform any of its obligations under the Transaction Documents. All consents, authorizations, orders, filings and

registrations that the Company is required to effect or obtain pursuant to the preceding sentence have been obtained or effected on or prior to the date hereof.

4.5 SEC Documents; Financial Statements .

a. Except as set forth on Schedule 4.5 , since December 31, 2005, the Company has timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC pursuant to the reporting requirements of the 1933 Act and the 1934 Act (all of the foregoing filed prior to the date hereof and all exhibits included therein and financial statements and schedules thereto and documents (other than exhibits to such documents) incorporated by reference therein, being hereinafter referred to herein as the " ***SEC Documents*** "), or has timely filed for a valid extension of such time of filing and has filed any such SEC Documents prior to the expiration of any such extension. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the Securities Act and the Exchange Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

b. As of their respective dates, the financial statements of the Company included in the SEC Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. Such financial statements have been prepared in accordance with United States generally accepted accounting principles ***("GAAP"***), consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may not include footnotes, year end adjustments or may be condensed or summary statements) and fairly present in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments). Except as set forth in the financial statements of the Company included in the SEC Documents, the Company has no liabilities, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to December 31, 2006, and (ii) obligations under contracts and commitments incurred in the ordinary course of business and not required under generally accepted accounting principles to be reflected in such financial statements, which, individually or taken in the aggregate would not reasonably be expected to have a Material Adverse Effect.

c. The Company has established and maintains disclosure controls and procedures (as such term is defined in Rule 13a-15 (e) under the 1934 Act). Such disclosure controls and procedures: (A) are designed to ensure that material information relating to the Company and its Subsidiaries is made known to the Company's chief executive officer, president, chief operating officer and its chief financial officer by others within those entities, particularly during the periods in which the Company's reports and filings under the 1934 Act are being prepared, (B) have been evaluated for effectiveness as of the end of the most recent annual period reported to the SEC, and (C) are effective to perform the functions for which they were established. Neither the auditors of the Company nor the Board of Directors of the Company has been advised of: (x) any significant deficiencies or material weaknesses in the design or operation of the internal controls over financial reporting (as such term is defined in Rule 13a-15(f) under the 1934 Act) of the Company that have materially affected the Company's internal control over financial reporting; or (y) any fraud, whether or not material, that involves management or other employees who have a role in the internal controls over financial reporting of the Company

4.6 Absence of Certain Changes . Except with respect to the Acquisition, transactions disclosed in the SEC Documents, and the transactions contemplated hereby and by each of the other Transaction Documents, since December 31, 2006, (i) the Company and each of its Subsidiaries has conducted its business only in the ordinary course, consistent with past practice, and since that date, no changes have occurred which would reasonably be expected to have a Material Adverse Effect; and (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables, accrued expenses and other liabilities incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected on the Company's financial statements pursuant to GAAP or required to be disclosed in filings made with the SEC.

4.7 Absence of Litigation . Except as set forth in Schedule 4.7 , there is no Action pending or, to the knowledge of the Company or any of its Subsidiaries, threatened against or affecting the Company or any of its Subsidiaries that (i) adversely affects or challenges the legality, validity or enforceability of this Agreement, or (ii) would, if there were an unfavorable decision, have or reasonably be expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries, nor any director or officer thereof (in his or her capacity as such), is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending any investigation by the SEC involving the Company or any current or former director or officer of the Company (in his or her capacity as such). The SEC has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the 1934 Act or the 1933 Act.

4.8 Intellectual Property . The Company and each of its Subsidiaries owns or possesses the requisite licenses or rights to use all patents, patent applications, patent rights, inventions, know-how, trade secrets, copyrights, trademarks, trademark applications, service marks, service names, trade names and copyrights (" ***Intellectual Property*** ") necessary to enable it to conduct its business as now operated (and, to the Company's knowledge, as presently contemplated to be operated in the future); there is no claim or Action by any person pertaining to, or proceeding pending, or to the Company's knowledge threatened, which challenges the right of the Company or of a Subsidiary with respect to any Intellectual Property necessary to enable it to conduct its business as now operated and to the Company's knowledge, the Company's or its Subsidiaries' current products and processes do not infringe on any Intellectual Property or other rights held by any person, except where any such infringement would not reasonably be expected to have a Material Adverse Effect.

4.9 Tax Status . The Company and each of its Subsidiaries has made or filed all federal, state and foreign income and all other material tax returns, reports and declarations required by any jurisdiction to which it is subject (unless and only to the extent that the Company and each of its Subsidiaries has set aside on its books provisions reasonably adequate for the payment of all unpaid and unreported taxes) and has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and has set aside on its books provisions reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company know of no basis for any such claim. The Company has not executed a waiver with respect to the statute of limitations relating to the assessment or collection of any foreign, federal, state or local tax.

4.10 Permits; Compliance .

a. The Company and each of its Subsidiaries is in possession of all franchises, grants, authorizations, licenses, permits, easements, variances, exemptions, consents, certificates, approvals and

orders necessary to own, lease and operate its properties and to carry on its business as it is now being conducted (collectively, " ***Permits*** "), and there is no Action pending or, to the knowledge of the Company, threatened regarding suspension or cancellation of any of the Permits. Neither the Company nor any of its Subsidiaries is in conflict with, or in default or violation of, any of the Permits, except for any such conflicts, defaults or violations which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

b. Since December 31, 2006, no event has occurred or, to the knowledge of the Company, circumstance exists that (with or without notice or lapse of time): (a) would reasonably be expected to constitute or result in a violation by the Company or any of its Subsidiaries, or a failure on the part of the Company or its Subsidiaries to comply with, any Legal Requirement; or (b) would reasonably be expected to give rise to any obligation on the part of the Company or any of its Subsidiaries to undertake, or to bear all or any portion of the cost of, any remedial action of any nature in connection with a failure to comply with any Legal Requirement, except in either case that would not reasonably be expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries has received any notice or other communication from any regulatory authority or any other person, nor does the Company have any knowledge regarding: (x) any actual, alleged, possible or potential violation of, or failure to comply with, any Legal Requirement, or (y) any actual, alleged, possible or potential obligation on the part of the Company or any of its Subsidiaries to undertake, or to bear all or any portion of the cost of, any remedial action of any nature in connection with a failure to comply with any Legal Requirement, except in either case that would not reasonably be expected to have a Material Adverse Effect.

c. The Company is in compliance in all material respects with the provisions of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated thereunder that are applicable to it and has taken reasonable steps such that the Company expects to be in a position to comply with the requirements of Section 404 of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated thereunder at such time as Section 404 becomes applicable to the Company.

d. The Company is, and has reason to believe that for the foreseeable future it will continue to be, in compliance with all applicable rules of the OTC Bulletin Board. The Company has not received notice from the OTC Bulletin Board that the Company is not in compliance with the rules or requirements thereof. The issuance and sale of the Shares under this Agreement does not contravene the rules and regulations of the OTC Bulletin Board, and no approval of the stockholders of the Company is required for the Company to issue the Shares as contemplated by this Agreement.

4.11 Environmental Matters . " ***Environmental Laws*** " shall mean, collectively, all Legal Requirements, including any federal, state, local or foreign statute, laws, rule, regulation, ordinance, code, policy or rule of common law or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent, decree or judgment, relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products (collectively, " ***Hazardous Materials*** ") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials. Except for such matters as could not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Effect or as set forth on Schedule 4.11 : (i) the Company and its Subsidiaries have complied and are in compliance with all applicable Environmental Laws; (ii) without limiting the generality of the foregoing, the Company and its Subsidiaries have obtained, have complied, and are in compliance with all Permits that are required pursuant to Environmental Laws for the occupation of their respective facilities and the operation of their respective businesses; (iii) none of the Company or its Subsidiaries has received any written notice, report or other information regarding any

actual or alleged violation of Environmental Laws, or any liabilities or potential liabilities (including fines, penalties, costs and expenses), including any investigatory, remedial or corrective obligations, relating to any of them or their respective facilities arising under Environmental Laws, nor, to the knowledge of the Company is there any factual basis therefore; (iv) there are no underground storage tanks, polychlorinated biphenyls, urea formaldehyde or other hazardous substances (other than small quantities of hazardous substances for use in the ordinary course of the operation of the Company's and its Subsidiaries' respective businesses, which are stored and maintained in accordance and in compliance with all applicable Environmental Laws), in, on, over, under or at any real property owned or operated by the Company and/or its Subsidiaries; (v) there are no conditions existing at any real property or with respect to the Company or any of its Subsidiaries that require remedial or corrective action, removal, monitoring or closure pursuant to the Environmental Laws and (vi) to the knowledge of the Company, neither the Company nor any of its Subsidiaries has contractually, by operation of law, or otherwise amended or succeeded to any liabilities arising under any Environmental Laws of any predecessors or any other Person.

4.12 Title to Property . Except for any lien for current taxes not yet delinquent or which are being contested in good faith and by appropriate proceedings, the Company and its Subsidiaries have good and marketable title to all real property and all personal property owned by them which is material to the business of the Company and its Subsidiaries. Any leases of real property and facilities of the Company and its Subsidiaries are valid and effective in accordance with their respective terms, except as would not have a Material Adverse Effect.

4.13 No Investment Company or Real Property Holding Company . The Company is not, and upon the issuance and sale of the Securities as contemplated by this Agreement will not be, an "investment company" as defined under the Investment Company Act of 1940 (" ***Investment Company*** "). The Company is not controlled by an Investment Company. The Company is not a United States real property holding company, as defined under the Internal Revenue Code of 1986, as amended (the ***"Code"***).

