

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

-----X
In re: : **Chapter 11**
: :
: **Case No. 14-11916-HJB**
GT ADVANCED TECHNOLOGIES INC., et al.,:
: **Jointly Administered**
Debtors.¹ :
: :
: :
-----X

**PLAN SUPPLEMENT FOR
DEBTORS' AMENDED JOINT PLAN OF REORGANIZATION UNDER
CHAPTER 11 OF THE BANKRUPTCY CODE, DATED FEBRUARY 1, 2016**

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Dated: February 16, 2016

¹ The Debtors, along with the last four digits of each debtor's tax identification number, as applicable, are: GT Advanced Technologies Inc. (6749), GTAT Corporation (1760), GT Advanced Equipment Holding LLC (8329), GT Equipment Holdings, Inc. (0040), Lindbergh Acquisition Corp. (5073), GT Sapphire Systems Holding LLC (4417), GT Advanced Cz LLC (9815), GT Sapphire Systems Group LLC (5126), and GT Advanced Technologies Limited (1721). The Debtors' corporate headquarters are located at 243 Daniel Webster Highway, Merrimack, NH 03054.



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Dated: February 16, 2016

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EXHIBIT 1

Senior Secured Notes Indenture

GT ADVANCED TECHNOLOGIES INC.,

as Issuer,

and any Guarantor that becomes party hereto pursuant to Section 4.10 hereof

Senior Secured PIK Toggle Notes due 2021

INDENTURE

Dated as of [•], 2016

[•],
as Trustee and as Collateral Agent¹

¹ NTD: Identity of trustee/agent to be confirmed.

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INDENTURE dated as of [•], 2016 among GT Advanced Technologies Inc., a Delaware corporation with an address at 243 Daniel Webster Highway, Merrimack, NH 03054 (the “Issuer”), any Guarantor that becomes party hereto pursuant to Section 4.10, and [•], as trustee (as more fully defined in Section 1.01, the “Trustee”) and as collateral agent (as more fully defined in Section 1.01, the “Collateral Agent”).

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders of (a) the Issuer’s Senior Secured PIK Toggle Notes due 2021 and (b) PIK Securities (as defined herein) that may be issued after the date hereof in the form of Exhibit A (all such securities in clauses (a) and (b) being referred to collectively as the “Securities”).

ARTICLE 1

DEFINITIONS AND INCORPORATION BY REFERENCE

SECTION 1.01. Definitions.

“Acquired Indebtedness” means, with respect to any specified Person:

- (1) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Subsidiary of such specified Person, and
- (2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under common control with such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

“Anti-Money Laundering and Anti-Terrorism Laws” means any applicable law relating to terrorism, economic sanctions or money laundering, including, without limitation, (a) the Money Laundering Control Act of 1986 (i.e., 18 U.S.C. §§ 1956 and 1957), (b) the Bank Secrecy Act of 1970 (31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959), and the implementing regulations promulgated thereunder, (c) the USA PATRIOT Act and the implementing regulations promulgated thereunder, (d) the laws, regulations and Executive Orders administered by the United States Department of the Treasury's Office of Foreign Assets Control (“OFAC”) and (e) any similar laws enacted in the United States or any other jurisdictions in which the Issuer and its Subsidiaries conduct material business, as any of the foregoing laws have been, or shall hereafter be, amended, renewed, extended, or replaced.

“Asset Sale” means:

(1) the sale, conveyance, transfer or other disposition (whether in a single transaction or a series of related transactions) of property or assets (including by way of a Sale/Leaseback Transaction) of the Issuer or any Subsidiary of the Issuer (each referred to in this definition as a “disposition”) or

(2) the issuance or sale of Equity Interests (other than directors’ qualifying shares and shares issued to foreign nationals or other third parties to the extent required by applicable law) of any Subsidiary (other than to the Issuer or another Subsidiary of the Issuer) (whether in a single transaction or a series of related transactions),

in each case other than:

(a) a disposition of (i) Cash Equivalents or Investment Grade Securities in the ordinary course of business, (ii) obsolete, damaged or worn out property or equipment in the ordinary course of business, (iii) Inventory (as defined in the Uniform Commercial Code) or goods (or other assets) held for sale in the ordinary course of business (which for the avoidance of doubt, shall exclude any furnaces) or (iv) equipment or other assets as part of a trade-in for replacement equipment;

(b) any Restricted Payment or Permitted Investment that is permitted to be made, and is made, under Section 4.04;

(c) any disposition of assets, or any issuance or sale of Equity Interests of any Subsidiary, (i) in any one or a series of such related transactions having a fair market value (as determined in good faith by the Issuer) of \$50,000 or less and (ii) including any assets or Equity Interests within the scope of clause (i) and any other assets or Equity Interests of any Subsidiary subject to any disposition or issuance (in each case, other than those described in clauses (a), (b) and (d) through (i) of this definition of “Asset Sale”), all of which assets or Equity Interests so disposed or issued during the term of this Indenture have an aggregate fair market value (as determined in good faith by the Issuer) of less than \$1,000,000;

(d) any disposition of property or assets, or the issuance of securities, by a Subsidiary of the Issuer to the Issuer or by the Issuer or a Subsidiary of the Issuer to a Subsidiary of the Issuer (or to an entity that contemporaneously therewith becomes a Subsidiary);

(e) (i) the lease, assignment or sublease of any real or personal property in the ordinary course of business or (ii) the disposition of any property or assets by way of a Sale/Leaseback Transaction; *provided* that any Sale/Leaseback Transaction with respect to the New Hampshire Property shall constitute an Asset Sale;

(f) all rights granted under any non-exclusive license, collaboration agreement, strategic alliance or similar arrangement providing for the licensing of Intellectual Property or the development or commercialization of Intellectual Property on a non-exclusive basis, in each case in the ordinary course of business; *provided* that such license, collaboration agreement, strategic alliance or similar arrangement, taken as a whole, in the judgment of the Issuer when executed, could not reasonably be expected to

have a material adverse effect on the business, financial condition or results of operations of the Issuer and its Subsidiaries taken as a whole (for the avoidance of doubt, any such license, collaboration, strategic alliance or similar arrangement shall not result in the Issuer or any Subsidiary of the Issuer no longer owning such Intellectual Property);

(g) dispositions consisting of the grant or other Incurrence of Permitted Liens;

(h) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements; and

(i) a disposition of assets in connection with the sale or other disposition of Merlin or HiCZ.

“Attributable Indebtedness” in respect of a sale and leaseback transaction means, at the time of determination, the present value of the obligation of the lessee for net rental payments during the remaining term of the lease included in such sale and leaseback transaction. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP; *provided*, however, that if such sale and leaseback transaction results in a Capitalized Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of “Capitalized Lease Obligation.”

“Bankruptcy Code” means title 11 of the United States Code, as amended from time to time, as applicable to the Chapter 11 Cases.

“Bankruptcy Court” means the United States Bankruptcy Court for the District of New Hampshire or any other court of the United States having jurisdiction over the Chapter 11 Cases.

“Bankruptcy Debtors” means the Issuer, GTAT Corporation, GT Advanced Equipment Holding LLC, GT Equipment Holdings, Inc., Lindbergh Acquisition Corp., GT Sapphire Systems Holding LLC, GT Advanced Cz LLC, GT Sapphire Systems Group LLC, and GT Advanced Technologies Limited, in their capacities as debtors and debtors in possession in the Chapter 11 Cases under sections 1107(a) and 1108 of the Bankruptcy Code.

“Blocked Person” means any Person

(a) that (i) is identified on the list of "Specially Designated Nationals and Blocked Persons" published by OFAC; (ii) resides, is organized or chartered, or has a place of business in a country or territory that is the subject of an OFAC Sanctions Program; or (iii) a United States Person is prohibited from dealing or engaging in a transaction with under any of the Anti-Money Laundering and Anti-Terrorism Laws; and

(b) that, to the Issuer’s knowledge, is owned or controlled by, or that owns or controls, or that is acting for or on behalf of, any Person described in clause (a) above.

“Board of Directors” means, as to any Person, the board of directors, board of managers or similar governing body, as applicable, of such Person (or, if such Person is a partnership, the board of directors or other governing body of the general partner of such Person) or any duly authorized committee thereof. References in this Indenture to directors (on a Board of Directors) shall also be deemed to refer to managers (on a Board of Managers).

“Business Day” means a day other than a Saturday, Sunday or other day on which banking institutions are authorized or required by law to close in New York City or the city in which the Corporate Trust Office is located.

“Capital Stock” means:

- (1) in the case of a corporation, corporate stock or shares;
- (2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited) and membership rights; and
- (4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person;

in each case to the extent treated as equity in accordance with GAAP.

“Capitalized Lease Obligation” means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) in accordance with GAAP; *provided*, that all obligations of any Person that are or would be characterized as operating lease obligations in accordance with GAAP on the Issue Date (whether or not such operating lease obligations were in effect on such date) shall continue to be accounted for as operating lease obligations (and not as Capitalized Lease Obligations) for purposes of this Indenture regardless of any change in GAAP following the Issue Date that would otherwise require such obligations to be recharacterized (on a prospective or retroactive basis or otherwise) as Capitalized Lease Obligations.

“Cash Equivalents” means:

- (1) U.S. Dollars, Canadian dollars, pounds sterling, euros or the national currency of any member state in the European Union;
- (2) securities issued or directly and fully guaranteed or insured by the U.S. government or any country that is a member of the European Union or any agency or instrumentality thereof, in each case maturing not more than two years from the date of acquisition;

(3) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances, in each case with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus in excess of \$250,000,000 and whose long-term debt is rated "A" or the equivalent thereof by Moody's or S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(4) repurchase obligations for underlying securities of the types described in clauses (2) and (3) above entered into with any financial institution meeting the qualifications specified in clause (3) above;

(5) commercial paper issued by a corporation (other than an Affiliate of the Issuer) rated at least "A-1" or the equivalent thereof by Moody's or S&P (or reasonably equivalent ratings of another internationally recognized rating agency), and in each case maturing within one year after the date of acquisition;

(6) readily marketable direct obligations issued by any state of the United States of America or any political subdivision thereof having one of the two highest rating categories obtainable from either Moody's or S&P (or reasonably equivalent ratings of another internationally recognized rating agency), in each case with maturities not exceeding two years from the date of acquisition;

(7) Indebtedness issued by Persons (other than an Affiliate of the Issuer) with a rating of "A" or higher from S&P or "A-2" or higher from Moody's (or reasonably equivalent ratings of another internationally recognized rating agency), in each case with maturities not exceeding two years from the date of acquisition;

(8) investment funds investing at least 95% of their assets in securities of the types described in clauses (1) through (7) above; and

(9) investments permitted by the Issuer's board-approved investment policy, as in effect on the Issue Date.

"Certificate of Designations" means the Certificate of Designations, dated as of the Issue Date, made by the Issuer with respect to the Series A Convertible Preferred Stock of the Issuer.

"Chapter 11 Cases" means (a) when used with reference to a particular Bankruptcy Debtor, the case pending as of the Issue Date for that Bankruptcy Debtor under chapter 11 of the Bankruptcy Code and (b) when used with reference to all Bankruptcy Debtors, the procedurally consolidated chapter 11 cases pending as of the Issue Date for the Bankruptcy Debtors in the Bankruptcy Court and jointly administered under Case No. 14-11916 (HJB).

"Chapter 11 Plan" means the Debtors' Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, dated as of February 1, 2016, as amended, modified, and supplemented on or prior to the Issue Date, filed by the Issuer and its affiliated debtors and debtors in possession with the Bankruptcy Court, together with the disclosure statement with respect to such plan.

“Change of Control” means the occurrence of any of the following events following the Issue Date:

(i) the direct or indirect sale, lease or transfer, in one or a series of related transactions, of all or substantially all the assets of the Issuer and its Subsidiaries, taken as a whole, to a Person other than any of the Issuer or its Subsidiaries;

(ii) the Issuer consolidates with, or merges with or into, any Person, or any Person consolidates with, or merges with or into, the Issuer, other than any such transaction where the Voting Stock of the Issuer outstanding immediately prior to such transaction is converted into or exchanged for Voting Stock (other than Disqualified Stock) of the surviving or transferee Person constituting a majority of the outstanding shares of such Voting Stock of such surviving or transferee Person (immediately after giving effect to such issuance);

(iii) the acquisition by any Person (other than a Permitted Holder) or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act or any successor provision) in a single transaction or in a related series of transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), of more than 50% of the total voting power of the Voting Stock of the Issuer (it being understood and agreed that for purposes of measuring beneficial ownership held by any Person that is not a Permitted Holder, Voting Stock held by a Permitted Holder will be excluded); or

(iv) the adoption of a plan relating to the Issuer’s dissolution or liquidation.

“Code” means the United States Internal Revenue Code of 1986, as amended.

“Collateral Agent” means [•] in its capacity as “Collateral Agent” under this Indenture and under the Security Documents and any successor thereto in such capacity.

“Controlled Foreign Corporation” means a corporation that is a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“Corporate Trust Office” means the address of the Trustee specified in Section 12.01 or such other address as to which the Trustee may give notice to the Holders and the Issuer.

“Default” means any event that is, or after notice or passage of time or both would be, an Event of Default.

“Designated Non-cash Consideration” means the fair market value (as determined in good faith by the Issuer) of non-cash consideration received by the Issuer or one of its Subsidiaries in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer’s Certificate, setting forth the basis of such valuation, less

the amount of Cash Equivalents received in connection with a subsequent sale of such Designated Non-cash Consideration.

“Disqualified Stock” means, with respect to any Person, any Equity Interests of such Person that, by its terms (or by the terms of any security or Equity Interests into which it is convertible or for which it is redeemable or exchangeable), or upon the happening of any event or condition:

- (1) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than as a result of a change of control or asset sale; *provided* that the relevant asset sale or change of control provisions, taken as a whole, are no more favorable in any material respect to holders of such Capital Stock than the asset sale and change of control provisions applicable to the Securities and any purchase requirement triggered thereby may not become operative until compliance with the asset sale and change of control provisions applicable to the Securities (including the purchase of any Securities tendered pursuant thereto)),
- (2) provides for the scheduled payments of dividends or other amounts in cash,
- (3) is convertible or exchangeable for Indebtedness or Disqualified Stock of such Person, or
- (4) is redeemable at the option of the holder thereof, in whole or in part (other than solely as a result of a change of control or asset sale),

in each case prior to 91 days after the earlier of the Stated Maturity of the Securities or the date the Securities are no longer outstanding; *provided, however*, that only the portion of Capital Stock that so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock; *provided, further, however*, that if such Capital Stock is issued to any employee or to any plan for the benefit of employees of the Issuer or its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Issuer in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability. For the avoidance of doubt, Disqualified Stock shall not include any Series A Convertible Preferred Stock of the Issuer issued pursuant to the Certificate of Designations.

“Domestic Subsidiary” means any Subsidiary of the Issuer incorporated or organized under the laws of the United States of America or any political subdivision of the United States of America.

“DTC” means The Depository Trust Company, its nominees and their respective successors.

“Environmental Actions” means any complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter or request for information from any Person or Governmental Authority alleging violations

of Environmental Laws or Releases of Hazardous Materials by the Issuer or any of its Subsidiaries or any predecessor in interest (a) from any assets, properties or businesses owned or operated by the Issuer or any of its Subsidiaries or any predecessor in interest; (b) onto properties adjoining any properties or businesses owned or operated by the Issuer or any of its Subsidiaries or any predecessor in interest; or (c) onto any facilities which received Hazardous Materials generated by the Issuer or any of its Subsidiaries or any predecessor in interest.

“Environmental Laws” means the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), the Federal Clean Water Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), as such laws may be amended or otherwise modified from time to time, and any other applicable law, permit or license of any Governmental Authority imposing liability or establishing standards of conduct for protection of the environment relating to the Release, deposit or migration of any Hazardous Materials into the environment.

“Environmental Liabilities and Costs” means all liabilities, monetary obligations, Remedial Actions, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants and costs of investigations and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim or demand by any Governmental Authority or any third party, and which relate to any environmental condition or a Release of Hazardous Materials from or onto (a) any property presently or formerly owned by the Issuer or any of its Subsidiaries or (b) any facility which received Hazardous Materials generated by the Issuer or any of its Subsidiaries.

“Environmental Lien” means any Lien in favor of any Governmental Authority for Environmental Liabilities and Costs.

“Equity Interests” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Issuer within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Issuer or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Issuer or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in

reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Issuer or any ERISA Affiliate.

“Exchange Act” means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Excluded Assets” means (i) any lease, license, contract, permit or agreement of the Issuer or any of the Guarantors, if and only for so long as the grant of a security interest under the Security Documents would result in a breach or default under, or abandonment, invalidation or unenforceability of, that lease, license, contract, permit or agreement, but only to the extent, and for so long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the Uniform Commercial Code or any other applicable law or principles of equity, (ii) any asset or property to the extent that the grant of a security interest in such asset or property is prohibited by any applicable law or requires a consent not obtained of any Governmental Authority pursuant to applicable law, (iii) any assets or property as to which the Collateral Agent (at the direction of the Holders of a majority in principal amount of the Securities then outstanding) reasonably determines in good faith that the costs of obtaining such a security interest are excessive in relation to the value of the security to be afforded thereby, (iv) Excluded Equity, (v) 100% of the assets of any Controlled Foreign Corporation, (vi) any segregated and limited-use payroll accounts, payroll withholding tax accounts, pension and pension reserve accounts, employee benefit accounts and other similar accounts to the extent funded or maintained in accordance with prudent business practice or as required by law, (vii) any asset owned by the Issuer or any Guarantor that is subject to a Lien of the type permitted by clauses (6), (9) and (10) of the definition of “Permitted Liens”, to the extent and for so long as the grant of a Lien thereon constitutes a breach of or a default under, or creates a right of termination in favor of any party (other than the Issuer or any Guarantor) to, any agreement pursuant to which such Lien has been created, (viii) any fee owned real property interest with a fair market value of less than \$2,000,000 and all leasehold interests in real property, (ix) margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System of the United States) and (x) motor vehicles or other assets subject to certificates of title; *provided, however*, that “Excluded Assets” shall not include any proceeds, products, substitutions or replacements of Excluded Assets (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Assets).

“Excluded Equity” means (a) any Equity Interests (as determined for U.S. federal income tax purposes) of (i) any First Tier Controlled Foreign Corporation, other than 65% of the Capital Stock of such First Tier Controlled Foreign Corporation, (ii) any Domestic Subsidiary of a Foreign Subsidiary that is a Controlled Foreign Corporation and (iii) to the extent, if any, not included in clause (ii), GTAT IP Holding LLC so long as it is a Domestic Subsidiary of a Foreign Subsidiary and (b) any equity interests in any joint venture not prohibited under this

Indenture to the extent that, and only for so long as, the organizational documents governing such joint venture prohibit a pledge thereof.

“Excluded Subsidiaries” means (i) any direct or indirect Foreign Subsidiary that is a Controlled Foreign Corporation of the Issuer, (ii) any Domestic Subsidiary of a Foreign Subsidiary that is a Controlled Foreign Corporation, (iii) to the extent, if any, not included in clause (ii), GTAT IP Holding LLC so long as it is a Domestic Subsidiary of a Foreign Subsidiary and (iv) any Subsidiary of a Person described in the foregoing clauses (i) or (ii).

“Extraordinary Receipts” means any cash received by the Issuer or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds of (x) Asset Sales, (y) any avoidance actions asserted in respect of the Chapter 11 Cases under Chapter 5 of the Bankruptcy Code, or (z) any counterclaims for periods prior to the Issue Date asserted against creditors in the Chapter 11 Cases), including (a) foreign, United States, state or local tax refunds, (b) pension plan reversions, (c) proceeds of insurance (other than to the extent such insurance proceeds are (i) payable to a Person that is not the Issuer or any of its Subsidiaries in accordance with applicable law or with contractual obligations entered into in the ordinary course of business or (ii) received by the Issuer or any of its Subsidiaries as reimbursement for any out-of-pocket costs incurred or made by such Person prior to the receipt thereof directly related to the event resulting from the payment of such proceeds), (d) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (e) condemnation awards (and payments in lieu thereof), (f) indemnity payments (other than to the extent such indemnity payments are (i) payable to a Person that is not an Affiliate of the Issuer or any of its Subsidiaries or (ii) received by the Issuer or any of its Subsidiaries as reimbursement for any costs previously incurred or any payment previously made by such Person) and (g) any purchase price adjustment received in connection with any purchase agreement, excluding any fees, expenses or indemnity payments paid to third parties in connection therewith related to such purchase price adjustment.

“Financial Officer” of any Person shall mean the Chief Financial Officer, principal accounting officer, Treasurer, Assistant Treasurer or Controller of such Person.

“First Tier Controlled Foreign Corporation” means any First Tier Foreign Subsidiary that is a Controlled Foreign Corporation.

“First Tier Foreign Subsidiary” means any Foreign Subsidiary the Equity Interests of which are owned directly by the Issuer or indirectly by the Issuer through one or more Domestic Subsidiaries or disregarded entities for U.S. federal income tax purposes.

“Foreign Subsidiary” means any Subsidiary of the Issuer that is not a Domestic Subsidiary.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect from time to

time. Notwithstanding any other provision contained herein the amount of any Indebtedness under GAAP with respect to Capitalized Lease Obligations and Attributable Indebtedness shall be determined in accordance with the definition of “Capitalized Lease Obligations” and “Attributable Indebtedness”, respectively.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“guarantee” means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

“Guarantee” means any guarantee of the obligations of the Issuer under this Indenture and the Securities by any Person in accordance with the provisions of this Indenture.

“Guarantor” means any Person that Incurs a Guarantee pursuant to Section 4.10; *provided, however*, that no Excluded Subsidiary shall be required to become a Guarantor; and, *provided further* that upon the release or discharge of such Person from its Guarantee in accordance with this Indenture, such Person ceases to be a Guarantor.

“Hazardous Material” means (a) any element, compound or chemical that is defined, listed or otherwise classified as a contaminant, pollutant, toxic pollutant, toxic or hazardous substance, extremely hazardous substance or chemical, hazardous waste, or special waste present in the environment in such quantity or state that it contravenes any Environmental Law; (b) petroleum and its refined products; (c) polychlorinated biphenyls; (d) any substance exhibiting a hazardous waste characteristic, including, without limitation, corrosivity, ignitability, toxicity or reactivity as well as any radioactive or explosive materials; and (e) any raw materials, building components (including, without limitation, asbestos-containing materials) and manufactured products containing hazardous substances that are subject to regulation under Environmental Laws.

“Hedging Obligations” means, with respect to any Person, the obligations of such Person under:

- (1) currency exchange, interest rate or commodity swap agreements, currency exchange, interest rate or commodity cap agreements and currency exchange, interest rate or commodity collar agreements; and
- (2) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange, interest rates or commodity prices.

“HiCZ” means the HiCZ product line consisting of intellectual property, customer relationships and certain equipment inventory related exclusively to the growth of monocrystalline silicon ingots.

“Holder” means the Person in whose name a Security is registered on the Registrar’s books.

“Incur” means issue, assume, guarantee, incur or otherwise become liable for; *provided, however*, that any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Subsidiary (whether by merger, amalgamation, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Person at the time it becomes a Subsidiary. “Incurrence” has a correlative meaning.

“Indebtedness” means, with respect to any Person:

(1) the principal and premium (if any) of any indebtedness of such Person, whether or not contingent, (a) in respect of borrowed money, (b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers’ acceptances (or, without duplication, reimbursement agreements in respect thereof), (c) representing the deferred and unpaid purchase price of any property (except (i) any such balance that constitutes a trade payable or similar obligation to a trade creditor Incurred in the ordinary course of business and (ii) any liabilities accrued in the ordinary course of business), which purchase price is due more than six months after the date of placing the property in service or taking delivery and title thereto, (d) in respect of Capitalized Lease Obligations, or (e) representing any Hedging Obligations, if and to the extent that any of the foregoing indebtedness (other than letters of credit and Hedging Obligations) would appear as a liability on a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;

(2) to the extent not otherwise included, any obligation of such Person, whether or not such obligation is contingent, to be liable for, or to pay, as obligor, guarantor or otherwise, on the Indebtedness of another Person (other than by endorsement of negotiable instruments for collection in the ordinary course of business); and

(3) to the extent not otherwise included, Indebtedness of another Person secured by a Lien on any asset owned by such Person (whether or not such Indebtedness is assumed by such Person); *provided, however*, that the amount of such Indebtedness will be the lesser of: (a) the fair market value (as determined in good faith by the Issuer) of such asset at such date of determination; and (b) the amount of such Indebtedness of such other Person.

Notwithstanding anything in this Indenture to the contrary, Indebtedness shall not include, and shall be calculated without giving effect to, the effects of Accounting Standards Codification section 815 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Indenture as a result of accounting for any embedded derivatives created by the terms of such Indebtedness; and any

such amounts that would have constituted Indebtedness under this Indenture but for the application of this sentence shall not be deemed an Incurrence of Indebtedness under this Indenture.

“Indenture” means this Indenture as amended, restated or supplemented from time to time.

“Independent Financial Advisor” means an accounting, appraisal or investment banking firm or consultant, in each case of nationally recognized standing that is, in the good faith determination of the Issuer, qualified to perform the task for which it has been engaged.

“Intellectual Property” means, with respect to any Person, all intellectual property and proprietary rights in any jurisdiction throughout the world, and all corresponding rights, presently or hereafter existing, including: (a) all inventions (whether or not patentable or reduced to practice), all improvements thereto, and all patents, patent applications, industrial designs, industrial design applications, and patent disclosures, together with all reissues, continuations, continuations-in-part, revisions, divisionals, extensions, and reexaminations in connection therewith; (b) all trademarks, service marks, trademark and service mark applications (except for intent-to-use trademark and service mark applications until such time as an affidavit or use or statement of use is accepted in the applicable trademark office), tradenames, trade dress, logos and designs, business names, company names, Internet domain names, and all other indicia of origin, all applications, registrations, and renewals in connection therewith, and all goodwill associated with any of the foregoing; (c) all copyrights and other works of authorship, mask works, database rights and moral rights, and all applications, registrations, and renewals in connection therewith; (d) all trade secrets, know-how, technologies, processes, techniques, protocols, methods, industrial models, designs, drawings, plans, specifications, research and development, and confidential information (including technical data, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals); (e) all software (including source code, executable code, data, databases, and related documentation); (f) all rights of privacy and publicity, including rights to the use of names, likenesses, images, voices, signatures and biographical information of real persons; (g) licenses and commercial marketing rights; and (h) all copies and tangible embodiments or descriptions of any of the foregoing (in whatever form or medium).

“Intercreditor Agreement” means an intercreditor agreement between the Trustee and the agent or lenders for any Working Capital Indebtedness in substantially the form set forth in Exhibit E.

“interest period” means the period commencing on and including a Payment Date and ending on and including the day immediately preceding the next succeeding Payment Date, with the exception that the first interest period shall commence on and include the Issue Date and end on and include [•], 2016 (the Payment Date for any interest period shall be the Payment Date occurring on the day immediately following the last day of such interest period).

“Investment Grade Securities” means:

(1) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents),

(2) securities that have a rating equal to or higher than “Baa3” (or equivalent) by Moody’s or “BBB-” (or equivalent) by S&P, or an equivalent rating by any other Rating Agency, but excluding any debt securities or loans or advances between and among the Issuer and its Subsidiaries,

(3) investments in any fund that invests exclusively in investments of the type described in clauses (1) and (2), which fund may also hold immaterial amounts of cash pending investment and/or distribution, and

(4) corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition.

“Investments” means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, trade credit and advances to customers and commission, travel and similar advances to officers, employees and consultants made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet of the Issuer in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property.

The amount of any Investment outstanding at any time will be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Issuer or a Subsidiary in respect of such Investment.

“IRS” means the U.S. Internal Revenue Service.

“Issue Date” means [•], 2016.

“Issuer” has the meaning set forth in the preamble hereof but, for the avoidance of doubt, shall not include any of its Subsidiaries.

“Lien” means, with respect to any asset, any mortgage, deed of trust, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction); *provided* that in no event shall an operating lease be deemed to constitute a Lien.

“Litigation Trust” means the grantor trust established pursuant to the terms of the Chapter 11 Plan and the Litigation Trust Agreement for the benefit of the Litigation Trust Beneficiaries (as defined in the Chapter 11 Plan).

“Litigation Trust Agreement” means the agreement setting forth the terms and conditions of the Litigation Trust, which shall be in the form contained in the Chapter 11 Plan.

“Material Adverse Change” means a material adverse effect on (1) the business, assets, financial condition or results of operations of the Issuer and its Subsidiaries taken as a whole or (2) the perfection or priority of the Liens on the Notes Collateral or on the value of such Notes Collateral. For the avoidance of doubt, the Incurrence of any secured Working Capital Indebtedness in accordance with the terms of this Indenture and the Intercreditor Agreement shall not constitute a Material Adverse Change.

“Merlin” means the “Merlin” product line consisting of (1) the production of grids for use in specialty solar modules located at a third party subcontractor in Thailand and (2) the production of specialty solar modules at the Issuer’s facility in San Jose, including all employees, Intellectual Property, customer relationship, contracts, assets and liabilities related exclusively thereto.

“Moody’s” means Moody’s Investors Service, Inc. or any successor to the rating agency business thereof.

“Multiemployer Plan” means any employee benefit plan of the type defined in Section 4001(a)(3) of ERISA, to which the Issuer or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including the Issuer or any ERISA Affiliate) at least two of whom are not under common control, as defined in Section 4064 of ERISA.

“Net Proceeds” means

(a) the aggregate cash proceeds received by the Issuer or any of its Subsidiaries in respect of any Asset Sale (including any cash or Cash Equivalents received in respect of or upon the sale or other disposition of any Designated Non-cash Consideration received in any Asset Sale and any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as and when received, but excluding the assumption by the acquiring Person of Indebtedness relating to the disposed assets or other consideration received in any other non-cash form), net of the direct costs relating to such Asset Sale and the sale or disposition of such Designated Non-cash Consideration (including legal, accounting and investment banking fees, brokerage and sales commissions and shipping and installation expenses), and any relocation expenses Incurred as a result thereof, taxes paid or payable as a result thereof (after taking into account any available tax credits or deductions and any tax-sharing arrangements to the extent related thereto, and including taxes imposed on the distribution or repatriation of any such Net Proceeds), amounts required to be applied to the repayment of principal, premium (if any) and interest on Indebtedness (other than (x) Obligations in respect of the Securities or (y) intercompany Indebtedness between a Subsidiary and the Issuer or another Subsidiary of the Issuer) required to be paid as a result of such transaction, and any deduction of appropriate amounts to be provided

by the Issuer as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Issuer after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction; and

(b) with respect to any Extraordinary Receipts, the aggregate cash proceeds of such Extraordinary Receipts (including any cash or Cash Equivalents received in respect of such Extraordinary Receipts), net of the direct costs of obtaining such Extraordinary Receipts (including legal and accounting fees) and any taxes paid or payable as a result thereof (after taking into account any available tax credits or deductions and any tax-sharing arrangements to the extent related thereto, and including taxes imposed on the distribution or repatriation of any such Net Proceeds).

“New Hampshire Property” means the real property and improvements at 243-247 Daniel Webster Highway, Merrimack, New Hampshire.

“Notes Collateral” means all property subject, or purported to be subject from time to time, to a Lien under any Security Documents. The Notes Collateral does not include the Excluded Assets.

“Obligations” means any principal, interest, penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and bankers’ acceptances), damages and other liabilities payable under the documentation governing any Indebtedness; *provided* that Obligations with respect to the Securities shall not include fees or indemnifications in favor of the Trustee and the Collateral Agent.

“OFAC Sanctions Programs” means (a) the laws and Executive Orders administered by OFAC, including, without limitation, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and (b) the list of Specially Designated Nationals and Blocked Persons administered by OFAC, in each case, as renewed, extended, amended, or replaced.

“Officer” means the [Chairman of the Board, the Chief Executive Officer, the Chief Financial Officer, the President, any Executive Vice President, any Senior Vice President, the Treasurer or the Secretary] of the Issuer.

“Officer’s Certificate” means a certificate signed on behalf of the Issuer by an Officer of the Issuer that meets the requirements set forth in this Indenture.

“Opinion of Counsel” means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the Issuer or the Trustee.

“PBGC” means the Pension Benefit Guaranty Corporation, or any successor thereof.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Issuer and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Permitted Holder” means (x) on the Issue Date, any Person identified on Schedule PH and (y) thereafter, any Person or group whose acquisition of beneficial ownership constitutes a Change of Control in respect of which any required Change of Control Offer is made and the Securities validly tendered in respect of which are purchased, in each case in accordance with the requirements of this Indenture (or would have required a Change of Control Offer in the absence of the waiver of such requirement by Holders in accordance with the provisions of this Indenture).

“Permitted Investments” means:

- (1) any Investment in the Issuer or any Subsidiary;
- (2) any Investment in Cash Equivalents or Investment Grade Securities;
- (3) any Investment by the Issuer or any Subsidiary of the Issuer in a Person if as a result of such Investment (a) such Person becomes a Subsidiary of the Issuer or (b) such Person, in one transaction or a series of related transactions, is merged, consolidated or amalgamated with or into, or transfers or conveys all or substantially all of its assets to, or is liquidated into, the Issuer or a Subsidiary of the Issuer;
- (4) any Investment in securities or other assets not constituting Cash Equivalents and (a) received in connection with an Asset Sale permitted under and made pursuant to the provisions of Section 4.06 or (b) made pursuant to any other disposition of assets not constituting an Asset Sale and otherwise permitted hereunder;
- (5) any Investment acquired by the Issuer or any of its Subsidiaries (a) in exchange for any other Investment or accounts receivable held by the Issuer or any such Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable or (b) as a result of a foreclosure by the Issuer or any of its Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;
- (6) Hedging Obligations permitted under Section 4.03(b)(viii);
- (7) loans and advances to officers, directors and employees (i) for business-related entertainment expenses, travel expenses, moving expenses and other similar expenses, in each case Incurred in the ordinary course of business and (ii) to finance the purchase by such person of Capital Stock or “phantom equity” of the Issuer in an aggregate principal amount not to exceed \$3,000,000 at any time outstanding;
- (8) Investments the payment for which consists of Equity Interests of the Issuer (other than Disqualified Stock) or any direct or indirect parent of the Issuer, as applicable;

(9) Investments consisting of the non-exclusive licensing of Intellectual Property or collaboration agreements, strategic alliances or similar arrangements in respect of Intellectual Property, in each case, for the non-exclusive development or commercialization of Intellectual Property and in the ordinary course of business, that, at the time of such license, collaboration agreement, strategic alliance or similar arrangement, taken as a whole, in the Issuer's judgment, could not reasonably be expected to result in a Material Adverse Change (for the avoidance of doubt, any such license, collaboration, strategic alliance or similar arrangement shall not result in the Issuer or any Subsidiary of the Issuer no longer owning such Intellectual Property);

(10) Investments consisting of or to finance purchases and acquisitions of inventory, supplies, materials, services or equipment or purchases of contract rights or non-exclusive licenses or leases of Intellectual Property, in each case in the ordinary course of business;

(11) Investments of a Subsidiary of the Issuer acquired after the Issue Date or of an entity merged into, amalgamated with, or consolidated with a Subsidiary of the Issuer in a transaction that is not prohibited by Section 5.01 after the Issue Date to the extent that such Investments were not made in contemplation of such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(12) any Investment in any Subsidiary of the Issuer or any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business; and

(13) other Investments not exceeding \$2,000,000 at any time outstanding.

"Permitted Liens" means, with respect to any Person:

(1) pledges or deposits by such Person under workmen's compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, in each case Incurred in the ordinary course of business;

(2) Liens imposed by law, such as carriers', warehousemen's and mechanics' Liens, in each case which are not overdue for a period of more than 45 days or are being contested in good faith by appropriate proceedings or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding in good faith by appropriate proceedings with an appeal or other proceedings for review;

(3) Liens for taxes, assessments or other governmental charges not yet due or payable or subject to penalties for nonpayment or which are being contested in good faith

by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of such Person to the extent required in accordance with GAAP;

(4) Liens in favor of issuers of performance and surety bonds or bid bonds or with respect to other regulatory requirements or letters of credit issued pursuant to the request of and for the account of such Person in the ordinary course of its business, *provided* that, in respect of letters of credit issued for the benefit of customers of the Issuer and its Subsidiaries to secure the performance of the Issuer and its Subsidiaries to such customers in accordance with sales contracts between the Issuer and its Subsidiaries, on the one hand, and such customers, on the other hand, in the ordinary course of business, any liens securing obligations of the Issuer and its Subsidiaries to the issuers of such letters of credit may be secured only with cash received from such customers as customary deposits in connection with sales contracts;

(5) survey exceptions, encumbrances, minor encroachments, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties that were not Incurred in connection with Indebtedness and that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(6) Liens securing Indebtedness permitted to be Incurred pursuant to Section 4.03(b)(iii) and (xiv), *provided* that such Lien applies solely to acquired property or assets of the acquired entity, as the case may be;

(7) Liens securing Working Capital Indebtedness permitted to be Incurred pursuant to Section 4.03(b)(ii), *provided* that such Liens shall be subject to the terms of the Intercreditor Agreement;

(8) Liens securing the Securities or the Guarantees, including Liens arising under or relating to the Security Documents;

(9) Liens on assets, property or shares of stock of a Person at the time such Person becomes a Subsidiary; *provided, however*, that such Liens are not created or Incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary; *provided, further, however*, that such Liens may not extend to any other property owned by the Issuer or any Subsidiary of the Issuer;

(10) Liens on assets or property at the time the Issuer or a Subsidiary of the Issuer acquired the assets or property, including any acquisition by means of a merger, amalgamation or consolidation with or into the Issuer or any Subsidiary of the Issuer; *provided, however*, that such Liens are not created or Incurred in connection with, or in contemplation of, such acquisition; *provided, further, however*, that the Liens may not extend to any other property owned by the Issuer or any Subsidiary of the Issuer;

(11) Liens securing Hedging Obligations not incurred in violation of this Indenture; *provided* that with respect to Hedging Obligations relating to Indebtedness, such Lien extends only to the property securing such Indebtedness;

(12) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(13) leases, subleases, or licenses of real property granted to other Persons that do not materially interfere with the ordinary conduct of the business of the Issuer or any of its Subsidiaries;

(14) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases entered into by the Issuer and its Subsidiaries in the ordinary course of business;

(15) Liens in favor of the Issuer or any Guarantor;

(16) deposits made in the ordinary course of business to secure liability to insurance carriers;

(17) all rights granted under any non-exclusive license, collaboration agreement, strategic alliance or similar arrangement providing for the licensing of Intellectual Property or the non-exclusive development or commercialization of Intellectual Property, in each case in the ordinary course of business, *provided*, that, in the case of an agreement entered into on or after the Issue Date, such license, collaboration agreement, strategic alliance or similar arrangement, taken as a whole, in the judgment of the Issuer when executed, could not reasonably be expected to have a material adverse effect on the business, financial condition or results of operations of the Issuer and its Subsidiaries taken as a whole (for the avoidance of doubt, any such license, collaboration, strategic alliance or similar arrangement shall not result in the Issuer or any Subsidiary of the Issuer no longer owning such Intellectual Property);

(18) Liens on equipment of the Issuer or any Subsidiary granted in the ordinary course of business to the Issuer's or such Subsidiary's client at which such equipment is located;

(19) judgment and attachment Liens not giving rise to an Event of Default and notices of *lis pendens* and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made;

(20) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;

(21) Liens incurred to secure cash management services or to implement cash pooling arrangements in the ordinary course of business;

(22) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection and (ii) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(23) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(24) Liens solely on any cash earnest money deposits made by the Issuer or any of its Subsidiaries in connection with any letter of intent or purchase agreement permitted under this Indenture;

(25) other Liens securing obligations in an aggregate outstanding amount not to exceed (as of the date any such Lien is incurred) \$1,000,000;

(26) Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancings, refundings, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in this clause (26) or the foregoing clauses (6), (7), (9), (10) and (25) of this definition; *provided, however*, that (x) such new Lien shall be limited to all or part of the same property that secured the original Lien (plus improvements on such property), (y) if such Lien secures Working Capital Indebtedness or Refinancing Indebtedness that previously refinanced Working Capital Indebtedness, such new Lien shall be subject to the terms of the Intercreditor Agreement and (z) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (A) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under the applicable clause(s) at the time the original Lien became a Permitted Lien under this Indenture, and (B) an amount necessary to pay any fees and expenses, including premiums, related to such refinancing, refunding, extension, renewal or replacement;

(27) any interest or title of a lessor, sublessor, licensor or sublicensor under any leases, subleases, licenses or sublicenses entered into by the Issuer or any Subsidiary in the ordinary course of business;

(28) ground leases in respect of real property on which facilities owned or leased by the Issuer or any Subsidiary are located; and

(29) any Lien in existence on the Issue Date and set forth on Schedule 4.11² and any Lien granted as a replacement or substitute therefor; *provided* that (A) the obligations secured or benefited by such replacement or substitute Lien are not prohibited by Section 4.03 and (B) any such replacement or substitute Lien (i) does not secure an aggregate amount of Indebtedness or other obligations, if any, greater than that secured on the Issue Date plus any capitalized interest, fees and expenses thereon and (ii) does not

² NTD: Certain IRS and state tax claims are currently under consideration. These will not be listed on Schedule 4.11 when posting on February 16, 2016, but may be proposed to be added by the Debtors for closing.

encumber any property other than (x) the property subject thereto on the Issue Date, (y) after acquired property that is affixed or incorporated into the property covered by such Lien and (z) any proceeds and products thereof.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Issuer or any ERISA Affiliate or any such Plan to which the Issuer or any ERISA Affiliate is required to contribute on behalf of any of its employees and not excluded under Section 4 of ERISA.

