

## **PURCHASE AND SALE AGREEMENT**

**THIS PURCHASE AND SALE AGREEMENT** is made and entered into effective as of September 9, 2010 (the "Effective Date") by and among BOWATER NUWAY MID-States Inc., a Delaware corporation, and BOWATER NUWAY INC., a Delaware corporation (together, the "Seller"), and TRUE PARTNERS FINANCIAL SERVICES, LLC, a California limited liability company (the "Buyer"), being the holder of a majority of the ownership interests in EcoFriendly Solutions LLC, a California limited liability company.

### **WITNESSETH:**

**WHEREAS**, Seller owns through a leasehold interest in, and option to purchase fee simple title to, or otherwise, all that tract or parcel of land consisting of approximately 16.3 acres located at 4400 Highway 51 North, Covington, Tipton County, Tennessee, more particularly described on Exhibit A attached hereto (the "Land"), the shuttered manufacturing building and other improvements located thereon (collectively, the "Building"), and all of the equipment located on the Land or within the Building or located elsewhere and listed on Exhibit B attached hereto (collectively, the "Equipment"; the Land, Building and Equipment being herein collectively referred to as the "Property").

**WHEREAS**, on April 16, 2009, Seller and certain of its Affiliates (collectively, the "Debtors") commenced chapter 11 cases as debtors-in-possession under Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") in the jointly administered cases captioned *In re AbitibiBowater Inc., et al.*, 09-11296 (KJC)(Bankr. D. Del. Apr. 16, 2009);

**WHEREAS**, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors continue to operate their businesses, manage their properties and administer their estates as debtors-in-possession; and

**WHEREAS**, upon the terms and subject to the conditions contained in this Agreement, pursuant to sections 363, 365 and/or 1129 of the Bankruptcy Code, and subject to approval by the Bankruptcy Court, Seller desires to sell, transfer, convey, assign and deliver the Property to Buyer and Buyer desires to purchase the Property from Seller;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## **ARTICLE 1. PROPERTY TO BE SOLD**

1.1 Property to be Sold. Subject to the terms and conditions of this Agreement, Buyer agrees to buy, and Seller agrees to sell and convey, all of Seller's right, title and interest in and to the Property. The Property shall include all Seller's rights, privileges, and easements, if any, appurtenant to the Property, including, without limitation, all water, mineral and air rights and rights of way related thereto, and pursuant to the exercise of its option to purchase fee simple title to the Property and receipt of a deed and bill of sale for the Property from The Industrial Development Board of the Town of Covington (the "Board") at or prior to Closing (as defined in Section 6.1 herein), fee simple title thereto.

## **ARTICLE 2. PURCHASE PRICE**

2.1 Purchase Price. The purchase price for the Property shall be Four Million Six Hundred Thousand Dollars (\$4,600,000) (the "Purchase Price"). The Purchase Price shall be paid at Closing (as defined in Section 6.1 herein) by wire transfer received by Seller or Fidelity National Title Group, Inc. (the "Title Company"), as applicable, subject to a credit to Buyer for the Earnest Money (as defined in Section 2.2 below) and closing adjustments as set forth herein. Three Million Four Hundred Thousand Dollars (\$3,400,000) of the Purchase Price shall be allocated to the Land and Building and One Million Two Hundred Thousand Dollars (\$1,200,000) of the Purchase Price shall be allocated to the Equipment.

2.2 Earnest Money; Payment to Seller at Closing. Within five (5) business days from the Effective Date, Buyer shall deposit with the Title Company at its office at 6840 Caruthers Parkway, Suite 200, Franklin, Tennessee 37067, or such other address as the Title Company shall provide, the sum of \$500,000 (together with all interest earned thereon, the "Earnest Money") to be held in escrow by the Title Company. All Earnest Money shall be held by the Title Company pursuant to the terms of this Agreement.

2.3 Escrow. The Earnest Money delivered to the Title Company shall be held in trust for the mutual benefit of the parties subject to the terms and conditions of this Agreement. The Earnest Money shall be deposited by the Title Company in one or more interest-bearing accounts with a reputable lending institution, which account(s) shall be fully insured by the Federal Deposit Insurance Corporation, with the interest thereon to accumulate until such time as the Earnest Money is released. If this Agreement terminates under circumstances which would permit forfeiture of the Earnest Money, or any portion thereof, to Seller, Seller will receive the Earnest Money and all interest accrued thereon; likewise, if this Agreement terminates under conditions allowing the Buyer to receive a refund of the Earnest Money, Buyer will receive the Earnest Money and all interest accrued thereon. If the sale of the Property closes as contemplated, Buyer will receive the benefit of the Earnest Money and interest accrued thereon as a credit against the Purchase Price. Any payments of income from the Earnest Money shall be subject to withholding regulations then in force with respect to

United States taxes. Seller and Buyer shall provide Title Company with appropriate Internal Revenue Service Forms W-9 for tax identification number certification, or non-resident alien certification, in connection with the Earnest Money.