4.14 No Brokers . The Company has taken no action which would give rise to any claim by any person for brokerage commissions, transaction fees or similar payments relating to this Agreement or the transactions contemplated hereby.

4.15 Registration Rights . Except pursuant to the Registration Rights Agreement, as it may be amended by the RRA Amendment, and as otherwise set forth in Schedule 4.15 effective upon the Closing, neither the Company nor any Subsidiary is currently subject to any agreement providing any person or entity any rights (including piggyback registration rights) to have any securities of the Company or any Subsidiary registered with the SEC or registered or qualified with any other governmental authority.

4.16 Exchange Act Registration . The Common Stock is registered pursuant to Section 12(b) of the 1934 Act, and the Company has taken no action designed to, or which, to the knowledge of the Company, is likely to have the effect of, delisting the registration of the Common Stock under the 1934 Act.

4.17 Labor Relations . No labor or employment dispute exists or, to the knowledge of the Company, is imminent or threatened, with respect to any of the employees of the Company that has, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

4.18 Transactions with Affiliates and Employees . Except as set forth in the SEC Documents, and Schedule 4.18 , none of the officers or directors of the Company, and to the knowledge of the

Company, none of the employees of the Company, is presently a party to any transaction or agreement with the Company (other than for services as employees, officers and directors) exceeding $60,000, including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner.

4.19 Insurance . The Company and its Subsidiaries have insurance policies in full force and effect of a type, covering such risks and in such amounts, and having such deductibles and exclusions as are customary for conducting businesses and owning assets similar in nature and scope to those of the Company and its Subsidiaries. The amounts of all such insurance policies and the risks covered thereby are in accordance in all material respects with all material contracts and agreements to which the Company and/or its Subsidiaries is a party and with all applicable Legal Requirements. With respect to each such insurance policy: (i) the policy is valid, outstanding and enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws in effect that limit creditors' rights generally, equitable limitations on the availability of specific remedies and principles of equity (regardless of whether such enforcement is considered in a proceeding in law or in equity); (ii) neither the Company nor any of its Subsidiaries is in breach or default with respect to its obligations thereunder in any material respect; and (iii) no party to the policy has repudiated, or given notice of an intent to repudiate, any provision thereof.

4.20 Approved Acquisitions of Shares; No Anti-Takeover Provisions . Except as otherwise set forth in Schedule 4.2 , and subject to and contingent on the Buyer's covenant in Section 5.7 , the Company has taken all necessary action, if any, required under the laws of the State of Nevada or otherwise to allow the Buyer to acquire the Securities pursuant to this Agreement and further to allow the Buyer to, without further approval of the Company's Board of Directors, acquire in the future additional shares of Common Stock, until such time as the Buyer owns 40% of the then-outstanding Common Stock on a fully diluted basis. The Company has no control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's Articles of Incorporation or Bylaws, each as amended (or similar charter documents), that is or could become applicable to the Buyers as a result of the Buyers and the Company fulfilling their obligations or exercising their rights under this Agreement, including without limitation the Company's issuance of the Securities and the Buyers' ownership of the Securities and Buyers' acquisition in the future of additional shares of Common Stock until such time as the Buyers own 40% of the then-outstanding Common Stock on a fully diluted basis. In addition, the Company has opted out of the provisions of the Nevada Revised Statutes (" **NRS** ") pertaining to the acquisition of a controlling interest (NRS 78.378 through 78.3793). As of the date hereof, the Company had less than 200 "stockholders of record" and is not considered a "resident domestic corporation" for purposes of §78.411 through §78.444 of the NRS.

4.21 ERISA . Based upon the Employee Retirement Income Security Act of 1974, as amended (" ***ERISA*** "), and the regulations and published interpretations thereunder: (i) neither the Company nor any of its Subsidiaries has engaged in any Prohibited Transactions (as defined in Section 406 of ERISA and Section 4975 of the Code); (ii) the Company and each of its Subsidiaries has met all applicable minimum funding requirements under Section 302 of ERISA in respect to its plans; (iii) neither the Company nor any of its Subsidiaries has any knowledge of any event or occurrence which would cause the Pension Benefit Guaranty Corporation to institute proceedings under Title IV of ERISA to terminate any employee benefit plan(s); neither the Company nor any of its Subsidiaries has any fiduciary responsibility for investments with respect to any plan existing for the benefit of persons other than its or such Subsidiary's employees; and (v) neither the Company nor any of its Subsidiaries has withdrawn,

completely or partially, from any multi-employer pension plan so as to incur liability under the Multiemployer Pension Plan Amendments Act of 1980.

4.22 Disclosure . The Company understands and confirms that the Buyers will rely on the representations and covenants contained herein in effecting the transactions contemplated by this Agreement and the other Transaction Documents. All representations and warranties provided to the Buyers including the disclosures in the Company's disclosure schedules attached hereto furnished by or on behalf of the Company, taken as a whole are true and correct and do not contain any untrue statement of material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. No event or circumstance has occurred or information exists with respect to the Company or its Subsidiaries or its or their businesses, properties, prospects, operations or financial conditions, which, under applicable law, rule or regulation, requires public disclosure or announcement by the Company but which has not been so publicly announced or disclosed.

ARTICLE 5
COVENANTS

5.1 Form D; Blue Sky Laws . Upon completion of the Closing, the Company shall file with the SEC a Form D with respect to the Securities as required under Regulation D and each applicable state securities commission and will provide a copy thereof to the Buyers promptly after such filing.

5.2 Use of Proceeds . The Company shall use the proceeds from the sale of the Securities to complete the Acquisition.

5.3 Expenses . The Company shall reimburse the Buyers for all reasonable expenses incurred by them in connection with their due diligence review of the Company and the Target, and the negotiation, preparation, execution, delivery and performance of this Agreement and the other Transaction Documents and the transactions hereunder and thereunder, and any transaction, the proceeds of which are used to repay the Debt Financing, including, without limitation, reasonable attorneys' fees and expenses, and out-of-pocket travel costs and expenses.

5.4 No Integration . The Company shall not make any offers or sales of any security (other than the Securities) under circumstances that would require registration of the Securities being offered or sold hereunder under the 1933 Act or cause the offering of the Securities to be integrated with any other offering of securities by the Company in such a manner as would require the Company to seek the approval of its stockholders for the issuance of the Securities under any stockholder approval provision applicable to the Company or its securities.

5.5 Board Designee(s) . For as long as the Buyers or their affiliates hold (i) at least 10% of the then issued and outstanding Common Stock, the Buyers shall have the right to appoint two members of the Company's Board of Directors; and (ii) at least 20% of the then issued and outstanding Common Stock, the Buyers shall have the right to appoint three members of the Company's Board of Directors. Notwithstanding anything to the contrary contained in this Agreement, the Articles of Incorporation, as amended, of the Company, or the Bylaws, as amended, of the Company, following the Closing and thereafter for as long as the Buyers have the right to appoint directors pursuant to this Section 5.5, the Company's Board of Directors shall be comprised of no more than nine directors. The parties agree that the provisions of this Section 5.5 shall supersede the provisions of Section 5.5 of the Initial Securities Purchase Agreement.

5.6 Observation Rights . The parties hereto acknowledge and affirm that the Buyers shall have Observation Rights (as defined in the Initial Securities Purchase Agreement) as set forth in Section 5.6 of the Initial Securities Purchase Agreement.

5.7 Future Acquisitions . The Company shall not revoke its approval of the acquisition of up to 40% of the Common Stock on a fully diluted basis by the Buyers. The Company shall use its best efforts to ensure that any future acquisitions of the Common Stock by the Buyers (up to 40% of the of the outstanding Common Stock on a fully diluted basis) shall not be made subject to the provisions of any anti-takeover laws and regulations of any governmental authority, including without limitation, the applicable provisions of the Nevada Revised Statutes, and any provisions of an anti-takeover nature adopted by the Company or any of its Subsidiaries or contained in the Company's Articles of Incorporation, Bylaws, or the organizational documents of any of its Subsidiaries, each as amended.

5.8 Announcement of Rights Offering . The Company shall publicly announce, concurrent with the announcement of the execution of this Agreement and the Target SPA, that the Company intends to conduct a registered rights offering to its stockholders at the Per Share Price following the consummation of the transactions contemplated under the Target SPA.

ARTICLE 6
CONDITIONS TO THE COMPANY'S OBLIGATION

The obligation of the Company hereunder to issue and sell the Securities to the Buyers at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions thereto, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion:

6.1 Delivery of Transaction Documents . The Buyers shall have executed and delivered the Transaction Documents to which they are a party to the Company.

6.2 Payment of Purchase Price . The Buyers shall have delivered the Purchase Price in accordance with Section 2.3 above.

6.3 Representations and Warranties . The representations and warranties of the Buyers shall be true and correct in all material respects (provided, however, that such qualification shall only apply to representations or warranties not otherwise qualified by materiality) as of the date when made and as of the Closing Date as though made at that time (except for representations and warranties that speak as of a specific date), and the applicable Buyer shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the applicable Buyer at or prior to the Closing Date.

6.4 Litigation . No litigation, statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by or in any court or governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby which prohibits the consummation of any of the transactions contemplated by this Agreement.

ARTICLE 7
CONDITIONS TO THE BUYERS' OBLIGATION

The obligation of the Buyers hereunder to purchase the Securities at the Closing is subject to the satisfaction, at or before the Closing Date, of each of the following conditions, provided that these conditions are for the Buyers' sole benefit and may be waived by the Buyers at any time in its sole discretion:

7.1 Delivery of Transaction Documents; Issuance of Securities . The Company shall have executed and delivered the Transaction Documents to the Buyers, including the Notes and shall deliver the Transfer Instructions to the transfer agent for the Company's Common Stock to issue certificates in the name of each Buyer representing the Shares being purchased by such Buyer. The Company shall deliver a copy of the Transfer Instructions to the Buyers at the Closing.