“Preferred Stock” means any Equity Interest with preferential right of payment of dividends or upon liquidation, dissolution or winding up.

“Rating Agency” means (1) Moody’s, (2) S&P and (3) any “nationally recognized statistical rating organization” within the meaning of Section 3(a)(62) of the Exchange Act selected by the Issuer or any direct or indirect parent of the Issuer as a replacement agency for Moody’s or S&P, as the case may be.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping or disposing of any Hazardous Material (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Material) into the indoor or outdoor environment, including, without limitation, the movement of Hazardous Materials through or in the ambient air, soil, surface or ground water, or property.

“Remedial Action” means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate or in any other way address Hazardous Materials in the indoor or outdoor environment; (b) prevent or minimize a Release or threatened Release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; (c) perform pre-remedial studies and investigations and post-remedial operation and maintenance activities; or (d) perform any other action defined as a “remedial action” by 42 U.S.C. § 9601.

“Reorganization Transactions” means the transactions described on Schedule RT.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“Restricted Investment” means an Investment other than a Permitted Investment.

“Restricted License” means any license or other agreement with respect to which the Issuer or a Subsidiary is the licensee and such license or agreement is material to the Issuer’s business and (a) that prohibits or otherwise restricts the Issuer or such Subsidiary from granting a security interest in its respective interest in such license or agreement or any other property or (b)

for which a default under or termination of could interfere with the Collateral Agent's or the Holders' right to sell any Notes Collateral.

“S&P” means Standard & Poor's Ratings Services or any successor to the rating agency business thereof.

“Sale/Leaseback Transaction” means an arrangement relating to property now owned or acquired after the Issue Date by the Issuer or a Subsidiary whereby the Issuer or a Subsidiary transfers such property to a Person and the Issuer or such Subsidiary leases it from such Person, other than leases between the Issuer and a Subsidiary of the Issuer or between Subsidiaries of the Issuer.

“SEC” means the United States Securities and Exchange Commission.

“Secured Indebtedness” means any Indebtedness secured by a Lien.

“Securities Act” means the United States Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Security Documents” means the security agreements, pledge agreements, mortgages, deeds of trust, collateral assignments and related agreements, as amended, supplemented, restated, renewed, refunded, replaced, restructured, repaid, refinanced or otherwise modified from time to time, creating, perfecting or otherwise evidencing the security interests in the Notes Collateral as contemplated by this Indenture.

“Stated Maturity” means, with respect to any security, the date specified in such security as the fixed date on which the final payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the happening of any contingency beyond the control of the issuer unless such contingency has occurred).

“Subordinated Indebtedness” means (a) with respect to the Issuer, any Indebtedness of the Issuer that is by its terms subordinated in right of payment to the Securities or (b) with respect to any Guarantor, any Indebtedness of such Guarantor that is by its terms subordinated in right of payment to its Guarantee.

“Subsidiary” means, with respect to any Person, (1) any corporation, association or other business entity (other than a partnership, joint venture or limited liability company) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, and (2) any partnership, joint venture or limited liability company of which (x) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general and limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, whether in the form of membership, general, special or limited partnership interests or otherwise, and (y)

such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity. For purposes of clarity, a Subsidiary of a Person shall not include any Person that is under common control with the first Person solely by virtue of having directors, managers or trustees in common and shall not include any Person that is solely under common control with the first Person (i.e., a sister company with a common parent). Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” refer to a Subsidiary or Subsidiaries of the Issuer.

“TIA” means the Trust Indenture Act of 1939 (15 U.S.C. Sections 77aaa-77bbbb) as in effect on the date of this Indenture.

“Trust Officer” means any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such Person’s knowledge of and familiarity with the particular subject, in each case who shall have direct responsibility for the administration of this Indenture.

“Trustee” means the party named as such in this Indenture until a successor replaces it in accordance with the applicable provisions of this Indenture and, thereafter, means such successor.

“Uniform Commercial Code” means the New York Uniform Commercial Code as in effect from time to time.

“U.S. Government Obligations” means securities that are:

- (1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged, or
- (2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America,

which, in each case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any such U.S. Government Obligations or a specific payment of principal of or interest on any such U.S. Government Obligations held by such custodian for the account of the holder of such depository receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligations or the specific payment of principal of or interest on the U.S. Government Obligations evidenced by such depository receipt.

“Voting Stock” of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness or Disqualified Stock, as the case may be, at any date, the quotient obtained by dividing (1) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock multiplied by the amount of such payment, by (2) the sum of all such payments.

“Wholly Owned Subsidiary” of any Person means a Subsidiary of such Person 100% of the outstanding Capital Stock or other ownership interests of which (other than directors’ qualifying shares or shares required to be held by Subsidiaries not organized or existing under the laws of the United States of America or any state or territory thereof or the District of Columbia) shall at the time be owned by such Person or by one or more Wholly Owned Subsidiaries of such Person.

SECTION 1.02. Other Definitions.

<u>Term</u>	<u>Defined in Section</u>
“Affiliate Transaction”	4.07(a)
“After-Acquired Property”	4.13
“Bankruptcy Law”	6.01
“Base Currency”	12.14(b)(i)(A)
“Change of Control Offer”	4.08(b)
“Confidential Parties”	7.11
“Controlled Account”	4.18
“covenant defeasance option”	8.01(e)
“Custodian”	6.01
“Definitive Security”	Appendix A
“Depository”	Appendix A
“Event of Default”	6.01
“Excess Proceeds”	4.06(b)
“Excluded Accounts”	4.18
“Global Security”	Appendix A
“Guaranteed Obligations”	10.01(a)
“Increased Amount”	4.11
“Judgment Currency”	12.14(b)(i)(A)
“legal defeasance option”	8.01(e)
“OFAC”	“Anti-Money Laundering and Anti-Terrorism Laws” definition
“Offer Period”	4.06(d)
“Paying Agent”	2.04(a)
“Payment Date”	Exhibit A
“PIK Interest”	Exhibit A
“PIK Security”	2.01
“protected purchaser”	2.08

<u>Term</u>	<u>Defined in Section</u>
“Purchase Offer”	4.06(b)
“rate(s) of exchange”	12.14(d)
“QIB”	Appendix A
“Record Date”	Exhibit A
“Refinancing Indebtedness”	4.03(b)(xi)
“Refunding Capital Stock”	4.04(b)(ii)
“Registrar”	2.04(a)
“Restricted Payments”	4.04(a)
“Retired Capital Stock”	4.04(b)(ii)
“Securities”	Preamble
“Securities Custodian”	Appendix A
“Successor Company”	5.01(a)(i)
“Successor Guarantor”	5.01(b)(i)
“Working Capital Credit Line”	4.03(b)(ii)
“Working Capital Indebtedness”	4.03(b)(ii)

SECTION 1.03. Rules of Construction. Unless the context otherwise requires:

- (a) a term has the meaning assigned to it;
- (b) unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with GAAP as defined herein, and an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP as defined herein;
- (c) “or” is not exclusive;
- (d) “including” means including without limitation;
- (e) words in the singular include the plural and words in the plural include the singular;
- (f) unsecured Indebtedness shall not be deemed to be subordinate or junior to Secured Indebtedness merely by virtue of its nature as unsecured Indebtedness;
- (g) the principal amount of any non-interest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the issuer dated such date prepared in accordance with GAAP as defined herein;
- (h) the principal amount of any Preferred Stock shall be (i) the maximum liquidation value of such Preferred Stock or (ii) the maximum mandatory redemption or mandatory repurchase price with respect to such Preferred Stock, whichever is greater;

(i) “\$” and “U.S. Dollars” each refers to United States dollars, or such other money of the United States of America that at the time of payment is legal tender for payment of public and private debts; and

(j) the words “asset” or “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

ARTICLE 2

THE SECURITIES

SECTION 2.01. Amount of Securities. The initial aggregate principal amount of Securities that may be authenticated and delivered under this Indenture on the Issue Date is limited to \$60,000,000. In addition, the Issuer may issue, from time to time in accordance with the provisions of this Indenture, additional PIK Securities. All Securities shall be substantially identical except as to denomination.

In connection with the payment of PIK Interest in respect of the Securities, the Issuer may, without the consent of the Holders and without regard to any restrictions or limitations set forth in Section 4.03 hereof, elect to either increase the outstanding principal amount of the Securities or issue additional Definitive Securities (each, a “PIK Security”) under this Indenture on the same terms and conditions as the Securities. The Securities shall be treated as a single class for all purposes under this Indenture, including directions provided to the Trustee pursuant to Section 6.05, waivers, amendments, redemptions and offers to purchase, and shall rank on a parity basis in right of payment and security. Holders of the Securities will vote and consent together on all matters to which such Holders are entitled to vote or consent as one class, and none of the Holders of the Securities shall have the right to vote or consent as a separate class on any matter to which such Holders are entitled to vote or consent.

SECTION 2.02. Form and Dating. Provisions relating to the Securities are set forth in Appendix A hereto, which is hereby incorporated in and expressly made a part of this Indenture. The Securities and the Trustee’s certificate of authentication shall each be substantially in the form of Exhibit A hereto, which is hereby incorporated in and expressly made a part of this Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange rule, agreements to which the Issuer or any Guarantor is subject, if any, or usage (*provided* that any such notation, legend or endorsement is in a form acceptable to the Issuer). Each Security shall be dated the date of its authentication. Subject to the issuance of PIK Securities or the increase in the principal amount of a Global Security in order to evidence PIK Interest (which PIK Securities or increased principal amount of a Global Security shall be in denominations of \$1.00 or any integral multiple of \$1.00 in excess thereof), the Securities shall be issuable only in registered form, without interest coupons, and in minimum denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof. On any Payment Date on which the Issuer pays PIK Interest with respect to a Global Security, the Trustee shall increase the principal amount of such Global Security by an amount equal to the interest payable as PIK Interest, rounded down to the nearest whole dollar, for the relevant interest period on the principal amount of such Global Security as of the relevant record date for such Payment Date,

to the credit of the Holders on such record date and an adjustment shall be made on the books and records of the Trustee with respect to such Global Security to reflect such increase. On any Payment Date on which the Issuer makes a PIK Interest payment by issuing PIK Securities, the principal amount of any such PIK Security issued to any Holder, for the relevant interest period as of the relevant record date for such Payment Date, shall be rounded down to the nearest whole dollar.

SECTION 2.03. Execution and Authentication. The Trustee shall (a) authenticate and make available for delivery upon a written order of the Issuer signed by one Officer Securities (i) for original issue on the date hereof in an aggregate principal amount of \$60,000,000 and (ii) subject to the terms of this Indenture, PIK Securities in an aggregate principal amount to be determined at the time of issuance and specified therein and (b) increase the principal amount of any Global Security as a result of a PIK Interest payment. Such order shall specify the amount of the Securities to be authenticated, the form in which the Securities are to be authenticated, the date on which the original issue of Securities is to be authenticated and, if such Securities are PIK Securities, whether such Securities shall be PIK Securities or an increase in the principal amount of any Global Security as a result of a PIK Interest payment.

One Officer shall sign the Securities for the Issuer by manual, facsimile or electronic (including “pdf”) signature.

If an Officer whose signature is on a Security no longer holds that office at the time the Trustee authenticates the Security, the Security shall be valid nevertheless.

A Security shall not be valid until an authorized signatory of the Trustee manually signs the certificate of authentication on the Security. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture.

The Trustee may appoint one or more authenticating agents reasonably acceptable to the Issuer to authenticate the Securities. Any such appointment shall be evidenced by an instrument signed by a Trust Officer, a copy of which shall be furnished to the Issuer. Unless limited by the terms of such appointment, an authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as any Registrar, Paying Agent or agent for service of notices and demands.

SECTION 2.04. Registrar and Paying Agent.

(a) The Issuer shall maintain (i) an office or agency where Securities may be presented for registration of transfer or for exchange (the “Registrar”) and (ii) an office or agency where Securities may be presented for payment (the “Paying Agent”). The Registrar shall keep a register of the Securities and of their transfer and exchange. The Issuer may have one or more co-registrars and one or more additional paying agents. The term “Registrar” includes any co-registrars. The term “Paying Agent” includes the Paying Agent and any additional paying agents. The Issuer initially appoints the Trustee as Registrar, Paying Agent and the Securities Custodian with respect to the Global Securities and as Registrar and Paying Agent with respect to the Definitive Securities.

(b) The Issuer may enter into an appropriate agency agreement with any Registrar or Paying Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such agent. The Issuer shall notify the Trustee of the name and address of any such agent. If the Issuer fails to maintain a Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.06. The Issuer or any of its domestically organized Wholly Owned Subsidiaries may act as Paying Agent or Registrar.

(c) The Issuer may remove any Registrar or Paying Agent without prior notice to the Holders of the Securities, but upon written notice to such Registrar or Paying Agent and to the Trustee; *provided, however*, that no such removal shall become effective until (i) if applicable, acceptance of an appointment by a successor as evidenced by an appropriate agreement entered into by the Issuer and such successor Registrar or Paying Agent, as the case may be, and delivered to the Trustee or (ii) notification to the Trustee that the Trustee shall serve as Registrar or Paying Agent until the appointment of a successor in accordance with clause (i) above. The Registrar or Paying Agent may resign at any time upon written notice to the Issuer and the Trustee; *provided, however*, that the Trustee may resign as Paying Agent or Registrar only if the Trustee also resigns as Trustee in accordance with Section 7.07.

SECTION 2.05. Paying Agent to Hold Money in Trust. On or prior to 12:00 noon (New York City time) on each due date of the principal of or interest on any Security, the Issuer shall deposit with each Paying Agent (or if the Issuer or a Wholly Owned Subsidiary is acting as Paying Agent, segregate and hold in trust for the benefit of the Persons entitled thereto) a sum sufficient to pay such principal and interest when so becoming due. The Issuer shall require each Paying Agent (other than the Trustee) to agree in writing that such Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by such Paying Agent for the payment of principal of and interest on the Securities, and shall notify the Trustee of any default by the Issuer in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay to the Trustee all money held by it in trust for payment in respect of the Securities. If the Issuer or a Wholly Owned Subsidiary of the Issuer acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it in trust for the benefit of the Persons entitled thereto. Upon any bankruptcy or reorganization proceedings relating to the Issuer, the Trustee will serve as Paying Agent if not otherwise so acting. The Issuer at any time may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed by such Paying Agent. Upon complying with this Section 2.05, a Paying Agent shall have no further liability for the money delivered to the Trustee.

SECTION 2.06. Holder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the Trustee is not the Registrar, the Issuer shall furnish, or cause the Registrar to furnish, to the Trustee, in writing annually at least five Business Days before each anniversary of the Issue Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders. The Issuer shall also maintain a copy of such list of the names and addresses of Holders at its registered office.

SECTION 2.07. Transfer and Exchange. The Securities shall be issued in registered form and shall be transferable only upon the surrender of a Security for registration of transfer and in compliance with Appendix A. When a Security is presented to the Registrar with a request to register a transfer, the Registrar shall register the transfer as requested if its requirements therefor are met. When Securities are presented to the Registrar with a request to exchange them for an equal principal amount of Securities of other denominations, the Registrar shall make the exchange as requested if the same requirements are met. To permit registration of transfers and exchanges, the Issuer shall execute and the Trustee shall authenticate Securities at the Registrar's request. No service charge will be made to a Holder for any registration of transfer or exchange of the Securities, but the Issuer may require payment from the Holder of a sum sufficient to pay all taxes (including transfer taxes), assessments or other governmental charges in connection with any transfer or exchange pursuant to this Section 2.07. Upon any transfer or exchange, the Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents. The Issuer shall not be required to make, and the Registrar need not register, transfers or exchanges of Securities selected for redemption (except, in the case of Securities to be redeemed in part, the portion thereof not to be redeemed) or of any Securities for a period of 15 days prior to a selection of Securities to be redeemed.

Prior to the due presentation for registration of transfer of any Security, the Issuer, the Guarantors, the Trustee, the Paying Agent and the Registrar shall deem and treat the Person in whose name a Security is registered as the absolute owner of such Security for the purpose of receiving payment of principal of, and interest, if any, on, such Security and for all other purposes whatsoever, whether or not such Security is overdue, and none of the Issuer, any Guarantor, the Trustee, the Paying Agent or the Registrar shall be affected by notice to the contrary.

Any holder of a beneficial interest in a Global Security shall, by acceptance of such beneficial interest, agree that transfers of beneficial interests in such Global Security may be effected only through a book-entry system maintained by (a) the Holder of such Global Security (or its agent) or (b) any holder of a beneficial interest in such Global Security, and that ownership of a beneficial interest in such Global Security shall be required to be reflected in a book entry.

All Securities issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Securities surrendered upon such transfer or exchange.

SECTION 2.08. Replacement Securities. If a mutilated Security is surrendered to the Registrar or if the Holder of a Security claims that the Security has been lost, destroyed or wrongfully taken, the Issuer shall issue and the Trustee shall authenticate a replacement Security if the requirements of Section 8-405 of the Uniform Commercial Code are met, such that the Holder (a) satisfies the Issuer or the Trustee that such Security has been lost, destroyed or wrongfully taken within a reasonable time after such Holder has notice of such loss, destruction or wrongful taking and the Registrar has not registered a transfer prior to receiving such notification, (b) makes such request to the Issuer or the Trustee prior to the Security being acquired by a protected purchaser as defined in Section 8-303 of the Uniform Commercial Code

(a “protected purchaser”) and (c) satisfies any other reasonable requirements of the Trustee. If required by the Trustee or the Issuer, such Holder shall furnish an indemnity bond sufficient in the judgment of the Trustee and the Issuer to protect the Issuer, each Guarantor, the Trustee, the Paying Agent and the Registrar from any loss that any of them may suffer if a Security is replaced. The Issuer and the Trustee may charge the Holder for their expenses in replacing a Security (including attorneys’ fees and disbursements in replacing such Security). In the event any such mutilated, lost, destroyed or wrongfully taken Security has become or is about to become due and payable, the Issuer in its discretion may pay such Security instead of issuing a new Security in replacement thereof.

Every replacement Security is an additional obligation of the Issuer and will be entitled to all of the benefits of this Indenture equally and proportionately with all other Securities duly issued hereunder.

The provisions of this Section 2.08 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, lost, destroyed or wrongfully taken Securities.

SECTION 2.09. Outstanding Securities. Securities outstanding at any time are all Securities authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation and those described in this Section 2.09 as not outstanding. Subject to Section 12.04, a Security does not cease to be outstanding because the Issuer or an Affiliate of the Issuer holds the Security.

If a Security is replaced pursuant to Section 2.08 (other than a mutilated Security surrendered for replacement), it ceases to be outstanding unless the Trustee and the Issuer receive proof satisfactory to them that the replaced Security is held by a protected purchaser. A mutilated Security ceases to be outstanding upon surrender of such Security and replacement thereof pursuant to Section 2.08.

If a Paying Agent segregates and holds in trust, in accordance with this Indenture, on a redemption date or maturity date money sufficient to pay all principal and interest payable on that date with respect to the Securities (or portions thereof) to be redeemed or maturing, as the case may be, and no Paying Agent is prohibited from paying such money to the Holders on that date pursuant to the terms of this Indenture, then on and after that date such Securities (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

SECTION 2.10. Temporary Securities. In the event that Definitive Securities are to be issued under the terms of this Indenture, until such Definitive Securities are ready for delivery, the Issuer may prepare and the Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of Definitive Securities but may have variations that the Issuer considers appropriate for temporary Securities. Without unreasonable delay, the Issuer shall prepare and the Trustee shall authenticate Definitive Securities and make them available for delivery in exchange for temporary Securities upon surrender of such temporary Securities at the office or agency of the Issuer, without charge to the Holder. Until such exchange, temporary Securities shall be entitled to the same rights, benefits and privileges as Definitive Securities under this Indenture.

SECTION 2.11. Cancellation. The Issuer at any time may deliver Securities to the Trustee for cancellation. The Registrar and each Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else shall cancel all Securities surrendered for registration of transfer, exchange, payment or cancellation and shall dispose of canceled Securities in accordance with its customary procedures. Certification of the destruction of all cancelled Securities shall be delivered to the Issuer. The Issuer may not issue new Securities to replace Securities it has redeemed, paid or delivered to the Trustee for cancellation. The Trustee shall not authenticate Securities in place of canceled Securities other than pursuant to the terms of this Indenture.

SECTION 2.12. Defaulted Interest. If the Issuer defaults in a payment of interest on the Securities, the Issuer shall pay the defaulted interest then borne by the Securities at the applicable rate set forth in the Securities (plus interest on such defaulted interest, at the applicable rate set forth in the Securities, to the extent lawful) in any lawful manner. The Issuer may pay the defaulted interest to the Persons who are Holders on a subsequent special record date. The Issuer shall fix or cause to be fixed any such special record date and payment date and shall promptly provide or cause to be provided to the Trustee a written notice that states the special record date, the payment date and the amount of defaulted interest to be paid. The special record date for the payment of such defaulted interest shall not be more than 15 days and shall not be less than 10 days prior to the proposed payment date and shall not be less than 10 days after the receipt by the Trustee of the notice of the proposed payment. Promptly following receipt of such written notice from the Issuer, the Trustee, in the name and expense of the Issuer, shall cause notice of the proposed payment of defaulted interest and the special record date therefor to be mailed, first-class postage prepaid, to each Holder not less than 10 days prior to such special record date.

SECTION 2.13. CUSIP Numbers, ISINs, etc. The Issuer in issuing the Securities may use CUSIP numbers, ISINs and “Common Code” numbers (if then generally in use) and, if so, the Trustee shall use CUSIP numbers, ISINs and “Common Code” numbers in notices (including notices of redemption or purchase) as a convenience to Holders; *provided, however,* that any such notice may state that no representation is made as to the correctness of such numbers, either as printed on the Securities or as contained in any notice that reliance may be placed only on the other identification numbers printed on the Securities and that any such notice shall not be affected by any defect in or omission of such numbers. The Issuer shall advise the Trustee of any change in the CUSIP numbers, ISINs and “Common Code” numbers.

SECTION 2.14. Calculation of Principal Amount of Securities. The aggregate principal amount of the Securities, at any date of determination, shall be the principal amount of the Securities at such date of determination. With respect to any matter requiring consent, waiver, approval or other action of the Holders of a specified percentage of the principal amount of all the Securities, such percentage shall be calculated, on the relevant date of determination, by dividing (a) the principal amount, as of such date of determination, of Securities, the Holders of which have so consented, waived, approved or taken other action by (b) the aggregate principal amount, as of such date of determination, of the Securities then outstanding, in each case, as determined in accordance with the preceding sentence, Section 2.09 and Section 12.04. Any such calculation made pursuant to this Section 2.14 shall be made by the Issuer and delivered to the Trustee pursuant to an Officer’s Certificate. The Issuer and the Trustee agree that

any action of the Holders may be evidenced by the DTC applicable procedures or by such other procedures as the Issuer and Trustee may agree.

SECTION 2.15. Statement to Holders. After the end of each calendar year but not later than the latest date permitted by applicable law, the Trustee shall (or shall instruct any Paying Agent to) furnish to each Person who at any time during such calendar year was a Holder a statement (for example, a Form 1099 or any other means required by applicable law) prepared by the Trustee containing the interest and original issue discount paid with respect to the Securities for such calendar year or, in the event such Person was a Holder during only a portion of such calendar year, for the applicable portion of such calendar year, and such other items as are readily available to the Trustee and that a Holder shall reasonably request as necessary for the purpose of such Holder's preparation of its U.S. federal income or other tax returns. So long as any of the Securities are registered in the name of DTC or its nominee, such report and such other items will be prepared on the basis of such information supplied to the Trustee by DTC and members of, or direct or indirect participants in, DTC and will be delivered by the Trustee to DTC and by DTC to the applicable beneficial holders of Securities in the manner described above. In the event that any such information has been provided by any Paying Agent directly to such Person through other tax-related reports or otherwise, the Trustee in its capacity as Paying Agent shall not be obligated to comply with such request for information.

ARTICLE 3

REDEMPTION

SECTION 3.01. Optional Redemption. The Securities may be redeemed by the Issuer at its option, in whole, or from time to time in part, on any Business Day specified by the Issuer, subject to the conditions set forth in the form of Security set forth in Exhibit A hereto, which is hereby incorporated by reference and made a part of this Indenture, at a redemption price equal to 100% of the principal amount of the Securities redeemed plus all accrued and unpaid interest, at the applicable rate set forth in the Securities, to the redemption date.

SECTION 3.02. Applicability of Article. Redemption of Securities at the election of the Issuer or otherwise, as permitted or required by any provision of this Indenture, shall be made in accordance with such provision and this Article 3.

SECTION 3.03. Notices to Trustee. If the Issuer elects to redeem Securities pursuant to the optional redemption provisions of Paragraph 5 of the Security, it shall notify the Trustee in writing of (i) the Section of this Indenture and the Paragraph of the Security (if any) pursuant to which the redemption shall occur, (ii) the redemption date, (iii) the principal amount of Securities to be redeemed and (iv) the redemption price.

The Issuer shall provide written notice to the Trustee provided for in this Section 3.03 at least 30 days but not more than 60 days before a redemption date, unless a shorter period is acceptable to the Trustee. If fewer than all the Securities are to be redeemed, the record date relating to such redemption shall be selected by the Issuer and given to the Trustee, which record date shall be not fewer than 15 days after the date of notice to the Trustee. Any such notice may

be canceled at any time prior to written notice of such redemption being provided to any Holder pursuant to Section 3.05 of this Indenture and shall thereby be void and of no effect.

SECTION 3.04. Selection of Securities to Be Redeemed. In the case of any partial redemption, and if the Securities are Global Securities held by the Depository, the Depository will select the Securities to be redeemed in accordance with its operational arrangements. If the Securities are not Global Securities held by the Depository, selection of the Securities for redemption will be made by the Trustee on a pro rata basis to the extent practicable or such other method the Trustee deems fair and appropriate; *provided* that no Securities of \$1,000 or less shall be redeemed in part. The Trustee shall make the selection from outstanding Securities not previously called for redemption. The Trustee may select for redemption portions of the principal of Securities that have denominations larger than \$1,000. Securities and portions of them the Trustee selects shall be in amounts of \$1,000 or any integral multiple of \$1,000 in excess thereof (or if a PIK Interest payment has been made, in minimum denominations of \$1.00 and any integral multiple of \$1.00 in excess thereof with respect to a PIK Security or the portion of a Global Security constituting PIK Interest); except that if all of the Securities of a Holder are to be redeemed or purchased, the entire outstanding amount of Securities held by such Holder shall be redeemed or purchased. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption. The Trustee shall notify the Issuer promptly of the Securities or portions of Securities to be redeemed.

SECTION 3.05. Notice of Redemption.

(a) At least 30 days but not more than 60 days before any redemption date if the redemption is an optional redemption pursuant to Paragraph 5 of the Security, the Issuer shall provide or cause to be provided (either by electronic transmission (including “pdf” on letterhead (if applicable) and signed by an authorized signer) or by first class mail) a written notice of redemption to each Holder whose Securities are to be redeemed, except that redemption notices may be provided more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Securities or a discharge of this Indenture pursuant to Article 8 hereof.

Any such notice shall identify the Securities to be redeemed and shall state:

- (i) the redemption date;
- (ii) the redemption price, equal to 100% of the principal amount thereof and the amount of all accrued (and accruing) and unpaid interest thereon to the redemption date at the applicable rate set forth in the Securities;
- (iii) the name and address of the Paying Agent;
- (iv) that Securities called for redemption must be surrendered to the Paying Agent to collect the redemption price, plus accrued interest;
- (v) that all outstanding Securities are to be redeemed or, if fewer than all the outstanding Securities are to be redeemed, the certificate numbers and principal amounts of the particular Securities to be redeemed, the aggregate

principal amount of Securities to be redeemed and the aggregate principal amount of Securities to be outstanding after such partial redemption;

(vi) that, unless the Issuer defaults in making such redemption payment or the Paying Agent is prohibited from making such payment pursuant to the terms of this Indenture, interest on Securities (or portion thereof) called for redemption ceases to accrue on and after the redemption date;

(vii) the CUSIP number, ISIN and/or “Common Code” number, if any, printed on the Securities being redeemed;

(viii) that no representation is made as to the correctness or accuracy of the CUSIP number or ISIN and/or “Common Code” number, if any, listed in such notice or printed on the Securities; and

(ix) such other matters as the Issuer deems desirable or appropriate.

Notice of any redemption may, at the Issuer’s direction, be subject to one or more conditions precedent, including the receipt by the Trustee, on or prior to the redemption date, of money sufficient to pay the principal of, and interest on, the Securities being redeemed and, at the Issuer’s discretion, the redemption date may be delayed until such time (including more than 60 days after the date the redemption notice was mailed or delivered, including by electronic transmission) as any or all such conditions are satisfied (or waived by the Issuer in its sole discretion), or if in the good faith judgment of the Issuer any or all of such conditions will not be satisfied, such notice may be rescinded.

(b) At the Issuer’s request, the Trustee shall give the notice of redemption in the Issuer’s name and at the Issuer’s expense. In such event, the Issuer shall provide the Trustee with the information required by this Section 3.05 at least five (5) Business Days (unless the Trustee consents to a shorter period) prior to the date such notice is to be provided to Holders. Once received by the Trustee, delivery of such notice to the Holders may not be canceled but may be subject to such conditions precedent as shall be set forth in such notice. The Issuer may provide in such notice that payment of the redemption price and performance of the Issuer’s obligations with respect to such redemption may be performed by another Person.

SECTION 3.06. Effect of Notice of Redemption. Once written notice of redemption is provided in accordance with this Article III, Securities called for redemption become due and payable on the redemption date and at the redemption price stated in the notice, subject to the satisfaction or waiver of any conditions precedent in the notice of redemption. Upon surrender to the Paying Agent, such Securities shall be paid at the redemption price stated in the notice, plus accrued interest, to, but not including, the redemption date; *provided, however*, that if the redemption date is after a Record Date and on or prior to the related Payment Date, the accrued interest shall be payable to the Holder of the redeemed Securities registered at the Issuer’s close of business on such Record Date. Failure to give notice or any defect in the notice to any Holder shall not affect the validity of the notice to any other Holder.

SECTION 3.07. Deposit of Redemption Price. With respect to any Securities, prior to 12:00 noon, New York City time, on the redemption date, the Issuer shall deposit with

the Paying Agent (or, if the Issuer or a Wholly Owned Subsidiary is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the redemption price (equal to 100% of the principal amount and the amount of all accrued (and accruing) and unpaid interest to the redemption date) of all Securities or portions thereof to be redeemed on that date other than Securities or portions of Securities called for redemption that have been delivered by the Issuer to the Trustee for cancellation. On and after the redemption date, interest shall cease to accrue on Securities or portions thereof called for redemption so long as the Issuer has deposited with the Paying Agent funds sufficient to pay the principal of, plus accrued and unpaid interest on, the Securities to be redeemed, unless the Paying Agent is prohibited from making such payment pursuant to the terms of this Indenture. The Trustee or the Paying Agent will promptly return to the Issuer any money deposited with the Trustee or the Paying Agent by the Issuer in excess of the amounts necessary to pay the redemption or purchase price of, and accrued and unpaid interest, if any, on, all Securities to be redeemed or purchased.

SECTION 3.08. Securities Redeemed in Part. Upon surrender of a Security that is redeemed in part, the Issuer shall execute and the Trustee shall authenticate for the Holder (at the Issuer's expense) a new Security equal in principal amount to the unredeemed portion of the Security surrendered. It is understood that, notwithstanding anything in this Indenture to the contrary, only an authentication order and not an Opinion of Counsel or Officer's Certificate is required for the Trustee to authenticate such new Security.

ARTICLE 4

COVENANTS

SECTION 4.01. Payment of Securities.

(a) The Issuer shall promptly pay the principal of and interest on the Securities on the dates and in the manner provided in the Securities and in this Indenture. An installment of principal or interest shall be considered paid on the date due if on such date the Trustee or the Paying Agent holds, as of 12:00 noon New York City time, money sufficient to pay all principal and interest then due and the Trustee or the Paying Agent, as the case may be, is not prohibited from paying such money to the Holders on that date pursuant to the terms of this Indenture; *provided* that, if the Issuer elects to pay interest in the form of PIK Interest in the manner provided for herein and in the Securities, then all such interest paid in the form of PIK Interest shall be considered paid or duly provided for, for all purposes of this Indenture, and shall not be considered overdue. PIK Interest shall be considered paid on the date due if on such date the Trustee has received (i) a written order from the Issuer signed by one Officer to increase the balance of any Global Security to reflect such PIK Interest or (ii) PIK Securities duly executed by the Issuer together with a written order of the Issuer signed by one Officer requesting the authentication of such PIK Securities by the Trustee.

(b) The Issuer shall pay interest on overdue principal at the applicable rate specified therefor in the Securities for the applicable period, and it shall pay interest on overdue installments of interest at the applicable rate specified in the Securities for the applicable period to the extent lawful.

SECTION 4.02. Reports and Other Information.

(a) Annual Financials. The Issuer shall deliver to the Trustee, as soon as available, but in any event within 120 days (or such earlier date on which the Issuer is required to file a Form 10-K under the Exchange Act, if applicable) after the end of each fiscal year of the Issuer, beginning with the fiscal year ending December 31, 2016, a consolidated balance sheet of the Issuer and its Subsidiaries as of the end of such fiscal year, and the related consolidated statements of income, cash flows and stockholders' equity for such fiscal year, setting forth in each case (commencing with the fiscal year ending December 31, 2017) in comparative form the figures for the previous fiscal year, all prepared in accordance with GAAP, with such consolidated financial statements to be audited and accompanied by (i) a management letter that describes the financial condition and results of operations of the Issuer and its consolidated Subsidiaries as of and for such reporting period in reasonable detail, (ii) a report and opinion of the Issuer's independent certified public accounting firm of recognized national standing (which report and opinion shall be prepared in accordance with GAAP), stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of the Issuer as of the dates and for the periods specified in accordance with GAAP, and (iii) (if and only if the Issuer is required to comply with the internal control provisions pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 requiring an attestation report of such independent certified public accounting firm) an attestation report of such independent certified public accounting firm as to the Issuer's internal controls pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 attesting that such internal controls meet the requirements of the Sarbanes-Oxley Act of 2002; *provided, however*, that the Issuer shall be deemed to have made such delivery of such consolidated financial statements if such consolidated financial statements shall have been made available for free within the time period specified above on the SEC's EDGAR system (or any successor system adopted by the SEC).

(b) Quarterly Financials. The Issuer shall deliver to the Trustee, as soon as available, but in any event within 60 days (or such earlier date on which the Issuer is required to file a Form 10-Q under the Exchange Act, if applicable) after the end of each of the first three fiscal quarters of each fiscal year of the Issuer, beginning with the fiscal quarter ending June 30, 2016, a consolidated balance sheet of the Issuer and its Subsidiaries as of the end of such fiscal quarter, and the related consolidated statements of income, cash flows and stockholders' equity for such fiscal quarter and (in respect of the second and third fiscal quarters of such fiscal year) for the then-elapsed portion of the Issuer's fiscal year, setting forth in each case (commencing with the fiscal quarter ending June 30, 2017) in comparative form the figures for the comparable period or periods in the previous fiscal year, all prepared in accordance with GAAP, with such consolidated financial statements to be accompanied by a management letter that describes the financial condition and results of operations of the Issuer and its consolidated Subsidiaries as of and for such reporting period in reasonable detail; *provided, however*, that the Issuer shall be deemed to have made such delivery of such consolidated financial statements if such consolidated financial statements shall have been made available for free within the time period specified above on the SEC's EDGAR system (or any successor system adopted by the SEC). Such consolidated financial statements shall be certified by a Financial Officer as, to his or her knowledge, fairly presenting, in all material respects, the consolidated financial condition, results of operations and cash flows of the Issuer and its Subsidiaries as of the dates and for the periods specified in accordance with GAAP consistently applied, and on a basis consistent with the

audited consolidated financial statements referred to under Section 4.02(a), subject to normal year-end audit adjustments, the absence of footnotes, and changes in GAAP that have come into effect since the delivery of audited consolidated financial statements referred to under Section 4.02(a).

(c) Monthly Financials. The Issuer shall deliver to the Trustee, as soon as available, but in any event within 45 days after the end of the first two months of each fiscal quarter of each fiscal year of the Issuer, beginning with the month ending July 31, 2016, a consolidated statement of cash flows for such month and for the period from the beginning of the fiscal year (or in the case of the fiscal year ending December 31, 2016, from June 30, 2016) to the end of such month, in substantially the form provided to the Holders prior to the date hereof. Such consolidated statement of cash flows shall be certified by a Financial Officer as, to his or her knowledge, fairly presenting, in all material respects, the consolidated cash flows of the Issuer and its Subsidiaries as of the dates and for the periods presented therein.

(d) Budget. The Issuer shall deliver to the Trustee, as soon as available, but in any event 30 days before the end of each fiscal year of the Issuer, a budget and business plan for the next fiscal year, approved by the Board of Directors of the Issuer, including balance sheets, statements of income, and statements of cash flow.

(e) Compliance with Indenture. The Issuer shall deliver to the Trustee, within 150 days after the end of each fiscal year of the Issuer, commencing with respect to the fiscal year ending December 31, 2016, an Officer's Certificate certifying that to such Officer's actual knowledge there is no Default or Event of Default that has occurred and is continuing or, if such Officer does know of any such Default or Event of Default, such Officer shall include in such certificate a description of such Default or Event of Default and its status with particularity.

(f) Information During Event of Default. The Issuer shall deliver to the Trustee, promptly, such additional information regarding the business or financial affairs of the Issuer or any of its Subsidiaries, or compliance with the terms of this Indenture, as the Trustee, any Holder or any holder of beneficial interests in the Securities may from time to time reasonably request during the existence of any Event of Default (subject to reasonable requirements of confidentiality, including requirements imposed by law or contract; and provided that the Issuer shall not be obligated to disclose any information that is reasonably subject to the assertion of attorney-client privilege).

(g) [Reserved].

(h) Other Information. Promptly (but in no event later than five Business Days after any Officer obtains knowledge thereof), the Issuer shall notify the Trustee in writing of any of the following:

- (i) the occurrence of any Default or Event of Default;
- (ii) the occurrence of any event which would trigger a Purchase Offer under the terms of this indenture;

(iii) the commencement of any litigation, investigation or proceeding affecting the Issuer or any Subsidiary that would reasonably be expected to result in a Material Adverse Change;

(iv) any notice of any violation received by the Issuer or any Subsidiary from any Governmental Authority (including with respect to non-compliance with environmental laws or delinquent or unpaid tax liabilities) that would reasonably be expected to result in a Material Adverse Change;

(v) any labor controversy that has resulted in a strike or other work action against the Issuer or any Subsidiary thereof that would reasonably be expected to result in a Material Adverse Change;

(vi) the acquisition by the Issuer or any Subsidiary of any margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System of the United States);

(vii) the occurrence of any ERISA Event (or equivalent event in any foreign jurisdiction applicable to the Issuer or any Subsidiary, as identified in the Issuer's financial statements) that would reasonably be expected to result in a Material Adverse Change;

(viii) the occurrence of any other event that would reasonably be expected to result in a Material Adverse Change; and

(ix) from time to time such other information regarding the business, affairs or financial condition of the Issuer or its Subsidiaries as the Trustee, any Holder or any holder of beneficial interests in the Securities may from time to time reasonably request (subject to reasonable requirements of confidentiality, including requirements imposed by law or contract; and provided that the Issuer shall not be obligated to disclose any information that is reasonably subject to the assertion of attorney-client privilege).

Each notice delivered under this clause (h) shall be accompanied by a statement of a Financial Officer or other executive officer of the Issuer setting forth the details of the event or development requiring such notice and, if applicable, any action taken or proposed to be taken with respect thereto.

(i) Communication of Information.