2.4 No Liability of Holder of Earnest Money. Seller and Buyer agree to indemnify Title Company and to hold Title Company harmless from and against any and all liabilities incurred by Title Company in connection with holding the Earnest Money under this Agreement, except to the extent due to Title Company's willful misconduct or gross negligence. In the event of any dispute or question as to the duties of Title Company hereunder, Title Company shall be entitled, in Title Company's sole discretion, without liability to any person having any claim to the Earnest Money, to refuse to perform any act other than to retain the Earnest Money until Title Company's obligations hereunder have been finally determined by a court of competent jurisdiction, or until Title Company has received appropriate instructions in writing signed by both of the Seller and Buyer. Title Company may act pursuant to the advice of counsel with respect to any matter relating to this Agreement and shall not be liable for any action taken or omitted by it in good faith in accordance with such advice, unless caused by the willful misconduct or gross negligence of Title Company. Title Company does not have any interest in the Earnest Money deposited hereunder but is serving as escrow holder only and having only possession thereof.

### **ARTICLE 3. BUYER'S REPRESENTATIONS, WARRANTIES AND COVENANTS**

3.1 Buyer's Representations, Warranties and Covenants. Buyer hereby represents, warrants and covenants to Seller as follows, which shall be true as of the Effective Date and as of the Closing Date:

(a) Authority of Buyer. Buyer has the right and authority to enter into this Agreement and to purchase the Property in accordance with the terms and conditions hereof. Each of the individuals executing this Agreement on behalf of Buyer has the right and authority to bind such Buyer to the terms and conditions of this Agreement without joinder of any other party.

(b) Available Funds. Buyer currently has, and at the Closing will have, sufficient funds on hand to enable it to pay the Purchase Price and any other amounts required to be paid under and in accordance with this Agreement. No financing contingency exists with respect to Buyer's obligations under this Agreement, it being understood that Buyer shall be required to close the transactions contemplated by this Agreement whether or not Buyer is able to obtain any financing it may choose to seek with respect to this Agreement.

(c) Net Worth. Buyer currently has and will have at Closing a net worth in excess of One Million Dollars (\$1,000,000.00).

3.2 Survival. The representations, warranties and covenants of Buyer in this Agreement shall survive the Closing.

#### **ARTICLE 4. TITLE, SURVEY AND INSPECTION PERIOD**

4.1 Title Insurance. Seller shall, at Buyer's expense, within ten (10) business days from the Effective Date, obtain a commitment for owner's title insurance on the standard ALTA form (the "Title Commitment") covering the Land and deliver such Title Commitment to Buyer. The Title Commitment shall indicate that the Land is owned in fee simple by the Board and that Seller holds a leasehold interest therein, free and clear of all liens and encumbrances except for current property taxes not yet due and payable, utility easements of record and any other matters agreed to by Buyer pursuant to this Agreement (the "Permitted Exceptions"). The Title Commitment and the owner's title policy shall be issued by the Title Company. At the Closing, the Title Company shall (i) insure that Buyer is vested with good and marketable fee simple title to the Land, subject only to the Permitted Exceptions, (ii) delete the standard exceptions for mechanics and materialmen's liens, parties in possession, "gap" coverage, and, if Buyer provides a current survey of the Land acceptable to the Title Company, delete the standard exception for matters which an accurate survey would disclose, and (iii) provide, at Buyer's expense, such endorsements as may be reasonably requested by Buyer.

4.2 Survey. Buyer shall have the option, at its expense, to obtain a survey of the Land satisfactory to Buyer, Seller and the Title Company (the "Survey"). The legal description on the Survey shall be the legal description used for the Land (provided that Seller shall have the option to convey the Land by special warranty deed utilizing the legal description for the Land included within the deed from the Board and executing a quitclaim deed for the Land as described in the Survey). Absent Buyer obtaining such Survey, the legal description to be used for the Land shall be the legal description attached hereto as Exhibit A or, at Seller's option, the legal description of the Land utilized in the deed whereby Seller obtained title to the Land from the Board.

4.3 Title and Survey Review. If the Title Commitment or Survey shows matters which are not satisfactory to Buyer, Buyer shall give Seller written notice thereof on or before September 15, 2010, and shall state in writing its objection to the same. Failure to give such notice within said time period shall constitute approval of the Title Commitment and the Survey. Within ten (10) days after receipt of such objections, Seller shall have the right, but shall not be obligated, to cure any objections. If Seller shall fail within such ten (10) day period to cure or commit to cure such objections, then Buyer shall elect, by written notice to Seller, on or before September 27, 2010 either to: (i) terminate this Agreement and receive a refund of the Earnest Money, including interest, or (ii) waive all title defects which Seller is unwilling to cure and proceed with Closing hereunder as if said title defects did not exist.

4.4 Inspection Period. Buyer and/or Buyer's agent(s) (which shall include its architects, engineers, contractors or design consultants) shall have the right, at its option and at its expense, to inspect all aspects of the Property during period commencing on the Effective Date and ending on September 15, 2010 (the "Inspection Period"). During the Inspection Period, Buyer may examine and investigate such

matters as (i) the availability and location of necessary utilities; (ii) environmental issues; and (iii) the condition of the Building and Equipment.