7.2 Representations and Warranties . The representations and warranties of the Company shall be true and correct in all material respects (provided, however, that such qualification shall only apply to representations or warranties not otherwise qualified by materiality) as of the date when made and as of the Closing Date as though made at such time (except for representations and warranties that speak as of a specific date) and the Company shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company at or prior to the Closing Date.

7.3 Consents . Any consents or approvals required to be secured by the Company for the consummation of the transactions contemplated by the Transaction Documents shall have been obtained and shall be reasonably satisfactory to the Buyers.

7.4 Litigation . No Action shall have been enacted, entered, promulgated or endorsed by or in any court or governmental authority of competent jurisdiction or any self-regulatory organization having authority over the matters contemplated hereby which prohibits the consummation of any of the transactions contemplated by this Agreement.

7.5 Opinion . The Buyers shall have received an opinion of the Company's counsel, dated as of the Closing Date, in form, scope and substance reasonably satisfactory to the Buyers with respect to the matters set forth in Exhibit D attached hereto.

7.6 No Material Adverse Change . There shall have been no material adverse change in the assets, liabilities (contingent or otherwise), affairs, business, operations, prospects or condition (financial or otherwise) of the Company prior to the Closing Date.

7.7 Project Wind . All of the conditions necessary for the Acquisition to be consummated shall have been satisfied and the Company and the parties to the Target SPA are proceeding to closing thereunder, subject to the provision of the Debt Financing and the purchase of the Shares under this Agreement.

ARTICLE 8
TERMINATION

8.1 Termination Provisions . This Agreement may be terminated at any time before the Closing Date:

a. By mutual consent of the Company and the Buyers;

b. By either the Company or the Buyers as applicable, in the event that any of the conditions precedent to their respective obligations to consummate the transactions contemplated hereby as set forth in Article 6 or Article 7 , through no fault of the terminating party, have not been met and satisfied and have become impossible of fulfillment;

c. By either the Company or the Buyers if the Closing Date does not occur within one hundred twenty (120) days after the date hereof, or such later date as the parties may mutually agree upon (provided that the terminating party is not then in material breach of any representation, warranty, covenant or other agreement contained herein);

d. By the Buyers if there has been any material breach of any representation, warranty, agreement or covenant in this Agreement by the Company, which breach cannot be or has not been cured within thirty (30) days after giving written notice thereof to the Company; and

e. By the Company if there has been any material breach of any representation, warranty, agreement or covenant in this Agreement by the Buyers, which breach cannot be or has not been cured within thirty (30) days after giving written notice thereof to the Buyers.

8.2 Effect of Termination . Upon the termination of this Agreement pursuant to the terms hereof, this Agreement will be void and neither party will have any further liability obligations with respect hereof, except as otherwise provided in this Agreement or except and to the extent termination results from the intentional breach by a party of any of its representations, warranties or covenants hereunder.

ARTICLE 9
INDEMNIFICATION

9.1 Indemnification by the Company . The Company agrees to indemnify each Buyer and its affiliates and hold each Buyer and its affiliates harmless from and against any and all liabilities, losses, damages, costs and expenses of any kind (including, without limitation, the reasonable fees and disbursements of such Buyer's counsel in connection with any investigative, administrative or judicial proceeding), which may be incurred by such Buyer or such affiliates as a result of any claims made against such Buyer or such affiliates by any person that relate to or arise out of (i) any breach by the Company of any of its representations, warranties or covenants contained in this Agreement or in the Transaction Documents (other than the Registration Rights Agreement, which contains separate indemnification provisions), or (ii) any litigation, investigation or proceeding instituted by any person with respect to this Agreement or the Shares (excluding, however, any such litigation, investigation or proceeding which arises solely from the acts or omissions of such Buyer or its affiliates).

9.2 Notification . Any person entitled to indemnification hereunder (" ***Indemnified Party*** ") will (i) give prompt notice to the Company, of any third party claim, action or suit with respect to which it seeks indemnification (the " ***Claim*** ") (but omission of such notice shall not relieve the Company from liability hereunder except to the extent it is actually prejudiced by such failure to give notice), specifying in reasonable detail the factual basis for the Claim, the amount thereof, estimated in good faith, and the method of computation of the Claim, all with reasonable particularity and containing a reference to the provisions of this Agreement in respect of which such indemnification is sought with respect to the Claim, and (ii) unless in such Indemnified Party's reasonable judgment a conflict of interest may exist between such Indemnified Party and the Company with respect to such claim, permit the Company to assume the defense of the Claim with counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party shall cooperate fully with the Company with respect to the defense of the Claim and, if

the Company elects to assume control of the defense of the Claim, the Indemnified Party shall have the right to participate in the defense of the Claim at its own expense. If the Company does not elect to assume control or otherwise participate in the defense of the Claim, then the Indemnified Party may defend through counsel of its own choosing. If such defense is not assumed by the Company, the Company will not be subject to any liability under this Agreement or otherwise for any settlement made without its consent (but such consent will not be unreasonably withheld or delayed). If the Company elects not to or is not entitled to assume the defense of a Claim, it will not be obligated to pay the fees and expenses of more than one counsel for all Indemnified Parties with respect to the Claim, unless an actual conflict of interest exists between such Indemnified Party and any other of such Indemnified Parties with respect to the Claim, in which event the Company will be obligated to pay the fees and expenses of such additional counsel or counsels.

ARTICLE 10
GOVERNING LAW; MISCELLANEOUS

10.1 Governing Law . This Agreement shall be enforced, governed by and construed in accordance with the laws of the State of Wisconsin applicable to agreements made and to be performed entirely within such state, without regard to the principles of conflict of laws. The parties hereto hereby submit to the exclusive jurisdiction of the United States Federal Courts located in the State of Wisconsin with respect to any dispute arising under this Agreement, the agreements entered into in connection herewith or the transactions contemplated hereby or thereby. All parties irrevocably waive the defense of an inconvenient forum to the maintenance of such suit or proceeding. All parties further agree that service of process upon a party mailed by first class mail shall be deemed in every respect effective service of process upon the party in any such suit or proceeding. Nothing herein shall affect any party's right to serve process in any other manner permitted by law. All parties agree that a final non-appealable judgment in any such suit or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on such judgment or in any other lawful manner. The party which does not prevail in any dispute arising under this Agreement shall be responsible for all reasonable fees and expenses, including reasonable attorneys' fees, incurred by the prevailing party in connection with such dispute.

10.2 Counterparts; Electronic Signatures . This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party. This Agreement, once executed by a party, may be delivered to the other party hereto by electronic transmission of a copy of this Agreement bearing the signature of the party so delivering this Agreement.

10.3 Headings . The headings of this Agreement are for convenience of reference only and shall not form part of, or affect the interpretation of, this Agreement.

10.4 Severability . In the event that any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute or rule of law. Any provision hereof which may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provision hereof.

10.5 Entire Agreement; Amendments . This Agreement and the instruments referenced herein contain the entire understanding of the parties with respect to the matters covered herein and therein and supersede all previous understandings or agreements between the parties with respect to such matters. No provision of this Agreement may be waived other than by an instrument in writing signed by the party to

be charged with enforcement. The provisions of this Agreement may be amended only by a written instrument signed by the Company and the Buyers.

10.6 Notices . Any notices required or permitted to be given under the terms of this Agreement shall be sent by certified or registered mail (return receipt requested) or delivered personally or by courier (including a recognized overnight delivery service) or by facsimile and shall be effective five days after being placed in the mail, if mailed by regular United States mail, or upon receipt, if delivered personally or by courier (including a recognized overnight delivery service) or by facsimile, in each case addressed to a party. The addresses for such communications shall be:

If to the Company:

Tower Tech Holdings, Inc.
100 Maritime Drive, Suite 3C
Manitowoc, Wisconsin 54220
Telephone: (920) 684-5531
Facsimile: (920) 684-5579
Attention: Mr. Raymond L. Brickner, III

With copy to:

Fredrikson & Byron, P.A.
4000 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402-1425
Telephone: (312) 492-7000
Facsimile: (612) 492-7077
Attention: Daniel A. Yarano

If to the Buyers:

Tontine Capital Partners, L.P.
55 Railroad Avenue, 1st Floor
Greenwich, Connecticut 06830
Attention: Mr. Jeffrey L. Gendell
Telephone: (203) 769-2000
Facsimile: (203) 769-2010

With copy to:

Barack Ferrazzano Kirschbaum & Nagelberg LLP
200 W. Madison Street, Suite 3900
Chicago, Illinois 60606
Attention: Sarah M. Bernstein, Esq.
Telephone: (312) 984-3100
Facsimile: (312) 984-3150

Each party shall provide notice to the other party of any change in address.

10.7 Successors and Assigns . This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the other Buyers.

10.8 Third Party Beneficiaries . This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person.

10.9 Publicity . The Company and the Buyers shall have the right to review a reasonable period of time before issuing any press releases or any other public statements with respect to the transactions contemplated hereby; provided, however, that the Company shall be entitled, without the prior approval of the Buyers, to make any press release with respect to such transactions as is required by applicable law and regulations (although the Buyers shall be consulted by the Company in connection with any such press release prior to its release and shall be provided with a copy thereof and be given an opportunity to comment thereon). Notwithstanding the foregoing, the Company shall file with the SEC a Form 8-K disclosing the transactions herein within four (4) business days of the Closing Date and attach the relevant agreements and instruments thereto, and the Buyers may make such filings as may be required under Section 13 and Section 16 of the 1934 Act.