(i) The Trustee will not disclose or make available to any Holder (or any holder of a beneficial interest in the Securities) any reports or other information that it receives from the Issuer or any Guarantor pursuant to this Section 4.02 unless the Issuer notifies the Trustee in writing that such Holder (or holder) has executed and delivered to the Issuer a confidentiality agreement in form and substance reasonably acceptable to the Issuer in accordance with the terms of this Indenture. The Issuer shall provide the Trustee with a list of such Holders (or holders of beneficial interests in the Securities) and shall update such

list after the execution and delivery to the Issuer of a confidentiality agreement by any Person not already party to such a confidentiality agreement with the Issuer.

(ii) Delivery of information under this Section 4.02 to the Trustee shall be for informational purposes only, and the Trustee's receipt thereof shall not constitute constructive notice of any information contained therein or determinable from any information contained therein, including compliance by the Issuer or any of its Subsidiaries with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates or certificates or statements delivered to the Trustee pursuant to Section 4.02(d)). Neither the Issuer nor the Guarantors shall be obligated to deliver any confidential reports or other confidential information to any Holder (or any holder of beneficial interests in the Securities) who has not executed a confidentiality agreement in accordance with the terms of this Indenture.

SECTION 4.03. Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

(a) The Issuer shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, incur any Indebtedness (including Acquired Indebtedness) or issue any shares of Disqualified Stock.

(b) The limitations set forth in Section 4.03(a) shall not apply to:

(i) the Incurrence by any of the Issuer and the Guarantors of Indebtedness represented by the Securities and the Guarantees;

(ii) the Incurrence of Indebtedness of the Issuer and the Guarantors in respect to a working capital line of credit in an amount not to exceed \$15,000,000 at any one time outstanding (the "Working Capital Credit Line" and the Indebtedness to be Incurred thereunder, the "Working Capital Indebtedness"), subject to satisfaction of the following conditions:

(1) prior to entering into the Working Capital Credit Line, the Issuer shall have delivered to the Trustee the financial statements described in Section 4.02(a) for the fiscal year ending December 31, 2016;

(2) the Issuer shall be in compliance with the covenant in Section 4.02 and no other Default or Event of Default exists both immediately before and immediately after giving *pro forma* effect to (A) the Issuer's entry into such Working Capital Credit Line, (B) any increase in the aggregate commitments to extend credit under the Working Capital Credit Line, and (C) each Incurrence of Working Capital Indebtedness under such Working Capital Credit line;

(3) the Issuer shall deliver to the Trustee an Officer's Certificate certifying and containing reasonably detailed calculations and supporting data demonstrating compliance with the applicable financial conditions set forth in Exhibit D; and

(4) in the event such Working Capital Indebtedness is secured, any Lien securing such Working Capital Indebtedness shall be subject to the terms of the Intercreditor Agreement;

(iii) Indebtedness (including Capitalized Lease Obligations) Incurred by the Issuer or any Subsidiary of the Issuer, and Disqualified Stock issued by the Issuer or any Subsidiary of the Issuer, to finance (whether prior to or within 180 days after) the acquisition, lease, construction, repair, replacement or improvement of property (real or personal) or fixtures or equipment (whether through the direct purchase of assets or the Capital Stock of any Person owning such assets) in an aggregate principal amount that, when aggregated with the principal amount of all other Indebtedness and Disqualified Stock then outstanding that was Incurred pursuant to this clause (iii), does not exceed \$2,000,000 at any time outstanding;

(iv) Indebtedness Incurred by the Issuer or any of its Subsidiaries constituting reimbursement obligations with respect to (i) letters of credit and bank guarantees issued in the ordinary course of business, including letters of credit in respect of workers' compensation claims, health, disability or other benefits to employees or former employees or their families or property, casualty or liability insurance or self-insurance, (ii) letters of credit in connection with the maintenance of, or pursuant to the requirements of, environmental or other permits or licenses from Governmental Authorities, or other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims and (iii) letters of credit issued for the benefit of customers of the Issuer and its Subsidiaries to secure the performance of the Issuer and its Subsidiaries in the ordinary course of business;

(v) Indebtedness arising from agreements of the Issuer or a Subsidiary providing for indemnification, adjustment of purchase price or similar obligations, in each case, Incurred in connection with any acquisition or disposition of any business, any assets or a Subsidiary of the Issuer in accordance with the terms of this Indenture, other than guarantees of Indebtedness Incurred by any Person (other than the Issuer or a Subsidiary of the Issuer) acquiring all or any portion of such business, assets or Subsidiary for the purpose of financing such acquisition;

(vi) Indebtedness of the Issuer to a Subsidiary; *provided* that any such Indebtedness owed to a Subsidiary that is not a Guarantor is subordinated in right of payment to the obligations of the Issuer under the Securities; *provided, further*, that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Subsidiary ceasing to be a Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Issuer or another Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien) shall be deemed, in each case, to be an Incurrence of such Indebtedness not permitted by this clause (vi);

(vii) Indebtedness of a Subsidiary to the Issuer or another Subsidiary of the Issuer; *provided*, that if a Guarantor Incurs such Indebtedness to a Subsidiary of the Issuer that is not a Guarantor, such Indebtedness is expressly subordinated in right of payment to the Guarantee of the Securities of such Guarantor; *provided, further*, that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Subsidiary of the Issuer holding such Indebtedness ceasing to be a Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Issuer or another Subsidiary of the Issuer or any pledge of such Indebtedness constituting a Permitted Lien) shall be deemed, in each case, to be an Incurrence of such Indebtedness not permitted by this clause (vii);

(viii) Hedging Obligations of the Issuer or any Subsidiary that are not Incurred for speculative purposes but: (1) for the purpose of fixing or hedging interest rate risk with respect to any Indebtedness that is permitted by the terms of this Indenture to be outstanding; (2) for the purpose of fixing or hedging currency exchange rate risk with respect to any currency exchanges; or (3) for the purpose of fixing or hedging commodity price risk with respect to any commodity purchases or sales;

(ix) obligations (including reimbursement obligations with respect to letters of credit and bank guarantees to the extent secured by Liens permitted under clause (4) of the definition of “Permitted Liens”) in respect of performance, bid, appeal and surety bonds and completion guarantees provided by the Issuer or any Subsidiary in the ordinary course of business;

(x) any guarantee by the Issuer or a Subsidiary of the Issuer of Indebtedness or other obligations of the Issuer or any other Subsidiary of the Issuer so long as the Incurrence of such Indebtedness Incurred by the Issuer or such other Subsidiary of the Issuer is permitted under the terms of this Indenture; *provided* that if such Indebtedness is by its express terms subordinated in right of payment to the Securities or the Guarantee of a Guarantor, as applicable, any such guarantee of such Guarantor with respect to such Indebtedness shall be subordinated in right of payment to such Guarantor’s Guarantee with respect to the Securities substantially to the same extent as such Indebtedness is subordinated to the Securities or the Guarantee of such Guarantor, as applicable;

(xi) Indebtedness or Disqualified Stock of (x) the Issuer or any Guarantor incurred to finance an acquisition of any property or assets or (y) Persons that are acquired by the Issuer or any Guarantor or merged, consolidated or amalgamated with or into the Issuer or a Guarantor in accordance with the terms of this Indenture, which when aggregated with the principal amount or liquidation preference of all other Indebtedness and Disqualified Stock then outstanding and Incurred pursuant to this clause (xi), does not exceed \$2,000,000 at any one time outstanding;

(xii) Indebtedness or Disqualified Stock of the Issuer or any Subsidiary in an aggregate principal amount that, when aggregated with the principal amount of all other Indebtedness and Disqualified Stock then outstanding and Incurred pursuant to this clause (xii), does not exceed \$2,000,000 at any time outstanding;

(xiii) the Incurrence by the Issuer or any Guarantor of Indebtedness or Disqualified Stock of a Guarantor that serves to refund, refinance or defease any Indebtedness Incurred or Disqualified Stock issued as permitted under this clause (xiii) or clauses (ii), (iii), (xi), (xii) or (xv) of this Section 4.03(b) or any Indebtedness or Disqualified Stock Incurred to so refund or refinance such Indebtedness or Disqualified Stock, including any additional Indebtedness or Disqualified Stock Incurred to pay premiums (including tender premiums), fees, expenses and defeasance costs in connection therewith (subject to the following proviso, "Refinancing Indebtedness") prior to its respective maturity; *provided* that such Refinancing Indebtedness:

(1) has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is Incurred that is not less than the shorter of (x) the remaining Weighted Average Life to Maturity of the Indebtedness or Disqualified Stock being refunded, refinanced or defeased and (y) the Weighted Average Life to Maturity that would result if all payments of principal on the Indebtedness and Disqualified Stock being refunded or refinanced that were due on or after the date that is one year following the last maturity date of any Securities then outstanding were instead due on such date;

(2) has a Stated Maturity that is not earlier than the earlier of (x) the Stated Maturity of the Indebtedness being refunded or refinanced or (y) 91 days following the Stated Maturity of the Securities;

(3) to the extent such Refinancing Indebtedness refunds, refinances or defeases (a) Indebtedness junior to the Securities or a Guarantee, as applicable, such Refinancing Indebtedness is junior to the Securities or a Guarantee, as applicable, (b) Disqualified Stock, such Refinancing Indebtedness is Disqualified Stock, and (c) Working Capital Indebtedness or Refinancing Indebtedness that previously refinanced Working Capital Indebtedness, (x) the aggregate amount of all such Working Capital Indebtedness and Refinancing Indebtedness does not exceed \$15,000,000 at any one time outstanding and (y) such Refinancing Indebtedness is subject to the terms of the Intercreditor Agreement;

(4) is Incurred in an aggregate amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the aggregate amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being refunded, refinanced or defeased plus premium (including tender premium), fees, expenses and defeasance costs Incurred in connection with such refinancing; and

(5) in the case of any Refinancing Indebtedness Incurred to refund, refinance or defease Indebtedness outstanding under clauses (iii), (xi) or (xii) of this Section 4.03(b), shall be deemed to have been Incurred and to be outstanding under such clause (iii), (xi) or (xii), as applicable, of this Section 4.03(b) and not this clause (xiii) for purposes of determining amounts outstanding under such clause (iii), (xi) or (xii), as applicable, of this Section 4.03(b);

(xiv) Indebtedness of the Issuer or any Subsidiary consisting of (x) the financing of insurance premiums or (y) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(xv) Indebtedness consisting of Attributable Indebtedness resulting from a Sale/Leaseback Transaction with respect to the New Hampshire Property permitted under this Indenture;

(xvi) Indebtedness in respect of cash management services or to implement cash pooling arrangements in the ordinary course of business; and

(xvii) Indebtedness outstanding on the Issue Date and listed on Schedule 4.03(b).

For purposes of determining compliance with this Section 4.03, in the event that an item of Indebtedness or Disqualified Stock (or any portion thereof) meets the criteria of more than one of the categories of permitted Indebtedness described in clauses (i) through (xvii) of this Section 4.03(b), the Issuer may, in its sole discretion, classify or reclassify, or later divide, classify or reclassify, such item of Indebtedness or Disqualified Stock (or any portion thereof) in any manner that complies with this Section 4.03; *provided* that this paragraph shall not apply to any Working Capital Indebtedness or any Refinancing Indebtedness in respect thereof.

Accrual of interest, the accretion of accreted value, the payment of interest in the form of additional Indebtedness with the same terms, the payment of dividends on Preferred Stock in the form of additional shares of Preferred Stock of the same class, amortization or accretion of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies shall not be deemed to be an Incurrence of Indebtedness, Disqualified Stock or Preferred Stock for purposes of this Section 4.03. Guarantees of, or obligations in respect of letters of credit relating to, Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness shall not be included in the determination of such amount of Indebtedness; *provided* that the Incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was in compliance with this Section 4.03.

For purposes of determining compliance with any U.S. Dollar-denominated restriction on the Incurrence of Indebtedness, the U.S. Dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term debt, or first committed or first Incurred (whichever yields the higher U.S. Dollar equivalent), in the case of revolving credit debt.

SECTION 4.04. Limitation on Restricted Payments.

(a) The Issuer shall not, and shall not permit any of its Subsidiaries to, directly or indirectly:

(i) declare or pay any dividend or make any distribution on account of the Issuer's or any of its Subsidiaries' Equity Interests, including any payment made in connection with any merger, amalgamation or consolidation involving the Issuer (other than (A) dividends or distributions by the Issuer payable solely in Equity Interests (other than Disqualified Stock) of the Issuer or (B) dividends or distributions by a Subsidiary, *provided* that, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Subsidiary other than a Wholly Owned Subsidiary, the Issuer or a Subsidiary receives at least its pro rata share of such dividend or distribution in accordance with its ownership percentage of Equity Interests in such class or series of securities);

(ii) purchase or otherwise acquire or retire for value any Equity Interests or any Disqualified Stock of the Issuer or any direct or indirect parent of the Issuer;

(iii) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case prior to any scheduled repayment or scheduled maturity, any Subordinated Indebtedness of the Issuer or any of its Subsidiaries (other than (x) the payment, redemption, repurchase, defeasance, acquisition or retirement of Subordinated Indebtedness in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement, unless such sinking fund obligation, principal installment or final maturity occurs within one year of the Stated Maturity of the Securities and (y) Indebtedness permitted under Sections 4.03(b)(vi), (vii) and (x) and any Refinancing Indebtedness thereof); or

(iv) make any Restricted Investment

(all such payments and other actions set forth in clauses (i) through (iv) above being collectively referred to as "Restricted Payments").

(b) The provisions of Section 4.04(a) shall not prohibit:

(i) the payment of any dividend or distribution within 60 days after the date of declaration thereof, if, at the date of declaration, the making of such payment would have complied with the provisions of this Indenture;

(ii) (A) the redemption, repurchase, retirement or other acquisition of any Equity Interests ("Retired Capital Stock") of the Issuer or any direct or indirect parent of the Issuer or Subordinated Indebtedness of the Issuer, any direct or indirect parent of the Issuer or any Guarantor in exchange for, or out of the

proceeds of, the substantially concurrent sale of, Equity Interests of the Issuer or any direct or indirect parent of the Issuer or contributions to the equity capital of the Issuer (other than any Disqualified Stock or any Equity Interests sold to a Subsidiary of the Issuer or to an employee stock ownership plan or any trust established by the Issuer or any of its Subsidiaries) (collectively, including any such contributions, "Refunding Capital Stock"); and (B) the declaration and payment of accrued dividends on the Retired Capital Stock out of the proceeds of the substantially concurrent sale (other than to a Subsidiary of the Issuer or to an employee stock ownership plan or any trust established by the Issuer or any of its Subsidiaries) of Refunding Capital Stock; and

(iii) the repurchase, retirement or other acquisition (or dividends to any direct or indirect parent of the Issuer to finance any such repurchase, retirement or other acquisition) for value of Equity Interests of the Issuer or any direct or indirect parent of the Issuer held by any future, present or former employee, director or consultant of the Issuer or any direct or indirect parent of the Issuer or any Subsidiary of the Issuer pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement and any payments made or expected to be made by the Issuer in respect of withholding or similar taxes payable by such future, present or former employee, director or consultant in consideration in connection with such repurchase, retirement or other acquisition; *provided* that the aggregate amounts paid under this clause (iii) do not exceed \$500,000 in any calendar year (with unused amounts in any calendar year being permitted to be carried over for the two succeeding calendar years subject to a maximum payment (without giving effect to the following proviso) of \$1,000,000 in any calendar year);

(iv) payments or distributions to dissenting stockholders or equityholders pursuant to applicable law, pursuant to or in connection with a consolidation, amalgamation, merger or transfer of all or substantially all of the assets of the Issuer and the Subsidiaries, taken as a whole, that complies with Section 5.01, *provided* that as a result of such consolidation, amalgamation, merger or transfer of assets, the Issuer shall have made a Change of Control Offer (if required by this Indenture) and that all Securities tendered by Holders in connection with such Change of Control Offer have been repurchased, redeemed or acquired for value;

(v) [reserved];

(vi) repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants if such Equity Interests represent a portion of the exercise price of such options or warrants;

(vii) Restricted Payments by the Issuer or any Subsidiary to allow the payment of cash in lieu of the issuance of fractional shares upon the exercise of options or warrants or upon the conversion or exchange of Capital Stock of any such Person; and

(viii) the payment of any dividend or distribution, whether paid in cash or in kind, in accordance with the Issuer's Series A Convertible Preferred Stock pursuant to Section 4 of the Certificate of Designations as in effect on the Issue Date;

provided, that at the time of, and after giving effect to, any Restricted Payment permitted under clauses (iii) and (viii) of this Section 4.04(b), no Default shall have occurred and be continuing or would occur as a consequence thereof.

SECTION 4.05. Dividend and Other Payment Restrictions Affecting Subsidiaries. The Issuer shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Subsidiary to:

- (a) (i) pay dividends or make any other distributions to the Issuer or any of its Subsidiaries (1) on its Capital Stock or (2) with respect to any other interest or participation in, or measured by, its profits or (ii) pay any Indebtedness owed to the Issuer or any of its Subsidiaries;
- (b) make loans or advances to the Issuer or any of its Subsidiaries; or
- (c) sell, lease or transfer any of its properties or assets to the Issuer or any of its Subsidiaries,

except in each case for such encumbrances or restrictions existing under or by reason of:

- (1) restrictions and conditions in effect on the Issue Date and described on Schedule 4.05, including pursuant to this Indenture, the Guarantees, the Securities or the Security Documents;
- (2) restrictions or conditions imposed by any agreement relating to Indebtedness permitted by Section 4.03 of this Indenture and secured by a Permitted Lien if such restrictions or conditions apply only to the property or assets securing such Indebtedness;
- (3) applicable law or any applicable rule, regulation or order;
- (4) the Working Capital Indebtedness, to the extent such encumbrances or restrictions are not inconsistent with the terms of the Intercreditor Agreement;
- (5) any agreement or other instrument relating to Indebtedness of a Person acquired by the Issuer or any Subsidiary that was in existence at the time of such acquisition (but not created in contemplation thereof or to provide all or any portion of the funds or credit support utilized to consummate such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired;
- (6) contracts or agreements for the sale of assets otherwise permitted hereunder, including any restriction with respect to a Subsidiary imposed pursuant to an

agreement entered into for the sale or disposition of the Capital Stock or assets of such Subsidiary pending the closing of such sale or disposition;

(7) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

(8) customary provisions in joint venture agreements, collaboration agreements, non-exclusive intellectual property licenses and other similar agreements entered into in the ordinary course of business;

(9) customary obligations in respect of purchase money obligations for property acquired and Capitalized Lease Obligations, in each case in the ordinary course of business;

(10) customary provisions contained in leases, licenses and other similar agreements entered into in the ordinary course of business; or

(11) any encumbrances or restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) or (4) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Issuer, no more restrictive in any material respect with respect to such encumbrance and other restrictions, taken as a whole, than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

SECTION 4.06. Asset Sales; Extraordinary Receipts.

(a) The Issuer shall not, and shall not permit any of its Subsidiaries to, cause or make an Asset Sale, unless (x) the Issuer or any of its Subsidiaries, as the case may be, receives consideration at the time of such Asset Sale at least equal to the fair market value (as determined in good faith by the Issuer) of the assets sold or otherwise disposed of, and (y) at least 75% of the consideration therefor received by the Issuer or such Subsidiary, as the case may be, is in the form of Cash Equivalents; *provided* that the amount of:

(i) any liabilities (as shown on the Issuer's or such Subsidiary's most recent balance sheet or in the notes thereto) of the Issuer or any Subsidiary of the Issuer (other than liabilities that are by their terms subordinated to the Securities or any Guarantee) that are assumed by the transferee of any such assets or that are otherwise cancelled or terminated in connection with the transaction with such transferee,

(ii) any notes or other obligations or other securities or assets received by the Issuer or such Subsidiary of the Issuer from such transferee that are converted by the Issuer or such Subsidiary of the Issuer into cash within 180 days of the receipt thereof (but only upon and only to the extent of the cash actually received), and

(iii) any Designated Non-cash Consideration received by the Issuer or any of its Subsidiaries in such Asset Sale having an aggregate fair market value (as determined in good faith by the Issuer), taken together with all other Designated Non-cash Consideration received pursuant to this clause (iii) that is at that time outstanding, not to exceed \$1,000,000 (with the fair market value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value),

shall be deemed to be Cash Equivalents for the purposes of this Section 4.06(a).

(b) Within 180 days after the Issuer's or any Subsidiary of the Issuer's receipt of the Net Proceeds of any Asset Sale or Extraordinary Receipts, the Issuer or such Subsidiary of the Issuer may apply such Net Proceeds, at its option, to make an Investment in any one or more businesses (*provided* that if such Investment is in the form of the acquisition of Capital Stock of a Person, such acquisition results in such Person becoming a Subsidiary of the Issuer or, if such Person is a partially-owned Subsidiary of the Issuer, in an increase in the percentage ownership of such Person by the Issuer or any Subsidiary of the Issuer), assets, or property or capital expenditures, (x) in the case of Investments or capital expenditures, where such Investment or capital expenditure is otherwise permitted under this Indenture and (y) in the case of assets and properties, such assets or properties (i) replace the assets or properties that are the subject of such Asset Sale or Extraordinary Receipts, as applicable, or (ii) would be used or useful in the business conducted by the Issuer and its Subsidiaries. To the extent the assets or properties that are the subject of any Asset Sale or Extraordinary Receipts constitute Working Capital First Lien Collateral (as defined in the Intercreditor Agreement) with respect to Working Capital Indebtedness permitted by the terms of this Indenture, and to the extent the Issuer is required under the terms of the Working Capital Credit Line to apply the Net Proceeds of such Asset Sale or Extraordinary Receipts to repay outstanding Working Capital Indebtedness, such repayment shall be treated as a permitted application of the Net Proceeds; *provided* that if such Working Capital Credit Line is a revolving credit facility and if, on a *pro forma* basis after giving effect to such repayments, the Issuer would not have the ability under this Agreement to increase commitments under the Working Capital Credit Line in the amount of such repayments, the aggregate commitments to extend credit under such Working Capital Credit Line shall be permanently reduced by an amount equal to the aggregate principal amount of any such repayments. For purposes of this Section 4.06(b), a binding commitment shall be treated as a permitted application of the Net Proceeds from the date of such commitment until the commitment is consummated, *provided* that (A) such Net Proceeds are applied as provided above within 270 days of the receipt of such Net Proceeds and (B) in the event such binding commitment is later canceled or terminated for any reason before such Net Proceeds are so applied, the Issuer or such Subsidiary may satisfy its obligations as to any Net Proceeds by entering into another binding commitment within 90 days of such cancellation or termination of the prior binding commitment and applying the Net Proceeds within 180 days of such subsequent binding commitment; *provided further* that the Issuer or such Subsidiary may only enter into such a commitment under the foregoing provision one time with respect to each receipt of Net Proceeds of any Asset Sale or Extraordinary Receipts.

(c) Any Net Proceeds from any Asset Sale or Extraordinary Receipts that are not applied as provided and within the time period set forth in clause (b) of this Section 4.06

shall be deemed to constitute “Excess Proceeds”. When the aggregate amount of Excess Proceeds from Asset Sales and Extraordinary Receipts exceeds \$1,000,000, the Issuer shall make an offer to all Holders of Securities (a “Purchase Offer”) to purchase the maximum principal amount of Securities that is at least \$2,000 and an integral multiple of \$1,000 (or if a PIK Interest payment has been made, in denominations of \$1.00 and any integral multiple of \$1.00 in excess thereof with respect to a PIK Security or the portion of a Global Security constituting PIK Interest) that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to 100% of the principal balance thereof, plus accrued and unpaid interest, to the date fixed for the closing of such offer, in accordance with the procedures set forth in this Section 4.06. The Issuer shall commence a Purchase Offer with respect to Excess Proceeds within ten (10) Business Days after the date that Excess Proceeds exceed \$1,000,000 by providing the written notice required pursuant to Section 4.06(f), with a copy to the Trustee. To the extent that the aggregate amount of Securities tendered pursuant to a Purchase Offer is less than the Excess Proceeds, the Issuer may use any remaining Excess Proceeds for any purpose that is not prohibited by this Indenture. If the aggregate principal amount of Securities surrendered by Holders thereof exceeds the amount of Excess Proceeds, the Trustee shall select the Securities to be purchased in the manner described in Section 4.06(e). Upon completion of any such Purchase Offer, the amount of Excess Proceeds shall be reset at zero.

(d) The Issuer shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations to the extent such laws or regulations are applicable in connection with the repurchase of the Securities pursuant to a Purchase Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture, the Issuer shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations described in this Indenture by virtue thereof.

(e) Not later than the date upon which written notice of a Purchase Offer is delivered to the Trustee as provided above, the Issuer shall deliver to the Trustee an Officer’s Certificate as to (i) the amount of the Excess Proceeds, (ii) the allocation of the Net Proceeds from the Asset Sales and/or Extraordinary Receipts pursuant to which such Purchase Offer is being made, as applicable, and (iii) the compliance of such allocation with the provisions of Section 4.06(b). On such date, the Issuer shall also irrevocably deposit with the Trustee or with a Paying Agent (or, if the Issuer or a domestically organized Wholly Owned Subsidiary is acting as the Paying Agent, segregate and hold in trust) an amount equal to the Excess Proceeds to be invested in Cash Equivalents, as directed in writing by the Issuer, and to be held for payment in accordance with the provisions of this Section 4.06. Upon the expiration of the period for which the Purchase Offer remains open (the “Offer Period”), the Issuer shall deliver to the Trustee for cancellation the Securities or portions thereof that have been properly tendered to and are to be accepted by the Issuer, along with a written payment and cancellation order. The Trustee (or the Paying Agent, if not the Trustee) shall, on the date of purchase, mail or deliver payment to each tendering Holder in the amount of the purchase price as determined by the Issuer and stated in the written payment and cancellation order. In the event that the Excess Proceeds delivered by the Issuer to the Trustee are greater than the purchase price of the Securities tendered, the Trustee shall deliver the excess to the Issuer immediately after the expiration of the Offer Period for application in accordance with Section 4.06.

(f) Holders electing to have a Security purchased shall be required to surrender the Security, with an appropriate form duly completed, to the Issuer at the address specified in the notice at least three Business Days prior to the purchase date. Holders shall be entitled to withdraw their election if the Trustee or the Issuer receives not later than one Business Day prior to the purchase date a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Security that was delivered by the Holder for purchase and a statement that such Holder is withdrawing such Holder's election to have such Security purchased. If at the end of the Offer Period more Securities are tendered pursuant to a Purchase Offer than the Issuer is required to purchase, and if the Securities are Global Securities held by the Depository, the Depository will select the Securities to be redeemed in accordance with its operational arrangements. If the Securities are not Global Securities held by the Depository, selection of such Securities for purchase shall be made by the Trustee on a pro rata basis, by lot or by such other method as the Trustee shall deem fair and appropriate (and in such manner as complies with applicable legal requirements); *provided* that no Securities of \$2,000 or less shall be purchased in part. Securities tendered pursuant to a Purchase Offer shall otherwise be made on a pro rata basis, as nearly as practicable.

(g) Written notices of a Purchase Offer shall be provided at least 30 but not more than 60 days before the purchase date to each Holder of Securities, electronically or by first class mail, postage prepaid (or, in the case of Global Securities held by the Depository, delivered to the Depository for communication to entitled Holders), by the Issuer (with a copy to the Trustee) or, at the Issuer's request given at least 5 days before such notice is to be sent, by the Trustee in the name and at the expense of the Issuer. If any Security is to be purchased in part only, any notice of purchase that relates to such Security shall state the portion of the principal amount thereof that has been or is to be purchased. Holders whose Securities are purchased only in part shall be issued new Securities equal in principal amount to the unpurchased portion of the Securities surrendered. If the Securities are Global Securities held by the Depository, then the applicable operational procedures of the Depository for tendering and withdrawing securities will apply.

SECTION 4.07. Transactions with Affiliates.

(a) The Issuer shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of transactions, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Issuer (each of the foregoing, an "Affiliate Transaction") involving consideration in excess of \$100,000 for any one transaction or series of related transactions, unless:

(i) such Affiliate Transaction is on terms that are not materially less favorable to the Issuer or the relevant Subsidiary than those that could have been obtained in a comparable transaction by the Issuer or such Subsidiary with an unrelated Person; and

(ii) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving consideration in excess of \$1,000,000 for any one

transaction or series of related transactions, the Issuer delivers to the Trustee a resolution adopted by the majority of the Board of Directors of the Issuer, approving such Affiliate Transaction and set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with clause (i) above.

(b) The provisions of Section 4.07(a) shall not apply to the following:

(i) (A) any transaction or series of transactions between or among any of the Issuer and its Subsidiaries (or an entity that becomes a Subsidiary as a result of such transaction), including any payment to, or sale, lease, transfer or other disposition of any properties or assets to, or purchase of any property or assets from, or any contract, agreement, amendment, understanding, loan, advance or guarantee with, or for the benefit of, any of the Issuer and its Subsidiaries (or an entity that becomes a Subsidiary as a result of such transaction) and (B) any merger, consolidation or amalgamation of the Issuer and any direct parent of the Issuer; *provided* that such parent shall have no material liabilities and no material assets other than cash, Cash Equivalents and the Capital Stock of the Issuer and such merger, consolidation or amalgamation is otherwise in compliance with the terms of this Indenture and effected for a bona fide business purpose;

(ii) Restricted Payments permitted by Section 4.04 and Permitted Investments;

(iii) the payment of reasonable and customary compensation, benefits, fees and reimbursement of expenses paid to, and indemnity, contribution and insurance provided on behalf of, officers, directors, employees or consultants and the entry into, and performance under, any reasonable and customary employment agreement, employee benefit plan, non-compete agreement, officer or director indemnification agreement or similar arrangement by the Issuer or any Subsidiary; *provided*, that for the avoidance of doubt, any such agreements and arrangements in effect on the Issue Date or described under the Chapter 11 Plan shall be permitted;

(iv) transactions in which the Issuer or any of its Subsidiaries, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Issuer or such Subsidiary from a financial point of view or meets the requirements of Section 4.07(a)(i);

(v) other payments or loans (or cancellation of loans) to officers, directors, employees or consultants of the Issuer or any of the Subsidiaries of the Issuer that, in each case, are approved by a majority of the disinterested members of the Board of Directors of the Issuer and that involve less than \$500,000 in any instance and less than \$1,000,000 in the aggregate;

(vi) any agreement as in effect as of the Issue Date or any amendment thereto (so long as any such agreement together with all amendments thereto,

taken as a whole, is not more disadvantageous to the Holders of the Securities in any material respect than the original agreement as in effect on the Issue Date) or any transaction contemplated thereby as determined in good faith by the Issuer;

(vii) the existence of, or the performance by the Issuer or any of its Subsidiaries of its obligations under the terms of, any stockholders or equityholders agreement (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Issue Date and any amendment thereto or similar transactions, agreements or arrangements that it may enter into thereafter; *provided* that the existence of, or the performance by the Issuer or any of its Subsidiaries of its obligations under, any future amendment to any such existing transaction, agreement or arrangement or under any similar transaction, agreement or arrangement entered into after the Issue Date shall only be permitted by this clause (vii) to the extent that the terms of any such existing transaction, agreement or arrangement together with all amendments thereto, taken as a whole, or new transaction, agreement or arrangement are not otherwise more disadvantageous to the Holders of the Securities in any material respect than the original transaction, agreement or arrangement as in effect on the Issue Date;

(viii) (A) transactions with customers, clients, suppliers or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Indenture, which are fair to the Issuer and its Subsidiaries in the reasonable determination of the Board of Directors or the senior management of the Issuer, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party or (B) transactions with joint ventures entered into in the ordinary course of business;

(ix) the issuances of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock option and stock ownership plans or similar employee or director benefit plans approved by the Board of Directors of the Issuer or any direct or indirect parent of the Issuer or of a Subsidiary of the Issuer, as appropriate;

(x) any contribution to the capital of the Issuer and any issuance of Equity Interests in consideration therefor;

(xi) transactions permitted by, and complying with, Section 5.01;

(xii) intercompany transactions undertaken in good faith (as certified by a Financial Officer in an Officer's Certificate) for the purpose of improving the consolidated tax efficiency of the Issuer and its Subsidiaries and not for the purpose of circumventing compliance with any covenant set forth in this Indenture; and

(xiii) the formation and maintenance of any consolidated group or subgroup for tax, accounting or cash pooling or management purposes in the ordinary course of business.

SECTION 4.08. Change of Control.

(a) Upon a Change of Control, each Holder shall have the right to require the Issuer to repurchase all or any part of such Holder's Securities at a purchase price in cash equal to 100% of the principal balance thereof, plus accrued and unpaid interest, if any, to the date of repurchase (subject to the right of the Holders of record on the relevant Record Date to receive interest due on the related Payment Date), in accordance with the terms contemplated in this Section 4.08; *provided, however*, that notwithstanding the occurrence of a Change of Control, the Issuer shall not be obligated to repurchase any Securities pursuant to this Section 4.08 in the event that it has exercised its (i) unconditional right to redeem such Securities in accordance with Article 3 or (ii) legal defeasance option or covenant defeasance option in accordance with Article 8.

(b) Within 30 days following any Change of Control, except to the extent that the Issuer has exercised its (x) unconditional right to redeem the Securities by delivery of a notice of redemption in accordance with Article 3 or (y) legal defeasance option or covenant defeasance option in accordance with Article 8, written notice (a "Change of Control Offer") shall be provided to each Holder, electronically or by first class mail, postage prepaid (or, in the case of Global Securities held by the Depository, delivered to the Depository for communication to entitled Holders), by the Issuer (with a copy to the Trustee) or, at the Issuer's request given at least 5 days before such notice is to be sent, by the Trustee in the name and at the expense of the Issuer, stating:

(i) that a Change of Control has occurred and that such Holder has the right to require the Issuer to repurchase such Holder's Securities at a repurchase price in cash equal to 100% of the principal balance thereof, plus all accrued and unpaid interest, if any, to the date of repurchase (subject to the right of the Holders of record on the relevant Record Date to receive interest on the related Payment Date);

(ii) the circumstances and relevant facts and financial information regarding such Change of Control;

(iii) the repurchase date (which shall be no earlier than 30 days nor later than 60 days from the date such written notice is provided); and

(iv) the instructions determined by the Issuer, consistent with this Section 4.08, that a Holder must follow in order to have its Securities repurchased.

(c) Holders electing to have a Security repurchased shall be required to surrender the Security, with an appropriate form duly completed, to the Issuer at the address specified in the notice at least three Business Days prior to the repurchase date. The Holders shall be entitled to withdraw their election if the Trustee or the Issuer receives not later than one

Business Day prior to the repurchase date a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Security that was delivered for purchase by the Holder and a statement that such Holder is withdrawing its election to have such Security repurchased. Holders whose Securities are repurchased only in part shall be issued new Securities equal in principal amount to the unpurchased portion of the Securities surrendered. If the Securities are Global Securities held by the Depository, then the applicable operational procedures of the Depository for tendering and withdrawing securities will apply.

(d) On the repurchase date, all Securities repurchased by the Issuer under this Section 4.08 shall be delivered to the Trustee for cancellation, and the Issuer shall pay the purchase price plus accrued and unpaid interest to the Holders entitled thereto.

(e) A Change of Control Offer may be made in advance of a Change of Control, and conditioned upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

(f) Notwithstanding the foregoing provisions of this Section 4.08, the Issuer shall not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 4.08 applicable to a Change of Control Offer made by the Issuer and purchases all Securities validly tendered and not withdrawn under such Change of Control Offer.

(g) Securities repurchased by the Issuer pursuant to a Change of Control Offer will have the status of Securities issued but not outstanding or will be retired and canceled at the option of the Issuer. Securities purchased by a third party pursuant to Section 4.08(f) will have the status of Securities issued and outstanding.

(h) At the time the Issuer delivers Securities to the Trustee that are to be accepted for repurchase, the Issuer shall also deliver an Officer's Certificate stating that such Securities are to be accepted by the Issuer pursuant to and in accordance with the terms of this Section 4.08 and confirming whether the Securities will be considered issued but not outstanding, or include orders to cancel the repurchased Securities. A Security shall be deemed to have been accepted for repurchase at the time the Trustee, directly or through an agent, provides payment therefor to the surrendering Holder.

(i) The Issuer shall comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Securities pursuant to this Section 4.08. To the extent that the provisions of any securities laws or regulations conflict with provisions of this Section 4.08, the Issuer shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.08 by virtue thereof.

SECTION 4.09. Further Instruments and Acts. Upon request of the Trustee, the Issuer shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

SECTION 4.10. Future Guarantors. The Issuer shall cause each of its Subsidiaries (other than Excluded Subsidiaries), within 15 Business Days of becoming a Subsidiary, to execute and deliver to the Trustee a supplemental indenture substantially in the form of Exhibit B pursuant to which such Subsidiary shall guarantee the Issuer's Obligations under the Securities and this Indenture; *provided, however*, that no Excluded Subsidiary shall be required to become a Guarantor. Each Subsidiary that becomes a Guarantor on or after the date of this Indenture shall also become a party to the applicable Security Documents and shall as promptly as practicable execute and deliver such security instruments, financing statements, mortgages, deeds of trust and certificates as may be necessary to vest in the Trustee a perfected security interest (subject to Permitted Liens) upon all its properties and assets (other than Excluded Assets) as security for the Notes or the Guarantees and as may be necessary to have such property or asset added to the Notes Collateral as required under the Security Documents and this Indenture, and thereupon all provisions of this Indenture relating to the Notes Collateral shall be deemed to relate to such properties and assets to the same extent and with the same force and effect.

SECTION 4.11. Liens. The Issuer shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, incur or suffer to exist any Lien (except Permitted Liens) on any asset or property of the Issuer or such Subsidiary securing Indebtedness.

For purposes of determining compliance with this Section 4.11, in the event that a Lien securing an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the categories of Liens described in the foregoing paragraph or in clauses (1) through (29) of the definition of "Permitted Liens", then the Issuer shall, in its sole discretion, classify or reclassify, or later divide, classify or reclassify, such Lien securing an item of Indebtedness (or any portion thereof) in any manner that complies with this Section 4.11.

With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the Incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness. The "Increased Amount" of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the payment of interest or dividends in the form of additional Indebtedness, amortization of original issue discount and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, in each case in respect of such Indebtedness.

SECTION 4.12. Maintenance of Office or Agency.

(a) The Issuer shall maintain an office or agency (which may be an office of the Trustee or an Affiliate of the Trustee or Registrar) where Securities may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Issuer in respect of the Securities and this Indenture may be served. The Issuer shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations and surrenders may be made at the corporate trust place of payment and notices and demands may be made or served at the Corporate Trust Office of the Trustee as set forth in Section 12.01.

(b) The Issuer may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Issuer of its obligation to maintain an office or agency for such purposes. The Issuer shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

(c) The Issuer hereby designates the Corporate Trust Office of the Trustee or its agent as such office or agency of the Issuer in accordance with Section 2.04.

SECTION 4.13. After-Acquired Property. Upon the acquisition by any Issuer or any Guarantor of any assets or property, including all equity in and all assets and properties of any new Subsidiary of the Issuer or any Guarantor (in each case, other than Excluded Assets) (“After-Acquired Property”), the Issuer or such Guarantor shall promptly execute and deliver such security instruments, pledge agreements, financing statements and certificates and opinions of counsel as shall be reasonably necessary to vest in the Collateral Agent a perfected security interest or other Lien, subject only to Permitted Liens, in such After-Acquired Property and to have such After-Acquired Property (but subject to certain limitations, if applicable, including as described under Article 11) added to the Notes Collateral, and thereupon all provisions of this Indenture relating to the Notes Collateral shall be deemed to relate to such After-Acquired Property to the same extent and with the same force and effect. Notwithstanding the foregoing, if any property or assets of the Issuer or any Guarantor originally deemed to be an Excluded Asset at any point ceases to be an Excluded Asset pursuant to such defined term, all or the applicable portion of such property and assets shall be deemed to be After-Acquired Property and shall be added to the Notes Collateral in accordance with the previous sentence.

SECTION 4.14. Line of Business. The Issuer shall not engage in any line of business substantially different from those lines of business conducted by the Issuer and its Subsidiaries on the Issue Date or any business(es) or any other activities that are reasonably similar, ancillary, incidental, complementary or related to, or a reasonable extension, development or expansion of, the business conducted or proposed to be conducted by the Issuer and its Subsidiaries on the Issue Date.

SECTION 4.15. Use of Proceeds. The Issuer shall use, or will cause its Subsidiaries to use, the net proceeds from the issuance and sale of the Securities for working capital, the Reorganization Transactions and other general corporate purposes. No part of such proceeds will be used, directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board of Governors of the Federal Reserve System of the United States of America, including Regulations T, U and X.

SECTION 4.16. Existence.