4.5 Access and Inspection Rights. Subject to the terms of this Agreement, Buyer shall have full right of access over, under and above the Property during the Inspection Period, and Seller shall cooperate with Buyer in the course of Buyer's investigation. Prior to accessing the Property, Buyer shall give notice to Seller of its intent to do so, and Seller shall have the right to have a representative present on the Property during any period of time Buyer is accessing the Property. Buyer agrees to restore any part of the Property inspected to its condition as it existed prior to the inspection and Buyer shall indemnify and hold Seller harmless from any liability, claim or demand arising out of the acts or omissions of Buyer or its agents, contractors, employees or other parties conducting diligence activities on the Property on behalf of Buyer. Seller hereby authorizes Buyer, at Buyer's expense, to seek and obtain any and all permits, licenses, site and development plan approvals, permits and authorizations, zoning approvals, and any and all other approvals or consents as Buyer may deem necessary in connection with its proposed development of the Property (collectively, the "Permits and Approvals"). Seller, at no cost to such Seller, shall cooperate with Buyer in seeking such Permits and Approvals if and to the extent necessary for obtaining same, and if any such Permits and Approvals are required to be sought in Seller's name, Seller shall seek such Permits and Approvals upon Buyer's written request; provided however, in no event shall any such Permits and Approvals become effective prior to the closing of Buyer's purchase of the Property.

4.6 Termination Rights. In the event that Buyer determines for any reason whatsoever either that the Property is not acceptable to Buyer, or Buyer's proposed project is not feasible in Buyer's sole discretion, Buyer may terminate this Agreement by providing Seller with written notice prior to the expiration of the Inspection Period. Failure to notify Seller of termination of this Agreement prior to the expiration of the Inspection Period shall waive the right to terminate this Agreement under this Section 4.6, and the parties shall proceed in accordance with the terms of this Agreement. Upon any such termination, the sum of \$100.00 of the Earnest Money shall be paid to Seller in full consideration for Buyer's rights to inspect the Property, to terminate this Agreement prior to the lapse of the Inspection Period, and to exercise other rights under this Agreement, and the balance of the Earnest Money (including accrued interest) shall be promptly returned to Buyer and the Agreement shall thereafter be of no further force and effect. Such \$100.00 is in addition to and independent of any other consideration or payment provided for in this Agreement. In the event Buyer terminates this Agreement pursuant to this Section 4.6, the Buyer agrees to provide to Seller, at no cost to Seller, electronic (to the extent available) and paper copies of all third-party surveys, reports, plans and studies related to the Property and obtained by Buyer as part of Buyer's due diligence investigation of the Property.

4.7 Special Condition to Seller's Obligation to Sell. If Seller is unable to convey fee simple title to the Property to Buyer at Closing pursuant to the exercise by Seller of its option to purchase set forth in the Master Industrial Development Lease Agreement dated May 17, 2001, and in accordance with the terms thereof, or otherwise,

then notwithstanding any provision herein to the contrary, Seller shall have no obligation to sell the Property to Buyer or to otherwise perform its obligations under this Agreement, Buyer shall be entitled to recover the Earnest Money and all interest accrued thereon, and neither party shall have any further rights or remedies hereunder.

## **ARTICLE 5. BANKRUPTCY COURT APPROVAL**

5.1 Sale Order. Notwithstanding anything in this Agreement to the contrary, this Agreement and the transactions contemplated hereby, including the Seller's obligation to sell and the Buyer's obligation to buy hereunder, are subject to entry by the Bankruptcy Court of a final order approving this Agreement and all transactions contemplated hereby under the Bankruptcy Code (the "Sale Order") unless the Buyer waives finality in writing, in which case the transactions contemplated hereby, including the Seller's obligation to sell and the Buyer's obligation to buy hereunder, shall become effective upon entry of the Sale Order. The Sale Order shall, among other things, approve the sale of the Property by the Seller to the Buyer free and clear of all liens, claims, encumbrances, and interests, including any claims of successor liability, enjoin the assertion of any such liens, claims, encumbrances, and interests against the Property and the Buyer, and contain such other terms as Buyer shall require in its reasonable discretion. As used in this Agreement, a sale order becomes "final" when it is in full force and effect and (a) the time to appeal or seek certiorari has expired and no appeal or petition for certiorari has been taken; or (b) any appeal or petition for certiorari has been resolved by the highest court to which the sale order was appealed or from which certiorari was sought, without the sale order having been reversed, stayed, vacated, modified or amended on any such appeal or grant of certiorari.

5.2 Superior Offer. If at any time as of and from the date hereof until entry of the Sale Order identifying Buyer as the purchaser, Seller receives an offer from any person to acquire the Property which, in light of its fiduciary obligations towards its creditors and acting reasonably, is determined by Seller to be a superior offer, Seller shall have the right, upon notice to the Buyer, to terminate this Agreement, in which event this Agreement shall become null and void and of no further force and effect, and Buyer shall receive the Earnest Money, including all interest earned thereon, in full satisfaction of all claims against Seller hereunder. Nothing in this Agreement shall prevent Seller from complying with its fiduciary obligations as a debtor in possession under the Bankruptcy Code.