10.10 Further Assurances . Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

10.11 No Strict Construction . The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

10.12 Rights Cumulative . Each and all of the various rights, powers and remedies of the parties shall be considered cumulative with and in addition to any other rights, powers and remedies which or the Transaction Documents such parties may have at law or in equity in the event of the breach of any of the terms of this Agreement. The exercise or partial exercise of any right, power or remedy shall neither constitute the exclusive election thereof nor the waiver of any other right, power or remedy available to such party.

10.13 Survival . Any covenant or agreement in this Agreement required to be performed following the Closing Date, shall survive the Closing Date. Without limitation of the foregoing, the respective representations and warranties given by the parties hereto shall survive the Closing Date and the consummation of the transactions contemplated herein, but only for a period of the earlier of (i) three (3) years following the Closing Date and (ii) the applicable statute of limitations with respect to each representation and warranty, and thereafter shall expire and have no further force and effect..

10.14 Knowledge . The term “knowledge of the Company” or any similar formulation of knowledge shall mean , the actual knowledge after due inquiry of an executive officer of the Company.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed as of the date first above written.

COMPANY :

TOWER TECH HOLDINGS INC.

By: /s/ Raymond L. Brickner, III
Name: Raymond L. Brickner, III
Title: President

BUYERS:

TONTINE CAPITAL PARTNERS, L.P.

By: Tontine Capital Management, LLC, its general partner

By: /s/ Jeffrey L. Gendell
Jeffrey L. Gendell, as managing member

TONTINE CAPITAL OVERSEAS MASTER FUND, L.P.

By: Tontine Capital Overseas GP, L.L.C., its general partner

By: /s/ Jeffrey L. Gendell
Jeffrey L. Gendell, as managing member

SCHEDULE 1

Name	Jurisdiction of Organization and Form of Entity	Number of Shares and Purchase Price	Portion of Debt Financing
Tontine Capital Partners, L.P.	Delaware Limited Partnership	TBD	TBD
Tontine Capital Overseas Master Fund, L.P.	Cayman Islands Limited Partnership	TBD	TBD

Exhibit A

NEITHER THESE SECURITIES NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE CONVERTIBLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE BORROWER.

THE INDEBTEDNESS REPRESENTED BY THIS INSTRUMENT IS SUBORDINATED TO THE PAYMENT OF SENIOR INDEBTEDNESS IN ACCORDANCE WITH AND TO THE EXTENT PROVIDED HEREIN.

FORM OF SENIOR SUBORDINATED CONVERTIBLE PROMISSORY NOTE

Note #

$[ ] Manitowoc, Wisconsin

FOR VALUE RECEIVED, TOWER TECH HOLDINGS INC., a Nevada corporation (hereinafter referred to as the " **Borrower** "), hereby promises to pay to the order of , and its successors and assigns (hereinafter referred to as " **Holder** "), in the manner hereinafter provided, the principal sum of [ ] DOLLARS ($[ ]), as it may be increased herein, in immediately available funds and in lawful money of the United States of America, together with interest thereon, all in accordance with the provisions hereinafter specified. This Note is one of $25,000,000 in aggregate principal amount of Senior Subordinated Convertible Promissory Notes (each a " **Note** " and collectively, the " **Notes** ") issued pursuant to the Securities Purchase Agreement dated August 22, 2007, by and among the Borrower and the original purchasers of the Notes (the " **Purchase Agreement** "), and is subject to the provisions set forth therein.

ARTICLE 11 ACCRUAL OF INTEREST . INTEREST SHALL ACCRUE ON THE OUTSTANDING PRINCIPAL AMOUNT HEREOF (INCLUDING ANY PIK INTEREST, AS HEREAFTER DEFINED) AT (I) A RATE EQUAL TO NINE AND ONE-HALF PERCENT (9.50%) PER ANNUM FOR THE PERIOD BEGINNING ON THE DATE HEREOF AND ENDING ON THE DATE THAT IS NINE MONTHS FROM THE DATE HEREOF (THE " **INITIAL PERIOD** ") AND (II) A RATE EQUAL TO THIRTEEN AND ONE-HALF PERCENT (13.50%) PER ANNUM FOR THE PERIOD FOLLOWING THE INITIAL PERIOD. INTEREST SHALL BE CALCULATED HEREUNDER ON THE BASIS OF THE ACTUAL NUMBER OF DAYS ELAPSED.

ARTICLE 12 PAYMENT OF INTEREST . COMMENCING ON DECEMBER 31, 2007, THE BORROWER SHALL PAY INTEREST ON THIS NOTE SEMI-ANNUALLY IN ARREARS ON EACH JUNE 30 AND DECEMBER 31 OF EACH CALENDAR YEAR AND ON THE MATURITY DATE (AS HEREAFTER DEFINED), OR IF ANY

SUCH DAY IS NOT A BUSINESS DAY, ON THE NEXT SUCCEEDING BUSINESS DAY (EACH AN " **INTEREST PAYMENT DATE** "), TO HOLDER. INTEREST PAYABLE ON THIS NOTE SHALL BE PAID ON EACH INTEREST PAYMENT DATE, AT THE ELECTION OF THE BORROWER, (I) IN CASH OR (II) IN KIND, IN WHICH EVENT, THE AMOUNT OF THE PRINCIPAL OUTSTANDING UNDER THIS NOTE SHALL BE INCREASED BY THE AMOUNT OF SUCH INTEREST PAYMENT (" **PIK INTEREST** ") ON SUCH INTEREST PAYMENT DATE AND INTEREST SHALL THEN ACCRUE ON THE INCREASED PRINCIPAL AMOUNT. DURING THE CONTINUANCE OF AN EVENT OF DEFAULT, NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY CONTAINED IN THIS NOTE, INTEREST PAYABLE ON THE OUTSTANDING PRINCIPAL HEREUNDER, INCLUDING ANY PIK INTEREST, SHALL BEAR INTEREST AT THE THEN APPLICABLE INTEREST RATE SET FORTH IN SECTION 1 PLUS TWO PERCENT (2%) PER ANNUM AND SUCH INTEREST SHALL BE PAYABLE UPON DEMAND.

ARTICLE 13 SCHEDULED PRINCIPAL PAYMENTS . THE BORROWER SHALL MAKE PAYMENTS OF PRINCIPAL TO HOLDER AS FOLLOWS: (I) ON THE FIRST ANNIVERSARY OF THIS NOTE, THE SUM OF [$], WHICH REPRESENTS 10% OF ORIGINAL PRINCIPAL AMOUNT OF THIS NOTE, (II) ON THE SECOND ANNIVERSARY OF THIS NOTE, THE SUM OF [$], WHICH REPRESENTS 40% OF ORIGINAL PRINCIPAL AMOUNT OF THIS NOTE, AND (III) ON THE THIRD ANNIVERSARY OF THIS NOTE (THE " **MATURITY DATE** "), A FINAL PAYMENT OF THE SUM OF THE OUTSTANDING PRINCIPAL BALANCE OF THIS NOTE, INCLUDING THE AMOUNT OF ANY PIK INTEREST, TOGETHER WITH ACCRUED AND UNPAID INTEREST THEREON, AND ALL OTHER OBLIGATIONS AND INDEBTEDNESS OWING HEREUNDER, IF NOT SOONER PAID.

ARTICLE 14 PREPAYMENT . THIS NOTE MAY BE PREPAID IN WHOLE OR IN PART AT ANY TIME WITHOUT PREMIUM OR PENALTY; *PROVIDED, HOWEVER* , THAT THE BORROWER MAY NOT PREPAY THE NOTE OR ANY PORTION OF THE OUTSTANDING PRINCIPAL BALANCE OF THE NOTE IF HOLDER HAS SURRENDERED THE NOTE TO THE BORROWER AND PROVIDED WRITTEN NOTICE TO THE BORROWER OF ITS ELECTION TO CONVERT THE NOTE OR SUCH PORTION OF THE OUTSTANDING PRINCIPAL BALANCE OF THE NOTE INTO CONVERSION SHARES PURSUANT TO SECTION 6. ANY PREPAYMENT OF PRINCIPAL SHALL BE ACCOMPANIED BY PAYMENT OF ANY INTEREST, IF ANY, ACCRUED AND UNPAID THROUGH THE DATE OF SUCH PREPAYMENT.

ARTICLE 15 MANNER AND APPLICATION OF PAYMENTS . ALL AMOUNTS PAYABLE HEREUNDER SHALL BE PAYABLE TO HOLDER BY WIRE TRANSFER OF IMMEDIATELY AVAILABLE FUNDS. PAYMENTS HEREUNDER SHALL BE APPLIED FIRST TO INTEREST AND THEN TO PRINCIPAL OUTSTANDING HEREUNDER, EXCEPT THAT IF HOLDER HAS INCURRED ANY COST OR EXPENSE IN CONNECTION WITH THE ENFORCEMENT OR COLLECTION OF THE OBLIGATIONS OF THE BORROWER HEREUNDER, HOLDER SHALL HAVE THE OPTION OF APPLYING ANY MONIES RECEIVED FROM THE BORROWER TO PAYMENT OF SUCH COSTS OR EXPENSES PLUS INTEREST THEREON BEFORE APPLYING ANY OF SUCH MONIES TO ANY INTEREST OR PRINCIPAL THEN DUE.

ARTICLE 16 CONVERSION . THIS NOTE IS CONVERTIBLE INTO COMMON STOCK, $0.001 PAR VALUE PER SHARE OF THE BORROWER (" **COMMON STOCK** ") IN ACCORDANCE WITH THIS SECTION 6.