(a) Subject to Section 5.01, each of the Issuer and each Guarantor will do or cause to be done all things necessary to preserve and keep in full force and effect its respective existence, rights (charter and statutory), licenses, permits, privileges and franchises; *provided, however*, that the Issuer shall not be required to preserve any such existence, rights, licenses,

permits, privileges and franchises with respect to any such Guarantor if the loss thereof would not, individually or in the aggregate, have a material adverse effect on the business, financial condition or results of operations of the Issuer and the Guarantors taken as a whole.

(b) The Issuer will not, nor will it permit any Subsidiary to, (i) without written notice to the Collateral Agent within 30 days thereof, (x) change its name, change its state of incorporation, formation or organization, change its organizational identification number or reorganize in another jurisdiction or (y) discontinue or change the address of its place of business, chief executive officer, or office where it keeps records concerning accounts, contract rights, and general intangibles, (ii) create any Foreign Subsidiary that does not exist on the Issue Date, other than a Foreign Subsidiary of another Foreign Subsidiary which exists on the Issue Date, (iii) other than the Reorganization Transactions, without prior written notice to, and prior consent of, the Collateral Agent, amend, supplement, modify or restate their articles or certificate of incorporation or formation, limited partnership agreement, bylaws, limited liability company agreements, or other equivalent organizational documents other than such amendment, supplement, modification or restatement which could not reasonably be expected to be adverse to the interests of the Collateral Agent and the Holders in any material respect or (iv) change its method of accounting employed in the preparation of the financial statements referred to in Section 4.02 or change the fiscal year end of the Borrower unless required to conform to GAAP or approved in writing by the Collateral Agent.

SECTION 4.17. Taxes. The Issuer shall pay, and shall cause each of its Subsidiaries to pay, prior to delinquency, all material taxes, assessments and governmental levies, except such as are being contested in good faith and by appropriate proceedings or where the failure to effect such payment could not reasonably be expected to result in a Material Adverse Change.

SECTION 4.18. Issuer Accounts. The Issuer and its Subsidiaries shall use their respective commercially reasonable efforts to enter into, and cause each depository, securities intermediary or commodities intermediary to enter into, no later than 90 days after the Issue Date (or 90 days after the date of opening the applicable deposit, securities, commodity or similar account), customary account control agreements with the Collateral Agent with respect to each domestic deposit, securities or commodity account maintained by the Issuer and its Subsidiaries (other than any (a) payroll, disbursement and other zero balance accounts, (b) withholding tax and fiduciary accounts, (c) any trust or similar account and (d) other deposit and securities account so long as the amount on deposit in or credited to all such accounts referred to in this clause (d) does not exceed \$500,000 (measured on a trailing five Business Day average) in the aggregate (all such accounts referred to in the preceding clauses (a), (b), (c) and (d), collectively, the "Excluded Accounts")) as of or after the Issue Date (each such account subject to an account control agreement, a "Controlled Account"); *provided* that the Collateral Agent shall not be entitled to exercise sole control or send any "blockage" or equivalent notice under any such account control agreement unless an Event of Default shall have occurred and be continuing. The Issuer and its Subsidiaries shall instruct each of their account debtors and obligors to make payments due or to become due to the Issuer and its Subsidiaries directly to a Controlled Account.

SECTION 4.19. Maintenance of Property and Insurance; Protection of Intellectual Property.

(a) The Issuer shall cause all material properties owned by or leased by it or any of its Subsidiaries necessary to the conduct of its business or the business of any of its Subsidiaries to be maintained and kept in normal condition, repair and working order and shall cause to be made all necessary repairs, renewals, replacements and improvements thereof, all to the extent that in its judgment may be necessary, so that the business carried on in connection therewith may be properly conducted at all times; *provided, however*, that nothing in this Section 4.19 shall prevent the Issuer or any of its Subsidiaries from discontinuing the use, operation or maintenance of any of such properties, or disposing of any of them, if such discontinuance or disposal could not reasonably be expected to result in a Material Adverse Change or is, as determined by the Issuer, the Subsidiary concerned or an Officer (or other agent employed by the Issuer or of any of its Subsidiaries) of the Issuer or any of its Subsidiaries having managerial responsibility for any such property, desirable or appropriate in the conduct of the business of the Issuer or any of its Subsidiaries.

(b) The Issuer shall maintain insurance (including appropriate self-insurance) against loss or damage of the kinds that, in the good faith judgment of the Issuer, are adequate and appropriate for the conduct of the business of the Issuer and its Subsidiaries in a prudent manner, with reputable insurers or with the government of the United States or an agency or instrumentality thereof, in such amounts, with such deductibles, and by such methods as shall be customary, in the good faith judgment of the Issuer, for companies similarly situated in the industry in which the Issuer and its Subsidiaries are engaged.

(c) The Issuer shall: (i) protect, defend and maintain the validity and enforceability of its and its Subsidiaries' Intellectual Property and promptly advise the Collateral Agent in writing of material infringements that could reasonably be expected to result in a Material Adverse Change; (ii) not allow any Intellectual Property material to the Issuer's business to be abandoned, forfeited or dedicated to the public without the Collateral Agent's written consent; (iii) provide written notice to the Collateral Agent within 10 days of entering or becoming bound by any Restricted License (other than over-the-counter and other generally available software that is commercially available to the public); and (iv) take such commercially reasonable steps as the Collateral Agent reasonably requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (A) any Restricted License to be deemed "Notes Collateral" and for the Collateral Agent and the Holders to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (B) the Collateral Agent or the Holders to have the ability in the event of a liquidation of any Notes Collateral to dispose of such Notes Collateral in accordance with the Collateral Agent's or the Holders' rights and remedies under this Indenture and the other Security Documents; *provided* that, nothing in this clause 4.19(c) shall prevent the Issuer or its Subsidiaries from disposing of, discontinuing the use or maintenance of, abandoning, failing to pursue, or otherwise allowing to lapse, terminate or put into the public domain, any of their respective Intellectual Property if the Issuer determines in its reasonable business judgment that such disposition, discontinuance, abandonment or other action (or non-action) is desirable in the conduct of its business.

SECTION 4.20. Compliance with Laws. The Issuer shall comply, and shall cause each of its Subsidiaries to comply, with all applicable statutes, rules, regulations, orders of the relevant jurisdiction in which they are incorporated or organized and/or in which they carry on business, all political subdivisions thereof, and of any relevant governmental regulatory authority, in respect of the conduct of their respective businesses and the ownership of their respective properties, except for such non-compliances as could not reasonably be expected to result in a Material Adverse Change.

SECTION 4.21. [Reserved].

SECTION 4.22. Limitations on Negative Pledges. The Issuer will not, nor will it permit any Subsidiary to, enter into, incur or permit to exist, or permit any Subsidiary to enter into, incur or permit to exist, directly or indirectly, any agreement, instrument, deed, lease or other arrangement that prohibits, restricts or imposes any condition upon the ability of the Issuer or any of its Subsidiaries to create, incur or permit to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, or that requires the grant of any security for an obligation if security is granted for another obligation, except the following: (i) restrictions and conditions in effect on the Issue Date and described on Schedule 4.22, including pursuant to this Indenture, the Guarantees, the Securities or the Security Documents, (ii) restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by Section 4.03 of this Indenture if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (iii) applicable law or any applicable rule, regulation or order, (iv) Working Capital Indebtedness subject to the Intercreditor Agreement, (v) any agreement or other instrument relating to Indebtedness of a Person acquired by the Issuer or any Subsidiary that was in existence at the time of such acquisition (but not created in contemplation thereof or to provide all or any portion of the funds or credit support utilized to consummate such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired, (vi) contracts or agreements for the sale of assets otherwise permitted hereunder, including any restriction with respect to a Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of the Capital Stock or assets of such Subsidiary pending the closing of such sale or disposition, (vii) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business, or arising in connection with any Permitted Liens, (viii) customary obligations in respect of purchase money obligations for property acquired and Capitalized Lease Obligations, in each case in the ordinary course of business, (ix) customary provisions contained in leases, licenses and other similar agreements entered into in the ordinary course of business, (x) restrictions or conditions contained in any trading, netting, operating, construction, service, supply, purchase, sale or other agreement to which the Issuer or any Subsidiary is a party entered into in the ordinary course of business; *provided* that such agreement prohibits the encumbrance of solely the property or assets of the Issuer or such Subsidiary that are subject to such agreement, the payment rights arising thereunder or the proceeds thereof and does not extend to any other asset or property of the Issuer or such Subsidiary or the assets or property of another Subsidiary or (xi) any encumbrances or restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i) and (iv) above; *provided further* that such amendments, modifications, restatements, renewals, increases, supplements, refundings,

replacements or refinancings are, in the good faith judgment of the Issuer, no more restrictive in any material respect with respect to such encumbrance and other restrictions, taken as a whole, than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing; *provided further* that in the case of clauses (v), (vi) and (vii), such encumbrance or restriction shall in no way interfere with the perfection and priority of the Collateral Agent's Lien in the Notes Collateral or the preservation of its rights therein.

SECTION 4.23. Restrictions with Respect to Other Debt and Preferred Stock.

The Issuer will not, nor will it permit any Subsidiary to:

(a) Amend, modify, supplement, waive compliance with, or consent to noncompliance with, any agreement governing Subordinated Indebtedness, unless the amendment, modification, supplement, waiver or consent is in compliance with the subordination provisions therein and any subordination agreement with respect thereto in favor of the Collateral Agent and the Holders.

(b) Make any voluntary or optional payment, prepayment or repayment on, redemption, exchange or acquisition for value of, or any sinking fund or similar payment with respect to, any Subordinated Indebtedness (other than in connection with Incurring any Refinancing Indebtedness for such Subordinated Indebtedness to the extent such Refinancing Indebtedness is permitted under this Indenture in respect thereof), except as permitted by the subordination provisions in the applicable agreement governing such Subordinated Indebtedness and any subordination agreement with respect thereto in favor of the Collateral Agent and the Holders.

(c) Amend, modify, supplement, waive compliance with, or consent to noncompliance with, any agreement governing Working Capital Indebtedness, or any Refinancing Indebtedness related thereto, in any manner that is inconsistent with the terms of the Intercreditor Agreement or that would cause the Incurrence of Working Capital Indebtedness or any Refinancing Indebtedness related thereto not to be permitted under this Indenture.

(d) Except as could not reasonably be expected to adversely affect the rights of the Holders of the Securities, amend, modify, supplement, waive compliance with, or consent to noncompliance with, the Certificate of Designations; *provided* that any such amendment, modification, supplement, waiver or consent that would increase the amount of dividends or other payments to the Series A Convertible Preferred Stock under the Certificate of Designations shall be deemed to adversely affect the rights of the Holders.

SECTION 4.24. Books and Records; Inspection Rights. The Issuer will, and will cause each of the Subsidiaries to, keep proper books of record and account in which full, true and correct entries are made of all material dealings and transactions in relation to its business and activities. The Issuer will, and will cause each of the Subsidiaries to, permit any representatives designated by the Collateral Agent, or by any Holder acting through the Collateral Agent, upon reasonable prior notice from the Administrative Agent, to visit and inspect its properties, to examine and make extracts from its books and records and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

SECTION 4.25. Environmental. The Issuer will (i) use best efforts to keep any property either owned or operated by it or any of its Subsidiaries free of any Environmental Liens; (ii) comply, and cause each of its Subsidiaries to comply, in all material respects with all Environmental Laws and provide to the Collateral Agent any documentation of such compliance which the Collateral Agent may reasonably request; (iii) provide the Collateral Agent written notice within 10 days of obtaining knowledge of any Release of a Hazardous Material in excess of any reportable quantity (and for which Issuer has liability under Environmental Laws) from or onto property at any time owned or operated by it or any of its Subsidiaries and take any Remedial Actions required under applicable Environmental Laws in response to such Release; (iv) not permit the use, handling, generation, storage, treatment, Release or disposal of Hazardous Materials at any property owned or leased by it or any of its Subsidiaries, except in compliance in all material respects with Environmental Laws and (v) provide the Collateral Agent with written notice within 10 days of the receipt of written notice of any of the following: (A) notice that an Environmental Lien has been filed against any property of the Issuer or any of its Subsidiaries; (B) commencement of any Environmental Action or notice that an Environmental Action will be filed against the Issuer or any of its Subsidiaries; and (C) notice of a violation, citation or other administrative order which could reasonably be expected to have a material adverse effect on the business, financial condition or results of operations of the Issuer and its Subsidiaries taken as a whole.

SECTION 4.26. Anti-Money Laundering and Anti-Terrorism Laws.

(a) Neither the Issuer nor any of its Subsidiaries, nor to the knowledge of the Issuer, any of their respective controlled Affiliates or agents (to the extent acting on behalf of the Issuer and its Subsidiaries), will (A) conduct any business or engage in any transaction or dealing with or for the benefit of any Blocked Person, including the making or receiving of any contribution of funds, goods or services to, from or for the benefit of any Blocked Person; (B) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked or subject to blocking pursuant to the OFAC Sanctions Programs; (C) use any of the proceeds of the transactions contemplated by this Indenture to finance, promote or otherwise support in any manner any activity prohibited by the Anti-Money Laundering and Anti-Terrorism Laws or any specified unlawful activity as that term is defined in the Money Laundering Control Act of 1986, 18 U.S.C. §§ 1956 and 1957; or (D) violate, attempt to violate, or engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, any of the Anti-Money Laundering and Anti-Terrorism Laws.

(b) Neither the Issuer nor any of its Subsidiaries, nor to the knowledge of the Issuer any officer, director or principal shareholder or owner of any of the foregoing, nor to the knowledge of the Issuer any of the Issuer or its Subsidiaries' respective controlled Affiliates or agents (to the extent acting on behalf of the Issuer and or its Subsidiaries) acting or benefiting in any capacity in connection with the Securities or other transactions hereunder, shall be or shall become a Blocked Person.

SECTION 4.27. Chapter 11 Plan.

Nothing in this Indenture shall impair the ability of Issuer and its Subsidiaries to make any payments, distributions, or transfers of assets to the Litigation Trust, or to holders of Claims (as defined in the Chapter 11 Plan), as required by the Chapter 11 Plan.

ARTICLE 5

SUCCESSOR COMPANY

SECTION 5.01. When Issuer May Merge or Transfer Assets.

(a) Other than the Reorganization Transactions, the Issuer shall not, directly or indirectly, consolidate, amalgamate or merge with or into or wind up or convert into (whether or not the Issuer is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions, to any Person unless:

(i) (x) the Issuer is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation, merger, winding up or conversion (if other than the Issuer) or to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made is a corporation, partnership or limited liability company organized or existing under the laws of the United States, any state thereof or the District of Columbia (the Issuer or such Person, as the case may be, being herein called the “Successor Company”); and (y) the Successor Company (if other than the Issuer) expressly assumes all the obligations of the Issuer under this Indenture, the Securities and the Security Documents pursuant to supplemental indentures or other documents or instruments in form reasonably satisfactory to the Trustee;

(ii) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Company or any of its Subsidiaries as a result of such transaction as having been Incurred by the Successor Company or such Subsidiary at the time of such transaction), no Default shall have occurred and be continuing;

(iii) each Guarantor, unless it is the other party to the transactions described above, shall have by supplemental indenture confirmed that its Guarantee shall apply to such Person’s obligations under this Indenture and the Securities; and

(iv) the Issuer shall have delivered to the Trustee (A) an Officer’s Certificate and an Opinion or Opinions of Counsel, each stating (to the extent applicable with respect to such Opinion or Opinions of Counsel) that such transaction and such supplemental indentures (if any) comply with this Indenture and that the obligations of the Issuer under this Indenture, the Securities and the Security Documents remain obligations of the Successor Company, and confirming the necessary actions to continue the perfection and priority of the Collateral Agent’s Lien in the Notes Collateral and of the preservation of its rights

therein and (B) an Officer's Certificate stating that such necessary actions have been taken (together with evidence thereof) promptly and in any event no later than 30 days following such transaction.

The Successor Company (if other than the Issuer) shall succeed to, and be substituted for, the Issuer under this Indenture, the Securities and the Security Documents, and in such event the Issuer will automatically be released and discharged from its obligations under this Indenture, the Securities and the Security Documents. Notwithstanding the foregoing clause (ii) of this Section 5.01(a), any Subsidiary may merge, consolidate or amalgamate with or transfer all or part of its properties and assets to the Issuer or to another Subsidiary. This Article 5 will not apply to a sale, assignment, transfer, lease, conveyance or other disposition of property or assets between or among any of the Issuer and its Subsidiaries.

(b) Other than the Reorganization Transactions, subject to the provisions of Section 10.02(b) (which govern the release of a Guarantee upon the sale or disposition of a Subsidiary of the Issuer that is a Guarantor), none of the Guarantors shall, and the Issuer shall not permit any Guarantor to, consolidate, amalgamate or merge with or into or wind up or convert into (whether or not such Guarantor is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, any Person unless:

(i) either (A) such Guarantor is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation, merger, winding up or conversion (if other than such Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made is a corporation, partnership or limited liability company organized or existing under the laws of the jurisdiction of its formation (such Guarantor or such Person, as the case may be, being herein called the "Successor Guarantor") and the Successor Guarantor (if other than such Guarantor) expressly assumes all the obligations of such Guarantor under this Indenture and, if applicable, such Guarantors' Guarantee and the Security Documents pursuant to a supplemental indenture or other documents or instruments in form reasonably satisfactory to the Trustee or (B) such sale or disposition or consolidation, amalgamation or merger is not in violation of Section 4.06 (in which case such Guarantor shall be released from its Guarantee); and

(ii) the Successor Guarantor (if other than such Guarantor) shall have delivered or caused to be delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger, winding up, conversion, sale, assignment, transfer, lease, conveyance or disposition and such supplemental indenture (if any) comply with this Indenture.

Except as otherwise provided in this Indenture, the Successor Guarantor (if other than such Guarantor) will succeed to, and be substituted for, such Guarantor under this Indenture, such Guarantor's Guarantee and the Security Documents, and in such event such Guarantor will automatically be released and discharged from its obligations under this Indenture, such Guarantor's Guarantee and the Security Documents.

Notwithstanding the foregoing, any Guarantor may consolidate, amalgamate, merge with or into or wind up or convert into, or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets to, the Issuer or any other Guarantor.

ARTICLE 6

DEFAULTS AND REMEDIES

SECTION 6.01. Events of Default. An “Event of Default” occurs if:

(a) there is a default in the payment, when due (whether by the Stated Maturity of the Securities, upon optional redemption, in respect of any Purchase Offer, upon declaration of acceleration or otherwise), (i) interest on any Security if, in the case of this clause (i) only, such default continues for a period of 5 Business Days, (ii) all or any portion of the principal of any Security, or (iii) any other amount payable under this Indenture (other than any portion thereof constituting interest on or principal of the Securities) or any other Security Document if, in the case of this clause (iii) only, such default continues for a period of 30 days,

(b) the Issuer or any of the Guarantors fails to comply with any of its agreements in the Securities or this Indenture (other than those referred to in clause (a) above) and such failure continues for 30 days after the notice specified below,

(c) the Issuer or any Subsidiary fails to pay any Indebtedness within any applicable grace period after such payment is due and payable (including at final maturity) or there occurs any other default under any agreement or instrument relating to Indebtedness, in each case, if the total amount of such Indebtedness unpaid or otherwise in default exceeds \$5,000,000 or its foreign currency equivalent,

(d) the Issuer or any Subsidiary pursuant to or within the meaning of any Bankruptcy Law:

(i) commences a voluntary case;

(ii) consents to the entry of an order for relief against it in an involuntary case;

(iii) consents to the appointment of a Custodian of it or for any substantial part of its property; or

(iv) makes a general assignment for the benefit of its creditors or takes any comparable action under any foreign laws relating to insolvency,

(e) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against the Issuer or any Subsidiary of the Issuer in an involuntary case;

(ii) appoints a Custodian of the Issuer or any Subsidiary of the Issuer or for any substantial part of its property; or

(iii) orders the winding up or liquidation of the Issuer or any Subsidiary of the Issuer;

or any similar relief is granted under any foreign laws and the order or decree remains unstayed and in effect for 60 days,

(f) the Issuer or any Subsidiary fails to pay final judgments aggregating in excess of \$5,000,000 or its foreign currency equivalent (net of any amounts that are covered by enforceable insurance policies issued by solvent carriers), which judgments are not discharged, waived or stayed for a period of 60 days following the entry thereof,

(g) any representation or warranty made in writing by or on behalf of the Issuer or any Guarantor in connection with the issuance and sale of the Securities or made in writing by or on behalf of the Issuer or any Guarantor or by any officer of the Issuer or any Guarantor furnished in connection with the transactions contemplated by this Indenture and the Security Documents proves to have been incorrect or misleading in any material respect on the date as of which made or deemed made,

(h) the Collateral Agent fails to have a perfected security interest in any material portion of the Notes Collateral, except as contemplated by this Indenture and the Security Documents,

(i) any Guarantee ceases to be in full force and effect (except as contemplated by the terms thereof) or any Guarantor denies or disaffirms its obligations under this Indenture or any Guarantee and such Default continues for 30 days,

(j) unless all of the Notes Collateral has been released from the Liens in accordance with the provisions of the Security Documents with respect to the Securities, the Issuer shall assert or any Guarantor shall assert, in any pleading in any court of competent jurisdiction, that any such security interest is invalid or unenforceable and, in the case of any such Person that is a Subsidiary of the Issuer, the Issuer fails to cause such Subsidiary to rescind such assertions within 30 days after the Issuer has actual knowledge of such assertions,

(k) the Issuer or any Guarantor fails to comply for 30 days after the notice specified below with its obligations contained in the Security Documents, except for a failure that would not be material to the Holders of the Securities and would not materially affect the value of the Notes Collateral taken as a whole or

(l) one or more ERISA Events (or equivalent event in any foreign jurisdiction applicable to the Issuer or any Subsidiary, identified as such in the Issuer's financial statements) shall occur or exist with respect to any Plan, which could reasonably be expected to have a material adverse effect on the business, financial condition or results of operations of the Issuer and its Subsidiaries taken as a whole.

The foregoing shall constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

The term “Bankruptcy Law” means Title 11, United States Code, or any similar U.S. federal or state law for the relief of debtors (or their foreign equivalents). The term “Custodian” means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

A Default under clause (b) or (k) above shall not constitute an Event of Default until the Trustee or the Holders of at least 25% in principal amount of the outstanding Securities notify the Issuer (and also the Trustee if given by the Holders) of the Default and the Issuer does not cure such Default within the time specified in clause (b) or (k) above after receipt of such notice. Such notice must specify the Default, demand that it be remedied and state that such notice is a “Notice of Default”. The Issuer shall deliver to the Trustee, within 30 days after the occurrence thereof, written notice in the form of an Officer’s Certificate of any event that is, or with the giving of notice or the lapse of time or both would become, an Event of Default, its status and what action the Issuer is taking or proposes to take in respect thereof.

SECTION 6.02. Acceleration. If an Event of Default (other than an Event of Default specified in Section 6.01(d) or 6.01(e) with respect to the Issuer) occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of outstanding Securities by notice to the Issuer may, and if such notice is given by the Holders such notice shall be given to the Issuer and the Trustee, declare that the principal of, and accrued but unpaid interest on, all the Securities is due and payable. Upon such a declaration, such principal and interest shall be due and payable immediately. If an Event of Default specified in Section 6.01(d) or 6.01(e) with respect to the Issuer occurs, the principal of, and accrued but unpaid interest on, all the Securities shall *ipso facto* become and be immediately due and payable, without any declaration or other act on the part of the Trustee or any Holders. The Holders of a majority in principal amount of the Securities by notice to the Trustee may rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal or interest of any Security held by a non-consenting Holder that has become due solely because of the acceleration) have been cured or waived.

In the event of any Event of Default specified in Section 6.01(c), such Event of Default and all consequences thereof (excluding, however, any resulting payment default) shall be annulled, waived and rescinded, automatically and without any action by the Trustee or the Holders of the Securities, if within 20 days after such Event of Default arose the Issuer delivers an Officer’s Certificate to the Trustee stating that (x) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged, (y) the Holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default or (z) the default that is the basis for such Event of Default has been cured, it being understood that in no event shall an acceleration of the principal amount of the Securities as described above be annulled, waived or rescinded upon the happening of any such events.

SECTION 6.03. Other Remedies. If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy at law or in equity to collect the payment of principal of or interest on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. To the extent required by law, all available remedies are cumulative.

SECTION 6.04. Waiver of Past Defaults. Provided the Securities are not then due and payable by reason of a declaration of acceleration, the Holders of a majority in principal amount of the Securities by written notice to the Trustee may waive an existing Default or Event of Default and its consequences except that the following may not be waived without the consent of each Holder affected thereby: (a) a continuing Default or Event of Default in the payment of the principal of or interest on any Security, (b) a Default or Event of Default arising from the failure to redeem or purchase any Security when required pursuant to the terms of this Indenture and (c) a Default or Event of Default in respect of a provision that under Section 9.02 cannot be amended without the consent of each Holder affected. When a Default or Event of Default is waived, it is deemed cured and the Issuer, the Trustee and the Holders will be restored to their former positions and rights under this Indenture, but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any consequent right. Any past Default, Event of Default or compliance with any provisions may be waived with the consent of the Holders of a majority in principal amount of the Securities then outstanding.

SECTION 6.05. Control by Majority. The Holders of a majority in principal amount of the Securities may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or, subject to Section 7.01, that the Trustee determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability. Prior to taking any action under this Indenture, the Trustee shall be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

SECTION 6.06. Limitation on Suits.

(a) Except to enforce the right to receive payment of principal or interest when due, no Holder may pursue any remedy with respect to this Indenture or the Securities unless:

(i) the Holder gives the Trustee written notice stating that an Event of Default is continuing;

(ii) the Holders of at least 25% in principal amount of the Securities make a written request to the Trustee to pursue the remedy;

(iii) such Holder or Holders offer to the Trustee security or indemnity satisfactory to it against any loss, liability or expense;

(iv) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of security or indemnity; and

(v) the Holders of a majority in principal amount of the Securities do not give the Trustee a direction inconsistent with the request during such 60-day period.

(b) A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder.

SECTION 6.07. Rights of the Holders to Receive Payment. Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal of and interest on the Securities held by such Holder, on or after the respective due dates expressed or provided for in this Indenture or in the Securities, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

SECTION 6.08. Collection Suit by Trustee. If an Event of Default specified in Section 6.01(a) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuer or any other obligor on the Securities for the whole amount then due and owing (together with interest on overdue principal and (to the extent lawful) on any unpaid interest at the rate provided for in the Securities) and the amounts provided for in Section 7.06.

SECTION 6.09. Trustee May File Proofs of Claim. The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation, expenses disbursements and advances of the Trustee (including counsel, accountants, experts or such other professionals as the Trustee deems necessary, advisable or appropriate)) and the Holders allowed in any judicial proceedings relative to the Issuer or any Guarantor, their creditors or their property, shall be entitled to participate as a member, voting or otherwise, of any official committee of creditors appointed in such matters and, unless prohibited by law or applicable regulations, may vote on behalf of the Holders in any election of a trustee in bankruptcy or other Person performing similar functions and be a member of a creditors' or other similar committee, and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and its counsel, and any other amounts due the Trustee under Section 7.06.

SECTION 6.10. Priorities. If the Trustee collects any money or property pursuant to this Article 6, it shall pay out the money or property in the following order:

FIRST: to the Trustee for amounts due under Section 7.06;

SECOND: to the Holders for amounts due and unpaid on the Securities for principal and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal and interest, respectively; and

THIRD: to the Issuer or, to the extent the Trustee collects any amount for any Guarantor, to such Guarantor.

The Trustee may fix a record date and payment date for any payment to the Holders pursuant to this Section 6.10. At least 15 days before such record date, the Trustee shall provide to each Holder and the Issuer a written notice that states the record date, the payment date and amount to be paid.

SECTION 6.11. Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than 10% in principal amount of the Securities.

SECTION 6.12. Waiver of Stay or Extension Laws. Neither the Issuer nor any Guarantor (to the extent it may lawfully do so) shall at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Issuer and each Guarantor (to the extent that it may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and shall not hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE 7

TRUSTEE

SECTION 7.01. Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee or the Collateral Agent, as applicable, shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee (it being agreed

that the permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty); and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture, the Securities, the Guarantees or the Collateral Documents, as the case may be. The Trustee shall be under no duty to make any investigation as to any statement contained in any such instance, but may accept the same as conclusive evidence of the truth and accuracy of such statement or the correctness of such opinions. However, in the case of certificates or opinions required by any provision hereof to be provided to it, the Trustee shall examine such certificates and opinions to determine whether or not they conform to the requirements of this Indenture, the Securities, the Guarantees or the Collateral Documents, as the case may be.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) this Section 7.01(c) does not limit the effect of Section 7.01(b);

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05; and

(iv) no provision of this Indenture, the Securities, the Guarantees or the Collateral Documents shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds to believe that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section 7.01.

(e) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuer.

(f) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law, the Indenture, the Securities, the Collateral Documents or by Section 11.06.

(g) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 7.01.

SECTION 7.02. Rights of Trustee.

(a) The Trustee may conclusively rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on the Officer's Certificate or Opinion of Counsel.

(c) The Trustee may act through agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within its rights or powers; *provided, however*, that the Trustee's conduct does not constitute willful misconduct or negligence.

(e) The Trustee may consult with counsel of its own selection and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Securities or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel or Opinion of Counsel.

(f) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, debenture, note or other paper or document unless requested in writing to do so by the Holders of a majority in principal amount of the Securities at the time outstanding, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney, at the expense of the Issuer and shall incur no liability of any kind by reason of such inquiry or investigation.

(g) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to the Trustee in its sole discretion against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

(h) The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be compensated, reimbursed and indemnified as provided in Section 7.06, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(i) The Trustee shall not be liable for any action taken or omitted by it in good faith at the direction of the Holders of a majority in principal amount of the Securities as to the time, method and place of conducting any proceedings for any remedy available to the Trustee or the exercising of any power conferred by this Indenture.

(j) Any action taken, or omitted to be taken, by the Trustee in good faith pursuant to this Indenture upon the request or authority or consent of any person who, at the time of making such request or giving such authority or consent, is the Holder of any Security shall be conclusive and binding upon future Holders of Securities and upon Securities executed and delivered in exchange therefor or in place thereof.

(k) In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

SECTION 7.03. Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Issuer or its Affiliates with the same rights it would have if it were not Trustee. The Trustee and its Affiliates have engaged, currently are engaged and may in the future engage in financial or other transactions with the Issuer and its Affiliates in the ordinary course of their respective businesses. Any Paying Agent or Registrar may do the same with like rights. In the event that the Trustee, any Paying Agent or Registrar acquires any conflicting interest, the Trustee, such Paying Agent or Registrar must eliminate such conflict within 90 days or resign.

SECTION 7.04. Trustee's Disclaimer. The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture, any Guarantee, the Securities or any Security Documents, it shall not be accountable for the Issuer's use of the proceeds from the Securities, and it shall not be responsible for any statement of the Issuer or any Guarantor in this Indenture or in any document issued in connection with the sale of the Securities or in the Securities other than the Trustee's certificate of authentication. The Trustee shall not be charged with knowledge of any Default or Event of Default under Section 6.01(b), 6.01(c), 6.01(d), 6.01(e), 6.01(f), 6.01(g), 6.01(h), 6.01(i), 6.01(j), 6.01(k) or 6.01(l) unless either (a) a Trust Officer shall have actual knowledge thereof or (b) the Trustee shall have received written notice thereof in accordance with Section 12.01 from the Issuer, any Guarantor or any Holder.

SECTION 7.05. Notice of Defaults. If a Default occurs and is continuing and if the Trustee receives written notice of such event, the Trustee shall provide to each Holder written notice of the Default within the earlier of 90 days after it occurs or 30 days after it is actually known to a Trust Officer or written notice of it is received by the Trustee. Except in the case of a Default in the payment of principal of, or interest on, any Security, the Trustee may withhold the

notice if and so long as a committee of its Trust Officers in good faith determines that withholding the notice is in the interests of the Holders.

SECTION 7.06. Compensation and Indemnity. The Issuer shall pay to the Trustee or the Collateral Agent, as applicable, from time to time reasonable compensation for its services as may be agreed in a separate agreement among the Issuer and the Trustee or the Collateral Agent, as applicable. The compensation of the Trustee or the Collateral Agent, as applicable, shall not be limited by any law on compensation of a trustee of an express trust. The Issuer shall reimburse the Trustee or the Collateral Agent, as applicable, upon request for all reasonable out-of-pocket expenses incurred or made by it, including costs of collection, in addition to the compensation for its services. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the agents, counsel, accountants and experts of the Trustee or the Collateral Agent, as applicable. The Issuer and each Guarantor, jointly and severally, shall indemnify the Trustee or the Collateral Agent, as applicable, against any and all loss, liability, claim, damage or expense (including reasonable attorneys' fees and expenses) incurred by or in connection with the acceptance or administration of this trust and the performance of its duties hereunder, including the costs and expenses of enforcing this Indenture or a Guarantee against the Issuer or a Guarantor (including this Section 7.06) and defending itself against any claim (whether asserted by the Issuer, any Guarantor, any Holder or any other Person). The obligation to pay such amounts shall survive the payment in full or defeasance of the Securities or the removal or resignation of the Trustee or the Collateral Agent, as applicable. The Trustee or the Collateral Agent, as applicable, shall notify the Issuer of any claim for which it may seek indemnity promptly upon obtaining actual knowledge thereof; *provided, however*, that any failure so to notify the Issuer shall not relieve the Issuer or any Guarantor of its indemnity obligations hereunder. The Issuer shall defend the claim and the indemnified party shall provide reasonable cooperation at the Issuer's expense in the defense. Such indemnified parties may have separate counsel and the Issuer and the Guarantors, as applicable, shall pay the reasonable fees and out-of-pocket expenses of such counsel; *provided, however*, the Issuer shall not be required to pay for any settlement made without its consent (such consent not to be unreasonably withheld, conditioned or delayed); and *provided, further*, that the Issuer shall not be required to pay such fees and expenses if it assumes such indemnified parties' defense and, in such indemnified parties' reasonable judgment, there is no conflict of interest between the Issuer and the Guarantors, as applicable, and such parties in connection with such defense. The Issuer need not reimburse any expense or indemnify against any loss, liability or expense incurred by an indemnified party through such party's own willful misconduct, negligence or bad faith.

To secure the Issuer's and the Guarantors' payment obligations in this Section 7.06, the Trustee shall have a Lien prior to the Securities on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of, and interest on, particular Securities.

The Issuer's and the Guarantors' payment obligations pursuant to this Section 7.06 shall survive the satisfaction or discharge of this Indenture, any rejection or termination of this Indenture under any Bankruptcy Law or the resignation or removal of the Trustee. Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs expenses after the occurrence of a Default specified in Section 6.01(d) or Section 6.01(e)

with respect to the Issuer, the expenses are intended to constitute expenses of administration under the Bankruptcy Law.

No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if repayment of such funds or adequate indemnity against such risk or liability is not assured to its satisfaction.

SECTION 7.07. Replacement of Trustee.

(a) The Trustee may resign in writing at any time upon 30 days prior notice to the Issuer by so notifying the Issuer. The Holders of a majority in principal amount of the Securities may remove the Trustee by so notifying the Trustee and may appoint a successor Trustee. The Issuer shall remove the Trustee if:

(i) the Trustee fails to comply with Section 7.09;

(ii) the Trustee is adjudged bankrupt or insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(iii) a receiver, custodian or other public officer takes charge of the Trustee or its property; or

(iv) the Trustee otherwise becomes incapable of acting.

(b) If the Trustee resigns or is removed by the Issuer or by the Holders of a majority in aggregate principal amount of the Securities and such Holders do not reasonably promptly appoint a successor Trustee, or if a vacancy exists in the office of Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Issuer shall promptly appoint a successor Trustee.

(c) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall provide a written notice of its succession to the Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the Lien provided for in Section 7.06.

(d) If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee or the Holders of at least 10% in aggregate principal amount of the Securities may petition, at the expense of the Issuer, any court of competent jurisdiction for the appointment of a successor Trustee.

(e) If the Trustee fails to comply with Section 7.09, any Holder who has been a bona fide holder of a Security for at least six months may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(f) Notwithstanding the replacement of the Trustee pursuant to this Section 7.07, the Issuer's obligations under Section 7.06 shall continue for the benefit of the retiring Trustee.

SECTION 7.08. Successor Trustee by Merger. If the Trustee consolidates with, merges with or converts into, or transfers all or substantially all of its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation or banking association without any further act shall be the successor Trustee.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trusts created by this Indenture, any of the Securities shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Securities so authenticated; and in case at that time any of the Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force that it is anywhere in the Securities or in this Indenture provided that the certificate of the Trustee shall have.

SECTION 7.09. [Reserved].

SECTION 7.10. [Reserved].

SECTION 7.11. Confidential Information. The Trustee, in its individual capacity and as Trustee, agrees and acknowledges that all information provided to the Trustee by the Issuer or any Subsidiary (or any direct or indirect equityholder of the Issuer or such Subsidiary) or any Holder (or holder of a beneficial interest in the Securities) may be considered to be proprietary and confidential information. The Trustee agrees to take all reasonable precautions necessary to keep such information confidential, which precautions shall be no less stringent than those that the Trustee employs to protect its own confidential information. The Trustee shall not disclose to any third party other than as set forth herein, and shall not use for any purpose other than the exercise of the Trustee's rights and the performance of its obligations under this Indenture, any such information without the prior written consent of the Issuer or such Holder (or such holder of a beneficial interest in the Securities), as applicable. The Trustee shall limit access to such information received hereunder to (a) its directors, officers, managers and employees and (b) its legal advisors, to each of whom disclosure of such information is necessary for the purposes described above; *provided, however*, that in each case such party has expressly agreed to maintain such information in confidence under terms and conditions substantially identical to the terms of this Section 7.11.

The Trustee agrees that the Issuer or any Holder (or any holder of a beneficial interest in the Securities), as applicable, does not have any responsibility whatsoever for any reliance on such information by the Trustee or by any Person to whom such information is disclosed in connection with this Indenture, whether related to the purposes described above or otherwise. Without limiting the generality of the foregoing, the Trustee agrees that the Issuer or any Holder (or any holder of a beneficial interest in the Securities), as applicable, makes no representation or warranty whatsoever to it with respect to such information or its suitability for

such purposes. The Trustee further agrees that it shall not acquire any rights against the Issuer or any of its Subsidiaries or any employee, officer, director, manager, representative or agent of the Issuer or any of its Subsidiaries or any Holder (or any holder of a beneficial interest in the Securities), as applicable (together with the Issuer, "Confidential Parties") as a result of the disclosure of such information to the Trustee and that no Confidential Party has any duty, responsibility, liability or obligation to any Person as a result of any such disclosure.

In the event the Trustee is required to disclose any such information received hereunder in order to comply with any laws, regulations or court orders, it may disclose such information only to the extent necessary for such compliance; *provided, however*, that it shall promptly give the Issuer or any Holder (or any holder of a beneficial interest in the Securities), as applicable, reasonable advance written notice of any court proceeding in which such disclosure may be required pursuant to a court order so as to afford the Issuer or any Holder (or any holder of a beneficial interest in the Securities), as applicable, full and fair opportunity to oppose the issuance of such order and to appeal therefrom and shall cooperate reasonably with the Issuer or any Holder (or any holder of a beneficial interest in the Securities), as applicable, in opposing such court order and in securing confidential treatment of any such information to be disclosed and/or obtaining a protective order narrowing the scope of such disclosure.

Each of the Paying Agent and the Registrar agrees to be bound by this Section 7.11 to the same extent as the Trustee.

ARTICLE 8

DISCHARGE OF INDENTURE; DEFEASANCE

SECTION 8.01. Discharge of Liability on Securities; Defeasance. This Indenture shall be discharged and shall cease to be of further effect (except as to surviving rights of registration of transfer or exchange of Securities, as expressly provided for in this Indenture) as to all outstanding Securities when:

(a) either (i) all the Securities theretofore authenticated and delivered (other than Securities pursuant to Section 2.08 that have been replaced or paid and Securities for which payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid by the Issuer or discharged from such trust) have been delivered to the Trustee for cancellation or (ii) all of the Securities (a) have become due and payable, (b) will become due and payable at their Stated Maturity within one year or (c) if redeemable at the option of the Issuer, are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer, and the Issuer has irrevocably deposited or caused to be deposited with the Trustee funds in an amount sufficient to pay and discharge the entire Indebtedness on the Securities not theretofore delivered to the Trustee for cancellation, for principal of, and interest on, the Securities to the date of deposit, together with irrevocable instructions from the Issuer directing the Trustee to apply such funds to the payment thereof at maturity or redemption, as the case may be;

(b) the Issuer and/or the Guarantors have paid all other sums then due and payable under this Indenture; and

(c) the Issuer has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel stating that all conditions precedent under this Indenture relating to the satisfaction and discharge of this Indenture have been complied with.