5.3 Bankruptcy Court Approval. Seller shall have the period from the date this Agreement is fully-executed and delivered to Seller until September 30, 2010 (the "Court Approval Period") in which to seek and obtain entry of the Sale Order. In the event Seller fails to obtain the entry of the Sale Order by September 30, 2010, then at Seller's request Buyer shall extend the Court Approval Period for one additional thirty (30) day period.

5.4 Further Actions. Buyer and Seller each agree to use commercially reasonable efforts to take all actions and to do all things necessary, proper or advisable to consummate the transactions contemplated hereby by the expected Closing Date.

5.5 Bankruptcy Court Jurisdiction. Buyer and Seller agree that the Bankruptcy Court shall have exclusive jurisdiction over all disputes and other matters arising out of or relating to this Agreement and the transactions contemplated hereby, including, without limitation, (a) the interpretation and enforcement of this Agreement or any ancillary document executed pursuant hereto, and (b) the Property, and Buyer expressly consents to and agrees not to contest such exclusive jurisdiction. The parties hereto and their affiliates irrevocably submit to the jurisdiction of the Bankruptcy Court (or any court exercising appellate jurisdiction over the Bankruptcy Court) for such disputes and matters and irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense or inconvenient forum in connection therewith.

## **ARTICLE 6. CLOSING**

6.1 Closing. The purchase and sale contemplated herein shall be consummated at the closing (referred to herein as the "Closing") which shall occur within fifteen (15) days from the entry of the Sale Order, or such other date after the entry of the Sale Order as may be mutually agreed upon by Seller and Buyer, but no event later than November 30, 2010 (the "Closing Date"). The Closing shall take place at the offices of the Title Company or at such other place as the parties may agree upon in writing. In the event the Closing does not occur by the Closing Date, then either party shall have the right to terminate this Agreement (in which case the Earnest Money plus accrued interest would be returned to Buyer), or by mutual agreement evidenced in writing the parties may extend the Closing Date.

6.2 Closing Documents. Seller shall deliver to Buyer at or before the Closing a FIRPTA form, an IRS 1099 form, a closing statement, and a special warranty deed conveying title to the Land and Improvements to Buyer or its designee, free and clear of all liens, encumbrances, easements and restrictions, except the Permitted Exceptions (and at Seller's option, a quitclaim deed as provided for in Section 4.2 hereof), and a special warranty bill of sale conveying title to the Equipment to Buyer or its designee. Seller shall also cause an owner's policy of the title insurance, or marked title commitment down-dated to the time of Closing, in the amount of the Purchase Price to be issued to Buyer or its designee at Closing. The policy to be issued following the Closing shall be in the form of the Title Commitment as approved by Buyer.

6.3 Sale Order. The obligations of Seller and Buyer to consummate the transactions contemplated by this Agreement are subject to the Sale Order becoming final, unless Buyer waives finality as a condition of closing, in which case the obligations of Seller and Buyer to consummate the transactions contemplated by this Agreement are subject to entry of the Sale Order.

6.4 Title Affidavit. Seller shall deliver at or before the Closing an affidavit and indemnity of Seller, in the form required by the Title Company, stating, among other things, that there are no outstanding unpaid bills for which liens can be attached to the Property and in form sufficient for the Title Company to provide "gap" coverage.

6.5 Possession. Seller shall transfer possession of the Property to Buyer on the date of the Closing.

6.6 Closing Costs. Seller shall pay one-half the cost of any escrow charges due the Title Company for conducting the closing. If Seller agrees to cure any objection to title that Buyer may have under Section 4.3 hereof, Seller shall satisfy, at or prior to Closing, any such objection, including any such objection to liens against the Property that are not Permitted Exceptions. Buyer shall pay the cost of the Title Commitment, any title search fees, the title premium for the owner's policy of title insurance, the cost of the Survey, all other costs of the Buyer's due diligence, including any environmental site assessment, the cost of recording the special warranty deed (and quitclaim deed if applicable), the cost of any endorsements to the title policy requested by Buyer and one-half the cost of any escrow charges due the Title Company for conducting the Closing. Each party shall pay its own attorney's fees in connection with this transaction.

6.7 Prorations. All prorations shall each be made as of 11:59 P.M. local time on the date immediately preceding the Closing Date. In each proration set forth below, the portion thereof allocable to periods beginning with the Closing Date shall be credited to Buyer, or charged to Buyer, as applicable, at Closing or, in the case of allocations made after Closing, promptly after receipt of payments or promptly after payment of expenses which are subject to proration. The following items shall, as applicable, be prorated between Buyer and Seller or credited to Buyer or Seller:

(a) Real and personal property ad valorem taxes upon the Property assessed for the year in which Closing occurs (regardless of when due and payable) shall be prorated. If the amount of such taxes for the year in which the closing occurs cannot reasonably be determined, the apportionment shall be based at closing upon the amount of such taxes for the next preceding tax year but shall be readjusted when the amount of such taxes is finally determined. Any back taxes assessed for any year prior to the year in which Closing occurs shall be paid in full by Seller at Closing, including all delinquent and/or interest charges. Any rollback taxes allowable to the Property shall be paid by the Seller.