16.1 Except as set forth below, Holder has the unrestricted right, at Holder's option, to convert, in whole or in part, the outstanding principal balance of this Note, including the amount of any PIK Interest, together with accrued and unpaid interest thereon (the " **Conversion Principal** "), into fully paid and nonassessable shares of Common Stock. The right to convert may be exercised by Holder at any time after three (3) months following the date hereof; *provided, however* , that Holder's right to convert may not be exercised for the six (6) month period (the " **Non-Conversion Period** ") following the date on which the Borrower files a registration statement with the Securities and Exchange Commission for the purpose of

registering shares to be offered by the Borrower in a rights offering to its stockholders, so long as at all times during the Non-Conversion Period, the Borrower is taking all reasonable steps to effectuate the consummation of the rights offering. The number of shares of Common Stock into which this Note may be converted (the " **Conversion Shares** ") shall be determined by dividing the Conversion Principal (as determined on the date that Holder exercises this conversion right) by the Conversion Price. The initial Conversion Price shall be $7.50.

16.2 Holder shall be entitled to convert this Note by surrendering this Note at the office of the Borrower and shall give written notice to the Borrower of the election to convert this Note and shall state therein the name or names in which the certificate or certificates for Conversion Shares are to be issued.

16.3 Such certificate or certificates shall bear such legends as are required, in the opinion of counsel to the Borrower, by applicable state and federal securities laws. The Borrower shall, as soon as practicable thereafter, but no later than seven (7) business days, issue and deliver to Holder a certificate or certificates for the number of Conversion Shares to which Holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of surrender of this Note, and the person or persons entitled to receive the Conversion Shares issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Conversion Shares as of such date.

16.4 No fractional shares of Common Stock shall be issued on conversion of this Note.

16.5 In the event the Borrower should at any time or from time to time after the date hereof fix a record date for the split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock to receive dividends or other distributions payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock ("Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents, then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of this Note shall be appropriately decreased so that the number of Conversion Shares issuable upon conversion of this Note shall be increased in proportion to such increase or potential increase of outstanding shares of Common Stock.

16.6 If the number of shares of Common Stock outstanding at any time after the date hereof is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for this Note shall be appropriately increased so that the number of shares of Common Stock issuable on conversion hereof shall be decreased in proportion to such decrease in outstanding shares of Common Stock.

16.7 The Borrower shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of this Note, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of this Note; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of the entire current Conversion Principal of this Note, in addition to such other remedies as shall be available to Holder, the Borrower will use its best efforts to take such corporate action as may, in the

opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes.

16.8 The Borrower shall use its best efforts to ensure that any future acquisitions of Common Stock by Holder upon the conversion, in whole or in part, of the outstanding principal balance of this Note shall not be subject to the provisions of any anti-takeover laws and regulations of any governmental authority, including without limitation, the applicable provisions of the Nevada Revised Statutes, and any provisions of an anti-takeover nature adopted by the Borrower or any of its subsidiaries or contained in the Borrower's Articles of Incorporation, Bylaws, or the organizational documents of any of its subsidiaries, each as amended.

ARTICLE 17 NO SECURITY **.** THIS NOTE IS AN UNSECURED OBLIGATION OF THE BORROWER AND NO COLLATERAL ACCOMPANIES THE OBLIGATIONS HEREUNDER.

ARTICLE 18 SUBORDINATION . THE INDEBTEDNESS OF THE BORROWER EVIDENCED BY THIS NOTE, INCLUDING THE PRINCIPAL AND INTEREST, IS SUBORDINATED AND JUNIOR IN RIGHT OF PAYMENT TO THE SENIOR INDEBTEDNESS (AS HEREAFTER DEFINED), WHETHER SUCH OBLIGATIONS ARE OUTSTANDING AT THIS DATE OR ARE HEREAFTER INCURRED, BUT WILL BE SENIOR IN RIGHT OF PAYMENT TO ANY ADDITIONAL INDEBTEDNESS OF THE BORROWER. FOR PURPOSES OF THIS NOTE, "SENIOR INDEBTEDNESS" SHALL MEAN **[DEFINE]. [SENIOR DEBTHOLDER WILL REQUIRE SPECIFIC SUBORDINATION LANGUAGE]**

ARTICLE 19 TREATMENT OF NOTES . EACH NOTE ISSUED PURSUANT TO THE PURCHASE AGREEMENT OR SUBSEQUENTLY ISSUED IN REPLACEMENT THEREOF SHALL RANK *PARI PASSU* WITH EACH OTHER AS TO THE PAYMENT OF PRINCIPAL AND INTEREST.] FURTHER, THE NOTES AND ANY NOTES SUBSEQUENTLY ISSUED IN REPLACEMENT THEREOF SHALL RANK SENIOR AS TO THE PAYMENT OF PRINCIPAL AND INTEREST WITH ALL PRESENT AND FUTURE INDEBTEDNESS FOR MONEY BORROWED OF THE BORROWER OTHER THAN THE SENIOR INDEBTEDNESS.

ARTICLE 20 EVENTS OF DEFAULT . EACH OF THE FOLLOWING ACTS, EVENTS OR CIRCUMSTANCES SHALL CONSTITUTE AN EVENT OF DEFAULT (EACH AN " **EVENT OF DEFAULT** ") HEREUNDER:

20.1 the Borrower shall default in the payment when due (in accordance with the terms of the Notes) of any principal, including PIK Interest, interest or other amounts owing hereunder or under any other Note, and such default is not cured within three (3) business days of the due date;

20.2 any representation or warranty made by the Borrower in the Purchase Agreement shall have been false or misleading in any material respect on the date as of which such representation or warranty was made;

20.3 the Borrower shall fail to perform or observe any material agreement, covenant or obligation arising under any provision hereof, under any other Note or the Purchase Agreement for more than thirty (30) days following receipt by the Borrower of a notice from Holder indicating any such violation;

20.4 the Borrower's failure to deliver certificates for the Conversion Shares in accordance with Section 6(iii)

20.5 any default by the Borrower under the terms of any other indebtedness of the Borrower or any subsidiary of the Borrower that is not cured or waived within any grace period applicable thereto;

20.6 the Borrower shall commence a voluntary case concerning itself under any bankruptcy, insolvency or similar laws or statutes (including Title 11 of the United States Code, as amended, supplemented or replaced) (collectively, the " **Bankruptcy Code** "); or (b) an involuntary case is commenced against the Borrower and is not dismissed within ninety (90) days; or (c) a custodian (as defined in the Bankruptcy Code) is appointed for, or takes charge of, all or substantially all of the property of the Borrower or the Borrower commences any other proceedings under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to the Borrower or there is commenced against the Borrower any such proceeding; or (d) any order of relief or other order approving any such case or proceeding is entered; or (e) the Borrower is adjudicated insolvent or bankrupt; or (f) the Borrower makes a general assignment for the benefit of creditors; or (g) the Borrower shall call a meeting of its creditors with a view to arranging a composition or adjustment of its debts; or (h) the Borrower shall by any act or failure to act consent to, approve of or acquiesce in any of the foregoing; and

20.7 this Note or any other Note shall cease to be in full force and effect, or shall cease to provide the rights, powers and privileges purported to be created hereby.

IF AN EVENT OF DEFAULT, OTHER THAN AN EVENT OF DEFAULT DESCRIBED IN SECTION 10(VI), OCCURS, HOLDER BY WRITTEN NOTICE TO THE BORROWER MAY DECLARE THE PRINCIPAL OF AND ACCRUED INTEREST ON THIS NOTE TO BE IMMEDIATELY DUE AND PAYABLE. UPON A DECLARATION OF ACCELERATION, SUCH PRINCIPAL AND INTEREST WILL BECOME IMMEDIATELY DUE AND PAYABLE. IF AN EVENT OF DEFAULT DESCRIBED IN SECTION 10(VI) OCCURS, THE PRINCIPAL OF AND ACCRUED INTEREST ON THIS NOTE THEN OUTSTANDING WILL BECOME IMMEDIATELY DUE AND PAYABLE WITHOUT ANY DECLARATION OR OTHER ACT ON THE PART OF HOLDER.

ARTICLE 21 REMEDIES; CUMULATIVE RIGHTS . IN ADDITION TO THE RIGHTS PROVIDED UNDER SECTION 9, HOLDER SHALL ALSO HAVE ANY OTHER RIGHTS THAT HOLDER MAY HAVE BEEN AFFORDED UNDER ANY CONTRACT OR AGREEMENT AT ANY TIME, INCLUDING THE PURCHASE AGREEMENT, AND ANY OTHER RIGHTS THAT HOLDER MAY HAVE PURSUANT TO APPLICABLE LAW. NO DELAY ON THE PART OF HOLDER IN THE EXERCISE OF ANY POWER OR RIGHT UNDER THIS NOTE OR UNDER ANY OTHER INSTRUMENT EXECUTED PURSUANT HERETO SHALL OPERATE AS A WAIVER THEREOF, NOR SHALL A SINGLE OR PARTIAL EXERCISE OF ANY POWER OR RIGHT PRECLUDE OTHER OR FURTHER EXERCISE THEREOF OR THE EXERCISE OF ANY OTHER POWER OR RIGHT.