(d) Notwithstanding clauses (a) and (b) above, the Issuer's obligations in Sections 2.04, 2.05, 2.06, 2.07, 2.08, 7.06 and 7.07 and in this Article 8 shall survive until the Securities have been paid in full. Thereafter, the Issuer's obligations in Sections 7.06, 8.05 and 8.06 shall survive such satisfaction and discharge.

(e) Subject to Section 8.01(d) and Section 8.02, the Issuer at any time may terminate (i) all its obligations under the Securities and this Indenture (with respect to such Securities) ("legal defeasance option") or (ii) its obligations under Sections 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.10, 4.11, 4.13, 4.14, 4.15 and 4.16 and the operation of Section 4.08, Section 5.01 and Sections 6.01(b), 6.01(c), 6.01(d) (with respect to Subsidiaries of the Issuer only), 6.01(e) (with respect to Subsidiaries of the Issuer only), 6.01(f), 6.01(g), 6.01(h), 6.01(i), 6.01(j), 6.01(k) and 6.01(l) ("covenant defeasance option"). If the Issuer exercises its covenant defeasance options, the Securities will thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but will continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Securities will not be deemed outstanding for accounting purposes). The Issuer may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option. In the event that the Issuer terminates all of its obligations under the Securities and this Indenture (with respect to such Securities) by exercising its legal defeasance option or its covenant defeasance option, the obligations of each Guarantor under its Guarantee of such Securities and the Security Documents shall be terminated simultaneously with the termination of such obligations.

If the Issuer exercises its legal defeasance option, payment of the Securities so defeased may not be accelerated because of an Event of Default. If the Issuer exercises its covenant defeasance option, payment of the Securities so defeased may not be accelerated because of an Event of Default specified in Section 6.01(b), 6.01(c), 6.01(d) (to the extent such Section 6.01(d) applies to Subsidiaries), 6.01(e), 6.01(f), 6.01(g), 6.01(h), 6.01(i), 6.01(j), 6.01(k) or 6.01(l) or because of the failure of the Issuer to comply with Section 4.08 or Section 5.01.

Upon satisfaction of the conditions set forth herein and upon request of the Issuer, the Trustee shall acknowledge in writing the discharge of those obligations that the Issuer terminates.

SECTION 8.02. Conditions to Defeasance.

(a) The Issuer may exercise its legal defeasance option or its covenant defeasance option only if:

(i) the Issuer irrevocably deposits in trust with the Trustee cash in U.S. Dollars in an amount sufficient, or U.S. Government Obligations, the

principal of and the interest on which will be sufficient, or a combination thereof sufficient, to pay the principal of and interest on the Securities when due at maturity or redemption, as the case may be, including interest thereon to maturity or such redemption date;

(ii) no Default (other than that resulting from borrowing funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness and, in each case, the granting of Liens and the consummation of other transactions in connection therewith) shall have occurred and be continuing on the date of such deposit;

(iii) 123 days pass after the deposit is made and during the 123-day period no Default specified in Section 6.01(d) or Section 6.01(e) with respect to the Issuer occurs that is continuing at the end of the period;

(iv) the deposit does not constitute a default under any other agreement (other than this Indenture) binding on the Issuer (other than a default resulting from any borrowing of funds to be applied to make the deposit required to effect such legal defeasance option or covenant defeasance option and any similar and simultaneous deposit relating to other Indebtedness, and, in each case, the granting of Liens and the consummation of other transactions in connection therewith);

(v) in the case of the legal defeasance option, the Issuer shall have delivered to the Trustee an Opinion of Counsel stating that (1) the Issuer has received from, or there has been published by, the IRS a ruling, or (2) since the date of this Indenture there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such deposit and defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred;

(vi) in the case of the covenant defeasance option, the Issuer shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such deposit and defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred;

(vii) the right of any Holder to receive payment of principal of and interest on such Holder's Securities on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Securities shall not be impaired; and

(viii) the Issuer delivers to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Securities to be so defeased and discharged as contemplated by this Article 8 have been complied with.

(b) Before or after a deposit, the Issuer may make arrangements satisfactory to the Trustee for the redemption of such Securities at a future date in accordance with Article 3.

Notwithstanding the foregoing, an Opinion of Counsel required by 8.02(a) with respect to the legal defeasance option need not be delivered if all of the Securities not theretofore delivered to the Trustee for cancellation (i) have become due and payable or (ii) will become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer.

SECTION 8.03. Application of Trust Money. The Trustee shall hold in trust money or U.S. Government Obligations (including proceeds thereof) deposited with it pursuant to this Article 8. It shall apply the deposited money and the money from U.S. Government Obligations through each Paying Agent and in accordance with this Indenture to the payment of principal of and interest on the Securities so discharged or defeased.

SECTION 8.04. Repayment to Issuer. Each of the Trustee and each Paying Agent shall promptly turn over to the Issuer upon request any money or U.S. Government Obligations held by it as provided in this Article 8 that, in the written opinion of a nationally recognized firm of independent public accountants delivered to the Trustee (which delivery shall only be required if U.S. Government Obligations have been so deposited), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent discharge or defeasance in accordance with this Article 8.

Subject to any applicable abandoned property law, the Trustee and each Paying Agent shall pay to the Issuer upon written request any money held by them for the payment of principal or interest that remains unclaimed for two years, and, thereafter, Holders entitled to the money must look to the Issuer for payment as general creditors, and the Trustee and each Paying Agent shall have no further liability with respect to such monies.

SECTION 8.05. Indemnity for Government Obligations. The Issuer shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Securities.

SECTION 8.06. Reinstatement. If the Trustee or any Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this Article 8 by reason of any legal proceeding or by reason of any order or judgment of any Governmental Authority enjoining, restraining or otherwise prohibiting such application, the Issuer's obligations under this Indenture and the Securities so discharged or defeased shall be revived and reinstated as though no deposit had occurred pursuant to this Article 8 until such time as the Trustee or any

Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with this Article 8; *provided, however*, that, if the Issuer has made any payment of principal of or interest on any such Securities because of the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or U.S. Government Obligations held by the Trustee or any Paying Agent.

ARTICLE 9

AMENDMENTS AND WAIVERS

SECTION 9.01. Without Consent of the Holders. Notwithstanding Section 9.02, the Issuer, the Collateral Agent, the Guarantors and the Trustee may amend or supplement this Indenture, the Securities, the Guarantees or the Security Documents, and may waive any provision thereof, without notice to or consent of any Holder:

- (i) to cure any ambiguity, omission, mistake, defect or inconsistency;
- (ii) to provide for the assumption by a Successor Company of the obligations of the Issuer under this Indenture and the Securities;
- (iii) to provide for the assumption by a Successor Guarantor of the obligations of a Guarantor under this Indenture and its Guarantee;
- (iv) to provide for uncertificated Securities in addition to or in place of certificated Securities;
- (v) to add additional Guarantees with respect to the Securities;
- (vi) to add covenants for the benefit of the Holders or to surrender any right or power conferred herein upon the Issuer or any Guarantor;
- (vii) to make any change that does not adversely affect the rights of any Holder;
- (viii) to add additional assets as Notes Collateral to secure the Securities;
- (ix) to release Notes Collateral from any Lien pursuant to this Indenture and the Security Documents when permitted or required by this Indenture or the Security Documents;
- (x) at the Issuer's election, to comply with requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA, if applicable (it being agreed that this Indenture need not qualify under the TIA); or
- (xi) to evidence and provide for the acceptance and appointment under this Indenture of a successor Trustee hereunder pursuant to the requirements hereof.

After an amendment under this Section 9.01 becomes effective, the Issuer shall provide to the Holders a written notice briefly describing such amendment. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.01.

SECTION 9.02. With Consent of the Holders.

(a) The Issuer, the Collateral Agent, the Guarantors and the Trustee may amend or supplement this Indenture, the Securities, the Guarantees and the Security Documents, and may waive any provision thereof, with the written consent of the Holders of a majority in aggregate principal amount of the Securities then outstanding voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Securities). However, without the consent of each Holder of an outstanding Security affected, an amendment, supplement or waiver may not:

- (i) reduce the principal amount of Securities whose Holders must consent to an amendment,
- (ii) reduce the rate of or extend the time for payment of interest on any Security held by a non-consenting Holder,
- (iii) reduce the principal of or change the Stated Maturity of any Security held by a non-consenting Holder,
- (iv) reduce the amount payable upon the redemption of any Security held by a non-consenting Holder or change the time at which any such Security may be redeemed in accordance with Article 3,
- (v) make any Security held by a non-consenting Holder payable in money other than that stated in such Security,
- (vi) expressly subordinate the Securities held by or any Guarantees for the benefit of a non-consenting Holder to any other Indebtedness of the Issuer or any Guarantor,
- (vii) impair the right of any non-consenting Holder to receive payment of principal of, and interest on, such Holder's Securities on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Securities,
- (viii) make any change in Section 6.04 or the second sentence of this Section 9.02,
- (ix) modify any Guarantees in any manner materially adverse to any non-consenting Holder of any Security or in any other manner that otherwise disproportionately affects any non-consenting Holder, or

(x) make any change in the provisions in this Indenture dealing with the application of proceeds of Notes Collateral that would materially adversely affect any non-consenting Holder of the Securities or otherwise disproportionately affect any non-consenting Holder.

Without the consent of the Holders of at least two-thirds in aggregate principal amount of the Securities then outstanding, no amendment, supplement or waiver may release all or substantially all of the Notes Collateral from the Lien of this Indenture and the Security Documents with respect to the Securities.

It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof. A consent to any amendment, supplement or waiver under this Indenture by any Holder of the Notes given in connection with a tender or exchange of such Holder's Notes will not be rendered invalid by such tender or exchange.

Notwithstanding the foregoing, neither an Opinion of Counsel nor an Officer's Certificate shall be required in connection with the addition of a Guarantor under this Indenture upon execution and delivery by such Guarantor and the Trustee of a supplemental indenture to this Indenture, the form of which is attached as Exhibit B hereto, provided that the execution thereof shall be deemed a representation by such Guarantor(s) that all conditions precedent and covenants, if any, relating to the execution of such supplemental indenture have been satisfied and the supplemental indenture is enforceable in accordance with its terms subject to (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and similar laws affecting the rights and remedies of creditors generally and (ii) general principles of equity.

(b) After an amendment under this Section 9.02 becomes effective, the Issuer shall provide to the Holders a written notice briefly describing such amendment. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.02.

SECTION 9.03. Revocation and Effect of Consents and Waivers.

(a) A consent to an amendment, supplement or a waiver by a Holder of a Security shall bind the Holder and every subsequent Holder of that Security or portion of the Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on the Security. However, any such Holder or subsequent Holder may revoke the consent as to such Holder's Security or portion of the Security if the Trustee receives the notice of revocation before the date on which the amendment, supplement or waiver becomes effective. After an amendment, supplement or waiver becomes effective, it shall bind every Holder. An amendment, supplement or waiver becomes effective upon the (i) receipt by the Issuer or the Trustee of consents by the Holders of the requisite principal amount of Securities, (ii) satisfaction of conditions to effectiveness as set forth in this Indenture and any indenture supplemental hereto containing such amendment, supplement or waiver, (iii) execution of such amendment, supplement or waiver by the Issuer and the Trustee and (iv) delivery to the Trustee of the Officer's Certificate and Opinion of Counsel required under Article 12.

(b) The Issuer may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding Section 9.03(a), those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date.

SECTION 9.04. Notation on or Exchange of Securities. If an amendment, supplement or waiver changes the terms of a Security, the Issuer may require the Holder of the Security to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security regarding the changed terms and return it to the Holder. Alternatively, if the Issuer or the Trustee so determines, the Issuer in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms. Failure to make the appropriate notation or to issue a new Security shall not affect the validity of such amendment, supplement or waiver.

SECTION 9.05. Trustee to Sign Amendments. The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article 9 if the amendment does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may but need not sign it. In signing such amendment, the Trustee shall be entitled to receive indemnity reasonably satisfactory to it and shall be provided with, and (subject to Section 7.01 and Section 7.02) shall be fully protected in relying upon, an Officer's Certificate and an Opinion of Counsel stating that such amendment, supplement or waiver is authorized or permitted by this Indenture and that such amendment, supplement or waiver is the legal, valid and binding obligation of the Issuer and the Guarantors, enforceable against them in accordance with its terms, subject to customary exceptions, and complies with the provisions hereof (including Section 9.03).

SECTION 9.06. Payment for Consent. Neither the Issuer nor any Affiliate of the Issuer shall, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Securities unless such consideration is offered to be paid to all Holders that so consent, waive or agree to amend in the time frame set forth in solicitation documents relating to such consent, waiver or agreement.

SECTION 9.07. Additional Voting Terms; Calculation of Principal Amount. All Securities issued under this Indenture shall vote and consent together on all matters (as to which any of such Securities may vote) as one class. Determinations as to whether Holders of the requisite aggregate principal amount of Securities have concurred in any direction, waiver or consent shall be made in accordance with this Article 9 and Section 2.14.

ARTICLE 10

GUARANTEES

SECTION 10.01. Guarantees.

(a) Each Guarantor hereby jointly and severally, irrevocably and unconditionally guarantees as a primary obligor and not merely as a surety on a senior basis to each Holder and to the Trustee and its successors and assigns, to the extent lawful, (i) the full and punctual payment when due, whether at Stated Maturity, by acceleration, by redemption or otherwise, of all obligations of the Issuer under this Indenture (including obligations to the Trustee) and the Securities, whether for payment of principal of, or interest on, the Securities and all other monetary obligations of the Issuer under this Indenture and the Securities, and (ii) the full and punctual performance within applicable grace periods of all other obligations of the Issuer, whether for fees, expenses, indemnification or otherwise under this Indenture and the Securities (all the foregoing being hereinafter collectively called the “Guaranteed Obligations”). Each Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from each such Guarantor, and that each such Guarantor shall remain bound under this Article 10 notwithstanding any extension or renewal of any Guaranteed Obligation. The Guaranteed Obligations of a Guarantor will be secured by security interests (subject to Permitted Liens) in the Notes Collateral owned by such Guarantor to the extent provided for in the Security Documents and as required pursuant to Sections 4.11 and 4.13.

(b) To the fullest extent permitted by applicable law, each Guarantor waives presentation to, demand of payment from and protest to the Issuer of any of the Guaranteed Obligations and also waives notice of protest for nonpayment. To the fullest extent permitted by applicable law, each Guarantor waives notice of any default under the Securities or the Guaranteed Obligations. The obligations of each Guarantor hereunder shall not be affected by (i) the failure of any Holder, the Trustee or the Collateral Agent to assert any claim or demand or to enforce any right or remedy against the Issuer or any other Person under this Indenture, the Securities, any Security Document, or any other agreement or otherwise; (ii) any extension or renewal of this Indenture, the Securities, any Security Document or any other agreement; (iii) any rescission, waiver, amendment or modification of any of the terms or provisions of this Indenture, the Securities, any Security Document or any other agreement; (iv) the release of any security held by any Holder, the Trustee or the Collateral Agent for the Guaranteed Obligations or any Guarantor; (v) the failure of any Holder, the Trustee or the Collateral Agent to exercise any right or remedy against any other guarantor of the Guaranteed Obligations; or (vi) any change in the ownership of such Guarantor, except as provided in Section 10.02(b).

(c) To the fullest extent permitted by applicable law, each Guarantor hereby waives any right to which it may be entitled to have its obligations hereunder divided among the Guarantors, such that such Guarantor’s obligations would be less than the full amount claimed. To the fullest extent permitted by applicable law, each Guarantor hereby waives any right to which it may be entitled to have the assets of the Issuer or any other Guarantor first be used and depleted as payment of the Issuer’s or such Guarantor’s obligations hereunder prior to any amounts being claimed from or paid by such Guarantor hereunder. To the fullest extent

permitted by applicable law, each Guarantor hereby waives any right to which it may be entitled to require that the Issuer be sued prior to an action being initiated against such Guarantor.

(d) Each Guarantor further agrees that its Guarantee herein constitutes a guarantee of payment when due (and not a guarantee of collection) and waives any right to require that any resort be had by any Holder, the Trustee or the Collateral Agent to any security held for payment of the Guaranteed Obligations.

(e) Except as set forth in Sections 8.01 and 10.02, the obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason (other than payment of the Guaranteed Obligations in full), including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Guarantor herein shall not be discharged or impaired or otherwise affected by the failure of any Holder, the Trustee or the Collateral Agent to assert any claim or demand or to enforce any remedy under this Indenture, the Securities, any Security Document or any other agreement, by any waiver or modification of any thereof, by any default, failure or delay, willful or otherwise, in the performance of the obligations, or by any other act or thing or omission or delay to do any other act or thing that may or might in any manner or to any extent vary the risk of any Guarantor or would otherwise operate as a discharge of any Guarantor as a matter of law or equity.

(f) Except as set forth in Sections 8.01 and 10.02, each Guarantor agrees that its Guarantee shall remain in full force and effect until payment in full of all the Guaranteed Obligations. Except as set forth in Sections 8.01 and 10.02, each Guarantor further agrees that its Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of, or interest on, any Guaranteed Obligation is rescinded or must otherwise be restored by any Holder or the Trustee upon the bankruptcy or reorganization of the Issuer or otherwise.

(g) In furtherance of the foregoing and not in limitation of any other right that any Holder, the Trustee or the Collateral Agent has at law or in equity against any Guarantor by virtue hereof, upon the failure of the Issuer to pay the principal of, or interest on, any Guaranteed Obligation when and as the same shall become due, whether at maturity, by acceleration, by redemption or otherwise, or to perform or comply with any other Guaranteed Obligation, each Guarantor hereby promises to and shall, upon receipt of written demand by the Trustee in accordance with this Indenture, forthwith pay, or cause to be paid, in cash, to the Holders, the Trustee or the Collateral Agent an amount equal to the sum of (i) the unpaid principal amount of such Guaranteed Obligations then due and owing, (ii) accrued and unpaid interest on such Guaranteed Obligations then due and owing (but only to the extent not prohibited by applicable law) and (iii) all other monetary obligations of the Issuer then due and owing to the Holders, the Trustee and the Collateral Agent in respect of the Guaranteed Obligations.

(h) Each Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any Guaranteed Obligations guaranteed hereby until payment in full of all Guaranteed Obligations. Each Guarantor further agrees that, as

between it, on the one hand, and the Holders, the Trustee and the Collateral Agent, on the other hand, (i) the maturity of the Guaranteed Obligations guaranteed hereby may be accelerated as provided in Article 6 for the purposes of any Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations guaranteed hereby, and (ii) in the event of any declaration of acceleration of such Guaranteed Obligations as provided in Article 6, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable by such Guarantor for the purposes of this Section 10.01.

(i) Each Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Trustee, the Collateral Agent or any Holder in enforcing any rights under this Section 10.01.

(j) Upon request of the Trustee, each Guarantor shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

SECTION 10.02. Limitation on Liability.

(a) Any term or provision of this Indenture to the contrary notwithstanding, the maximum aggregate amount of the Guaranteed Obligations guaranteed hereunder by any Guarantor shall not exceed the maximum amount that can be guaranteed hereby without rendering the Guarantee, as it relates to such Guarantor, voidable under applicable laws relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally.

(b) A Guarantee as to any Guarantor shall terminate and be of no further force or effect, such Guarantor shall be deemed to be automatically released from all obligations under this Indenture and the Security Documents to which it is a party, and the Liens, if any, on the Notes Collateral pledged by such Guarantor pursuant to the Security Documents shall be released with respect to the Securities upon:

(i) the sale, disposition, exchange or other transfer (including through merger, consolidation, amalgamation or otherwise) of the Capital Stock, or all or substantially all the assets, of the applicable Guarantor if such sale, disposition, exchange or other transfer is made in a manner not in violation of this Indenture;

(ii) the Issuer designating such Guarantor to be an Excluded Subsidiary; or

(iii) the Issuer's exercise of the Issuer's legal defeasance option or covenant defeasance option in accordance with Section 8.01 or if the obligations of the Issuer and such Guarantor under this Indenture are discharged in accordance with the terms of this Indenture.

SECTION 10.03. Successors and Assigns. This Article 10 shall be binding upon each Guarantor and its successors and assigns and shall inure to the benefit of the Trustee, the Collateral Agent and the Holders and their respective successors and assigns and, in the event of

any transfer or assignment of rights by any Holder, the Collateral Agent or the Trustee, the rights and privileges conferred upon that party in this Indenture and in the Securities shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions of this Indenture.

SECTION 10.04. No Waiver. Neither a failure nor a delay on the part of the Trustee, the Collateral Agent or the Holders in exercising any right, power or privilege under this Article 10 shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The rights, remedies and benefits of the Trustee, the Collateral Agent and the Holders herein expressly specified are cumulative and not exclusive of any other rights, remedies or benefits that any of them may have under this Article 10 at law, in equity, by statute or otherwise.

SECTION 10.05. Modification. No modification, amendment or waiver of any provision of this Article 10, nor the consent to any departure by any Guarantor therefrom, shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on any Guarantor in any case shall entitle such Guarantor to any other or further notice or demand in the same, similar or other circumstances.

SECTION 10.06. Execution of Supplemental Indenture for Future Guarantors. Each Person that is required to become a Guarantor after the Issue Date pursuant to Section 4.10 shall promptly execute and deliver to the Trustee a supplemental indenture in the form of Exhibit B hereto pursuant to which such Person shall become a Guarantor under this Article 10 and shall guarantee the Guaranteed Obligations.

SECTION 10.07. No Impairment. The failure to endorse a Guarantee on any Security shall not affect or impair the validity thereof.

ARTICLE 11

SECURITY DOCUMENTS

SECTION 11.01. Collateral and Security Documents. The due and punctual payment of the principal of and interest on the Securities when and as the same shall be due and payable, whether on a Payment Date, at Stated Maturity, or by acceleration, repurchase, redemption or otherwise, and interest on the overdue principal of and interest (to the extent permitted by law), if any, on the Securities and performance of all other Guaranteed Obligations of the Issuer and the Guarantors to the Holders, the Trustee or the Collateral Agent under this Indenture, the Securities and the Security Documents, according to the terms hereunder or thereunder, shall be secured as provided in the Security Documents, which define the terms of the Liens that secure the Guaranteed Obligations. The Trustee and the Issuer hereby acknowledge and agree that the Collateral Agent holds the Notes Collateral in trust for the benefit of the Trustee and the Holders, in each case pursuant to the terms of the Security Documents. Each Holder, by accepting a Security, consents and agrees to the terms of the Security Documents (including the provisions providing for the possession, use, release and foreclosure of Notes Collateral) as the same may be in effect or may be amended from time to

time in accordance with their respective terms and this Indenture, and authorizes and directs the Collateral Agent to enter into the Security Documents (including any Intercreditor Agreement entered into in connection with any Working Capital Indebtedness) and to perform its obligations and exercise its rights thereunder in accordance therewith. The Issuer shall deliver to the Trustee (if it is not then also appointed and serving as Collateral Agent) copies of all documents delivered to the Collateral Agent pursuant to the Security Documents, and will do or cause to be done all such acts and things as may be reasonably required by the next sentence of this Section 11.01, to assure and confirm to the Trustee and the Collateral Agent the Liens on the Notes Collateral contemplated hereby, by the Security Documents or by any part thereof, as from time to time constituted, so as to render the same available for the security and benefit of this Indenture and of the Securities secured hereby, according to the intent and purposes herein expressed. The Issuer shall take, and shall cause the Guarantors to take, any and all actions reasonably required to cause the Security Documents to create and maintain at all times, as security for the Obligations of the Issuer and the Guarantors hereunder, a valid and enforceable perfected Lien on all of the Notes Collateral, in favor of the Collateral Agent for the benefit of the Trustee and the Holders under the Security Documents.

SECTION 11.02. [Reserved].

SECTION 11.03. Release of Collateral.

(a) Subject to Section 11.03(b) and 11.04, the Notes Collateral may be released from the Lien and security interest created by the Security Documents at any time or from time to time in accordance with the provisions of the Security Documents or as provided hereby. The Issuer and the Guarantors will be entitled to a release of assets included in the Notes Collateral from the Liens securing the Securities, and the Trustee shall release, or instruct the Collateral Agent to release, as applicable, the same from such Liens at the Issuer's sole cost and expense, under one or more of the following circumstances:

(1) to enable the Issuer or any Subsidiary to sell, exchange or otherwise dispose of any of the Notes Collateral to any Person other than the Issuer or any Subsidiary (but excluding any transaction subject to Section 5.01 where the recipient is required to become the obligor on the Securities or a Guarantee) to the extent not prohibited by this Indenture, including Section 4.06;

(2) to release Excess Proceeds that remain unexpended after the conclusion of a Purchase Offer conducted in accordance with this Indenture;

(3) in the case of a Guarantor that is released from its Guarantee with respect to the Securities in accordance with this Indenture, the release of the property and assets of such Guarantor;

(4) pursuant to an amendment, supplement or waiver in accordance with Article 9;

(5) with the consent of Holders of a majority, or two-thirds, as applicable, of the aggregate principal amount of the Securities then outstanding in accordance with Section 9.02 hereof;

(6) to the extent any Notes Collateral otherwise becomes Excluded Assets in a manner not otherwise prohibited by the Indenture and other Security Documents; and

(7) if the Securities have been defeased pursuant to Section 8.01 or if this Indenture is discharged pursuant to Section 8.01.

Upon receipt of an Officer's Certificate certifying that all conditions precedent under this Indenture and the Security Documents, if any, to such release have been met and any necessary or proper instruments of termination, satisfaction or release have been prepared by the Issuer, the Collateral Agent shall execute, deliver or acknowledge (at the Issuer's expense) such instruments or releases to evidence the release of any Notes Collateral permitted to be released pursuant to this Indenture or the Security Documents.

(b) At any time when a Default or Event of Default has occurred and is continuing and the maturity of the Securities has been accelerated (whether by declaration or otherwise) and the Trustee (if not then also appointed and serving as Collateral Agent) has delivered a notice of acceleration to the Collateral Agent, no release of Notes Collateral pursuant to the provisions of this Indenture or the Security Documents will be effective as against the Holders.

SECTION 11.04. Permitted Releases Not To Impair Lien. The release of any Notes Collateral from the terms hereof and of the Security Documents or the release of, in whole or in part, the Liens created by the Security Documents, will not be deemed to impair the security under this Indenture in contravention of the provisions hereof if and to the extent the Notes Collateral or Liens are released pursuant to the applicable Security Documents and the terms of this Article 11. Each of the Holders acknowledges that a release of Notes Collateral or a Lien in accordance with the terms of the Security Documents and of this Article 11 will not be deemed for any purpose to be in contravention of the terms of this Indenture.

SECTION 11.05. Suits To Protect the Collateral. Subject to the provisions of Article 7, the Trustee in its sole discretion and without the consent of the Holders, on behalf of the Holders, may or may direct the Collateral Agent to take all actions it deems necessary or appropriate in order to:

(a) enforce any of the terms of the Security Documents; and

(b) collect and receive any and all amounts payable in respect of the Guaranteed Obligations of the Issuer hereunder.

Subject to the provisions of the Security Documents, the Trustee shall have the power (but not the obligation) to institute and to maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Notes Collateral by any acts that may be unlawful or in violation of any of the Security Documents or this Indenture, and such suits and proceedings as the Trustee, in its sole discretion, may deem expedient to preserve or protect its interests and the interests of the Holders in the Notes Collateral (including the power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would

impair the Lien on the Notes Collateral or be prejudicial to the interests of the Holders or the Trustee).

SECTION 11.06. Authorization of Receipt of Funds by the Trustee Under the Security Documents. The Trustee is authorized (a) to receive any funds for the benefit of the Holders distributed under, and in accordance with, the Security Documents and (b) to make further distributions of such funds to the Holders according to the provisions of this Indenture and the Security Documents.

SECTION 11.07. Purchaser Protected. In no event shall any purchaser in good faith of any property purported to be released hereunder be bound to ascertain the authority of the Collateral Agent or the Trustee to execute the release or to inquire as to the satisfaction of any conditions required by the provisions hereof for the exercise of such authority or to see to the application of any consideration given by such purchaser or other transferee; nor shall any purchaser or other transferee of any property or rights permitted by this Article 11 to be sold be under any obligation to ascertain or inquire into the authority of the Issuer or the applicable Guarantor to make any such sale or other transfer.

SECTION 11.08. Powers Exercisable by Receiver or Trustee. In case the Notes Collateral shall be in the possession of a receiver or trustee, lawfully appointed, the powers conferred in this Article 11 upon the Issuer or a Guarantor with respect to the release, sale or other disposition of such property may be exercised by such receiver or trustee, and an instrument signed by such receiver or trustee shall be deemed the equivalent of any similar instrument of the Issuer or a Guarantor or of any officer or officers thereof required by the provisions of this Article 11; and if the Trustee shall be in the possession of the Notes Collateral under any provision of this Indenture, then such powers may be exercised by the Trustee.

SECTION 11.09. Release Upon Termination of the Issuer's Obligations. In the event that the Issuer delivers to the Trustee, in form and substance reasonably acceptable to the Trustee, an Officer's Certificate certifying that (i) payment in full of the principal of, and accrued and unpaid interest on, the Securities and all other Obligations with respect to the Securities under this Indenture, the Guarantees and the Security Documents that are due and payable at or prior to the time such principal, together accrued and unpaid interest (including additional interest, if any), are paid, (ii) all the obligations under this Indenture, the Securities and the Security Documents have been satisfied and discharged by complying with the provisions of Article 8 or (iii) the Issuer shall have exercised its legal defeasance option or its covenant defeasance option, in each case in compliance with the provisions of Article 8, the Trustee shall deliver to the Issuer and the Collateral Agent a notice stating that the Trustee, on behalf of the Holders, disclaims and gives up any and all rights it has in or to the Notes Collateral (other than with respect to funds held by the Trustee pursuant to Article 8), and any rights it has under the Security Documents, and upon receipt by the Collateral Agent of such notice, the Collateral Agent shall be deemed not to hold a Lien in the Notes Collateral on behalf of the Trustee and shall do or cause to be done all acts reasonably necessary to release such Lien as soon as is reasonably practicable.

SECTION 11.10. Collateral Agent.

(a) [•] shall initially act as Collateral Agent and shall be authorized to appoint co-Collateral Agents as necessary in its sole discretion. Except as otherwise explicitly provided herein or in the Security Documents, neither the Collateral Agent nor any of its officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Notes Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Notes Collateral upon the request of any other Person or to take any other action whatsoever with regard to the Notes Collateral or any part thereof. The Collateral Agent shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither the Collateral Agent nor any of its officers, directors, employees or agents shall be responsible for any act or failure to act hereunder, except for its own willful misconduct, gross negligence or bad faith. The Collateral Agent is not a fiduciary for the Trustee or the Holders.

(b) The Collateral Agent is authorized and directed to (i) enter into the Security Documents, (ii) bind the Holders on the terms as set forth in the Security Documents and (iii) perform and observe its obligations under the Security Documents.

ARTICLE 12

MISCELLANEOUS

SECTION 12.01. Notices.

(a) Any notice or communication required or permitted hereunder shall be in writing and delivered in person, via facsimile, via overnight courier, via electronic mail or via first-class mail addressed as follows:

if to the Issuer or a Guarantor:

GT Advanced Technologies Inc.
243 Daniel Webster Highway
Merrimack, New Hampshire 03054
Attention: Hoil Kim
Facsimile: (603) 595-6993
Email: hoil.kim@gtat.com

and

GT Advanced Technologies Inc.
243 Daniel Webster Highway
Merrimack, New Hampshire 03054
Attention: Michele Rayos
Facsimile: (603) 589-2951
Email: michele.rayos@gtat.com

with a copy to:
Ropes & Gray LLP
Attn: Alexander Zeltser
1211 Avenue of the Americas
New York, NY 10036
Fax: (212) 841-5725

if to the Trustee or to the Collateral Agent:

[_____]]
[_____]]
[_____]]
[_____]]
Attention: [_____]]
Facsimile: [_____]]

The Issuer, the Collateral Agent or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

(b) Any notice or communication mailed to a Holder shall be mailed, first-class mail, to the Holder at the Holder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed within the time prescribed.

(c) Failure to provide a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given and provided, whether or not the addressee receives it, except that notices to the Trustee are effective only if received.

SECTION 12.02. Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Issuer to the Trustee to take or refrain from taking any action under this Indenture, the Issuer shall furnish to the Trustee at the request of the Trustee:

(a) an Officer's Certificate in form reasonably satisfactory to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(b) an Opinion of Counsel in form reasonably satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

SECTION 12.03. Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a covenant or condition provided for in this Indenture (other than pursuant to Section 4.02(e)) shall include:

(a) a statement that the individual making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such individual, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with; *provided, however*, that with respect to matters of fact an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials.

SECTION 12.04. When Securities Disregarded. In determining whether the Holders of the required principal amount of Securities have concurred in any direction, waiver or consent, Securities owned by the Issuer, any Guarantor or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Issuer or any Guarantor (other than Permitted Holders holding only Preferred Stock of the Issuer issued on the Issue Date) shall be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities that the Trustee knows are so owned shall be so disregarded. Subject to the foregoing, only Securities outstanding at the time shall be considered in any such determination. Notwithstanding the foregoing, if any such Person or Persons owns 100% of the Securities, such Securities shall not be so disregarded as aforesaid.

SECTION 12.05. Rules by Trustee, Paying Agent and Registrar. The Trustee may make reasonable rules for action by or a meeting of the Holders. The Registrar and a Paying Agent may make reasonable rules for their functions.

SECTION 12.06. Legal Holidays. If a Payment Date is not a Business Day, payment shall be made on the next succeeding day that is a Business Day, and no interest shall accrue on any amount that would have been otherwise payable on such Payment Date if it were a Business Day for the intervening period. If a Record Date is not a Business Day, the Record Date shall not be affected.

SECTION 12.07. **GOVERNING LAW; SUBMISSION TO JURISDICTION; WAIVER OF IMMUNITY. THIS INDENTURE, THE SECURITIES AND THE SECURITY DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.** The Issuer, the Guarantors, the Trustee and, by its acceptance of a Security, each Holder (and holder of beneficial interests in a Security) hereby submit to the non-exclusive jurisdiction of the federal and state courts of competent jurisdiction in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Indenture or the transactions contemplated hereby. To the extent that the Issuer or any Guarantor may in any jurisdiction claim for itself or its assets immunity (to the extent such immunity may now or hereafter exist, whether on the grounds of sovereign immunity or otherwise) from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process (whether through service of notice or otherwise), and to the extent that in any such jurisdiction there may

be attributed to itself or its assets such immunity (whether or not claimed), such Issuer or Guarantor, as applicable, irrevocably agrees with respect to any matter arising under this Indenture for the benefit of the Holders not to claim, and irrevocably waives, such immunity to the full extent permitted by the laws of such jurisdiction.

SECTION 12.08. No Recourse Against Others. No director, officer, employee, manager, incorporator, member, partner or holder of any Equity Interests in the Issuer or in any Guarantor, as such, shall have any liability for any obligations of the Issuer or the Guarantors under the Securities, this Indenture or the Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Securities by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Securities.

SECTION 12.09. Successors. All agreements of the Issuer and each Guarantor in this Indenture and the Securities shall bind their respective successors. All agreements of the Trustee in this Indenture shall bind its successors.

SECTION 12.10. Multiple Originals. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture and signature pages for all purposes.

SECTION 12.11. Table of Contents; Headings. The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

SECTION 12.12. Indenture Controls. If and to the extent that any provision of the Securities limits, qualifies or conflicts with a provision of this Indenture, such provision of this Indenture shall control.

SECTION 12.13. Severability. In case any provision in this Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

SECTION 12.14. Currency of Account; Conversion of Currency; Foreign Exchange Restrictions.

(a) U.S. Dollars are the sole currency of account and payment for all sums payable by the Issuer and the Guarantors under or in connection with the Securities, the Guarantees and this Indenture, including damages related thereto. Any amount received or recovered in a currency other than U.S. Dollars by a Holder (whether as a result of, or as a result of the enforcement of, a judgment or order of a court of any jurisdiction, in the winding-up or dissolution of the Issuer or otherwise) in respect of any sum expressed to be due to it from the Issuer or a Guarantor shall only constitute a discharge to the Issuer or any such Guarantor to the

extent of the U.S. Dollar amount, which the recipient is able to purchase with the amount so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so). If that U.S. Dollar amount is less than the U.S. Dollar amount expressed to be due to the recipient under the applicable Securities, the Issuer and the Guarantors shall indemnify it against any loss sustained by it as a result as set forth in Section 12.14(b). In any event, the Issuer and the Guarantors shall indemnify the recipient against the cost of making any such purchase. For the purposes of this Section 12.14, it will be sufficient for the Holder of a Security to certify in a satisfactory manner (indicating sources of information used) that it would have suffered a loss had an actual purchase of U.S. Dollars been made with the amount so received in that other currency on the date of receipt or recovery (or, if a purchase of U.S. Dollars on such date had not been practicable, on the first date on which it would have been practicable, it being required that the need for a change of date be certified in the manner mentioned above).

(b) The Issuer and the Guarantors, jointly and severally, covenant and agree that the following provisions shall apply to conversion of currency in the case of the Securities, the Guarantees and this Indenture:

(i) The following apply:

(A) If for the purpose of obtaining judgment in, or enforcing the judgment of, any court in any country, it becomes necessary to convert into a currency (the "Judgment Currency") an amount due in any other currency (the "Base Currency"), then the conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which the judgment is given or the order of enforcement is made, as the case may be (unless a court shall otherwise determine).

(B) If there is a change in the rate of exchange prevailing between the Business Day before the day on which the judgment is given or an order of enforcement is made, as the case may be (or such other date as a court shall determine), and the date of receipt of the amount due, the Issuer and the Guarantors will pay such additional (or, as the case may be, such lesser) amount, if any, as may be necessary so that the amount paid in the Judgment Currency when converted at the rate of exchange prevailing on the date of receipt will produce the amount in the Base Currency originally due.

(ii) In the event of the winding-up of the Issuer or any Guarantor at any time while any amount or damages owing under the Securities, the Guarantees and this Indenture, or any judgment or order rendered in respect thereof, shall remain outstanding, the Issuer and the Guarantors shall indemnify and hold the Holders and the Trustee harmless against any deficiency arising or resulting from any variation in rates of exchange between (1) the date as of which the foreign currency equivalent of the amount due or contingently due under the Securities, the Guarantees and this Indenture (other than under this subsection (b)(ii)) is calculated for the purposes of such winding-up and (2) the final date for the filing of proofs of claim in such winding-up. For the purpose of this

subsection (b)(ii), the final date for the filing of proofs of claim in the winding-up of the Issuer or any Guarantor shall be the date fixed by the liquidator or otherwise in accordance with the relevant provisions of applicable law as being the latest practicable date as at which liabilities of the Issuer or such Guarantor may be ascertained for such winding-up prior to payment by the liquidator or otherwise in respect thereto.

(c) The obligations contained in subsections (a), (b)(i)(B) and (b)(ii) of this Section 12.14 shall constitute separate and independent obligations from the other obligations of the Issuer and the Guarantors under this Indenture, shall give rise to separate and independent causes of action against the Issuer and the Guarantors. Any such deficiency as aforesaid may be deemed to constitute a loss suffered by the Holders or the Trustee, as the case may be, and no proof or evidence of any actual loss shall be required by the Issuer or any Guarantor or the liquidator or otherwise or any of them. In the case of subsection (b)(ii) above, the amount of such deficiency shall not be deemed to be reduced by any variation in rates of exchange occurring between the said final date and the date of any liquidating distribution.

(d) The term “rate(s) of exchange” shall mean the rate of exchange quoted by Reuters at 12:00 noon. (New York time) for spot purchases of the Base Currency with the Judgment Currency other than the Base Currency referred to in subsections (b)(i) and (b)(ii) above and includes any premiums and costs of exchange payable.

SECTION 12.15. Tax Matters.

(a) The Issuer has entered into this Indenture, and the Securities will be issued, with the intention that, for all tax purposes, the Securities will qualify as indebtedness. The Issuer, by entering into this Indenture, and each Holder and beneficial holder of Securities, agree to treat the Securities as indebtedness for all tax purposes.

(b) The Issuer shall not be obligated to pay any additional amounts to the Holders or beneficial holder of Securities as a result of any withholding or deduction for, or on account of, any present or future taxes imposed on payments in respect of the Securities. If a Global Security is issued, in accordance with the procedures of DTC, the Issuer shall (or shall direct the Trustee in writing to) request the Securities to be coded as eligible for the “portfolio interest exemption”. Unless otherwise required by applicable law, if Definitive Securities are issued, so long as a Person shall have delivered to the Issuer a properly completed IRS Form W-9, IRS Form W-8BEN, IRS Form W-8BEN-E, IRS Form W-8ECI or other applicable IRS form or, in the case of a Person claiming the exemption from U.S. federal withholding tax under Section 871(h) of the Code or Section 881(c) of the Code with respect to payments of “portfolio interest”, the appropriate properly completed IRS form together with a certificate substantially in the form of Exhibit C, neither the Issuer nor the Trustee shall withhold taxes on payments of interest made to any such Person. Any such IRS Form W-8BEN or IRS Form W-8BEN-E shall specify whether the Holder or beneficial holder of Securities to whom the form relates is entitled to the benefits of any applicable income tax treaty.