(b) All other charges, if any, shall be prorated as of the Closing Date based on the last available information with respect thereto, subject to adjustment within thirty (30) days after the Closing upon receipt of current information.

## **ARTICLE 7. CONDEMNATION AND RISK OF LOSS**

7.1 Condemnation. In the event of condemnation or receipt of notice of condemnation or taking of any material part of the Property by governmental authority prior to the date of Closing, Buyer, at its option, shall have the right to terminate this Agreement by written notice to the Seller within ten (10) days following written notice from Seller to Buyer setting out all the terms of such condemnation. If Buyer elects to terminate this Agreement, the Earnest Money, plus any interest earned thereon, shall be refunded to Buyer, at which time all parties shall be relieved of all right and



responsibilities in this Agreement, at law and in equity. If Buyer does not elect to terminate this Agreement, as aforesaid, then Closing hereunder shall be consummated as herein provided and without reduction of the Purchase Price, but all condemnation awards or payments shall be assigned to Buyer. In no event shall Seller be under any duty to restore the Property following condemnation.

7.2 Risk of Loss. The risk of loss or damage to the Property prior to Closing by fire or other casualty, act of God, or any other event shall be upon Seller. If all or a material part of the Property is damaged, as aforesaid, prior to Closing, Buyer, at its option, shall have the right to terminate this Agreement, and thereupon the Earnest Money shall be refunded to Buyer, at which time all parties shall be relieved of all rights and responsibilities in the Agreement, at law and in equity. For purposes of the preceding sentence the parties agree that a "material part of the Property" will only be deemed to have been damaged if the repair or replacement of such Property would cost in excess of \$460,000. If Buyer does not elect to terminate, as aforesaid, then closing hereunder shall be consummated as herein provided, without reduction of the Purchase Price, but all insurance proceeds payable as a result of such damage or casualty, if any, but only up to the amount of the Purchase Price, shall be assigned to Buyer and all causes of action of Seller arising out of said damage shall be assigned to Buyer.

## **ARTICLE 8. AS IS SALE**

8.1 "As Is" Sale/Limited Representations. Seller expressly disclaims any and all representations and warranties concerning (i) the condition of the Property, and (ii) the compliance or non-compliance of the Property with applicable law. Buyer and Seller acknowledge and agree that the sale of the Property is being made on an "AS IS, WHERE IS AND WITH ALL FAULTS" condition and basis, and that the Seller has no obligation to make repairs, replacements or improvements thereto. The Purchase Price and the terms and conditions set forth herein are the result of arms-length bargaining between entities familiar with transactions of this kind. Buyer further acknowledges and agrees that Seller has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties not set forth in this Agreement of any kind or character whatsoever, whether express or implied, oral or written, past, present or future. Buyer further acknowledges and agrees that, having been given the opportunity to inspect the Property, Buyer is relying solely on its own investigation of the Property, and not on any information provided or to be provided by Seller. Seller shall not be liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property, or the operation thereof, furnished by any real estate broker, agent, employee or any other person, which is not expressly set forth in this Agreement.

8.2 Survival. The provisions of this Article 8 shall survive the Closing.

## **ARTICLE 9. REAL ESTATE COMMISSION**

9.1 Real Estate Commission. Seller and Buyer represent and warrant to each other that neither Seller nor Buyer has dealt with, consulted or engaged any real estate broker, or agent, with respect to the transaction described herein, except for Seller's engagement of Binswanger, whose commission (which applies to the sale of the Land and Improvements only) shall be payable by Seller pursuant to a separate written agreement.

9.2 Hold Harmless. Each party to this Agreement (an "Indemnitor") hereby agrees to indemnify and hold the other party (the "Indemnitee") harmless from any liability, claim or demand, cost or expense, including reasonable attorneys' fees the Indemnitee may suffer or incur by reason of the claims of any real estate broker or agent who may claim to have dealt with, consulted or been engaged by Indemnitor in connection with this transaction.

## **ARTICLE 10. DEFAULT; TERMINATION**

10.1 Default by Buyer. In the event that Buyer fails to perform under this Agreement, including the failure to consummate the purchase of the Property under the terms stated in this Agreement, Seller shall have the right, after providing written notice to Buyer and a five (5) business day period to cure, either (i) to terminate this Agreement and retain the Earnest Money, including all interest earned thereon, as liquidated damages, or (ii) to pursue any and all remedies available at law or in equity, including without limitation, a suit for specific performance, and in either case, Seller shall have the right to recover attorneys' fees and costs under Section 11.9 of this Agreement. Notwithstanding the foregoing, Seller hereby waives any right it may have to recover consequential damages from Buyer.

10.2 Default by Seller. If Seller fails to perform under this Agreement, Buyer shall have the right, after providing written notice to Seller and a five (5) business day period to cure, to receive the Earnest Money, including all interest earned thereon, and thereby terminate this Agreement, in full satisfaction of all claims against Seller hereunder. This shall be Buyer's sole and exclusive remedy against Seller, and Buyer hereby waives any and all other remedies that it may have at law or in equity against Seller, including without limitation, any right that it may have to recover consequential damages from Seller. Seller and Buyer agree that Buyer's damages resulting from Seller's default are difficult to determine and that the Earnest Money is a fair estimate of such damages that has been agreed to by Seller and Buyer in an effort to cause the amount of said damages to be certain. Notwithstanding anything to the contrary contained herein, the Bankruptcy Court's failure to enter the Sale Order by the Termination Date shall not constitute a default under, or breach of, this Agreement by Seller.