NO EXTENSIONS OF TIME OF THE PAYMENT OF THIS NOTE OR ANY OTHER MODIFICATION, AMENDMENT OR FORBEARANCE MADE BY AGREEMENT WITH ANY PERSON NOW OR HEREAFTER LIABLE FOR THE PAYMENT OF THIS NOTE SHALL OPERATE TO RELEASE, DISCHARGE, MODIFY, CHANGE OR AFFECT THE LIABILITY OF ANY CO-BORROWER, ENDORSER, GUARANTOR OR ANY OTHER PERSON WITH REGARD TO THIS NOTE, EITHER IN PART OR IN WHOLE. NO FAILURE ON THE PART OF HOLDER OR ANY HOLDER HEREOF TO EXERCISE ANY RIGHT OR REMEDY HEREUNDER, WHETHER BEFORE OR AFTER THE OCCURRENCE OF A DEFAULT, SHALL CONSTITUTE A WAIVER THEREOF, AND NO WAIVER OF ANY PAST DEFAULT SHALL CONSTITUTE A WAIVER OF ANY FUTURE DEFAULT OR OF ANY OTHER DEFAULT. NO FAILURE TO ACCELERATE THE DEBT EVIDENCED HEREBY BY REASON OF AN EVENT OF DEFAULT HEREUNDER OR ACCEPTANCE OF A PAST DUE INSTALLMENT, OR INDULGENCE GRANTED FROM TIME TO TIME SHALL BE CONSTRUED TO BE A WAIVER OF THE RIGHT TO INSIST UPON PROMPT PAYMENT THEREAFTER, OR TO IMPOSE LATE PAYMENT CHARGES, OR SHALL BE DEEMED TO BE A NOVATION OF THIS NOTE OR ANY REINSTATEMENT OF THE DEBT EVIDENCED HEREBY, OR A WAIVER OF SUCH RIGHT OF ACCELERATION OR ANY OTHER RIGHT, OR BE CONSTRUED SO AS TO PRECLUDE THE EXERCISE OF ANY RIGHT WHICH HOLDER OR ANY HOLDER HEREOF MAY HAVE, WHETHER BY THE LAWS OF THE STATE OF WISCONSIN, BY AGREEMENT OR OTHERWISE, AND NONE OF THE FOREGOING SHALL OPERATE TO RELEASE, CHANGE OR AFFECT THE LIABILITY OF THE BORROWER OF THIS NOTE, AND THE BORROWER HEREBY EXPRESSLY WAIVES (TO THE EXTENT ALLOWED BY LAW) THE BENEFIT OF ANY STATUTE OR RULE OF LAW OR EQUITY WHICH WOULD PRODUCE A RESULT CONTRARY TO OR IN CONFLICT WITH THE FOREGOING.

ARTICLE 22 WAIVERS . EXCEPT FOR THE NOTICES EXPRESSLY REQUIRED BY THE TERMS OF THIS NOTE (WHICH RIGHTS TO NOTICE ARE NOT WAIVED BY THE BORROWER), THE BORROWER, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, HEREBY FOREVER WAIVES PRESENTMENT, PROTEST AND DEMAND, NOTICE OF PROTEST, DEMAND, DISHONOR AND NON-PAYMENT OF THIS NOTE, AND ALL OTHER NOTICES IN CONNECTION WITH THE DELIVERY, ACCEPTANCE, PERFORMANCE, DEFAULT OR ENFORCEMENT OF THE PAYMENT OF THIS NOTE, AND WAIVES AND RENOUNCES (TO THE EXTENT ALLOWED BY LAW), ALL RIGHTS TO THE BENEFITS OF ANY STATUTE OF LIMITATIONS AND ANY MORATORIUM, APPRAISEMENT, AND EXEMPTION NOW ALLOWED OR WHICH MAY HEREBY BE PROVIDED BY ANY FEDERAL OR STATE STATUTE OR DECISIONS AGAINST THE ENFORCEMENT AND COLLECTION OF THE OBLIGATIONS EVIDENCED BY THIS NOTE AND ANY AND ALL AMENDMENTS, SUBSTITUTIONS, EXTENSIONS, RENEWALS, INCREASES, AND MODIFICATIONS HEREOF.

ARTICLE 23 ATTORNEYS' FEES . THE BORROWER AGREES TO PAY ALL REASONABLE COSTS AND EXPENSES OF COLLECTION AND ENFORCEMENT OF THIS NOTE WHEN INCURRED, INCLUDING HOLDER'S REASONABLE ATTORNEYS' FEES AND LEGAL AND COURT COSTS, INCLUDING ANY INCURRED ON APPEAL OR IN CONNECTION WITH BANKRUPTCY OR INSOLVENCY, WHETHER OR NOT ANY LAWSUIT OR PROCEEDING IS EVER FILED WITH RESPECT HERETO.

ARTICLE 24 SEVERABILITY; INVALIDITY . THE BORROWER AND HOLDER INTEND AND BELIEVE THAT EACH PROVISION IN THIS NOTE COMPORTS WITH ALL APPLICABLE LOCAL, STATE AND FEDERAL LAWS AND JUDICIAL DECISIONS. HOWEVER, IF ANY PROVISIONS, PROVISION, OR PORTION OF ANY PROVISION IN THIS NOTE IS FOUND BY A COURT OF COMPETENT JURISDICTION TO BE IN VIOLATION OF ANY APPLICABLE LOCAL, STATE OR FEDERAL ORDINANCE, STATUTE, LAW, OR ADMINISTRATIVE OR JUDICIAL DECISION, OR PUBLIC POLICY, AND IF SUCH COURT WOULD DECLARE SUCH PORTION, PROVISION OR PROVISIONS OF THIS NOTE TO BE ILLEGAL, INVALID, UNLAWFUL,

VOID OR UNENFORCEABLE AS WRITTEN, THEN IT IS THE INTENT OF ALL PARTIES HERETO THAT SUCH PORTION, PROVISION OR PROVISIONS SHALL BE GIVEN FORCE AND EFFECT TO THE FULLEST POSSIBLE EXTENT THEY ARE LEGAL, VALID AND ENFORCEABLE, AND THE REMAINDER OF THIS NOTE SHALL BE CONSTRUED AS IF SUCH ILLEGAL, INVALID, UNLAWFUL, VOID OR UNENFORCEABLE PORTION, PROVISION OR PROVISIONS WERE SEVERABLE AND NOT CONTAINED HEREIN, AND THE RIGHTS, OBLIGATIONS AND INTEREST OF THE BORROWER AND HOLDER HEREOF UNDER THE REMAINDER OF THIS NOTE SHALL CONTINUE IN FULL FORCE AND EFFECT.

ARTICLE 25 USURY . ALL TERMS, CONDITIONS AND AGREEMENTS HEREIN ARE EXPRESSLY LIMITED SO THAT IN NO CONTINGENCY OR EVENT WHATSOEVER, WHETHER BY ACCELERATION OF MATURITY OF THE UNPAID PRINCIPAL BALANCE HEREOF, OR OTHERWISE, SHALL THE AMOUNT PAID OR AGREED TO BE PAID TO THE HOLDERS HEREOF FOR THE USE, FORBEARANCE OR DETENTION OF THE MONEY ADVANCED HEREUNDER EXCEED THE HIGHEST LAWFUL RATE PERMISSIBLE UNDER APPLICABLE LAWS. IF, FROM ANY CIRCUMSTANCES WHATSOEVER, FULFILLMENT OF ANY PROVISION HEREOF SHALL INVOLVE TRANSCENDING THE LIMIT OF VALIDITY PRESCRIBED BY LAW WHICH A COURT OF COMPETENT JURISDICTION MAY DEEM APPLICABLE HERETO, THEN *IPSO FACTO* , THE OBLIGATION TO BE FULFILLED SHALL BE REDUCED TO THE LIMIT OF SUCH VALIDITY, AND IF UNDER ANY CIRCUMSTANCES THE HOLDER HEREOF SHALL EVER RECEIVE AS INTEREST AN AMOUNT WHICH WOULD EXCEED THE HIGHEST LAWFUL RATE, SUCH AMOUNT WHICH WOULD BE EXCESSIVE INTEREST SHALL BE APPLIED TO REDUCTION OF THE UNPAID PRINCIPAL BALANCE DUE HEREUNDER AND NOT TO THE PAYMENT OF INTEREST.

ARTICLE 26 ASSIGNMENT . THE BORROWER MAY NOT TRANSFER, ASSIGN OR DELEGATE ANY OF ITS RIGHTS OR OBLIGATIONS HEREUNDER. THIS NOTE SHALL ACCRUE TO THE BENEFIT OF HOLDER AND ITS SUCCESSORS AND SHALL BE BINDING UPON THE UNDERSIGNED AND ITS SUCCESSORS. HOLDER SHALL HAVE THE RIGHT, WITHOUT THE CONSENT OF THE BORROWER, TO TRANSFER OR ASSIGN, IN WHOLE OR IN PART, ITS RIGHTS AND INTERESTS IN AND TO THIS NOTE, PROVIDED SUCH TRANSFER COMPLIES WITH ALL APPLICABLE STATE AND FEDERAL SECURITIES LAWS. AS USED HEREIN, THE TERM " **HOLDER** " SHALL MEAN AND INCLUDE SUCH SUCCESSORS AND ASSIGNS.

ARTICLE 27 NOTICES . ANY NOTICES REQUIRED OR PERMITTED TO BE GIVEN UNDER THE TERMS OF THIS NOTE SHALL BE SENT OR DELIVERED PERSONALLY OR BY COURIER (INCLUDING A RECOGNIZED, RECEIPTED OVERNIGHT DELIVERY SERVICE) OR BY FACSIMILE (WITH A COPY SENT BY A RECOGNIZED, RECEIPTED OVERNIGHT DELIVERY SERVICE) AND SHALL BE EFFECTIVE UPON RECEIPT, IF DELIVERED PERSONALLY OR BY COURIER (INCLUDING A RECOGNIZED OVERNIGHT DELIVERY SERVICE) OR BY FACSIMILE, IN EACH CASE ADDRESSED TO A PARTY. THE ADDRESSES FOR SUCH COMMUNICATIONS SHALL BE:

If to the Borrower:

Tower Tech Holdings Inc.
100 Maritime Drive, Suite 3C
Manitowoc, Wisconsin 54220
Telephone: (920) 684-5531
Facsimile: (920) 684-5579
Attention: Mr. Raymond L. Brickner, III

If to Holder:

Tontine Capital Partners, L.P.
55 Railroad Avenue, 1st Floor

Greenwich, Connecticut 06830
Attention: Mr. Jeffrey L. Gendell
Telephone: (203) 769-2000
Facsimile: (203) 769-2010

EACH PARTY SHALL PROVIDE NOTICE TO THE OTHER PARTY OF ANY CHANGE IN ADDRESS.