(c) If Definitive Securities are issued, (i) if any withholding tax is imposed on the Issuer’s payment under the Securities to any Holder or beneficial holder of Securities, such

tax shall reduce the amount otherwise distributable to such Holder or beneficial holder, as the case may be, (ii) the Trustee is hereby authorized and directed to retain from amounts otherwise distributable to any Holder or beneficial holder of Securities sufficient funds for the payment of any withholding tax that is legally owed with respect thereto (but such authorization shall not prevent the Trustee from contesting any such withholding tax in appropriate proceedings and withholding payment of such tax, if permitted by applicable law, pending the outcome of such proceedings) and (iii) the amount of any withholding tax imposed with respect to any Holder or beneficial holder of Securities shall be treated as cash distributed to such Holder or beneficial holder, as the case may be, at the time it is withheld by the Trustee and remitted to the appropriate taxing authority. If there is a possibility that withholding tax is payable with respect to a payment under the Securities, the Trustee may (but shall have no obligation to) withhold such amounts in accordance with this Section 12.16. Nothing herein shall impose an obligation on the part of the Trustee to determine the amount of any tax or withholding obligation on the part of the Issuer or in respect of the Securities.

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

GT ADVANCED TECHNOLOGIES INC.

By: _____

Name:

Title:

{Signature Page to the Indenture}

**[•],
as Trustee**

By: _____
Name:
Title:

**[•],
as Collateral Agent**

By: _____
Name:
Title:

APPENDIX A

PROVISIONS RELATING TO THE SECURITIES

1. Definitions.

1.1 Definitions.

For the purposes of this Appendix A, the following terms shall have the meanings indicated below (and if not defined in this Appendix A, capitalized terms used herein shall have the meaning set forth in this Indenture):

“Clearstream” means Clearstream Banking, S.A.

“Definitive Security” means a certificated Security (bearing the Restricted Securities Legend and/or the Regulation S Legend if the transfer of such Security is restricted by applicable law) that does not include the Global Securities Legend.

“Depository” means The Depository Trust Company, its nominees and their respective successors.

“Euroclear” means Euroclear Bank S.A./N.V., as operator of the Euroclear System.

“Global Securities Legend” means the legend set forth in Section 2.2(f)(i)(C) herein.

“Global Security” means a certificated Security (bearing the Restricted Securities Legend and/or the Regulation S Legend if the transfer of such Security is restricted by applicable law) that includes the Global Securities Legend. The term “Global Securities” includes Rule 144A Global Securities and Regulation S Global Securities.

“QIB” means a “qualified institutional buyer” as defined in Rule 144A.

“Regulation S” means Regulation S under the Securities Act.

“Regulation S Legend” means the legend set forth in Section 2.2(f)(i)(B) herein.

“Regulation S Securities” means all Securities offered and sold outside the United States in reliance on Regulation S.

“Restricted Period”, with respect to any Regulation S Securities, means the period of 40 consecutive days beginning on and including the later of (a) the day on which such Securities are first offered to persons other than distributors (as defined in Regulation S) in reliance on Regulation S, notice of which day shall be promptly given by the Issuer to the Trustee, and (b) the date of issuance of such Securities.

“Restricted Securities Legend” means the legend set forth in Section 2.2(f)(i)(A) herein.

“Rule 144A” means Rule 144A under the Securities Act.

“Rule 144A Securities” means all Securities privately placed with QIBs in reliance on Rule 144A.

“Rule 501” means Rule 501(a) under the Securities Act.

“Rule 506” means Rule 506 under the Securities Act.

“Securities Custodian” means the custodian with respect to a Global Security (as appointed by the Depository) or any successor person thereto, who shall initially be the Trustee.

“Transfer Restricted Definitive Securities” means Definitive Securities that bear or are required to bear or are subject to the Restricted Securities Legend and/or the Regulation S Legend.

“Transfer Restricted Global Securities” means Global Securities that bear or are required to bear or are subject to the Restricted Securities Legend and/or the Regulation S Legend.

“Unrestricted Definitive Securities” means Definitive Securities that are not required to bear, and are not subject to, the Restricted Securities Legend or the Regulation S Legend.

“Unrestricted Global Securities” means Global Securities that are not required to bear, and are not subject to, the Restricted Securities Legend or the Regulation S Legend.

“U.S. Person” means a “U.S. person” as defined in Regulation S.

1.2 Other Definitions.

<u>Term:</u>	<u>Defined in Section:</u>
Agent Members	2.1(b)
Regulation S Global Securities	2.1(b)
Rule 144A Global Securities	2.1(b)

2. The Securities.

2.1 Form and Dating; Global Securities.

(a) Issuance and Transfers. The Securities issued by the Issuer will be (i) privately placed by the Issuer and (ii) sold initially only to (1) QIBs and (2) Persons other than U.S. Persons in reliance on Regulation S. Such Securities may thereafter be transferred to, among others, QIBs and purchasers in reliance on Regulation S.

(b) Global Securities. (i) Rule 144A Securities initially shall be represented by one or more Securities in fully registered, global form without interest coupons (collectively, the “Rule 144A Global Securities”), which shall be registered in the name of the Depository for the accounts of designated agents holding on behalf of Euroclear or Clearstream.

Regulation S Securities initially shall be represented by one or more Securities in fully registered, global form without interest coupons (collectively, the “Regulation S Global Securities”), which shall be registered in the name of the Depository for the accounts of designated agents holding on behalf of Euroclear or Clearstream.

The provisions of the “Operating Procedures of the Euroclear System” and “Terms and Conditions Governing Use of Euroclear” and the “General Terms and Conditions of Clearstream Banking” and “Customer Handbook” of Clearstream shall be applicable to transfers of beneficial interests in the Regulation S Global Securities that are held through Euroclear or Clearstream, as applicable.

The Global Securities shall bear the Global Securities Legend. The Global Securities initially shall (i) be registered in the name of the Depository, in each case for credit to an account of an Agent Member, (ii) be delivered to the Securities Custodian, (iii) bear the Restricted Securities Legend and (iv) if applicable, bear the Regulation S Legend.

Members of, or direct or indirect participants in, the Depository (collectively, the “Agent Members”) shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depository, or the Trustee as its custodian, or under the Global Securities. The Depository may be treated by the Issuer, the Trustee and any agent of the Issuer or the Trustee as the absolute owner of the Global Securities for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Trustee or any agent of the Issuer or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository, or impair, as between the Depository and its Agent

Members, the operation of customary practices governing the exercise of the rights of a Holder of any Security.

The Registrar shall retain copies of all letters, notices, confidentiality agreements and other written communications received pursuant to this Section 2.1 or Section 2.2. The Issuer, at its sole cost and expense, shall have the right to inspect and make copies of all such letters, notices, confidentiality agreements or other written communications at any reasonable time upon the giving of reasonable written notice to the Registrar.

(ii) Transfers of Global Securities shall be limited to transfer in whole, but not in part, to the Depository. If required to do so pursuant to any applicable law or regulation, beneficial owners may obtain Definitive Securities in exchange for their beneficial interests in a Global Security upon written request in accordance with the Depository's and the Registrar's procedures. In addition, a Global Security shall be exchangeable for Definitive Securities if (x) the Depository (1) notifies the Issuer that it is unwilling or unable to continue as depository for such Global Security or (2) has ceased to be a clearing agency registered under the Exchange Act, and in each case, the Issuer thereupon fails to appoint a successor depository, (y) the Issuer in its sole discretion executes and delivers to the Trustee and Registrar an Officer's Certificate stating that such Global Security shall be so exchangeable or (z) there shall have occurred and be continuing an Event of Default with respect to such Global Security. In all cases, Definitive Securities delivered in exchange for any Global Security or beneficial interests therein shall be registered in the names, and issued in any approved denominations, requested by or on behalf of the Depository in accordance with its customary procedures.

(iii) In connection with the transfer of a Global Security as an entirety to beneficial owners pursuant to subsection (ii) of this Section 2.1(b), such Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Issuer shall execute, and the Trustee shall authenticate and make available for delivery, to each beneficial owner identified by the Depository in writing in exchange for its beneficial interest in such Global Security, an equal aggregate principal amount of Definitive Securities of authorized denominations.

(iv) Any Transfer Restricted Definitive Security delivered in exchange for an interest in a Global Security pursuant to Section 2.2 shall, except as otherwise provided in Section 2.2, bear the Restricted Securities Legend and, if applicable, the Regulation S Legend.

(v) Notwithstanding the foregoing, through the Restricted Period, a beneficial interest in a Regulation S Global Security may be held only through Euroclear or Clearstream unless delivery is made in accordance with the applicable provisions of Section 2.2.

(vi) The Holder of any Global Security may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action that a Holder is entitled to take under this Indenture or the Securities.

2.2 Transfer and Exchange.

(a) Transfer and Exchange of Global Securities. A Global Security may not be transferred as a whole except as set forth in Section 2.1(b). Global Securities will not be

exchanged by the Issuer for Definitive Securities except under the circumstances described in Section 2.1(b)(ii). Global Securities also may be exchanged or replaced, in whole or in part, as provided in Sections 2.08 and 2.10 of this Indenture. Beneficial interests in a Global Security may be transferred and exchanged as provided in Section 2.2(b) or 2.2(g).

(b) Transfer and Exchange of Beneficial Interests in Global Securities. The transfer and exchange of beneficial interests in the Global Securities shall be effected through the Depository, in accordance with the provisions of this Indenture and the applicable rules and procedures of the Depository. Beneficial interests in Transfer Restricted Global Securities shall be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers and exchanges of beneficial interests in the Global Securities also shall require compliance with either subparagraph (i) or (ii) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(i) Transfer of Beneficial Interests in the Same Global Security. Beneficial interests in any Transfer Restricted Global Security may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Transfer Restricted Global Security in accordance with the transfer restrictions set forth in the Restricted Securities Legend and the Regulation S Legend, as applicable; *provided, however*, that prior to the expiration of the Restricted Period, transfers of beneficial interests in a Regulation S Global Security may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than to a QIB in reliance on Rule 144A). A beneficial interest in an Unrestricted Global Security may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Security. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.2(b)(i).

(ii) All Other Transfers and Exchanges of Beneficial Interests in Global Securities. In connection with all transfers and exchanges of beneficial interests in any Global Security that is not subject to Section 2.2(b)(i), the transferor of such beneficial interest must deliver to the Registrar (1) a written order from an Agent Member given to the Depository in accordance with the applicable rules and procedures of the Depository directing the Depository to credit or cause to be credited a beneficial interest in another Global Security in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the applicable rules and procedures of the Depository containing information regarding the Agent Member account to be credited with such increase. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Securities contained in this Indenture and the Securities or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Security pursuant to Section 2.2(g) of this Appendix A.

(iii) Transfer of Beneficial Interests to Another Transfer Restricted Global Security. A beneficial interest in a Transfer Restricted Global Security may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another

Transfer Restricted Global Security if the transfer complies with the requirements of Section 2.2(b)(ii) above and the Registrar receives the following:

(A) if the transferee will take delivery in the form of a beneficial interest in a Rule 144A Global Security, then the transferor must deliver a certificate in the form attached to the applicable Security; and

(B) if the transferee will take delivery in the form of a beneficial interest in a Regulation S Global Security, then the transferor must deliver a certificate in the form attached to the applicable Security.

(iv) Transfer and Exchange of Beneficial Interests in a Transfer Restricted Global Security for Beneficial Interests in an Unrestricted Global Security. A beneficial interest in a Transfer Restricted Global Security may be exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Security or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Security if the exchange or transfer complies with the requirements of Section 2.2(b)(ii) above and the Registrar receives the following:

(A) if the holder of such beneficial interest in a Transfer Restricted Global Security proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Security, a certificate from such holder in the form attached to the applicable Security; or

(B) if the holder of such beneficial interest in a Transfer Restricted Global Security proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Security, a certificate from such holder in the form attached to the applicable Security,

and, in each such case, if the Issuer or the Registrar so requests or if the applicable rules and procedures of the Depository so require, an Opinion of Counsel in form reasonably acceptable to the Issuer and the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Restricted Securities Legend and the Regulation S Legend, as applicable, are no longer required in order to maintain compliance with the Securities Act. If any such transfer or exchange is effected pursuant to this subparagraph (iv) at a time when an Unrestricted Global Security has not yet been issued, the Issuer shall issue and, upon receipt of a written order of the Issuer in the form of an Officer's Certificate, the Trustee shall authenticate one or more Unrestricted Global Securities in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred or exchanged pursuant to this subparagraph (iv).

(v) Transfer and Exchange of Beneficial Interests in an Unrestricted Global Security for Beneficial Interests in a Transfer Restricted Global Security. Beneficial interests in an Unrestricted Global Security cannot be exchanged for, or transferred to

Persons who take delivery thereof in the form of, a beneficial interest in a Transfer Restricted Global Security.

(c) Transfer and Exchange of Beneficial Interests in Global Securities for Definitive Securities. A beneficial interest in a Global Security may not be exchanged for a Definitive Security except under the circumstances described in Section 2.1(b)(ii).

(d) Transfer and Exchange of Definitive Securities for Beneficial Interests in Global Securities. Transfers and exchanges of Definitive Securities for beneficial interests in Global Securities also shall require compliance with either subparagraph (i), (ii), (iii) or (iv) below, as applicable:

(i) Transfer Restricted Definitive Securities to Beneficial Interests in Transfer Restricted Global Securities. If any Holder of a Transfer Restricted Definitive Security proposes to exchange such Transfer Restricted Definitive Security for a beneficial interest in a Transfer Restricted Global Security or to transfer such Transfer Restricted Definitive Security to a Person who takes delivery thereof in the form of a beneficial interest in a Transfer Restricted Global Security, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Transfer Restricted Definitive Security proposes to exchange such Transfer Restricted Definitive Security for a beneficial interest in a Transfer Restricted Global Security, a certificate from such Holder in the form attached to the applicable Security;

(B) if such Transfer Restricted Definitive Security is being transferred to a QIB in accordance with Rule 144A, a certificate from such Holder in the form attached to the applicable Security;

(C) if such Transfer Restricted Definitive Security is being transferred to a Person that is not a U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904 under the Securities Act, a certificate from such Holder in the form attached to the applicable Security;

(D) if such Transfer Restricted Definitive Security is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144 under the Securities Act, a certificate from such Holder in the form attached to the applicable Security; and

(E) if such Transfer Restricted Definitive Security is being transferred to the Issuer or a Subsidiary thereof, a certificate from such Holder in the form attached to the applicable Security;

the Trustee shall cancel the Transfer Restricted Definitive Security, and increase or cause to be increased the aggregate principal amount of the appropriate Transfer Restricted Global Security.

(ii) Transfer Restricted Definitive Securities to Beneficial Interests in Unrestricted Global Securities. A Holder of a Transfer Restricted Definitive Security may exchange such Transfer Restricted Definitive Security for a beneficial interest in an Unrestricted Global Security or transfer such Transfer Restricted Definitive Security to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Security only if the Registrar receives the following:

(A) if the Holder of such Transfer Restricted Definitive Security proposes to exchange such Transfer Restricted Definitive Security for a beneficial interest in an Unrestricted Global Security, a certificate from such Holder in the form attached to the applicable Security; or

(B) if the Holder of such Transfer Restricted Definitive Security proposes to transfer such Transfer Restricted Definitive Security to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Security, a certificate from such Holder in the form attached to the applicable Security,

and, in each such case, if the Issuer or the Registrar so requests or if the applicable rules and procedures of the Depository so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Restricted Securities Legend and the Regulation S Legend, as applicable, are no longer required in order to maintain compliance with the Securities Act. Upon satisfaction of the conditions of this subparagraph (ii), the Trustee shall cancel the Transfer Restricted Definitive Securities and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Security. If any such transfer or exchange is effected pursuant to this subparagraph (ii) at a time when an Unrestricted Global Security has not yet been issued, the Issuer shall issue and, upon receipt of an written order of the Issuer in the form of an Officer's Certificate, the Trustee shall authenticate one or more Unrestricted Global Securities in an aggregate principal amount equal to the aggregate principal amount of Transfer Restricted Definitive Securities transferred or exchanged pursuant to this subparagraph (ii).

(iii) Unrestricted Definitive Securities to Beneficial Interests in Unrestricted Global Securities. A Holder of an Unrestricted Definitive Security may exchange such Unrestricted Definitive Security for a beneficial interest in an Unrestricted Global Security or transfer such Unrestricted Definitive Security to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Security at any time. Upon receipt of a request for such an exchange or transfer, the Trustee shall cancel the applicable Unrestricted Definitive Security and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Securities. If any such transfer or exchange is effected pursuant to this subparagraph (iii) at a time when an Unrestricted Global Security has not yet been issued, the Issuer shall issue and, upon receipt of a written order of the Issuer in the form of an Officer's Certificate, the Trustee shall authenticate one or more Unrestricted Global Securities in an aggregate principal

amount equal to the aggregate principal amount of Unrestricted Definitive Securities transferred or exchanged pursuant to this subparagraph (iii).

(iv) Unrestricted Definitive Securities to Beneficial Interests in Transfer Restricted Global Securities. An Unrestricted Definitive Security cannot be exchanged for, or transferred to a Person who takes delivery thereof in the form of, a beneficial interest in a Transfer Restricted Global Security.

(e) Transfer and Exchange of Definitive Securities for Definitive Securities. Upon request by a Holder of Definitive Securities and such Holder's compliance with the provisions of this Section 2.2(e), the Registrar shall register the transfer or exchange of Definitive Securities. Prior to such registration of transfer or exchange, the requesting Holder shall present or surrender to the Registrar the Definitive Securities duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.2(e):

(i) Transfer Restricted Definitive Securities to Transfer Restricted Definitive Securities. A Transfer Restricted Definitive Security may be transferred to and registered in the name of a Person who takes delivery thereof in the form of a Transfer Restricted Definitive Security if the Registrar receives the following:

- (A) if the transfer will be made pursuant to Rule 144A, a certificate in the form attached to the applicable Security;
- (B) if the transfer will be made pursuant to Rule 903 or Rule 904 under the Securities Act, a certificate in the form attached to the applicable Security;
- (C) if the transfer will be made pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144 under the Securities Act, a certificate in the form attached to the applicable Security; and
- (D) if such transfer will be made to the Issuer or a Subsidiary thereof, a certificate in the form attached to the applicable Security.

(ii) Transfer Restricted Definitive Securities to Unrestricted Definitive Securities. Any Transfer Restricted Definitive Security may be exchanged by the Holder thereof for an Unrestricted Definitive Security or transferred to a Person who takes delivery thereof in the form of an Unrestricted Definitive Security if the Registrar receives the following:

- (1) if the Holder of such Transfer Restricted Definitive Security proposes to exchange such Transfer Restricted Definitive Security for an Unrestricted Definitive Security, a certificate from such Holder in the form attached to the applicable Security; or

(2) if the Holder of such Transfer Restricted Definitive Security proposes to transfer such Transfer Restricted Definitive Security to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Security, a certificate from such Holder in the form attached to the applicable Security,

and, in each such case, if the Registrar so requests, an Opinion of Counsel in form reasonably acceptable to the Issuer to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Restricted Securities Legend and the Regulation S Legend, as applicable, are no longer required in order to maintain compliance with the Securities Act.

(iii) Unrestricted Definitive Securities to Unrestricted Definitive Securities. A Holder of an Unrestricted Definitive Security may transfer such Unrestricted Definitive Security to a Person who takes delivery thereof in the form of an Unrestricted Definitive Security at any time. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Securities pursuant to the instructions from the Holder thereof.

(iv) Unrestricted Definitive Securities to Transfer Restricted Definitive Securities. An Unrestricted Definitive Security cannot be exchanged for, or transferred to a Person who takes delivery thereof in the form of, a Transfer Restricted Definitive Security.

At such time as all beneficial interests in a particular Global Security have been exchanged for Definitive Securities or a particular Global Security has been redeemed, repurchased or canceled in whole and not in part, each such Global Security shall be retained and canceled by the Trustee in accordance with Section 2.11 of this Indenture. At any time prior to such cancellation, if any beneficial interest in a Global Security is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security or for Definitive Securities, the principal amount of Securities represented by such Global Security shall be reduced accordingly and an endorsement shall be made on such Global Security by the Trustee or by the Depository at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security, such other Global Security shall be increased accordingly and an endorsement shall be made on such Global Security by the Trustee or by the Depository at the direction of the Trustee to reflect such increase.

(f) Legends.

(i) (A) Each Security certificate evidencing the Global Securities and the Definitive Securities (and all Securities issued in exchange therefor or in substitution thereof) shall bear a legend in substantially the following form (each defined term in the legend being defined as such for purposes of the legend only):

NEITHER THIS NOTE NOR ANY INTEREST HEREIN HAS BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), THE

SECURITIES LAWS OF ANY STATE OR THE SECURITIES LAWS OF ANY OTHER JURISDICTION, NOR IS SUCH REGISTRATION CONTEMPLATED. NEITHER THIS NOTE NOR ANY INTEREST HEREIN MAY BE ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED, SOLD OR OFFERED FOR SALE OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EXEMPTION FROM SUCH REGISTRATION THEREUNDER AND ANY OTHER APPLICABLE SECURITIES LAW REGISTRATION REQUIREMENTS. EACH PERSON OR ENTITY THAT ACQUIRES OR ACCEPTS THIS NOTE OR AN INTEREST HEREIN BY SUCH ACQUISITION OR ACCEPTANCE (1) REPRESENTS THAT (A) IT IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) AND, IF SUBSEQUENT TO THE INITIAL ACQUISITION HEREOF, IS PURCHASING THIS NOTE IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A UNDER THE SECURITIES ACT OR (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS NOTE IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 903 OR 904 OF REGULATION S UNDER THE SECURITIES ACT, (2) AGREES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THIS NOTE OR AN INTEREST HEREIN, EXCEPT (A) TO THE ISSUER OR A SUBSIDIARY THEREOF, (B) FOR SO LONG AS THIS NOTE IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO AN ENTITY IT REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER, TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A UNDER THE SECURITIES ACT, OR (C) TO PERSONS OR ENTITIES OTHER THAN U.S. PERSONS, INCLUDING DEALERS OR OTHER PROFESSIONAL FIDUCIARIES IN THE UNITED STATES ACTING ON A DISCRETIONARY BASIS FOR FOREIGN BENEFICIAL OWNERS (OTHER THAN AN ESTATE OR TRUST), IN OFFSHORE TRANSACTIONS IN RELIANCE UPON, AND IN ACCORDANCE WITH, REGULATION S UNDER THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON OR ENTITY TO WHOM THIS NOTE OR AN INTEREST HEREIN IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. THE TERMS "OFFSHORE TRANSACTION", "UNITED STATES" AND "U.S. PERSON" HAVE THE RESPECTIVE MEANINGS GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT. THE INDENTURE REFERRED TO HEREINAFTER CONTAINS A PROVISION REQUIRING THE REGISTRAR APPOINTED THEREUNDER TO REFUSE TO REGISTER ANY TRANSFER OF THIS NOTE IN VIOLATION OF THE FOREGOING RESTRICTIONS.

THIS NOTE MAY NOT BE RESOLD OR TRANSFERRED EXCEPT AS SET FORTH IN THE INDENTURE REFERRED TO HEREINAFTER, AND, IN ADDITION, EACH PERSON OR ENTITY THAT ACQUIRES OR ACCEPTS THIS NOTE OR AN INTEREST HEREIN BY SUCH ACQUISITION OR ACCEPTANCE AGREES TO COMPLY WITH THE TRANSFER RESTRICTIONS SET FORTH IN SUCH INDENTURE, AND FURTHER ACKNOWLEDGES AND AGREES TO THE PROVISIONS SET FORTH IN SUCH INDENTURE.

THE FOLLOWING INFORMATION IS SUPPLIED SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES. THIS NOTE WAS ISSUED WITH ORIGINAL ISSUE DISCOUNT ("OID") WITHIN THE MEANING OF SECTION 1273 OF THE INTERNAL REVENUE

CODE OF 1986, AS AMENDED (THE “CODE”), AND THIS LEGEND IS REQUIRED BY SECTION 1275(C) OF THE CODE.

Holders may obtain information regarding the amount of OID, the issue price, the issue date, and the yield to maturity relating to the Notes by contacting [●].

(B) Except as permitted by the following paragraph (ii), each Security certificate evidencing the Global Securities (and all Securities issued in exchange therefor or in substitution thereof), in the case of Securities offered in reliance on Regulation S, shall bear a legend in substantially the following form (each defined term in the legend being defined as such for purposes of the legend only):

THIS NOTE IS A TEMPORARY REGULATION S GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE REFERRED TO HEREINAFTER AND IS SUBJECT TO RESTRICTIONS ON THE TRANSFER AND EXCHANGE THEREOF AND ON THE PAYMENT OF INTEREST THEREON AS SPECIFIED IN THE INDENTURE REFERRED TO HEREINAFTER.

(C) Each Global Security shall bear the following legend:

UNLESS THIS NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION, TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY NOTE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON OR ENTITY IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF CEDE & CO. OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE AND TRANSFERS OF PORTIONS OF THIS NOTE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO HEREINAFTER.

(ii) Upon a sale or transfer after the expiration of the Restricted Period of any Security acquired pursuant to Regulation S, all requirements that such Security bear the Regulation S Legend shall cease to apply and the requirements requiring any such Initial Security be issued in global form shall continue to apply.

(g) Cancellation or Adjustment of Global Security. At such time as all beneficial interests in a particular Global Security have been exchanged for Definitive Securities or a particular Global Security has been redeemed, repurchased or canceled in whole and not in part, each such Global Security shall be returned to or retained and canceled by the Trustee in accordance with Section 2.11 of this Indenture. At any time

prior to such cancellation, if any beneficial interest in a Global Security is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security or for Definitive Securities, the principal amount of Securities represented by such Global Security shall be reduced accordingly and an endorsement shall be made on such Global Security by the Trustee or by the Depository at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security, such other Global Security shall be increased accordingly and an endorsement shall be made on such Global Security by the Trustee or by the Depository at the direction of the Trustee to reflect such increase.

(h) Obligations with Respect to Transfers and Exchanges of Securities.

(i) To permit registrations of transfers and exchanges, the Issuer shall, subject to the terms and conditions of this Section 2 and Article 2 of the Indenture, execute, and the Trustee shall authenticate, Definitive Securities and Global Securities at the Registrar's request.

(ii) No service charge shall be made to a Holder for any registration of transfer or exchange, but the Issuer may require the Holder to pay a sum sufficient to cover any transfer tax, assessments, or similar governmental charge payable in connection therewith (other than any such transfer taxes, assessments or similar governmental charge payable upon exchanges pursuant to Sections 3.06, 4.06, 4.08 and 9.04 of this Indenture).

(iii) Prior to the due presentation for registration of transfer of any Security, the Issuer, the Trustee, a Paying Agent or the Registrar may deem and treat the Person in whose name a Security is registered as the absolute owner of such Security for the purpose of receiving payment of principal of, and (subject to paragraph 2 of the form of Security attached hereto as Exhibit A) interest on, such Security and for all other purposes whatsoever, whether or not such Security is overdue, and none of the Issuer, the Trustee, the Paying Agent or the Registrar shall be affected by notice to the contrary.

(iv) All Securities issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Securities surrendered upon such transfer or exchange.

(i) No Obligation of the Trustee.

(i) The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Security, a member of, or a participant in, the Depository or any other Person with respect to the accuracy of the records of the Depository or of any participant or member thereof, with respect to any ownership interest in the Securities or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depository) of any notice (including any notice of redemption or repurchase) or the payment of any amount, under or with respect to such Securities. All notices and communications to be given to the Holders and all payments to be made to the Holders under the Securities shall be given or made to the registered Holders (which shall be the Depository in the case of a Global Security). Except as may be otherwise permitted pursuant to Section 2.14 of the Indenture, the rights of beneficial

owners in any Global Security shall be exercised only through the Depository subject to the applicable rules and procedures of the Depository. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, its participants and any beneficial owners.

(ii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Depository participants, members or beneficial owners in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

EXHIBIT A

{FORM OF SECURITY}

NEITHER THIS NOTE NOR ANY INTEREST HEREIN HAS BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), THE SECURITIES LAWS OF ANY STATE OR THE SECURITIES LAWS OF ANY OTHER JURISDICTION, NOR IS SUCH REGISTRATION CONTEMPLATED. NEITHER THIS NOTE NOR ANY INTEREST HEREIN MAY BE ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED, SOLD OR OFFERED FOR SALE OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EXEMPTION FROM SUCH REGISTRATION THEREUNDER AND ANY OTHER APPLICABLE SECURITIES LAW REGISTRATION REQUIREMENTS. EACH PERSON OR ENTITY THAT ACQUIRES OR ACCEPTS THIS NOTE OR AN INTEREST HEREIN BY SUCH ACQUISITION OR ACCEPTANCE (1) REPRESENTS THAT (A) IT IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) AND, IF SUBSEQUENT TO THE INITIAL ACQUISITION HEREOF, IS PURCHASING THIS NOTE IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A UNDER THE SECURITIES ACT OR (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS NOTE IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 903 OR 904 OF REGULATION S UNDER THE SECURITIES ACT, (2) AGREES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THIS NOTE OR AN INTEREST HEREIN, EXCEPT (A) TO THE ISSUER OR A SUBSIDIARY THEREOF, (B) FOR SO LONG AS THIS NOTE IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO AN ENTITY IT REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER, TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A UNDER THE SECURITIES ACT, OR (C) TO PERSONS OR ENTITIES OTHER THAN U.S. PERSONS, INCLUDING DEALERS OR OTHER PROFESSIONAL FIDUCIARIES IN THE UNITED STATES ACTING ON A DISCRETIONARY BASIS FOR FOREIGN BENEFICIAL OWNERS (OTHER THAN AN ESTATE OR TRUST), IN OFFSHORE TRANSACTIONS IN RELIANCE UPON, AND IN ACCORDANCE WITH, REGULATION S UNDER THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON OR ENTITY TO WHOM THIS NOTE OR AN INTEREST HEREIN IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND. THE TERMS "OFFSHORE TRANSACTION", "UNITED STATES" AND "U.S. PERSON" HAVE THE RESPECTIVE MEANINGS GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT. THE INDENTURE REFERRED TO HEREINAFTER CONTAINS A PROVISION REQUIRING THE REGISTRAR APPOINTED THEREUNDER TO REFUSE TO REGISTER ANY TRANSFER OF THIS NOTE IN VIOLATION OF THE FOREGOING RESTRICTIONS.

THIS NOTE MAY NOT BE RESOLD OR TRANSFERRED EXCEPT AS SET FORTH IN THE INDENTURE REFERRED TO HEREINAFTER, AND, IN ADDITION, EACH PERSON OR ENTITY THAT ACQUIRES OR ACCEPTS THIS NOTE OR AN INTEREST HEREIN BY SUCH ACQUISITION OR ACCEPTANCE AGREES TO COMPLY WITH THE TRANSFER

RESTRICTIONS SET FORTH IN SUCH INDENTURE, AND FURTHER ACKNOWLEDGES AND AGREES TO THE PROVISIONS SET FORTH IN SUCH INDENTURE.

{Global Securities Legend}

UNLESS THIS NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION, TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY NOTE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON OR ENTITY IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF CEDE & CO. OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS NOTE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO HEREINAFTER.

{Restricted Securities Legend for Global Securities Offered in Reliance on Regulation S}

THIS NOTE IS A TEMPORARY REGULATION S GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE REFERRED TO HEREINAFTER AND IS SUBJECT TO RESTRICTIONS ON THE TRANSFER AND EXCHANGE THEREOF AND ON THE PAYMENT OF INTEREST THEREON AS SPECIFIED IN THE INDENTURE REFERRED TO HEREINAFTER.

{Original Issue Discount Legend}

THE FOLLOWING INFORMATION IS SUPPLIED SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES. THIS NOTE WAS ISSUED WITH ORIGINAL ISSUE DISCOUNT ("OID") WITHIN THE MEANING OF SECTION 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), AND THIS LEGEND IS REQUIRED BY SECTION 1275(C) OF THE CODE.

Holders may obtain information regarding the amount of OID, the issue price, the issue date, and the yield to maturity relating to the Notes by contacting [●].

{FORM OF SECURITY }

No. _____

\$ _____

Senior Secured PIK Toggle Note due 2021

CUSIP No. _____

ISIN No. _____

GT Advanced Technologies Inc., a Delaware corporation (the “Issuer”), promises to pay to Cede & Co., or its registered assigns, the principal sum {of \$_____ Dollars} {as the same may be revised from time to time as listed on the Schedule of Increases or Decreases in Global Security attached hereto}³ on or before [•], 2021 as set forth in this Security.

Payment Dates: [•] and [•] (each, a “Payment Date”)

Record Dates: [•] and [•] (each, a “Record Date”)

Additional provisions of this Security are set forth on the following pages of this Security.

³ Use the Schedule of Increases or Decreases language if Security is in Global Form.

IN WITNESS WHEREOF, the undersigned has caused this Instrument to be duly executed.

GT ADVANCED TECHNOLOGIES INC.

By: _____

Name:

Title:

TRUSTEE'S CERTIFICATE OF
AUTHENTICATION

[•],
as Trustee, certifies that this is
one of the Securities
referred to in the within-mentioned Indenture.

By: _____
Authorized Signatory

Date: _____

Senior Secured PIK Toggle Note due 2021

1. Interest and Payments of Principal

(a) GT Advanced Technologies Inc., a Delaware corporation (the “Issuer”), shall pay interest on the outstanding principal amount of this Security in cash at a rate of 9.0% per annum; *provided* that, for any interest period, at the irrevocable election of the Issuer, so long as no Event of Default has occurred and is continuing at the time when such payment is due and payable or at the time when notice of such election is delivered by the Issuer to the Trustee prior to the beginning of such interest period, the Issuer may elect to pay interest on the outstanding principal amount of this Security in kind by increasing the principal amount of this Security or by issuing additional PIK Securities at a rate of 11.0% per annum (“PIK Interest”). If the Issuer elects, in respect of any interest period, to pay PIK Interest on this Security, the Issuer (i) must make such election in writing to the Trustee at least 15 but not more than 30 days prior to the beginning of such interest period, and such election shall be irrevocable once made, (ii) must make such election as to all interest due and payable on this Security for such interest period, and (iii) must make such election as to all interest due and payable on all other Securities for such interest period; and *further provided* that, in the event that, for any semi-annual interest payment, the Issuer does not elect to pay PIK Interest on this Security and fails to pay cash interest on this Security when due and payable, (x) interest on this Security shall be deemed to have accrued at a rate of 11.0% per annum for the interest period applicable to such semi-annual interest payment, and (y) the accrual of interest at such rate shall not cure or otherwise resolve any Event of Default caused by the failure to pay such interest in cash when due and payable.

(b) The Issuer shall pay interest semi-annually in arrears, whether in cash or in kind and at the applicable rate per annum pursuant to clause (a) above, on [•] and [•] of each year, commencing [•], 2016, or on the succeeding Business Day if any such date is not a Business Day. Interest on the Securities shall accrue daily on the outstanding principal amount thereof, at the applicable rate per annum pursuant to clause (a) above, from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from [•], 2016 until the principal hereof is paid or duly provided for. Interest shall be computed on the basis of a 360-day year of twelve 30-day months. PIK Interest shall be capitalized and added to the outstanding principal amount of this Security or by issuing additional PIK Securities on the applicable Payment Date. The Issuer shall pay interest on overdue principal at the per annum rate of 11.0%, and it shall pay interest on overdue installments of interest at the same 11.0% per annum rate to the extent lawful.

(c) At all times, PIK Interest on this Security will be payable (x) with respect to securities represented by one or more Global Securities registered in the name of, or held by, DTC or its nominee on the relevant record date, by increasing the principal amount of the outstanding Global Security by an amount equal to the amount of PIK Interest for the applicable interest period (rounded down to the nearest whole dollar) as provided in writing by the Issuer to the Trustee and (y) with respect to Securities represented by Definitive Securities, by issuing PIK Securities in certificated form in an

aggregate principal amount equal to the amount of PIK Interest for the applicable interest period (rounded down to the nearest whole dollar), and the Trustee will, at the written request of the Issuer, authenticate and deliver such PIK Securities in certificated form for original issuance to the Holders on the relevant record date, as shown by the records of the register of Holders. Following an increase in the principal amount of any outstanding Global Securities as a result of payment of any PIK Interest, such Global Security will bear interest on such increased principal amount from and after the date of such payment of PIK Interest. Any PIK Securities issued in certificated form will be dated as of the applicable Payment Date and will bear interest from and after such date. All Securities issued pursuant to a payment of PIK Interest will mature on [•], 2021 and will be governed by, and subject to the terms, provisions and conditions of, the Indenture and shall have the same rights and benefits as the Securities issued on the Issue Date. Any certificated PIK Securities will be issued with the description “PIK” on the face of such PIK Security.

(d) The Securities will mature, and all Obligations in respect thereof shall be due and payable in full in cash, on [•], 2021.

2. Method of Payment

The Issuer shall pay interest on the Securities (except defaulted interest) to the Persons who are registered Holders at the close of business on the Record Date immediately preceding the related Payment Date even if Securities are canceled after such Record Date and on or before such Payment Date (whether or not a Business Day). PIK Interest shall be credited to the account of such registered Holders. Holders must surrender Securities to the Paying Agent to collect principal payments. The Issuer shall pay principal and interest in money of the United States of America that at the time of payment is legal tender for payment of public and private debts. {Payments in cash in respect of the Securities (including principal and interest) shall be made by wire transfer of immediately available funds to the accounts specified by The Depository Trust Company or any successor depository.}⁴ {The Issuer shall make all payments in cash in respect of the Securities (including principal and interest) at the office of the Paying Agent, except that, at the option of the Issuer, payment of interest may be made by mailing a check to the registered address of each Holder thereof; *provided, however*, that payments on the Securities may also be made, in the case of a Holder of at least \$1,000,000 aggregate principal amount of Securities, by wire transfer to a U.S. dollar account maintained by the payee with a bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or Paying Agent to such effect designating such account no later than 30 days immediately preceding the relevant due date for payment (or such other date as the Trustee may accept in its discretion).}⁵

⁴ Include in a Global Security.

⁵ Include in a Definitive Security.

3. Paying Agent and Registrar

Initially, [•] (the “Trustee”) will act as Paying Agent and Registrar. The Issuer may appoint and change any Paying Agent, Registrar, co-registrar or transfer agent, upon notice to the Trustee, but without notice to any Holder. The Issuer or any of its domestically organized Wholly Owned Subsidiaries may act as Paying Agent or Registrar.

4. Indenture

The Issuer issued the Securities under the Indenture dated as of [•], 2016 (as it may be amended or supplemented from time to time in accordance with the terms thereof, the “Indenture”) among the Issuer, the guarantors that may be party thereto from time to time, the Trustee and the Collateral Agent. The terms of the Securities include those stated in the Indenture. Terms defined in the Indenture and not defined herein have the meanings ascribed thereto in the Indenture. The Securities are subject to all terms and provisions of the Indenture, and the Holders are referred to the Indenture for a statement of such terms and provisions.

The Securities are senior secured obligations of the Issuer. This Security is one of the Securities referred to in the Indenture. The Securities are treated as a single class of securities under the Indenture. The Indenture imposes certain limitations on the ability of the Issuer and its Subsidiaries to, among other things, make certain Investments and other Restricted Payments, pay dividends and other distributions, incur Indebtedness, enter into consensual restrictions upon the payment of certain dividends and distributions by such Subsidiaries, issue or sell shares of capital stock of the Issuer and such Subsidiaries, enter into or permit certain transactions with Affiliates, create or incur Liens and make Asset Sales. The Indenture also imposes limitations on the ability of the Issuer and each Guarantor to consolidate or merge with or into any other Person or convey, transfer or lease all or substantially all of their property.

To guarantee the due and punctual payment of the principal of, and interest on, the Securities and all other amounts payable by the Issuer under the Indenture and the Securities when and as the same shall be due and payable, whether at maturity, by acceleration or otherwise, according to the terms of the Securities and the Indenture, the Guarantors have, jointly and severally, irrevocably and unconditionally guaranteed the Guaranteed Obligations on a senior secured basis pursuant to the terms of the Indenture.

5. Redemption

The Issuer may redeem the Securities at its option, in whole at any time or in part from time to time, at a redemption price equal to 100% of the principal amount of the Securities being redeemed, plus all accrued and unpaid interest, if any, to the redemption date (subject to the right of Holders of record on the relevant Record Date to receive interest due on the relevant Payment Date). For the purpose of any optional redemption occurring prior to the end of any applicable interest period, the applicable interest rate for the principal amount to be redeemed shall be 9.0% per annum for the interest payment period in which such optional redemption occurs.