10.3 No Order. Notwithstanding anything to the contrary contained herein, neither the Bankruptcy Court's failure to enter the Sale Order by October 31, 2010 (the

"Termination Date") nor the Sale Order not becoming final by the Termination Date shall constitute a default under, or breach of, this Agreement by Seller.

10.4 Termination. This Agreement and the transactions contemplated hereby may be terminated at any time prior to the Closing, as follows:

(a) By the mutual written consent of both Parties; or

(b) By Buyer or Seller, upon written notice to the other, if the Closing shall not have occurred on or before the Termination Date due solely to the failure of the Bankruptcy Court to enter the Sale Order; or

(c) By Buyer or Seller, upon written notice to the other, if the Closing shall not have occurred on or before the Closing Date, as provided for in Section 6.1 hereof.

10.5 Effect of Termination; Waiver. In the event this Agreement is terminated, this Agreement shall become null and void and of no further force and effect; provided however unless the Earnest Money is forfeited under Section 10.1 hereof, upon termination hereof the Earnest Money and all interest accrued thereon shall be promptly returned to Buyer by the Title Company. Notwithstanding any other provision of this Agreement to the contrary, the Closing shall constitute a waiver by each party of any conditions to Closing not satisfied as of the Closing Date, other than entry of the Sale Order, and neither party shall have any liability to the other with respect to any condition to Closing waived by such other party.

## **ARTICLE 11. MISCELLANEOUS PROVISIONS**

11.1 Completeness and Modification. This Agreement constitutes the final, complete, exclusive and entire agreement between the parties hereto with respect to the transactions contemplated herein, and it supersedes all prior discussions, understandings or agreements between the parties.

11.2 Assignment and Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto, their respective heirs, permitted successors, permitted assigns, beneficial owners and representatives; provided however, the rights of Buyer under this Agreement shall not be transferable or assignable by Buyer, in whole or part, without Seller's prior written consent.

11.3 Waiver; Modification. Failure by Seller or Buyer to insist upon or enforce any of its rights hereto shall not constitute a waiver thereof, except as provided herein.

11.4 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Tennessee. Except as otherwise provided in Section 5.5 hereof, the parties agree that the appropriate venue for any litigation arising out of this Agreement shall be a court of competent jurisdiction in Davidson County, Tennessee.

11.5 Counterparts/Facsimiles. To facilitate execution, this Agreement may be executed in as many counterparts as may be required; and it shall not be necessary that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on one or more such counterparts. All counterparts shall collectively constitute a single agreement. Execution evidenced by facsimile or electronic signature shall be deemed an original for all purposes.

11.6 Notice. All notices, consents and other communications hereunder shall be in writing and shall be (i) personally delivered or (ii) sent by a nationally recognized overnight courier service or (iii) sent by first class, registered or certified mail, return receipt requested, postage prepaid as follows:

(a) If to Seller, to the address stated below, or to such address as may have been furnished by Seller to Buyer in writing:

Bowater Nuway Inc. and  
Bowater Nuway Mid-States Inc.  
c/o AbitibiBowater  
Attention: Sophie Rossignol, Legal Counsel  
1155, rue Metcalfe, bureau 800  
Montreal (Quebec), Canada H3B 5H2

with a copy to:

Michael S. Peek, Esq.  
Bass, Berry & Sims PLC  
150 Third Avenue South, Suite 2800  
Nashville, TN 37201

(b) If to Buyer, to the address stated below, or to such other address as may have been furnished by Buyer to Seller in writing:

True Partners Financial Services LLC  
211 Calle Pintesresco, Suite A  
San Clemente, CA 92672  
Attention: Ray Taccolini, President  
Attention: Anita Wortzman, Legal Counsel

with a copy to:

Robert C. Goodrich Jr.  
Stites & Harbison, PLLC  
401 Commerce Street, Suite 800  
Nashville, TN 37219

Any such notice, request, consent or other communications shall be deemed received (i) at such time as it is personally delivered by hand, (ii) one business day after deposit with a courier delivery service, or (iii) on the third business day after it is mailed, as the case may be.

11.7 Further Assurances. The parties shall execute such additional documents and do such other acts as may be reasonably required to carry out the intent of this Agreement.

11.8 Time of the Essence. Time is of the essence with respect to the performance of each of the covenants and agreements under this Agreement.

11.9 Attorneys' Fees. In the event that a party hereto engages attorneys to enforce its rights in connection with or related to this Agreement, the prevailing party in any such action shall be entitled to receive from the non-prevailing party its reasonable attorneys' fees and expenses and court costs.

11.10 Tax Deferred Exchange. Buyer acknowledges that Seller, at Seller's option, may elect to participate in a tax deferred exchange in connection with the sale and purchase of the Property under Section 1031 of the Internal Revenue Code. Buyer agrees to cooperate, at no expense to Buyer, with Seller's efforts to participate in such exchange and to execute any and all reasonable documents required by Seller or any qualified intermediary in connection with such exchange.