ARTICLE 28 AMENDMENT . THE PROVISIONS OF THIS NOTE MAY BE AMENDED ONLY BY A WRITTEN INSTRUMENT SIGNED BY THE BORROWER AND HOLDER.

ARTICLE 29 GOVERNING LAW . THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF ALL PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF WISCONSIN.

ARTICLE 30 JURISDICTION; WAIVER OF JURY TRIAL . ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS NOTE SHALL BE FILED, TRIED AND LITIGATED IN THE STATE AND FEDERAL COURTS LOCATED IN WISCONSIN. THE BORROWER WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS NOTE, INCLUDING CONTRACT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. THE BORROWER HAS REVIEWED THIS WAIVER AND KNOWINGLY AND VOLUNTARILY WAIVES THE AFORESAID TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS NOTE MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

[Signature page follows]

EXECUTED AND DELIVERED at Manitowoc, Wisconsin as of the date written below.

TOWER TECH HOLDINGS INC.

Dated as of [ ], 2007

By: _____
Name: _____
Title: _____

Exhibit B

FORM OF AMENDMENT TO REGISTRATION RIGHTS AGREEMENT

This AMENDMENT TO REGISTRATION RIGHTS AGREEMENT (this " ***Amendment*** "), dated as of , 2007, is entered into by and among TOWER TECH HOLDINGS INC., a Nevada corporation (the " ***Company*** "), TONTINE CAPITAL PARTNERS, L.P., a Delaware limited partnership (" ***TCP*** "), TONTINE CAPITAL OVERSEAS MASTER FUND, L.P., a Cayman Islands Limited Partnership (" ***TCOMF*** ") and **[INSERT ADDITIONAL TONTINE PARTIES TO AGREEMENT]** (collectively, the " ***New Stockholders*** " and together with TCP and TCOMF, the " ***Stockholders*** ")).

RECITALS:

A. The Registration Rights Agreement dated as of March 1, 2007 (the " ***Registration Rights Agreement*** "), by and among the Company, TCP and TCOMF provides that pursuant to Section 4.3, it may be amended only with the written consent of the Company and the Designated Holders of a majority of the Registrable Securities.

B. The Company has agreed to sell 12,500,000 shares of the Company's Common Stock to the Stockholders, which sale is being made pursuant to a Securities Purchase Agreement dated as of August 22, 2007, by and between the Company and the Stockholders (the " ***Securities Purchase Agreement*** ").

C. It is a condition precedent to the consummation of the transactions contemplated by the Securities Purchase Agreement that the Registration Rights Agreement be amended as provided in this Amendment to (i) extend the period of time that must pass before the Company must file its initial Registration Statement; and (ii) add the New Stockholders as parties to the Registration Rights Agreement.

D. The Company, TCP and TCOMF desire to amend the Registration Rights Agreement as set forth herein and the New Stockholders desire to become parties to the Agreement, subject to the terms of this Amendment.

E. Capitalized terms used and not defined in this Amendment are defined in the Registration Rights Agreement.

AGREEMENT

NOW, THEREFORE , in consideration of the foregoing premises and the mutual covenants and agreements hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound, the parties hereto hereby agree as follows:

ARTICLE 31
AMENDMENTS TO THE REGISTRATION RIGHTS AGREEMENT

31.1 Amendments to Registration Rights Agreement .

a. Article I of the Registration Rights Agreement is amended by adding at the beginning thereof a new definition as follows: "' ***Additional Purchasers*** ' means **[Insert New Stockholders]** , which

purchased shares of Common Stock pursuant to that certain Securities Purchase Agreement with the Company dated as of August 22, 2007 (the " ***Additional SPA*** ").".

b. The definition of "Designated Holders" set forth in Article I of the Registration Rights Agreement is hereby amended by deleting it in its entirety and replacing it with the following: "' ***Designated Holders*** ' means the Purchasers, the Additional Purchasers and any qualifying transferees of the Designated Holders under Section 3.1 hereof who hold Registrable Securities.".

c. Clause (a) (i) of the definition of "Effectiveness Date" set forth in Article I of the Registration Rights Agreement is hereby amended by deleting he reference to "the 300 th day following the Closing Date" and replacing it with a reference to "180 days from the Filing Date".

d. Clause (a) of the definition of "Filing Date" set forth in Article I of the Registration Rights Agreement is hereby amended by deleting the reference to "180 days following the Closing Date" and replacing it with "no later than , 2007 **[NINE MONTHS FOLLOWING CLOSING DATE]** ; provided that if prior to , 2007 **[SAME DATE]** , the Company shall file a registration statement for the purpose of registering shares to be offered in a rights offering, the Company shall file the initial Registration Statement prior to or contemporaneously with the filing of such rights offering registration statement".

e. Clause (i) of the definition of "Registrable Securities" is hereby amended by deleting it in its entirety and replacing it with the following: " shares of Common Stock acquired by the Purchasers from the Company pursuant to the Securities Purchase Agreement, shares of Common Stock purchased on the Closing Date from certain stockholders of the Company pursuant to the Founders Securities Purchase Agreement, shares of Common Stock acquired by the Purchasers and the Additional Purchasers pursuant to the Additional SPA and so long as this Agreement is still in effect, any other shares of Common Stock acquired by the Purchasers and the Additional Purchasers on or after the Closing Date, including, without limitation, any shares of Common Stock acquired upon the conversion of the senior subordinated promissory notes purchased pursuant to the Additional SPA and any shares of Common Stock acquired pursuant to any rights offering conducted by the Company.".

f. The Registration Rights Agreement is hereby amended by deleting the reference to "Purchasers" in the definition of "Registration Statement" and Sections 3.1, 3.2 and 4.2 thereof and replacing it with a reference to "Designated Holders".

g. Section 4.6 of the Registration Rights Agreement is hereby amended by deleting the reference there to "Purchaser" and replacing it with "Purchasers and Additional Purchasers".

31.2 Joinder of New Stockholders . By execution of this Amendment, each of the New Stockholders hereby confirms its agreement to be bound by the Registration Rights Agreement, as amended hereby, and as may be subsequently amended, restated, revised, supplemented or otherwise modified from time to time.

ARTICLE 32
MISCELLANEOUS

32.1 Effectiveness . This Amendment shall be deemed effective as of the date first written above, as if executed by all parties hereto on such date. Except as specifically modified by the terms set forth herein, the parties hereto acknowledge and agree that the Registration Rights Agreement is in full force and effect. All references in the Registration Rights Agreement to the "Agreement" shall be deemed to refer to the Registration Rights Agreement as amended by this Amendment.

32.2 Further Assurances . Each party agrees that, from time to time upon the written request of the other party, it will execute and deliver such further documents and do such other acts and things as the other party may reasonably request to effect the purposes of this Amendment.

32.3 Severability . Whenever possible, each provision of this Amendment shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Amendment shall be held to be prohibited by or invalid wider applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Amendment.

32.4 Counterparts . This Amendment may be executed in one or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

32.5 Governing Law . This Amendment shall be governed by and construed in accordance with the laws of the State of Wisconsin, without regard to the conflicts of laws rules or provisions.

32.6 Captions . The captions, headings and arrangements used in this Amendment are for convenience only and do not in any way limit or amplify the terms and provisions hereof.

32.7 No Prejudice . The terms of this Amendment shall not be construed in favor of or against any party on account of its participation in the preparation hereof.

32.8 Words in Singular and Plural Form . Words used in the singular form in this Amendment shall be deemed to import the plural, and vice versa, as the sense may require.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to Registration Rights Agreement to be duly executed as of the date and year first written above.

COMPANY :

TOWER TECH HOLDINGS INC.

By: _____
Title: _____

PURCHASER :

TONTINE CAPITAL PARTNERS, L.P.

By: Tontine Capital Management, LLC, its general partner

By: _____
Jeffrey L. Gendell, as managing member

TONTINE CAPITAL OVERSEAS MASTER FUND, L.P.

By: Tontine Capital Overseas GP, LLC, its general partner

By: _____
Jeffrey L. Gendell, as managing member

EXHIBIT C

FORM OF JOINDER TO SECURITIES PURCHASE AGREEMENT

The undersigned, **,** hereby agrees to become a party to, and be bound by, that certain Securities Purchase Agreement, dated , 2007, among Tower Tech Holdings Inc. (the " ***Company*** ") and the additional signatories thereto (as amended, restated, revised, supplemented or otherwise modified from time to time, the " ***Securities Purchase Agreement*** "), and the Company agrees to accept the undersigned, as though the undersigned were a " ***Buyer*** " under the Securities Purchase Agreement. Upon the execution of this Joinder by both the undersigned and the Company, the Company and the undersigned each agree that the undersigned shall be entitled to the rights and privileges, and be bound by the obligations and shall make the representations and warranties, of a Buyer under the Securities Purchase Agreement. This Joinder shall take effect and shall become an integral part of the Securities Purchase Agreement immediately upon execution and delivery by both parties hereto. This Joinder may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Instrument.

Dated: _____

COMPANY :

TOWER TECH HOLDINGS INC.