6. Notice of Redemption

Written notice of redemption pursuant to paragraph 5 will be provided at least 30 days but not more than 60 days before the redemption date to each Holder of Securities to be redeemed. Securities in denominations larger than \$2,000 may be redeemed in part but only in whole multiples of \$1,000 (or if a PIK Interest payment has been made, in denominations of \$1.00 and any integral multiple of \$1.00 in excess thereof with respect to a PIK Security or the portion of a Global Security constituting PIK Interest). If money sufficient to pay the redemption price of and accrued and unpaid interest on all Securities (or portions thereof) to be redeemed on the redemption date is deposited with a Paying Agent on or before the redemption date and certain other conditions are satisfied, on and after such date, interest ceases to accrue on such Securities (or such portions thereof) called for redemption.

Notice of any optional redemption may, at the Issuer's discretion, be subject to one or more conditions precedent, including the receipt by the Trustee, on or prior to the redemption date, of money sufficient to pay the principal of, and interest on, the Securities being redeemed, but any such notice shall otherwise be irrevocable once made.

7. Sinking Fund

The Securities are not subject to any sinking fund.

8. Repurchase of Securities at the Option of the Holders upon Change of Control, Asset Sales and Extraordinary Receipts.

Upon the occurrence of a Change of Control, unless the Issuer has exercised its right to redeem all of the Securities as described under paragraph 5 of the Securities, each Holder shall have the right, subject to certain conditions specified in the Indenture, to cause the Issuer to repurchase all or any part of such Holder's Securities at a purchase price in cash equal to 100% of the principal balance thereof, plus accrued and unpaid interest, if any, to the date of repurchase (subject to the right of the Holders of record on the relevant Record Date to receive interest due on the related Payment Date), as provided in, and subject to the terms of, Section 4.08 of the Indenture.

Upon the occurrence of certain Asset Sale and Extraordinary Receipts events, the Issuer will be required to offer to purchase Securities with the Excess Proceeds from such Asset Sale and Extraordinary Receipts Issuance events, as applicable, at an offer price in cash equal to 100% of the principal balance thereof, plus accrued and unpaid interest, if any, to the date of fixed for the closing of such offer, as provided in, and subject to the terms of, Section 4.06 of the Indenture.

9. Security

The Securities will be secured by the Notes Collateral on the terms and subject to the conditions set forth in the Indenture and the Security Documents. The Collateral Agent holds the Notes Collateral in trust for the benefit of the Trustee and the Holders, in each case pursuant to the Security Documents. Each Holder, by accepting this Security, consents and agrees to the terms of the Security Documents (including the provisions providing for the foreclosure and

release of Notes Collateral) as the same may be in effect or may be amended from time to time in accordance with their terms and the Indenture and authorizes and directs each of the Trustee and the Collateral Agent to enter into the Security Documents, and to perform its obligations and exercise its rights thereunder in accordance therewith.

10. Denominations; Transfer; Exchange

The Securities are in registered form, without coupons, in denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof (or if a PIK Interest payment has been made, in denominations of \$1.00 and any integral multiple of \$1.00 in excess thereof with respect to a PIK Security or the portion of a Global Security constituting PIK Interest). The registration of transfer of or exchange of Securities shall be done in accordance with the Indenture. Upon any registration of transfer or exchange, the Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of the Security not to be redeemed) or to transfer or exchange any Securities for a period of 15 days prior to a selection of Securities to be redeemed.

11. Persons Deemed Owners

Subject to Section 2.14 of the Indenture, the registered Holder of this Security shall be treated as the owner of it for all purposes.

12. Unclaimed Money

If money for the payment of principal or interest remains unclaimed for two years after such principal or interest has become due and payable, the Trustee and a Paying Agent shall pay the money back to the Issuer at its written request unless an abandoned property law designates another Person. After any such payment, the Holders entitled to the money must look to the Issuer for payment as general creditors and the Trustee and Paying Agent shall have no further liability with respect to such monies.

13. Discharge and Defeasance

Subject to certain conditions set forth in the Indenture, the Issuer at any time may terminate some of or all its obligations under the Securities and the Indenture if the Issuer deposits with the Trustee money or U.S. Government Obligations for the payment of principal and interest on the Securities to redemption or maturity, as the case may be.

14. Amendment; Waiver

Subject to certain exceptions set forth in the Indenture, (x) the Indenture, the Securities or any Security Document may be amended with the written consent of the Holders of a majority in principal amount of the Securities then outstanding (voting as a single class) and (y) any past default or compliance with any provisions may be waived with the written consent of the Holders of a majority in aggregate principal amount of the Securities then outstanding.

Subject to certain exceptions set forth in the Indenture, without the consent of any Holder, the Issuer, the Collateral Agent, the Guarantors and the Trustee may amend the Indenture, the Securities or any Security Document (i) to cure any ambiguity, omission, mistake, defect or inconsistency; (ii) to provide for the assumption by a Successor Company of the obligations of the Issuer under the Indenture and the Securities; (iii) to provide for the assumption by a Successor Guarantor of the obligations of a Guarantor under the Indenture and its Guarantee; (iv) to provide for uncertificated Securities in addition to or in place of certificated Securities; (v) to add additional Guarantees with respect to the Securities; (vi) to add covenants for the benefit of the Holders or to surrender any right or power conferred in the Indenture upon the Issuer or any Guarantor; (vii) to make any change that does not adversely affect the rights of any Holder; (ix) to release Notes Collateral from any Lien pursuant to the Indenture and the Security Documents when permitted or required by the Indenture or the Security Documents; (x) at the Issuer's election, to comply with requirements of the SEC in order to effect or maintain the qualification of the Indenture under the Trust Indenture Act of 1939 (15 U.S.C. Sections 77aaa-77bbbb) as in effect on the date of the Indenture (the "TIA") if applicable (it being agreed that the Indenture need not qualify under the TIA); or (xi) to evidence and provide for the acceptance and appointment under the Indenture of a successor Trustee thereunder pursuant to the requirements thereof.

15. Defaults and Remedies

If an Event of Default (other than an Event of Default relating to certain events of bankruptcy, insolvency or reorganization with respect to the Issuer) occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of outstanding Securities by notice to the Issuer may, and if such notice is given by the Holders such notice shall be given to the Issuer and the Trustee, declare that the principal of, and accrued but unpaid interest on, all the Securities is due and payable. Upon such a declaration, such principal and interest shall be due and payable immediately. If an Event of Default relating to certain events of bankruptcy, insolvency or reorganization with respect to the Issuer occurs, the principal of, and accrued but unpaid interest on, all the Securities shall *ipso facto* become and be immediately due and payable, without any declaration or other act on the part of the Trustee or any Holders. Under certain circumstances, the Holders of a majority in principal amount of the Securities may rescind any such acceleration with respect to the Securities and its consequences.

Except to enforce the right to receive payment of principal or interest when due, no Holder may pursue any remedy with respect to the Indenture or the Securities unless (i) such Holder gives the Trustee written notice stating that an Event of Default is continuing, (ii) the Holders of at least 25% in principal amount of the Securities make a written request to the Trustee to pursue the remedy, (iii) such Holder or Holders offer to the Trustee security or indemnity satisfactory to it against any loss, liability or expense, (iv) the Trustee does not comply with such request within 60 days after the receipt of the request and the offer of security or indemnity and (v) the Holders of a majority in principal amount of the Securities do not give the Trustee a direction inconsistent with such request during such 60-day period. Subject to certain restrictions set forth in the Indenture, the Holders of a majority in principal amount of the Securities may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. The Trustee, however, may refuse to follow any direction that conflicts with law or the Indenture or,

subject to the Indenture, that the Trustee determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability. Prior to taking any action under the Indenture, the Trustee shall be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

16. Trustee Dealings with the Issuer

Subject to certain limitations imposed by the Indenture, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Issuer or its Affiliates with the same rights it would have if it were not Trustee.

17. No Recourse Against Others

No director, officer, employee, manager, incorporator, member, partner or holder of any Equity Interests in the Issuer or in any Guarantor, as such, shall have any liability for any obligations of the Issuer or the Guarantors under the Securities or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Securities by accepting a Security waives and releases all such liability.

18. Authentication

This Security shall not be valid until an authorized signatory of the Trustee (or an authenticating agent) manually signs the certificate of authentication on this Security.

19. Abbreviations

Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

20. Governing Law

THIS SECURITY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

21. CUSIP Numbers; ISINs

The Issuer has caused CUSIP numbers and ISINs, if applicable, to be printed on the Securities and has directed the Trustee to use CUSIP numbers and ISINs, if applicable, in notices (including notices of redemption or purchase) as a convenience to the Holders. No representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice and reliance may be placed only on the other identification numbers placed thereon.

The Issuer will furnish to any Holder of Securities upon written request and without charge to the Holder a copy of the Indenture, which has in it the text of this Security.

ASSIGNMENT FORM

To assign this Security, fill in the form below:

I or we assign and transfer this Security to:

(Print or type assignee's name, address and zip code)

(Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint _____ agent to transfer this Security on the books of the Issuer. The agent may substitute another to act for him or her.

Date: _____ Your Signature: _____

Sign exactly as your name appears on this Security.

Signature Guarantee: _____

Date: _____

Signature must be guaranteed by a participant in a recognized signature guaranty medallion program or other signature guarantor program reasonably acceptable to the Trustee

Signature of Signature Guarantee

CERTIFICATE TO BE DELIVERED UPON EXCHANGE OR
REGISTRATION OF TRANSFER OF RESTRICTED SECURITIES

This certificate relates to \$_____ principal amount of Securities held in (check applicable space) ____ book-entry or ____ definitive form by the undersigned.

The undersigned (check one box below):

- has requested the Trustee by written order to deliver in exchange for its beneficial interest in the Global Security held by the Depository a Security or Securities in definitive, registered form of authorized denominations and an aggregate principal amount equal to its beneficial interest in such Global Security (or the portion thereof indicated above);
- has requested the Trustee by written order to exchange or register the transfer of a Security or Securities.

In connection with any transfer of any of the Securities evidenced by this certificate occurring prior to the expiration of the period referred to in Rule 144(d)(1) under the Securities Act, the undersigned confirms that such Securities are being transferred in accordance with its terms:

CHECK ONE BOX BELOW

- (1) to the Issuer or a Subsidiary thereof; or
- (2) to the Registrar for registration in the name of the Holder, without transfer; or
- (3) pursuant to an effective registration statement under the Securities Act of 1933; or
- (4) inside the United States to a “qualified institutional buyer” (as defined in Rule 144A under the Securities Act of 1933) that purchases for its own account or for the account of a qualified institutional buyer to whom notice is given that such transfer is being made in reliance on such Rule 144A, in each case pursuant to and in compliance with Rule 144A under the Securities Act of 1933; or
- (5) outside the United States in an offshore transaction within the meaning of Regulation S under the Securities Act in compliance with Rule 904 under the Securities Act of 1933 and such Security shall be held immediately after the transfer through Euroclear or Clearstream until the expiration of the Restricted Period; or
- (6) pursuant to another available exemption from registration provided by Rule 144 under the Securities Act of 1933.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Securities evidenced by this certificate in the name of any Person other than the registered Holder thereof; *provided, however*, that if box (5) or (6) is checked, the Issuer or the Trustee may require, prior to registering any such transfer of the Securities, such legal opinions, certifications and other information as the Issuer or the Trustee have reasonably requested to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933.

Date: _____ Your Signature: _____

Signature Guarantee: _____

Date: _____

Signature must be guaranteed by a participant
in a recognized signature guaranty medallion
program or other signature guarantor program
reasonably acceptable to the Trustee

Signature of Signature Guarantee

TO BE COMPLETED BY PURCHASER IF (4) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, and is aware that the sale to it is being made in reliance on such Rule 144A and acknowledges that it has received such information regarding the Issuer as the undersigned has requested pursuant to such Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned’s foregoing representations in order to claim the exemption from registration provided by such Rule 144A.

Dated: _____

NOTICE: To be executed by an executive officer

{TO BE ATTACHED TO GLOBAL SECURITIES}

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL SECURITY

The initial principal amount of this Global Security is \$_____. The following increases or decreases in this Global Security have been made:

<u>Date</u>	<u>Amount of decrease in Principal Amount of this Global Security</u>	<u>Amount of increase in Principal Amount of this Global Security</u>	<u>Principal amount of this Global Security following such decrease or increase</u>	<u>Signature of authorized signatory of Trustee or Securities Custodian</u>
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OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Security purchased by the Issuer pursuant to Section 4.06 (Asset Sale) or 4.08 (Change of Control) of the Indenture, check the box:

Asset Sale

Change of Control

If you want to elect to have only part of this Security purchased by the Issuer pursuant to Section 4.06 (Asset Sale) or 4.08 (Change of Control) of the Indenture, state the amount (\$2,000 or any integral multiple of \$1,000 in excess thereof (or, if a PIK Interest payment has been made, in a minimum denomination of \$1.00 with respect to a PIK Security or the portion of a Global Security constituting PIK Interest)):

\$

Date: _____ Your Signature: _____

(Sign exactly as your name
appears on this Security)

Signature Guarantee: _____

**Signature must be guaranteed by a participant in a
recognized signature guaranty medallion program or other
signature guarantor program reasonably acceptable to the
Trustee**

EXHIBIT B

{FORM OF}
SUPPLEMENTAL INDENTURE

This SUPPLEMENTAL INDENTURE (this “Supplemental Indenture”) dated as of _____, 20__ is among {GUARANTOR} (the “New Guarantor”), a subsidiary of GT Advanced Technologies Inc. (the “Issuer”), the Issuer, {the existing guarantors (the “Existing Guarantors”) under the Indenture referred to below,} and [•], as trustee (the “Trustee”) and as collateral agent (the “Collateral Agent”) under such Indenture.

W I T N E S S E T H :

WHEREAS the Issuer {and the Existing Guarantors} {has}{have} heretofore executed and delivered to the Trustee and the Collateral Agent an indenture (as amended, supplemented or otherwise modified, the “Indenture”) dated as of [•], 2016, providing for the issuance of the Issuer’s Senior Secured PIK Toggle Note due 2021 (the “Securities”);

WHEREAS Section 4.10 of the Indenture provides that under certain circumstances the Issuer is required to cause the New Guarantor to execute and deliver to the Trustee a supplemental indenture pursuant to which the New Guarantor shall guarantee the Issuer’s Obligations under the Securities and the Indenture pursuant to a Guarantee on the terms and conditions set forth herein and in the Indenture; and

WHEREAS, pursuant to Section 9.01(v) of the Indenture, the Trustee, the Issuer {and the Existing Guarantors} {is}{are} authorized to execute and deliver this Supplemental Indenture without notice to or consent of any Holder.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the New Guarantor, the Issuer{, the Existing Guarantors} and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

1. Defined Terms. As used in this Supplemental Indenture, terms defined in the Indenture or in the recitals hereto are used herein as therein defined, except that the term “Holders” in this Supplemental Indenture shall refer to the term “Holders” as defined in the Indenture and the Trustee acting on behalf of and for the benefit of such Holders. The words “herein”, “hereof” and “hereby” and other words of similar import used in this Supplemental Indenture refer to this Supplemental Indenture as a whole and not to any particular section hereof.

2. Agreement to Guarantee. The New Guarantor hereby, jointly and severally, with each Existing Guarantor, irrevocably and unconditionally guarantees as a primary obligor and not merely as a surety on a senior basis to each Holder and to the Trustee and its successors and assigns the Guaranteed Obligations, on the terms and subject to the conditions set forth in Article 10 of the Indenture, and agrees to be bound by all other applicable provisions of the Indenture and the Securities and to perform all of the obligations and agreements of a Guarantor under the Indenture and the Security Documents, including without limitation by

granting to the Collateral Trustee a lien on all properties and assets of the New Guarantor as may be required by the Indenture and the Security Documents.

3. Notices. All notices or other communications to the New Guarantor shall be given as provided in Section 12.01 of the Indenture.

4. Ratification of Indenture; Supplemental Indentures Part of Indenture. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder shall be bound hereby.

5. Governing Law. THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

6. Trustee Makes No Representation. The Trustee makes no representation as to the validity or sufficiency of this Supplemental Indenture.

7. Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

8. Effect of Headings. The Section headings herein are for convenience of reference only and shall not affect the construction thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the date first above written.

{NEW GUARANTOR}

By: _____
Name:
Title:

GT ADVANCED TECHNOLOGIES INC.

By: _____
Name:
Title:

{EXISTING GUARANTORS:}

{ANY EXISTING GUARANTORS}

By: _____
Name:
Title:

[•], AS TRUSTEE

By: _____
Name:
Title:

[•], AS COLLATERAL AGENT

By: _____
Name:
Title:

EXHIBIT C

FORM OF PORTFOLIO INTEREST CERTIFICATE

_____ hereby certifies that:

1. It is (*one must be checked*):
 - (1) _____ a natural individual person;
 - (2) _____ treated as a corporation for U.S. federal income tax purposes;
 - (3) _____ disregarded for U.S. federal income tax purposes (in which case a copy of this certificate is completed and signed by its sole beneficial owner); or
 - (4) _____ treated as a partnership for U.S. federal income tax purposes (in which case each partner also has completed as to itself and signed a copy of this certificate and an appropriate IRS Form W-8, a copy of each of which is attached, or, if applicable, has completed as to itself and signed an IRS Form W-9, a copy of which is attached).
2. It is not a bank, as such term is used in Section 881(c)(3)(A) of the Internal Revenue Code of 1986, as amended (the "Code").
3. It is not a 10-percent shareholder of GT Advanced Technologies Inc. (the "Issuer") within the meaning of Section 871(h)(3) of the Code or Section 881(c)(3)(B) of the Code.
4. It is not a controlled foreign corporation that is related to the Issuer within the meaning of Section 881(c)(3)(C) of the Code.
5. The interest payments in question are not effectively connected with its conduct of a United States trade or business.

{Fill in name of holder}

By: _____

Name:

Title:

Date:

EXHIBIT D

WORKING CAPITAL INDEBTEDNESS FINANCIAL CONDITIONS

1. Pursuant to Section 4.03(b)(4) of the Indenture, and subject to the further conditions set forth in such Section 4.03, the entry into and incurrence of Indebtedness under the Working Capital Credit Line shall be subject to the following financial conditions:

a. Entry into Working Capital Credit Line and Increases in Commitments. Entry into the Working Capital Credit Line and any increase in the aggregate commitments to extend credit under such Working Capital Credit Line are subject to the following financial condition: on the date that the Working Capital Credit Line is to be entered into or the increase in commitments thereunder is to become effective, as applicable, the Consolidated Leverage Ratio of the Issuer shall be less than or equal to [3.5] to 1.0, determined on a *pro forma* basis to give effect to the Incurrence of the maximum or committed amount (which, giving effect to any such increase in commitments, may be up to, but not in excess of, \$15,000,000 in aggregate principal amount) of Working Capital Indebtedness (including a *pro forma* application of the net proceeds therefrom), as if such additional Working Capital Indebtedness had been Incurred and the application of proceeds therefrom had occurred at the beginning of the applicable Test Period. For the avoidance of doubt, the condition set forth in this Section 1(a) shall apply regardless of whether, and to what extent, the Issuer actually incurs any Working Capital Indebtedness upon entering into such Working Capital Credit Line, and the Incurrence of any Working Capital Indebtedness shall be subject to the additional financial condition set forth in section 1(b) below.

b. Incurrence of Working Capital Indebtedness. Incurrence of Working Capital Indebtedness under the Working Capital Credit Line is subject to the following financial condition: the Issuer may Incur Working Capital Indebtedness, up to a maximum of \$15,000,000 aggregate principal amount of all Working Capital Indebtedness at any time outstanding, so long as the Consolidated Leverage Ratio of the Issuer would have been less than or equal to [3.5] to 1.0, determined on a *pro forma* basis to give effect to the Incurrence of such additional Working Capital Indebtedness (including a *pro forma* application of the net proceeds therefrom), as if such additional Working Capital Indebtedness had been Incurred and the application of proceeds therefrom had occurred at the beginning of the applicable Test Period. The Issuer may elect to treat all or any portion of the Working Capital Indebtedness permitted to be Incurred after application of the financial condition set forth in the immediately preceding sentence as being Incurred at the time such calculation is delivered (the amount demonstrated as Incurred for purposes of such calculation, whether drawn or not, the "Committed Amount"). Notwithstanding the requirements of Section 4.03(b)(3), the Issuer shall not be required to comply with such financial condition or deliver another Officer's Certificate demonstrating such compliance with respect to any amount drawn less than or equal to the Committed Amount until either (i) the Issuer had delivered, or had been required to deliver, additional financial statements pursuant to Section 4.02(a) or Section 4.02(b) or (ii) there occurs an event which would require a *pro forma* adjustment to the Consolidated Leverage Ratio pursuant to the definition thereof (other than the repayment and borrowing of Working Capital Indebtedness).

2. The following terms shall have the meanings specified below (capitalized terms used and not otherwise defined in this Exhibit D having the definitions assigned thereto in the Indenture):

“Consolidated Interest Expense” means, with respect to any Person for any period, the sum, without duplication, of:

(1) consolidated interest expense of such Person and its Subsidiaries for such period, to the extent such expense was deducted in computing Consolidated Net Income (including amortization of original issue discount, the interest component of Capitalized Lease Obligations, and net payments and receipts (if any) pursuant to interest rate Hedging Obligations, amortization of deferred financing fees, debt issuance costs, commissions, fees and expenses and expensing of any bridge, commitment or other financing fees); *plus*

(2) consolidated capitalized interest of such Person and its Subsidiaries for such period, whether paid or accrued; *minus*

(3) interest income for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by the Issuer to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

“Consolidated Leverage Ratio” means, with respect to any Person, at any date, the ratio of (i) Indebtedness of such Person and its Subsidiaries as of such date of calculation (determined on a consolidated basis in accordance with GAAP) to (ii) EBITDA of such Person for the Test Period immediately preceding such date (which will, for the purposes of this calculation, not be less than zero). In the event that the Issuer or any of its Subsidiaries Incurs, repays, repurchases or redeems any Indebtedness subsequent to the Test Period for which the Consolidated Leverage Ratio is being calculated but prior to the event for which the calculation of the Consolidated Leverage Ratio is made (the “Consolidated Leverage Calculation Date”), then the Consolidated Leverage Ratio shall be calculated giving pro forma effect to such Incurrence, repayment, repurchase or redemption of Indebtedness as if the same had occurred at the beginning of the applicable Test Period.

For purposes of making the computation referred to above, Investments, acquisitions, dispositions, mergers, amalgamations, consolidations and discontinued operations (as determined in accordance with GAAP), in each case with respect to an operating unit of a business, and any operational changes that the Issuer or any of its Subsidiaries has made subsequent to such Test Period and on or prior to or simultaneously with the Consolidated Leverage Calculation Date shall be calculated on a *pro forma* basis assuming that all such Investments, acquisitions, dispositions, mergers, amalgamations, consolidations, discontinued operations and other operational changes (and the change of any associated Indebtedness and the change in EBITDA resulting therefrom) had occurred on the first day of the Test Period. If since the beginning of such Test Period any Person that subsequently became a Subsidiary or was merged with or into the Issuer or any Subsidiary since the beginning of such Test Period shall have made any Investment, acquisition, disposition, merger, consolidation, amalgamation, discontinued

operation or operational change, in each case with respect to an operating unit of a business, that would have required adjustment pursuant to this definition, then the Consolidated Leverage Ratio shall be calculated giving *pro forma* effect thereto for such Test Period as if such Investment, acquisition, disposition, merger, amalgamation, consolidation, discontinued operation or operational change had occurred at the beginning of the applicable Test Period.

For purposes of this definition, whenever *pro forma* effect is to be given to any event, the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Issuer.

For purposes of this definition, any amount in a currency other than U.S. Dollars will be converted to U.S. Dollars based on the average exchange rate for such currency for the most recent twelve month period immediately prior to the date of determination in a manner consistent with that used in calculating EBITDA for the applicable period.

“Consolidated Net Income” means, with respect to any Person for any period, the aggregate of the net income (loss) of such Person and its Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP.

“Consolidated Non-cash Charges” means, with respect to any Person for any period, the aggregate depreciation, amortization, non-cash impairment charges (including write-downs of goodwill, intangibles, inventory and assets), non-cash expenses related to a cumulative effect of a change in GAAP, and other non-cash expenses of such Person and its Subsidiaries reducing Consolidated Net Income of such Person for such period on a consolidated basis and otherwise determined in accordance with GAAP, but excluding any such charge that consists of or requires an accrual of, or cash reserve for, anticipated cash charges for any future period.

“Consolidated Taxes” means, with respect to any Person for any period, the provision for taxes based on income, profits or capital, including state, franchise, property and similar taxes and foreign withholding taxes (including penalties and interest related to such taxes or arising from tax examinations).

“EBITDA” means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period plus, without duplication, to the extent the same was deducted in calculating Consolidated Net Income:

- (1) Consolidated Taxes; *plus*
- (2) Consolidated Interest Expense plus all cash dividend payments (excluding items eliminated in consolidation) on a series of Preferred Stock or Disqualified Stock of such Person and its Subsidiaries; *plus*
- (3) Consolidated Non-cash Charges; *plus*
- (4) all out-of-pocket fees, costs, and expenses incurred or payable in cash to the lenders under the Working Capital Credit Line or to any advisors of the Issuer in connection with obtaining the Working Capital Credit Line, not to exceed \$250,000 in the aggregate;

less, without duplication,

(5) non-cash items increasing Consolidated Net Income for such period (excluding the recognition of deferred revenue or any items that represent the reversal of any accrual of, or cash reserve for, anticipated cash charges that reduced EBITDA in any prior period and any items for which cash was received in a prior period).

“Test Period” means, as of any date of determination, the period of four full consecutive fiscal quarters for which the Issuer has delivered financial statements pursuant to Section 4.02 of the Indenture, ending on or immediately prior to such date; *provided* that if there have elapsed fewer than four fiscal quarters since the Issue Date, “Test Period” shall mean such number of full consecutive fiscal quarters for which the Issuer has delivered financial statements pursuant to Section 4.02 of the Indenture that have elapsed since the Issue Date, ending on or immediately prior to such date; and *provided further* that for the avoidance of doubt, no Incurrence under the Working Capital Credit Line may occur unless the conditions set forth in Section 4.03(b) have been satisfied.

[FORM OF]

LIEN SUBORDINATION AND INTERCREDITOR AGREEMENT

dated as of

[_____],

among

[_____],
as Trustee,

[_____],
as Noteholder Collateral Agent,

[_____],
as Working Capital Collateral Agent,

GT ADVANCED TECHNOLOGIES INC.,

and

its Subsidiaries signatory hereto

LIEN SUBORDINATION AND INTERCREDITOR AGREEMENT (this “**Agreement**”) dated as of [____], among [____], as Trustee (as defined below) under the Indenture referred to herein, [____], as Noteholder Collateral Agent (as defined below) for the Noteholder Secured Parties referred to herein, [____], as Working Capital Collateral Agent (as defined below) for the Working Capital Secured Parties referred to herein, GT ADVANCED TECHNOLOGIES INC., a Delaware corporation (the “**Company**”), and each subsidiary of the Company that is a signatory hereto.

Reference is made to (a) the Working Capital Agreement (such term and each other capitalized term used and not otherwise defined herein having the meaning assigned to it in Article I) under which the Working Capital Lenders have extended and/or agreed to extend credit to the Company or any of its subsidiaries party to such Working Capital Agreement and (b) the Indenture governing the Notes. In consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Trustee (for itself and on behalf of the Noteholders), the Noteholder Collateral Agent (for itself and on behalf of the Noteholder Secured Parties), the Working Capital Collateral Agent (for itself and on behalf of the Working Capital Secured Parties), the Company and the subsidiaries of the Company party hereto agree as follows:

ARTICLE I

Definitions

SECTION 1.01 *Construction Certain Defined Terms.* (a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument, other document, statute or regulation herein shall be construed as referring to such agreement, instrument, other document, statute or regulation as from time to time amended, supplemented or otherwise modified, (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, but shall not be deemed to include the subsidiaries of such Person unless express reference is made to such subsidiaries, (iii) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to Articles, Sections and Annexes shall be construed to refer to Articles, Sections and Annexes of this Agreement, (v) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (vi) the term “or” is not exclusive.

(b) As used in this Agreement, the following terms have the meanings specified below:

“**Administrative Agent**” means the applicable administrative agent (or similar agent party) in its capacity as administrative agent (or similar agent) under the Working Capital Documents, and its successors in such capacity.

“**Bankruptcy Code**” means Title 11 of the United States Code.

“**Business Day**” means a day other than a Saturday, Sunday or other day on which banking institutions are authorized or required by law to close in New York City or the city in which the Corporate Trust Office (as defined in the Indenture) is located.

“**Capital Stock**” means (a) in the case of a corporation, corporate stock or shares, (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock, (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited) and membership rights, and (d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, in each case to the extent treated as equity in accordance with GAAP.

“**Collateral**” means all Working Capital Collateral and all Noteholder Collateral.

“**Company**” has the meaning set forth in the recitals hereto.

“**Deposit Account**” means a “deposit account” (as defined in Article 9 of the New York UCC) in which funds are held or invested for credit to or for the benefit of the Company or any other Grantor.

“**Event of Default**” means an “Event of Default” under and as defined in the Working Capital Agreement or the Indenture, as the context may require.

“**Federal Deposit Insurance Corporation**” means the Federal Deposit Insurance Corporation or any successor thereto.

“**GAAP**” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect from time to time.

“**Grantor**” means the Company and each subsidiary of the Company that shall have granted any Lien in favor of the Working Capital Collateral Agent or the Noteholder Collateral Agent on any of its assets or properties to secure any of the Obligations.

“**Indenture**” means the Indenture dated as of [_____], 2016, among the Company, the other Grantors from time to time party thereto, the Trustee and the Noteholder Collateral Agent, as amended, extended, renewed, restated, supplemented, waived, replaced, restructured, repaid, refunded, refinanced or otherwise modified from time to time, with [_____] as trustee and as collateral agent.

“**Junior Collateral**” means, with respect to each Junior Representative, the Collateral in respect of which such Junior Representative (on behalf of itself and the applicable Junior Secured Parties) holds a Junior Lien.

“**Junior Documents**” means (a) with respect to the Noteholder First Lien Collateral, the Working Capital Documents with respect to Working Capital Obligations secured by Junior Liens on such Collateral, if any, and (b) with respect to the Working Capital First Lien Collateral, the Noteholder Documents.

“**Junior Liens**” means (a) with respect to the Working Capital First Lien Collateral, the Noteholder Liens on such Collateral, and (b) with respect to the Noteholder First Lien Collateral, the Working Capital Liens, if any, on such Collateral.

“**Junior Representative**” means (a) with respect to the Noteholder First Lien Collateral, the Working Capital Collateral Agent (to the extent any Working Capital Obligations are secured by Working Capital Liens on such Collateral), and (b) with respect to the Working Capital First Lien Collateral, the Noteholder Collateral Agent.

“**Junior Secured Obligations**” means (a) with respect to the Noteholder Obligations, the Working Capital Obligations (to the extent such Working Capital Obligations are secured by the Noteholder First Lien Collateral), and (b) with respect to the Working Capital Obligations, the Noteholder Obligations (to the extent such Noteholder Obligations are secured by Working Capital First Lien Collateral).

“**Junior Secured Parties**” means (a) with respect to the Noteholder First Lien Collateral, the Working Capital Secured Parties (to the extent any Working Capital Obligations are secured by Working Capital Liens on such Collateral), and (b) with respect to the Working Capital First Lien Collateral, the Noteholder Secured Parties.

“**Junior Security Documents**” means (a) with respect to the Working Capital First Lien Collateral, the Noteholder Security Documents, and (b) with respect to the Noteholder First Lien Collateral, the Working Capital Security Documents with respect to Working Capital Obligations secured by Junior Liens on such Collateral, if any.

“**Lien**” means, with respect to any asset, any mortgage, deed of trust, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the New York UCC (or equivalent statutes of any jurisdiction); *provided* that in no event shall an operating lease be deemed to constitute a Lien.

“**Lockbox Account**” means any Deposit Account maintained at a depository institution whose customer deposits are insured by the Federal Deposit Insurance Corporation (to the extent required by law), into which account are paid solely the Proceeds of Inventory and Accounts that constitute Working Capital Collateral. All capitalized terms used in this definition and not defined elsewhere herein have the meaning assigned to them in the New York UCC.

“**New York UCC**” means the Uniform Commercial Code as from time to time in effect in the State of New York.

“**Noteholder Collateral**” means all assets and properties subject to Liens created by the Noteholder Security Documents to secure the Noteholder Obligations.

“**Noteholder Collateral Agent**” means [_____], in its capacity as collateral agent under the Indenture and the Noteholder Security Documents, and its successors in such capacity.

“**Noteholder Documents**” means the Indenture, the Notes and the Noteholder Security Documents.

“**Noteholder First Lien Collateral**” means any and all Noteholder Collateral other than the Working Capital First Lien Collateral.

“**Noteholder Liens**” means Liens on the Noteholder Collateral created under the Noteholder Security Documents to secure the Noteholder Obligations.

“**Noteholder Obligations**” means the “Obligations” as such term is defined in the Noteholder Security Agreement.

“**Noteholder Secured Parties**” means, at any time, the Noteholder Collateral Agent, the Co-Collateral Agents (as defined in the Noteholder Security Agreement), each Noteholder, the Trustee and each other holder of, or obligee in respect of, any Noteholder Obligations outstanding at such time.

“**Noteholder Security Agreement**” means the Collateral Agreement dated as of [_____], 2016, among the Company, the subsidiaries of the Company from time to time party thereto, the Trustee and the Noteholder Collateral Agent for the benefit of the Noteholder Secured Parties, as amended, supplemented, restated, renewed, refunded, replaced, restructured, repaid, refinanced or otherwise modified from time to time.

“**Noteholder Security Documents**” means the Noteholder Security Agreement and any other documents (including any copyright, patent and trademark security or pledge agreements, if applicable) now existing or entered into after the date hereof that grant a Lien on any assets or properties of any Grantor or any of its subsidiaries to secure the Noteholder Obligations.

“**Noteholders**” means the Holders under and as defined in the Indenture.

“**Notes**” means the “Securities” issued under and as defined in the Indenture.

“**Obligations**” means the Noteholder Obligations and the Working Capital Obligations.

“**Person**” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

“**Representative**” means (a) in the case of any Noteholder Obligations, the Noteholder Collateral Agent, and (b) in the case of any Working Capital Obligations, the Working Capital Collateral Agent.

“**Secured Parties**” means (a) the Noteholder Secured Parties and (b) the Working Capital Secured Parties.

“**Security Documents**” means (a) the Noteholder Security Documents and (b) the Working Capital Security Documents.

“**Senior Collateral**” means, with respect to each Senior Representative, the Collateral in respect of which such Senior Representative (on behalf of itself and the applicable Senior Secured Parties) holds a Senior Lien.

“**Senior Liens**” means (a) with respect to the Noteholder First Lien Collateral, the Noteholder Liens on such Collateral and (b) with respect to the Working Capital First Lien Collateral, the Working Capital Liens on such Collateral.

“**Senior Representative**” means (a) with respect to the Noteholder First Lien Collateral, the Noteholder Collateral Agent, and (b) with respect to the Working Capital First Lien Collateral, the Working Capital Collateral Agent.

“**Senior Secured Obligations**” means (a) with respect to the Working Capital Obligations (to the extent such Obligations are secured by the Noteholder First Lien Collateral), the Noteholder Obligations, and (b) with respect to the Noteholder Obligations (to the extent such Obligations are secured by the Working Capital First Lien Collateral), the Working Capital Obligations.

“**Senior Secured Parties**” means (a) with respect to the Noteholder First Lien Collateral, the Noteholder Secured Parties, and (b) with respect to the Working Capital First Lien Collateral, the Working Capital Secured Parties.

“**Senior Security Documents**” means (a) with respect to the Working Capital First Lien Collateral, the Working Capital Security Documents, and (b) with respect to the Noteholder First Lien Collateral, the Noteholder Security Documents.

“**subsidiary**” means, with respect to any Person, (a) any corporation, association or other business entity (other than a partnership, joint venture or limited liability company) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other subsidiaries of that Person or a combination thereof, and (b) any partnership, joint venture or limited liability company of which (x) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general and limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other subsidiaries of that Person or a combination thereof, whether in the form of membership, general, special or limited partnership interests or otherwise, and (y) such Person or any subsidiary of such person is a controlling general partner or otherwise

controls such entity. For purposes of clarity, a subsidiary of a Person shall not include any Person that is under common control with the first Person solely by virtue of having directors, managers or trustees in common and shall not include any Person that is solely under common control with the first Person (i.e., a sister company with a common parent).

“*Trustee*” means [_____], in its capacity as trustee under the Indenture, and its successors in such capacity.

“*Working Capital Agreement*” means the agreement governing the “Working Capital Credit Line” as such term is defined in the Indenture.

“*Working Capital Collateral*” means all assets and properties subject to Liens created by the Working Capital Security Documents to secure the Working Capital Obligations.

“*Working Capital Collateral Agent*” means the collateral agent (or similar agent party) in its capacity as collateral agent (or similar agent) under the Working Capital Documents or Working Capital Lender if acting as sole lender thereunder, and its successors in such capacity.

“*Working Capital Documents*” means the Working Capital Agreement and the Working Capital Security Documents.

“*Working Capital First Lien Collateral*” means any and all of the following Working Capital Collateral now owned or at any time hereafter acquired by the Company or any other Grantor under the Working Capital Security Documents (but solely to the extent that the Company or any such Grantor, as the case may be, is a party to the Working Capital Security Documents, and solely to the extent such party has granted a Working Capital Lien on such Working Capital Collateral pursuant to such Working Capital Security Documents): (a) all Inventory; (b) all Accounts arising from the sale of Inventory or provision of services; (c) to the extent evidencing, governing or securing the obligations of Account Debtors in respect of the items referred to in the preceding clauses (a) and (b), all (i) General Intangibles, (ii) Chattel Paper, (iii) Instruments, (iv) Documents, (v) Payment Intangibles (including tax refunds), other than any Payment Intangibles that represent tax refunds in respect of or otherwise relate to real property, Fixtures or Equipment, (vi) Supporting Obligations; (d) collection accounts and Deposit Accounts, including any Lockbox Account, and any cash or other assets in any such accounts constituting Proceeds of clause (a) or (b) (other than identifiable cash proceeds in respect of real estate, Fixtures or Equipment); (e) all indebtedness that arises from cash advances to enable the obligor or obligors thereon to acquire Inventory, and any Deposit Account into which such cash advances are deposited (provided no Proceeds from the sale of the Notes are deposited therein); (f) any purchase orders or other customer agreements related to Inventory; (g) all books and records related to the foregoing; and (h) all Products and Proceeds of any and all of the foregoing in whatever form received, including proceeds of insurance policies related to Inventory or Accounts arising from the sale of Inventory of the Company or any other Grantor or provision of services by the Company or any other Grantor and business interruption insurance. All capitalized terms used in this definition and not defined elsewhere in this Agreement have the meanings assigned to them in the New York UCC.

“**Working Capital First Lien Collateral Transition Date**” means the earlier of (a) the date on which all Working Capital Obligations shall have been paid in full (other than indemnity obligations not yet accrued under the Working Capital Documents) and all commitments to extend credit under the Working Capital Agreement shall have been terminated and (b) the date on which all Senior Liens on the Working Capital First Lien Collateral securing the Working Capital Obligations shall have been released from the Liens created under the Working Capital Documents.

“**Working Capital Lenders**” means the lenders under the Working Capital Agreement.

“**Working Capital Liens**” means Liens on the Working Capital Collateral created under the Working Capital Security Documents to secure the Working Capital Obligations.

“**Working Capital Obligations**” means all “Obligations” or “Secured Obligations” as such term is defined in the Working Capital Documents (or if “Obligations” or “Secured Obligations” is not defined therein, then all the liabilities and obligations under the Working Capital Documents purported to be secured pursuant to the Working Capital Security Documents).

“**Working Capital Secured Parties**” means, at any time, the Working Capital Collateral Agent, the Administrative Agent, each Working Capital Lender and each other holder of, or obligee in respect of, any Working Capital Obligations outstanding at such time.

“**Working Capital Security Documents**” means the Working Capital Agreement (insofar as the same grants a Lien on any assets or properties of any Grantor or any of its subsidiaries to secure any Working Capital Obligations), and any other documents now existing or entered into after the date hereof that grant a Lien on any assets or properties of any Grantor or any of its subsidiaries to secure any Working Capital Obligations.