11.11 Business Day. If any date or any period provided in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period shall be extended to the first business day following such Saturday, Sunday or legal holiday.

11.12 Representation by Counsel. The parties acknowledge that each party to this Agreement has been represented by counsel and such counsel has participated in the negotiation and preparation of this Agreement. This Agreement shall be construed without regard to any presumption or rule requiring that it be construed or constructed against the party who has drafted or caused the Agreement to be drafted.

11.13 Notice by Counsel. Anything contained in this Agreement to the contrary notwithstanding, all notices pursuant to this Agreement, whether from a Seller to Buyer or from Buyer to a Seller, will be effective if executed by and sent by the attorney of the party sending such notice. Buyer and Seller hereby agree that if a notice is given hereunder by counsel, such counsel may communicate directly in writing with all principals, as may be required to comply with the notice provisions of this Agreement.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the Effective Date.

BUYER:

TRUE PARTNERS FINANCIAL SERVICES LLC

By: \_\_\_\_\_  
Ray Taccolini, President

SELLER:

BOWATER NUWAY MID-STATES INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BOWATER NUWAY INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TDS

9/9/2010 11:38:14 AM PAGE 2/002 Fax Server

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the Effective Date.

BUYER:

TRUE PARTNERS FINANCIAL SERVICES LLC

By: Ray Jacobini  
Ray Jacobini, President

SELLER:

BOWATER NUWAY MID-STATES, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**DESCRIPTION OF LAND**

**(See attached Description of Real Property from Memorandum of Lease  
Of record in Book 942 page 717 Register's Office of Tipton County, TN)**



EXHIBIT "A"  
TO  
MEMORANDUM OF LEASE

Description of Real Property

LOCATED IN TIPTON COUNTY, TENNESSEE:

Description of a 16.31 acre parcel, being a part of the Industrial Development Board of the Town of Covington property as recorded at Deed Book 448 Page 473, and the Industrial Development Board of the Town of Covington property as recorded at Deed Book ~~242~~ Page ~~539~~ (0.93 acre parcel), also see lease amendment as recorded at Deed Book ~~242~~ Page ~~528~~ (0.45 acre parcel), which is a part of this parcel, said property being situated in the First Civil District of Tipton County, Tennessee and being located on the East side of U. S. Highway 51 and the South side of Rialto Road.

Beginning at a found ½ inch rebar with a cap in the South Right of Way line of Rialto Road (30 feet from centerline) being the Northeast corner of this 16.31 acre parcel, being a part of the Industrial Development Board of the Town of Covington property as recorded at Deed Book 448 Page 473, also being in the West line of the property leased by Wallace Computer Services, Inc. (589/51 - Lease Agreement), said rebar being 577.51 feet eastwardly as measured along the South Right of Way line of Rialto Road from the intersection of said South Right of Way line with the East Right of Way line of U. S. Highway 51 (50 feet from the centerline of the northbound lane); thence in a Southwestwardly direction, along an East line of the Industrial Development Board of the Town of Covington property and this parcel, also being the West line of the property leased by Wallace Computer Services, Inc., South 06 degrees 04 minutes 35 seconds West, passing a found ½ inch rebar with a cap at 30.39 feet, in all a distance of 567.61 feet to a found p.k. nail in a cross tie being an interior corner of said parcel, also being in the North line of the Industrial Development Board of the Town of Covington property (0.93 acre parcel), which is a part of this parcel, also being an exterior corner of the property leased by Wallace Computer Services, Inc.; thence in a Southeastwardly direction, along a North line of the Industrial Development Board of the Town of Covington property (0.93 acre parcel) and this parcel, also being a South line of the property leased by Wallace Computer Services, Inc., South 83 degrees 50 minutes 40 seconds East, a distance of 40.00 feet to a set ½ inch rebar with a cap being the Northeast corner of the Industrial Development Board of the Town of Covington property (0.93 acre parcel), and an exterior corner of this parcel, also being an interior corner of the property leased by Wallace Computer Services, Inc.; thence in a Southwestwardly direction, along an East line of the Industrial Development Board of the Town of Covington property (0.93 acre parcel) and this parcel, also being a West line of the Property leased by Wallace Computer Services, Inc., South 06 degrees 09 minutes 20 seconds West, a distance of 521.30 feet to a set ½ inch rebar with a cap being the Southeast corner of said 0.93 acre parcel and an exterior corner of this parcel, also being the Northeast corner of the remaining City of Covington property as recorded at Deed Book 494 Page 312, which the 0.93 acre parcel was originally a part; thence in a Northwestwardly direction, along a South line of the 0.93 acre parcel and this parcel, also being a North line of the remaining City of Covington property, North 62 degrees 18 minutes 59 seconds West, a distance of 86.00 feet to a found iron post (broken) being an interior corner of this parcel, also being the Northwest corner of the remaining City of Covington property, also being the Northeast corner of the property leased by World Color Press as recorded at Deed Book 637 Page 962 (lease agreement), also being the Northeast corner of an 0.45 acre parcel (see lease amendment), which is a part of the property leased by World Color Press and is a part of this parcel; thence in a Southwestwardly direction, along an East line of said 0.45 acre parcel and this parcel, also being a West line of the remaining City of Covington property, South 06 degrees 05 minutes 00 seconds West, a distance of 310.55 feet to a set ½ inch rebar with a cap being the Southernmost corner of this parcel, also being the Southernmost corner of said 0.45 acre parcel, also being in the East line of the property leased by World Color Press as recorded at Deed Book 637 Page 962 (lease agreement); thence in a Northwestwardly direction, along a West line of this parcel, also being the West line of said 0.45 acre parcel, the following