By: _____
Name: _____
Title: _____

BUYER :

[Signature Block]

EXHIBIT D

FORM OF LEGAL OPINION

1. The Company and each of its Subsidiaries is a corporation, validly existing and in good standing under the laws of the state of the jurisdiction in which it is incorporated. The Company and each of its Subsidiaries are duly qualified as a foreign corporation to do business and are in good standing in the State of Wisconsin.

2. The Company has all necessary corporate power and authority to execute, deliver and perform its obligations under each of the Transaction Documents. The execution, delivery and performance of each of the Transaction Documents have been duly authorized by all necessary corporate action on the part of the Company.

3. The Company has all requisite corporate power and authority to own and operate its property and to conduct the business in which it is currently engaged.

4. Each of the Transaction Documents has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

5. Except as set forth in Section [ ] of the Disclosure Schedules, the issuance, sale and delivery of the Securities and the execution, delivery and performance by the Company of the Transaction Documents and the consummation by the Company of the transactions contemplated thereby do not violate or result in a breach of or default under the Articles of Incorporation, as amended, or the Bylaws or any requirement of law that to our knowledge, is applicable to the performance by the Company of the transactions contemplated by the Transaction Documents.

6. To our knowledge, there are no legal actions, suits, proceedings, or disputes pending or threatened against, or affecting, the Company, at law, in equity, in arbitration or before any governmental authority that contest the execution, validity or performance of the Transaction Documents.

7. Except for filings, authorizations or approvals contemplated by the Agreement, to our knowledge no authorizations or approvals of, and no filings with, any governmental authority are necessary or required for the execution, delivery or performance by, or enforcement against, the Company of any of the Transaction Documents.

8. The Securities are duly authorized and, when issued and sold to the Buyers after payment therefor in accordance with the terms of the Transaction Documents, will be validly issued, fully paid and non-assessable.

9. To our knowledge, there are no contractual preemptive rights, rights of first refusal or similar rights with respect to the issuance and sale of the Securities .

10. Assuming that the representations made by the Buyers in the Agreement are true and correct and that any required filings are made pursuant to Rule 503 of Regulation D as promulgated under the Securities Act of 1933, the offering, sale and issuance of the Securities pursuant to the Agreement do not require registration under the Securities Act of 1933, as amended and the rules promulgated thereunder as they currently exist or registration or qualification under any state securities laws.

Exhibit 99.1

FOR IMMEDIATE RELEASE

TOWER TECH HOLDINGS INC.
101 South 16 th Street, P.O. Box 1957
Manitowoc, WI 54221-1957
(920) 684-5531

For more information contact:
Steve Huntington, CFO

BRAD FOOTE GEAR WORKS, INC.
1309 South Cicero Avenue
Cicero, IL 60804
(708) 298-1100

For more information contact:
J. Cameron Drecoll, CEO

TOWER TECH HOLDINGS INC. TO ACQUIRE BRAD FOOTE GEAR WORKS, INC.

-Brad Foote Acquisition Combines Leading Component Suppliers to the North American Wind Turbine Industry-

-J. Cameron Drecoll to be CEO and Tontine Capital Partners to Appoint Directors to Tower Tech's Board-

MANITOWOC, WI and CICERO, IL, August 22, 2007 – Tower Tech Holdings Inc. (TWRT) has agreed to acquire Brad Foote Gear Works, Inc., an Illinois-based manufacturer of gearing systems for the wind turbine, oil and gas and energy-related industries.

Brad Foote Transaction

Established in 1924, Brad Foote manufactures and repairs gear systems at two locations in Cicero, Illinois and one location in Pittsburgh, Pennsylvania. During the first six months of 2007, Brad Foote had revenues of approximately $37 million, with a significant portion of the revenues related to the sale of gear components to the wind turbine industry. Brad Foote's 2005 and 2006 revenues were approximately $43 million and $59 million, respectively, and Brad Foote anticipates continued growth in its revenues due in part to the growth of the U.S. wind turbine market. Brad Foote currently provides gear sets to multiple leading manufacturers of wind turbines up to 2.5MW. The remaining revenues are related to the oil and gas, mining, steel, power generation and other energy-related industries.

Upon completion of the acquisition, J. Cameron Drecoll, the CEO of Brad Foote, will assume chief executive responsibilities for the combined company. Mr. Drecoll has been the majority shareholder and CEO of Brad Foote since 1996. Prior to acquiring Brad Foote, Drecoll was employed by Regal Beloit Corporation. Tower Tech anticipates that Mr. Drecoll will join Tower Tech's board of directors.

"The combination of Tower Tech and Brad Foote is the next step toward our vision of becoming the premier component supplier to the wind turbine industry in North America. We are delighted to have a leader like Cam take the reigns as CEO, especially with his proven track record and extensive acquisition and integration experience," said Raymond Brickner, President and co-founder of Tower Tech.

Mr. Drecoll stated, "This is an extraordinary opportunity to combine two rapidly growing component suppliers to the wind turbine industry. This transaction will strengthen our ability to reinvest in our respective companies and communities and acquire additional related businesses." Management expects to operate its Brad Foote and Tower Tech subsidiaries separately but also expects to integrate aspects of the businesses, including customer relationship management and certain administrative functions.

Under the terms of the agreement, which has been unanimously approved by the boards of directors of both companies, Brad Foote shareholders will receive an aggregate of approximately 16,000,000 shares of Tower Tech common stock. Brad Foote shareholders will also receive an aggregate of $64 million in cash as part of the consideration. The cash portion of the consideration will be funded through both debt and equity financing, which will be structured to provide additional liquidity to facilitate the combined companies' future growth plans and working capital needs. Tontine Capital Partners, L.P. and its affiliates have agreed to purchase 12,500,000 shares of common stock in a private placement at a purchase price of $4.00 per share and to provide $25 million of additional interim debt financing in the form of senior subordinated convertible notes. Tower Tech will also assume approximately $21 million of senior debt from Brad Foote. The companies expect the acquisition to close by the fourth quarter of 2007.

Tontine Capital Partners expects to appoint James M. Lindstrom and two additional directors to Tower Tech's Board of Directors pursuant to its rights granted in connection with its March 2, 2007 investment in Tower Tech and as part of the investment to fund the acquisition of Brad Foote. Mr. Lindstrom is a partner of Tontine Associates, LLC, a Greenwich, Connecticut-based partnership, since February 2006. Prior to that, Jim was Chief Financial Officer of Centrue Financial Corporation and has prior experience in private equity and investment banking. Raymond Brickner said, "We are looking forward to the addition of Jim to the Board. Jim's initiatives led to our initial financing last March and the transaction with Brad Foote. We look forward to Jim's leadership and the additional directors' ability to increase value for its customers, employees and shareholders." Tontine Capital Partners expects to appoint the additional directors prior to the fourth quarter of 2007.

Following the closing of the transaction, Tower Tech intends to raise approximately $25 million of additional equity capital by means of a rights offering of its common stock to its existing shareholders. The rights to be distributed will permit Tower Tech shareholders as of the to-be-determined record date to purchase additional shares of Tower Tech common stock at the same $4.00 per share price paid by Tontine in the

private placement. Proceeds from the rights offering are expected to be applied to the repayment of debt, including the senior subordinated convertible notes.

About Tower Tech Holdings Inc.

Tower Tech Holdings Inc (TWRT-OTC) is headquartered in Manitowoc, Wisconsin and is dedicated to the production of wind tower support structures for the wind turbine industry.

Important Information

The foregoing notice does not constitute an offer to sell, or a solicitation of an offer to buy, any securities of Tower Tech Holdings Inc. The distribution of rights to purchase shares of Tower Tech Holdings common stock and the issuance of common stock related thereto will be accomplished by means of a registration statement to be filed by Tower Tech with the Securities and Exchange Commission. Tower Tech will distribute the related prospectus following the effectiveness of the registration statement to all shareholders as of the rights offering record date.

Forward Looking Statements

Certain statements found in this press release may constitute forward-looking statements as defined by Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements are based on current expectations and include any statement that does not directly relate to a current or historical fact. Such statements are generally identifiable by the terminology used, such as “anticipate,” “believe,” “intend,” “expect,” “plan,” or other similar words. Our forward-looking statements in this release generally relate to: (i) beliefs about our future position in the component supply industry; (ii) the anticipated future benefits resulting from the acquisition of Brad Foote; (iii) our expectations for future operations of Tower Tech and Brad Foote and our anticipated method of integration for the combined company, including the future composition of our Board of Directors; (iv) our expectations relating to assumption of Brad Foote’s senior debt; (v) Brad Foote’s anticipated revenue growth; (vi) the anticipated timing for closing of the Brad Foote acquisition; and (vii) our intent to raise capital for repayment of debt through a rights offering. Although it is not possible to foresee all of the factors that may cause actual results to differ from our forward-looking statements, such factors include, among others, the following: (i) difficulties in integrating the merged businesses and our ability to successfully capitalize on each segment’s strengths and product offerings; (ii) the ability of our management team and key employees to transition to working with a new CEO; (iii) our ability to successfully complete a rights offering; (iv) our anticipated capital needs; (v) unforeseen costs or liabilities that may arise in connection with either acquisition; (vi) approval of an amendment to our bylaws to increase the size of our Board of Directors (vii) fluctuations in general economic conditions; and (viii) those risks described from time to time in our reports to the Securities and Exchange Commission (including our Annual Report on Form 10-KSB). Investors should not consider any list of such factors to be an exhaustive statement of all of the risks, uncertainties or potentially inaccurate assumptions that could cause our current expectations or beliefs to change. Shareholders and other readers should not place undue reliance on “forward-

looking statements," as such statements speak only as of the date of this release. We undertake no obligation to update publicly or revise any forward-looking statements.

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