four (4) courses, North 08 degrees 11 minutes 23 seconds West, a distance of 95.95 feet to a set ½ inch rebar with a cap being a point of curvature; thence along a curve to the left having a radius of 438.34 feet, a delta angle of 06 degrees 03 minutes 25 seconds, an arc length of 46.34 feet, a tangent length of 23.19 feet, a chord bearing of North 11 degrees 13 minutes 05 seconds West, and a chord length of 46.32 feet to a set ½ inch rebar with a cap being a point of tangency; thence North 14 degrees 14 minutes 47 seconds West, a distance of 69.68 feet to a set ½ inch rebar with a cap being a point of curvature; thence along a curve to the left having a radius of 438.34 feet, a delta angle of 29 degrees 42 minutes 06 seconds, an arc length of 227.23 feet, a chord bearing of North 29 degrees 05 minutes 50 seconds West, and a chord length of 224.70 feet to a set ½ inch rebar with a cap being a point on a curve being an interior corner of this parcel, also being in the North line of the property leased by World Color Press, also being the Northwest corner of said 0.45 acre parcel; thence in a Northwestwardly direction, along a South line of this parcel and the North line of the property leased by World Color Press, North 62 degrees 18 minutes 59 seconds West, a distance of 679.92 feet to a found iron post (bent) in the East Right of Way line of U. S. Highway 51 (50 feet from centerline of the northbound lane) being the Westernmost Southwest corner of this parcel, also being the Northwest corner of the property leased by World Color Press; thence in a Northeastwardly direction, along the East Right of Way line of U. S. Highway 51 and the West line of this parcel, North 27 degrees 41 minutes 01 seconds East, a distance of 778.00 feet to the Northwest corner of this parcel being the intersection of the East Right of Way line of U. S. Highway 51 with the South Right of Way line of Rialto Road; thence in a Southeastwardly direction, along the South Right of Way line of Rialto Road and the North line of this parcel, the following three (3) courses, South 83 degrees 58 minutes 10 seconds East, a distance of 246.85 feet to an angle point; thence South 85 degrees 19 minutes 17 seconds East, a distance of 300.66 feet to a found ½ inch rebar with a cap being an angle point, also being the Northwest corner of the Bell South Telecommunications 30 foot x 30 foot easement (865/563); thence South 84 degrees 38 minutes 11 seconds East, a distance of 30.00 feet to the Point of Beginning and containing 16.31 acres, more or less.

Said property is described on the Boundary and Topographic Survey prepared by Donald R. Cole & Associates, Inc., and certified by Donald R. Cole, Tennessee Registered Land Surveyor No. 1563, dated December 27, 2000, updated April 6, 2001, and last revised April 19, 2001.

The instrument constituting the source of the grantor's interest in the foregoing described property was a \_\_\_\_\_ recorded at Book \_\_\_\_\_, Page \_\_\_\_\_ in the Register's Office of Tipton County, Tennessee.

## EXHIBIT B

### LIST OF EQUIPMENT LOCATED OFF-SITE

In addition to all equipment presently located on the Land or within the Building, the following additional equipment:

*Equipment listed below stored at the AbitibiBowater Calhoun, TN mill and Tri-State Warehouse Inc., PO Box 2186, Cleveland, TN:*

- All of the Bowater Nuway Coating Equipment stored in crates at the AbitibiBowater Mill in Calhoun, TN.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the Effective Date.

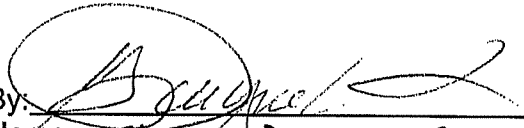
BUYER:

TRUE PARTNERS FINANCIAL SERVICES LLC

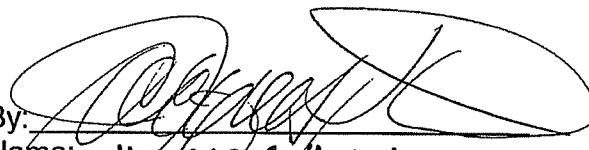
By: \_\_\_\_\_  
Ray Taccolini, President

SELLER:

BOWATER NUWAY MID-STATES INC.

By:   
Name: GILLES DAIGNEAULT  
Title: VICE PRESIDENT AND TREASURER

BOWATER NUWAY INC.

By:   
Name: JACQUES P. VACHON  
Title: VICE-PRESIDENT AND SECRETARY