ARTICLE II

Subordination of Junior Liens; Certain Agreements

SECTION 2.01 **Subordination of Junior Liens.** (a) At any time when any Senior Secured Obligations secured by Senior Collateral shall be outstanding or any commitments to extend credit that would constitute Senior Secured Obligations secured by a Senior Lien shall be in effect, all Junior Liens in respect of such Collateral are expressly subordinated and made junior in right, priority, operation and effect to any and all Senior Liens in respect of such Collateral, notwithstanding anything contained in this Agreement, the Noteholder Documents, the Working Capital Documents or any other agreement or instrument to the contrary, and irrespective of the time, order or method of creation, attachment or perfection of such Junior Liens and such Senior Liens or any defect or deficiency or alleged defect or deficiency in any of the foregoing. For the avoidance of doubt, subject to the limitations set forth in the Indenture, the Senior Secured Obligations (secured by a Senior Lien on Working Capital First Lien Collateral) with respect to Noteholder Obligations may be created from time to time even if no Senior Secured Obligations exist immediately prior to such creation.

(b) It is acknowledged that, so long as Senior Secured Obligations secured by Senior Collateral shall be outstanding or any commitments to extend credit that would constitute Senior Secured Obligations secured by a Senior Lien shall be in effect, (i) all or a portion of the Senior Secured Obligations consists or may consist of Indebtedness that is revolving in nature, and the amount thereof that may be outstanding at any time or from time to time may be increased or repaid and subsequently reborrowed and (ii) the Senior Secured Obligations may, subject to the limitations set forth in the Indenture and the Working Capital Agreement, be increased, extended, renewed, replaced, restated, supplemented, restructured, repaid, refunded, refinanced or otherwise amended or modified from time to time, all without affecting the subordination of the Junior Liens in respect of such Collateral or the provisions of this Agreement defining the relative rights of the applicable Senior Secured Parties and the applicable Junior Secured Parties. So long as Senior Secured Obligations secured by Senior Collateral shall be outstanding or any commitments to extend credit that would constitute Senior Secured Obligations secured by a Senior Lien shall be in effect, the lien priorities provided for herein shall not be altered or otherwise affected by any amendment, modification, supplement, extension, increase, replacement, renewal, restatement or refinancing of either the applicable Junior Secured Obligations or the applicable Senior Secured Obligations to the extent permitted by the Indenture, by the release of any such Collateral or of any guarantees securing any such Senior Secured Obligations or by any action that any Representative or Secured Party may take or fail to take in respect of any such Collateral or by the avoidance, invalidation or lapse of any Lien on any such Collateral.

SECTION 2.02 *No Action With Respect to Junior Collateral Subject to Senior Liens.* No Junior Representative or other Junior Secured Party shall commence or instruct any Junior Representative to commence any judicial or non-judicial foreclosure proceedings with respect to, seek to have a trustee, receiver, liquidator or similar official appointed for or over, attempt any action to take possession of, exercise any right, remedy or power with respect to, or otherwise take any action to enforce its interest in or realize upon, or take any other action available to it in respect of, any of its Junior Collateral under any Junior Security Document, applicable law or otherwise, at any time when such Junior Collateral shall be subject to any Senior Lien and any Senior Secured Obligations secured by such Senior Lien shall remain outstanding or any commitment to extend credit that would constitute Senior Secured Obligations secured by such Senior Lien shall remain in effect, it being agreed that only the Senior Representative with respect to such Collateral, acting in accordance with the applicable Senior Security Documents, shall be entitled to take any such actions or exercise any such remedies. Notwithstanding the foregoing, any Junior Representative may, subject to Section 2.05, take all such actions as it shall deem necessary to perfect or continue the perfection of its Junior Liens.

SECTION 2.03 *No Duties of Senior Representative.* (a) Each Junior Secured Party acknowledges and agrees that neither the applicable Senior Representative nor any other Senior Secured Party shall have any duties or other obligations to such Junior Secured Party with respect to any Senior Collateral, other than to transfer to the applicable Junior Representative (i) any proceeds of any such Collateral that constitutes Junior Collateral remaining in its possession following any sale, transfer or other disposition of such Collateral, the payment and satisfaction in full of the Senior Secured Obligations secured thereby and the termination of any commitment to extend credit that would constitute Senior Secured Obligations secured thereby (in each case,

unless the Junior Liens on all such Junior Collateral are terminated and released prior to or concurrently with such transaction), or (ii) if such Senior Representative shall be in possession of all or any part of such Collateral after such payment and satisfaction in full and termination, such Collateral or any part thereof remaining, in each case without representation or warranty on the part of such Senior Representative or any Senior Secured Party. In furtherance of the foregoing, each Junior Secured Party acknowledges and agrees that until the Senior Secured Obligations secured by any Collateral in respect of which such Junior Secured Party holds a Junior Lien shall have been paid and satisfied in full and any commitment to extend credit that would constitute Senior Secured Obligations secured thereby shall have been terminated, the applicable Senior Representative shall be entitled, for the benefit of the holders of such Senior Secured Obligations, to sell, transfer or otherwise dispose of or deal with such Senior Collateral as provided herein and in compliance with the Senior Security Documents and applicable law without regard to any Junior Lien or any rights to which the holders of the applicable Junior Secured Obligations would otherwise be entitled as a result of such Junior Lien. Without limiting the foregoing, each Junior Secured Party agrees that neither the applicable Senior Representative nor any other Senior Secured Party shall have any duty or obligation first to marshal or realize upon any type of Senior Collateral (or any other collateral securing any Senior Secured Obligations on which the Senior Secured Party has a Senior Lien), or to sell, dispose of or otherwise liquidate all or any portion of such Collateral (or any other collateral securing any Senior Secured Obligations on which the Senior Secured Party has a Senior Lien), in any manner that would maximize the return to the applicable Junior Secured Parties, notwithstanding that the order and timing of any such realization, sale, disposition or liquidation may affect the amount of proceeds actually received by such Junior Secured Parties from such realization, sale, disposition or liquidation.

(b) Each of the Junior Secured Parties waives any claim such Junior Secured Party may now or hereafter have against any Senior Representative or any other Senior Secured Party (or their representatives) arising out of (i) any actions which any Senior Representative or any Senior Secured Parties take or omit to take (including, actions with respect to the creation, perfection or continuation of Liens on any of its Senior Collateral, actions with respect to the foreclosure upon, sale, release or depreciation of, or failure to realize upon, any of such Collateral and actions with respect to the collection of any claim for all or any part of any Senior Secured Obligations from any account debtor, guarantor or any other party) in accordance with the applicable Senior Security Documents, any other agreement related thereto or applicable law or to the collection of any Senior Secured Obligations or the valuation, use, protection or release of any security for any Senior Secured Obligations, (ii) any election by any Senior Representative or any Senior Secured Parties, in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b) of the Bankruptcy Code (or any other applicable foreign bankruptcy, insolvency, receivership or similar law), (iii) any borrowing by the Company or any of its subsidiaries, as debtor-in-possession, including any grant of a security interest, adequate protection, or administrative expense priority under Section 364 of the Bankruptcy Code to any party in connection with such borrowing, or (iv) any use of cash collateral by the Company or any of its subsidiaries, as debtor-in-possession, including any grant or award of adequate protection under Section 363 of the Bankruptcy Code to any party in connection with such use of cash collateral.

SECTION 2.04 *No Interference; Payment Over; Reinstatement.* (a) At any time when any Senior Secured Obligations secured by Senior Collateral shall be outstanding or any commitments to extend credit that would constitute Senior Secured Obligations secured by a Senior Lien shall be in effect, each respective Junior Secured Party agrees that (i) it will not take or cause to be taken any action the purpose or effect of which is, or could be, to make any respective Junior Lien pari passu with, or to give such Junior Secured Party any preference or priority relative to, any Senior Lien with respect to the Collateral subject to such Senior Lien and Junior Lien or any part thereof, (ii) it will not challenge or question in any proceeding the validity or enforceability of any such Senior Secured Obligations or Senior Security Document, or the validity, attachment, perfection or priority of any such Senior Lien, or the validity or enforceability of the priorities, rights or duties established by or other provisions of this Agreement, (iii) it will not take or cause to be taken any action the purpose or intent of which is, or could be, to contest, interfere, hinder or delay, in any manner, whether by judicial proceedings or otherwise, any sale, transfer or other disposition of the Collateral subject to such Junior Lien by any such Senior Secured Parties secured by Senior Liens on such Collateral or any Senior Representative acting on their behalf, (iv) it shall have no right to (A) direct any Senior Representative or any holder of Senior Secured Obligations to exercise any right, remedy or power with respect to the Collateral subject to such Junior Lien or (B) consent to the exercise by any Senior Representative or any other Senior Secured Party of any right, remedy or power with respect to the Collateral subject to such Junior Lien, (v) it will not institute any suit or assert in any suit, bankruptcy, insolvency or other proceeding any claim against any Senior Representative or other Senior Secured Party seeking damages from or other relief by way of specific performance, instructions or otherwise with respect to, and neither any Senior Representative nor any other Senior Secured Party shall be liable for, any action taken or omitted to be taken by such Senior Representative or other Senior Secured Party with respect to any Collateral securing such Senior Secured Obligations that is subject to such Junior Lien, (vi) it will not seek, and hereby waives any right, to have any Senior Collateral subject to such Junior Lien or any part thereof marshaled upon any foreclosure or other disposition of such Collateral and (vii) it will not attempt, directly or indirectly, whether by judicial proceedings or otherwise, to challenge the enforceability of any provision of this Agreement.

(b) Each Junior Representative and each other Junior Secured Party hereby agrees that if it shall obtain possession of any Senior Collateral or shall realize any proceeds or payment in respect of any such Collateral, pursuant to any Junior Security Document or by the exercise of any rights available to it under applicable law or in any bankruptcy, insolvency or similar proceeding or through any other exercise of remedies, at any time when any Senior Secured Obligations secured or intended to be secured by such Collateral shall remain outstanding or any commitment to extend credit that would constitute Senior Secured Obligations secured or intended to be secured by such Senior Lien shall remain in effect, then it shall hold such Collateral, proceeds or payment in trust or as agent, as the case may be, for the applicable Senior Secured Parties and transfer such Collateral, proceeds or payment, as the case may be, to the applicable Senior Representative promptly after obtaining actual knowledge or notice from the applicable Senior Secured Parties that it has possession of such Senior Collateral or proceeds or payments in respect thereof. Each Junior Secured Party agrees that if, at any time, it receives notice or obtains actual knowledge that all or part of any payment with respect to any Senior Secured Obligations previously made shall be rescinded for any reason whatsoever, such Junior Secured Party shall promptly pay over to the applicable Senior Representative any

payment received and then held by it in respect of any Collateral subject to any Senior Lien securing such Senior Secured Obligations and shall promptly turn any Collateral subject to any such Senior Lien then held by it over to the applicable Senior Representative, and the provisions set forth in this Agreement shall be reinstated as if such payment had not been made, until the payment and satisfaction in full of such Senior Secured Obligations.

SECTION 2.05 *Automatic Release of Junior Liens.* (a) Each Junior Representative and each other Junior Secured Party agree that in the event of a sale, transfer or other disposition of any Senior Collateral subject to any Junior Lien in favor of such Junior Secured Representative or such Junior Secured Party (regardless of whether or not an Event of Default has occurred and is continuing under the applicable Junior Documents at the time of such sale, transfer or other disposition), such Junior Lien on such Collateral shall terminate and be released automatically and without further action if the applicable Senior Liens on such Collateral are released and if such sale, transfer or other disposition either (x) is then not prohibited by such Junior Documents or (y) occurs in connection with the foreclosure (including by a Senior Representative or other Senior Secured Party) upon or other exercise of rights and remedies with respect to such Senior Collateral, *provided* that such Junior Lien shall remain in place with respect to any proceeds of a sale, transfer or other disposition under this clause (a) that remain after the satisfaction in full of such Senior Secured Obligations.

(b) Each Junior Representative agrees to execute and deliver (at the sole cost and expense of the Grantors) all such releases and other instruments as shall reasonably be requested by any applicable Senior Representative to evidence and confirm any release of Junior Collateral provided for in this Section, and upon the Junior Representative's failure to do so within the prescribed time frame set forth in New York UCC Section 9-513(b) or (c), as applicable, the appropriate Senior Representative is hereby granted a limited power of attorney to execute any necessary UCC-3 filing or similar document necessary to effect such a release.

SECTION 2.06 *Certain Agreements With Respect to Bankruptcy or Insolvency Proceedings.* (a) This Agreement shall continue in full force and effect notwithstanding the commencement of any proceeding under the Bankruptcy Code or any other Federal, state or foreign bankruptcy, insolvency, receivership or similar law by or against the Company or any of its subsidiaries.

(b) So long as any Senior Secured Obligations secured by Senior Collateral shall be outstanding or any commitments to extend credit that would constitute Senior Secured Obligations secured by a Senior Lien shall be in effect, if the Company or any of its subsidiaries shall become subject to a case under the Bankruptcy Code (or under any other applicable foreign bankruptcy, insolvency, receivership or similar law) and shall, as debtor(s)-in-possession, move for approval of financing ("**DIP Financing**") to be provided by one or more lenders (the "**DIP Lenders**") under Section 364 of the Bankruptcy Code (or under any other applicable foreign bankruptcy, insolvency, receivership or similar law) or the use of cash collateral with the consent of the DIP Lenders under Section 363 of the Bankruptcy Code (or under any other applicable foreign bankruptcy, insolvency, receivership or similar law), each Junior Secured Party agrees that it will raise no objection to (and, upon the grant or award of adequate protection acceptable to the holders of Senior Secured Obligations with comparable adequate protection granted or awarded to the Working Capital Collateral Agent or the Noteholder Collateral Agent and

Trustee, as applicable, junior in priority only to that of the holders of Senior Secured Obligations, shall affirmatively consent to) any such financing to the extent secured by Liens on any respective Senior Collateral securing the same (“**DIP Financing Liens**”) or to any use of cash collateral that constitutes such Senior Collateral, unless the applicable Senior Secured Parties, or a representative authorized by such Senior Secured Parties, shall then oppose or object to such DIP Financing or such DIP Financing Liens or use of cash collateral (and, to the extent that such DIP Financing Liens are senior to, or rank *pari passu* with, the applicable Senior Liens, the applicable Junior Representative will, for itself and on behalf of the other applicable Junior Secured Parties, subordinate the Junior Liens on such Senior Collateral to such Senior Liens, the DIP Financing Liens and any “carve-out” for administrative, professional and United States Trustee fees and expenses agreed to by any applicable Senior Representative), so long as each Secured Party retains Liens on all the applicable Collateral, including proceeds thereof arising after the commencement of such proceeding, with the same relative priority as existed prior to the commencement of the case under the Bankruptcy Code (or under any other applicable foreign bankruptcy, insolvency, receivership or similar law). Each Junior Secured Party agrees not to propose or agree to provide any DIP Financing that is secured by any Lien on Collateral (including any Liens provided as adequate protection), unless such Lien is junior in priority to the Liens securing the Senior Secured Obligations.

(c) So long as any Senior Secured Obligations secured by Senior Collateral shall be outstanding or any commitments to extend credit that would constitute Senior Secured Obligations secured by a Senior Lien shall be in effect, each Junior Secured Party agrees that it will not object to or oppose a sale or other disposition of any Senior Collateral (or any portion thereof) under Section 363 of the Bankruptcy Code or any other provision of the Bankruptcy Code (or under any other applicable foreign bankruptcy, insolvency, receivership or similar law) if the applicable Senior Secured Parties shall have consented to such sale or disposition of such Senior Collateral.

SECTION 2.07 **Reinstatement.** In the event that any of the Senior Secured Obligations shall be paid in full and such payment or any part thereof shall subsequently, for whatever reason (including an order or judgment for disgorgement of a preference under Title 11 of the Bankruptcy Code (or under any other applicable foreign bankruptcy, insolvency, receivership or similar law) or the settlement of any claim in respect thereof), be required to be returned or repaid, the terms and conditions of this Article II shall be fully applicable thereto until all such Senior Secured Obligations shall again have been paid in full in cash.

SECTION 2.08 **Entry Upon Premises by the Working Capital Collateral Agent and the Working Capital Lenders.** (a) So long as any Senior Secured Obligations secured by Senior Collateral shall be outstanding or any commitments to extend credit that would constitute Senior Secured Obligations secured by a Senior Lien shall be in effect, if the Working Capital Collateral Agent takes any enforcement action with respect to any Working Capital First Lien Collateral on which it holds Working Capital Liens, the Noteholder Secured Parties (i) shall reasonably cooperate with the Working Capital Collateral Agent (at the sole cost and expense of such Working Capital Collateral Agent and subject to the condition that the Noteholder Secured Parties shall have no obligation or duty to take any action or refrain from taking any action that could reasonably be expected to result in the incurrence of any liability or damage to the Noteholder Secured Parties) in its efforts to enforce its security interest in such Working Capital

First Lien Collateral and to finish any work-in-process and assemble such Working Capital First Lien Collateral, (ii) shall not hinder or restrict in any respect the Working Capital Collateral Agent from enforcing its security interest in such Working Capital First Lien Collateral or from finishing any work-in-process or assembling such Working Capital First Lien Collateral, and (iii) shall permit the Working Capital Collateral Agent, its employees, agents, advisers and representatives, at the sole cost and expense of the Working Capital Secured Parties and upon reasonable advance notice, to enter upon and use the Noteholder First Lien Collateral (including (x) equipment, processors, computers and other machinery related to the storage or processing of records, documents or files and (y) intellectual property), for a period not to exceed 180 days after the taking of such enforcement action, for purposes of (A) assembling and storing such Working Capital First Lien Collateral and completing the processing of and turning into finished goods of such Working Capital First Lien Collateral consisting of work-in-process, (B) selling any or all of the Working Capital First Lien Collateral located on or in such Noteholder First Lien Collateral, whether in bulk, in lots or to customers in the ordinary course of business or otherwise, (C) removing any or all of the Working Capital First Lien Collateral located on such Noteholder First Lien Collateral, or (D) taking reasonable actions to protect, secure, and otherwise enforce the rights of the Working Capital Secured Parties in and to any Working Capital First Lien Collateral, *provided, however*, that nothing contained in this Agreement shall restrict the rights of the Trustee or the Noteholder Collateral Agent from selling, assigning or otherwise transferring any Noteholder First Lien Collateral prior to the expiration of such 180-day period if the purchaser, assignee or transferee thereof agrees to be bound by the provisions of this Section. If any stay or other order prohibiting the exercise of remedies with respect to the applicable Working Capital First Lien Collateral has been entered by a court of competent jurisdiction, such 180-day period shall be tolled during the pendency of any such stay or other order.

(b) In no event shall the Working Capital Secured Parties have any liability to the Noteholder Secured Parties pursuant to this Section as a result of any condition on or with respect to the Noteholder First Lien Collateral existing prior to the date of the exercise by such Working Capital Secured Parties of their rights under this Section and such Working Capital Secured Parties shall have no duty or liability to maintain the Noteholder First Lien Collateral in a condition or manner better than that in which it was maintained prior to the use thereof by such Working Capital Secured Parties, or for any diminution in the value of the Noteholder First Lien Collateral that results solely from ordinary wear and tear resulting from the use of the Noteholder First Lien Collateral by such Working Capital Secured Parties in the manner and for the time periods specified under this Section 2.08. Without limiting the rights granted in this paragraph, such Working Capital Secured Parties shall cooperate with the Noteholder Secured Parties in connection with any efforts made by the Noteholder Secured Parties to sell the Noteholder First Lien Collateral to the extent such Working Capital Secured Parties obtain any interest in the Noteholder First Lien Collateral, subject to the condition that no Working Capital Secured Party shall have any obligation or duty to take any action or refrain from taking any action that could reasonably be expected to result in its incurrence of any liability or damage.

SECTION 2.09 ***Insurance.*** Unless and until the Working Capital Collateral Agent has sent written notice to the Trustee that the Working Capital Obligations have been paid in full and all commitments to extend credit under the Working Capital Agreement shall have been terminated, as between such Working Capital Collateral Agent, on the one hand, and the

Trustee and the Noteholder Collateral Agent, as the case may be, on the other hand, only such Working Capital Collateral Agent will have the right (subject to the rights of the Grantors under the Working Capital Documents and the Noteholder Documents) to adjust or settle any insurance policy or claim covering or constituting any of the Working Capital First Lien Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding solely affecting such Working Capital First Lien Collateral. Unless and until the Trustee has sent written notice to the Working Capital Collateral Agent that the Noteholder Obligations have been paid in full, as between the Working Capital Collateral Agent, on the one hand, and the Trustee and the Noteholder Collateral Agent, as the case may be, on the other hand, only the Noteholder Collateral Agent will have the right (subject to the rights of the Grantors under the Working Capital Documents and the Noteholder Documents) to adjust or settle any insurance policy covering or constituting any applicable Noteholder First Lien Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding solely affecting any applicable Noteholder First Lien Collateral. To the extent that an insured loss covers or constitutes both Working Capital First Lien Collateral and Noteholder First Lien Collateral, then the Working Capital Collateral Agent and the Noteholder Collateral Agent will work jointly and in good faith to collect, adjust or settle (subject to the rights of the Grantors under the Working Capital Documents and the Noteholder Documents) under the relevant insurance policy.

SECTION 2.10 *Refinancings.* The Working Capital Obligations and the Noteholder Obligations may be refinanced or replaced (either immediately or after the passage of time), in whole or in part, in each case, without notice to, or the consent (except to the extent a consent is otherwise required to permit the refinancing transaction under any Working Capital Document or any Noteholder Document) of any Working Capital Secured Party or any Noteholder Secured Party, all without affecting the Lien priorities provided for herein or the other provisions hereof, *provided, however*, that the holders of any such refinancing or replacement indebtedness (or an authorized agent or trustee on their behalf) bind themselves in writing to the terms of this Agreement pursuant to such documents or agreements (including amendments or supplements to this Agreement) as the Working Capital Collateral Agent or the Noteholder Collateral Agent, as the case may be, shall reasonably request and in form and substance reasonably acceptable to such Working Capital Collateral Agent or Noteholder Collateral Agent, as the case may be. In connection with any refinancing or replacement contemplated by this Section 2.10, this Agreement shall be amended at the request and sole expense of the Company, and without the consent of any Representative, (a) to add parties (or any authorized agent or trustee therefor) providing any such refinancing or replacement indebtedness, (b) to establish that Liens on any Noteholder First Lien Collateral securing such refinancing or replacement indebtedness shall have the same priority as the Liens on any Noteholder First Lien Collateral securing the indebtedness being refinanced or replaced and (c) to establish that Liens on any Working Capital First Lien Collateral securing such refinancing or replacement indebtedness shall have the same priority as the Liens on any Working Capital First Lien Collateral securing the indebtedness being refinanced or replaced, all on the terms provided for herein immediately prior to such refinancing or replacement.

SECTION 2.11 *Amendments to Security Documents.* (a) Without the prior written consent of any applicable Senior Representative, no Junior Security Document may be amended, supplemented or otherwise modified or entered into to the extent such amendment,

supplement or modification, or the terms of any new Junior Security Document, would be prohibited by, or would require any Grantor to act or refrain from acting in a manner that would violate, any of the terms of this Agreement.

(b) In the event that any Senior Representative enters into any amendment, waiver or consent in respect of any of the Senior Security Documents for the purpose of adding to, or deleting from, or waiving or consenting to any departures from any provisions of, any such Senior Security Document that relate directly to any Senior Collateral on which a Junior Lien exists or changing in any manner the rights of such Senior Representative, the applicable Senior Secured Parties, the Company or any other Grantor thereunder (including the release of any Liens on any applicable Senior Collateral permitted by Section 2.05), then such amendment, waiver or consent shall apply automatically to any comparable provision of the comparable Junior Security Document with respect to such Junior Lien without the consent of the applicable Junior Representative or any applicable Junior Secured Party and without any action by such Junior Representative, the Company or any other Grantor; *provided, however*, that written notice of such amendment, waiver or consent shall have been given by the Company to such Junior Representative no later than two (2) Business Days following its effectiveness; and *provided further*, that no such amendment, waiver or consent shall be effective to (i) release any Junior Liens (other than as permitted by Section 2.05), (ii) permit any Liens on the Collateral except Liens permitted under the Junior Documents or this Agreement, or (iii) impose duties on the Junior Representative without its consent. Reasonably promptly following such effectiveness, the Company shall prepare and deliver, or cause to be prepared and delivered to the applicable Junior Representative, forms of amendment documents to any applicable Junior Security Documents to evidence the amendments to such Junior Security Documents previously effected pursuant to this Section 2.11(b).

SECTION 2.12 *Legends*. The Working Capital Collateral Agent acknowledges with respect to the Working Capital Documents, and the Trustee and the Noteholder Collateral Agent acknowledge with respect to the Noteholder Documents, that each such agreement will contain the appropriate legend set forth on Annex I in substantially the same terms as set forth therein.

SECTION 2.13 *Permitted Liens*. Notwithstanding anything herein to the contrary, neither this Agreement nor any term or provision hereof shall be construed to permit any Working Capital Secured Party to obtain, receive or be the beneficiary of any Lien on all or any portion of any Collateral (other than the Working Capital Collateral, to the extent permitted under the terms of the Indenture), irrespective of the time, order or method of creation, attachment or perfection of such Lien, including any Lien arising by operation of law or in connection with any judgment.

ARTICLE III

Gratuitous Bailment for Perfection of Certain Security Interests; Rights Under Permits and Licenses

SECTION 3.01 *General*. Each Senior Representative agrees that if it shall at any time hold a Senior Lien on any Junior Collateral that can be perfected by the possession or

control of such Collateral or of any account in which such Collateral is held, and if such Collateral or any such account is in fact in the possession or under the control of such Senior Representative, such Senior Representative will serve as gratuitous bailee for the applicable Junior Representative for the sole purpose of perfecting the Junior Lien of such Junior Representative on such Collateral. It is agreed that the obligations of such Senior Representative and the rights of such Junior Representative and the other applicable Junior Secured Parties in connection with any such bailment arrangement will be in all respects subject to the provisions of Article II. Notwithstanding anything to the contrary herein, such Senior Representative will be deemed to make no representation as to the adequacy of the steps taken by it to perfect the Junior Lien on any such Collateral and shall have no responsibility, duty, obligation or liability to such Junior Representative or any other applicable Junior Secured Party or any other person for such perfection or failure to perfect, it being understood that the sole purpose of this Article is to enable the applicable Junior Secured Parties to obtain a perfected Junior Lien on such Collateral to the extent, if any, that such perfection results from the possession or control of such Collateral or any such account by such Senior Representative. Subject to Section 2.07, at such time as such Senior Secured Obligations secured by the applicable Senior Lien of such Senior Representative shall have been paid and satisfied in full and any commitment to extend credit that would constitute such Senior Secured Obligations shall have been terminated, such Senior Representative shall take all such actions in its power as shall reasonably be requested by such Junior Representative (at the sole cost and expense of the Grantors) to transfer possession or control of such Collateral or any such account (in each case to the extent such Junior Representative has a Lien on such Collateral or account after giving effect to any prior or concurrent releases of Liens) to such Junior Representative.

SECTION 3.02 *Collection Accounts.* The Company and its subsidiaries, to the extent required by a Working Capital Document, shall maintain collection accounts relating to applicable Working Capital First Lien Collateral (the “*Collection Accounts*”, which term shall include any Lockbox Account relating to such Working Capital Document) in which collections from any Inventory and Accounts are deposited. The Working Capital Collateral Agent will act as gratuitous bailee for the Trustee and the Noteholder Collateral Agent for the purpose of perfecting the Liens of the Noteholder Secured Parties in all such Collection Accounts and the cash and other assets therein as provided in Section 3.01 (but will have no duty, responsibility or obligation to the Noteholder Secured Parties except as set forth in the last sentence of this Section). Unless the Junior Liens on such Working Capital First Lien Collateral shall have been or concurrently are released, after the occurrence of the Working Capital First Lien Collateral Transition Date, the Working Capital Collateral Agent shall at the request of the Noteholder Collateral Agent cooperate with the Noteholder Collateral Agent (at the expense of the Grantors) in permitting “control” (as defined in Article 8 or Article 9 of the New York UCC) of any Collection Account to be transferred to the Noteholder Collateral Agent (or for other arrangements with respect to each such Collection Account satisfactory to the Noteholder Collateral Agent to be made) to the extent required by the Noteholder Security Documents.

SECTION 3.03 *Rights under Permits and Licenses.* The Trustee and the Noteholder Collateral Agent agree that if the Working Capital Collateral Agent shall require rights available under any permit or license controlled by the Trustee or the Noteholder Collateral Agent in order to realize on any Working Capital First Lien Collateral, the Trustee or the Noteholder Collateral Agent, as the case may be, shall take all such actions as shall be

available to it (at the sole expense of the Grantors), consistent with applicable law and reasonably requested by the Working Capital Collateral Agent, to make such rights available to such Working Capital Collateral Agent, subject to the Noteholder Liens. The Working Capital Collateral Agent agrees that if the Trustee or the Noteholder Collateral Agent shall require rights available under any permit or license controlled by the Working Capital Collateral Agent in order to realize on any Noteholder First Lien Collateral, the Working Capital Collateral Agent shall take all such actions as shall be available to it (at the sole expense of the Grantors), consistent with applicable law and reasonably requested by the Trustee or the Noteholder Collateral Agent, as the case may be, to make such rights available to the Trustee or the Noteholder Collateral Agent, as the case may be, subject to the applicable Working Capital Liens.

ARTICLE IV

Existence and Amounts of Liens and Obligations

Whenever a Representative shall be required, in connection with the exercise of its rights or the performance of its obligations hereunder, to determine the existence or amount of any Senior Secured Obligations (or the existence of any commitment to extend credit that would constitute Senior Secured Obligations) or Junior Secured Obligations (or the existence of any commitment to extend credit that would constitute Junior Secured Obligations), or the existence of any Lien securing any such obligations, or the Collateral subject to any such Lien, it may request that such information be furnished to it in writing by the other applicable Representative and shall be entitled to make such determination on the basis of the information so furnished; *provided, however*, that if a Representative shall fail or refuse reasonably promptly to provide the requested information, the requesting Representative shall be entitled to make any such determination by such method as it may, in the exercise its good faith judgment, determine, including by reliance upon a certificate of the Company. Each Representative may rely conclusively, and shall be fully protected in so relying, on any determination made by it in accordance with the provisions of the preceding sentence (or as otherwise directed by a court of competent jurisdiction) and shall have no liability to the Company or any of its subsidiaries, any Secured Party or any other person as a result of such determination.

ARTICLE V

Consent of Grantors

SECTION 5.01 Each Grantor hereby consents to the provisions of this Agreement and the intercreditor arrangements provided for herein and agrees that the obligations of the Grantors under the Working Capital Documents and the Noteholder Documents will in no way be diminished or otherwise affected by such provisions or arrangements (except as expressly provided herein).

SECTION 5.02 If a Junior Secured Party pays or distributes cash, property, or other assets to a Senior Secured Party under this Agreement, the Junior Secured Party will be subrogated to the rights of the Senior Secured Party with respect to the applicable Senior Collateral to the extent of the value of such payment or distribution; *provided* that the Junior

Secured Party waives such right of subrogation until the discharge of the Senior Secured Obligations. Such payment or distribution will not reduce the Junior Secured Obligations.

ARTICLE VI

Representations and Warranties

SECTION 6.01 *Representations and Warranties of Each Party*. Each party hereto represents and warrants to the other parties hereto as follows.

(a) Such party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite power and authority to enter into and perform its obligations under this Agreement.

(b) This Agreement has been duly executed and delivered by such party.

(c) The execution, delivery and performance by such party of this Agreement (i) do not require any consent or approval of, registration or filing with or any other action by any governmental authority of which the failure to obtain the same could reasonably be expected to have a Material Adverse Effect, (ii) will not violate any applicable law or regulation or any order of any governmental authority or any indenture, agreement or other instrument binding upon such party which could reasonably be expected to have a Material Adverse Effect and (iii) will not violate the charter, by-laws or other organizational documents of such party. As used in this clause (c), "Material Adverse Effect" means, with respect to a party, a material adverse effect on (a) the business, operations, affairs, financial condition, assets or properties of such party and its subsidiaries taken as a whole, or (b) the ability of such party to perform its obligations hereunder, or (c) the validity or enforceability of this Agreement as to such party.

SECTION 6.02 *Representations and Warranties of Each Representative*. Each of the Trustee, the Noteholder Collateral Agent and the Working Capital Collateral Agent represents and warrants to the other parties hereto that it is authorized under the Indenture and the Working Capital Agreement, respectively, to enter into this Agreement.

ARTICLE VII

Miscellaneous

SECTION 7.01 *Notices*. All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows.

(c) if to the Trustee, to it at:

[_____]
Attention: [_____]
Facsimile: [_____]

(d) if to the Noteholder Collateral Agent, to it at:

[_____]]
Attention: [_____]]
Facsimile: [_____]]

- (e) if to the Working Capital Collateral Agent, to it at:

[_____]]
Attention: [_____]]
Facsimile: [_____]]

- (f) if to the Company, to it at:

GT Advanced Technologies Inc.
[243 Daniel Webster Highway
Merrimack, NH 03054]
Attention: [_____]]
Facsimile: [_____]]

- (g) if to any other Grantor, to it in care of the Company as provided in clause (d) above.

Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto (and for this purpose a notice to the Company shall be deemed to be a notice to each Grantor). All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt (if a Business Day) and on the next Business Day thereafter (in all other cases) if delivered by hand or overnight courier service or sent by facsimile or on the date five Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 7.01 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 7.01. As agreed to in writing among the Company and any Representative from time to time, notices and other communications may also be delivered by e-mail to the e-mail address of a representative of the applicable person provided from time to time by such person.

SECTION 7.02 *Waivers; Amendment.* (a) No failure or delay on the part of any party hereto in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties hereto are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and

for the purpose for which given. No notice or demand on any party hereto in any case shall entitle such party to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement nor any provision hereof may be terminated, waived, amended or modified except pursuant to an agreement or agreements in writing entered into by each Representative and the Company; *provided, however*, that this Agreement may be amended from time to time (x) as provided in Section 2.10 and (y) at the sole request and expense of the Company, and without the consent of any Representative or any other party hereto, to add additional Grantors. Any amendment of this Agreement that is proposed to be effected without the consent of a Representative as permitted by the proviso to the second preceding sentence shall be submitted to such Representative for its review at least five (5) Business Days prior to the proposed effectiveness of such amendment.

SECTION 7.03 *Parties in Interest.* This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, as well as the Noteholder Secured Parties and the Working Capital Secured Parties, all of whom are intended to be bound by, and to be third party beneficiaries of, this Agreement; *provided* that at any time and from time to time, if any Representative assigns any part of its rights or obligations under any Working Capital Documents or Noteholder Documents (as applicable) such that there exists more than one Working Capital Collateral Agent or Noteholder Collateral Agent, as applicable, (i) such Representative shall cause each such additional Working Capital Collateral Agent or Noteholder Collateral Agent, as applicable, to become a party hereto and (ii) the parties hereto shall execute and deliver mutually acceptable supplements or amendments hereto to set forth the rights and responsibilities of each Working Capital Collateral Agent or Noteholder Collateral Agent, as applicable, and designate a single primary Working Capital Collateral Agent or Noteholder Collateral Agent, as applicable, with respect to the Working Capital Obligations and Noteholder Obligations, respectively, *provided* that such supplements or amendments maintain the respective priorities, rights and remedies with respect to the Noteholder Obligations and Working Capital Obligations as provided herein.

SECTION 7.04 *Survival of Agreement.* All covenants, agreements, representations and warranties made by any party in this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement.

SECTION 7.05 *Counterparts.* This Agreement may be executed in counterparts, each of which shall constitute an original but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Agreement by facsimile transmission or by email shall be as effective as delivery of a manually signed counterpart of this Agreement.

SECTION 7.06 *Severability.* Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof, and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable

provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 7.07 *Governing Law; Jurisdiction; Consent to Service of Process.*

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. EACH PARTY HERETO HEREBY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS OF COMPETENT JURISDICTION IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK IN ANY SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY TO THIS AGREEMENT IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 7.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 7.08 *WAIVER OF JURY TRIAL.* EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 7.09 *Waiver of Immunity.* To the extent that any Grantor may in any jurisdiction claim for itself or its assets immunity (to the extent such immunity may now or hereafter exist, whether on the grounds of sovereign immunity or otherwise) from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process (whether through service of notice or otherwise), and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed), such Grantor irrevocably agrees with respect to any matter arising under this Agreement for the benefit of the Secured Parties not to claim, and irrevocably waives, such immunity to the full extent permitted by the laws of such jurisdiction.

SECTION 7.10 *Headings.* Article, Section and Annex headings used herein have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

SECTION 7.11 *Conflicts.* In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of any of the other Working Capital Documents and/or Noteholder Documents, the provisions of this Agreement shall control.

SECTION 7.12 *Provisions Solely to Define Relative Rights.* The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of the

Working Capital Parties, on the one hand, and the Noteholder Secured Parties, on the other hand. None of the Company, any other Grantor or any other creditor thereof shall have any rights or obligations hereunder, except as expressly provided in this Agreement. Nothing in this Agreement is intended to or shall impair the obligations of the Company or any other Grantor, which are absolute and unconditional, to pay the Obligations as and when the same shall become due and payable in accordance with their terms.

SECTION 7.13 *Concerning the Noteholder Collateral Agent.* The Noteholder Collateral Agent is entering into this Agreement solely in its capacity as Noteholder Collateral Agent under the Indenture, and not in its individual or corporate capacity. In acting hereunder, the Noteholder Collateral Agent shall be entitled to all of the rights, privileges and immunities of the Noteholder Collateral Agent set forth in the Indenture and the Noteholder Documents.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

[_____] ,
as Trustee

By:

Name:
Title

[_____] ,
as Noteholder Collateral Agent

By:

Name:
Title

Signature page to Lien Subordination and Intercreditor Agreement

[____],
as Working Capital Collateral Agent

By:

Name:

Title

GT ADVANCED TECHNOLOGIES INC.

By: _____

Name:

Title:

[SUBSIDIARY]

By: _____

Name:

Title:

ANNEX I

Provision for the Working Capital Agreement and the Indenture

Reference is made to the Lien Subordination and Intercreditor Agreement dated as of [_____], among [_____], as Trustee, [_____], as Noteholder Collateral Agent, the Working Capital Collateral Agent(s) for the Working Capital Secured Parties referred to therein, GT Advanced Technologies Inc., a Delaware corporation (“GTAT”), and the subsidiaries of GTAT party thereto (the “Intercreditor Agreement”; capitalized terms used in this paragraph and not defined shall have the meaning assigned to them in the Intercreditor Agreement). Each [lender hereunder] [Noteholder, by its acceptance of a Note,] [(a) consents to the subordination of Liens provided for in the Intercreditor Agreement, (b)]⁶ / [(a) agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement and [(c) / [(b) authorizes and instructs the [Working Capital Collateral Agent] [Trustee] to enter into the Intercreditor Agreement as [Working Capital Collateral Agent] [Trustee] and on behalf of such [Lender] [Noteholder]. The foregoing provisions are intended as an inducement to the [lenders under the Working Capital Agreement] [Noteholders] to [extend credit] [to acquire the Notes of the Company] and such [lenders] [Noteholders] are intended third party beneficiaries of such provisions and the provisions of the Intercreditor Agreement. In the event of any conflict or inconsistency between the provisions of this Agreement and the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall control.

Provision for Working Capital Security Documents and Noteholder Security Documents

Reference is made to the Lien Subordination and Intercreditor Agreement dated as of [_____], among [_____], as Trustee, [_____], as Noteholder Collateral Agent, the Working Capital Collateral Agent(s) for the Working Capital Secured Parties referred to therein, GT Advanced Technologies Inc., a Delaware corporation (“GTAT”), and the subsidiaries of GTAT party thereto (the “Intercreditor Agreement”; capitalized terms used in this paragraph and not defined shall have the meaning assigned to them in the Intercreditor Agreement). Notwithstanding any other provision contained herein, this Agreement, the [Liens][*insert appropriate defined term under such security document*] created hereby and the rights, remedies, duties and obligations provided for herein are subject in all respects to the provisions of the Intercreditor Agreement and, to the extent provided therein, the applicable Senior Security Documents. In the event of any conflict or inconsistency between the provisions of this Agreement and the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall control.

⁶ To be inserted for any Noteholder Document.

Additional Legend

Notwithstanding anything to the contrary herein, in any [Noteholder Document] *[insert appropriate description of such document]* or any [Working Capital Document]*[insert appropriate description of such document]*, the Grantors shall not be required to act or refrain from acting (a) pursuant to any [Noteholder Document] solely with respect to any [Working Capital First Lien Collateral]*[insert appropriate defined term under such security document]* in any manner that would cause a default under any [Working Capital Document], or (b) pursuant to any [Working Capital Document] solely with respect to any [Noteholder First Lien Collateral]*[insert appropriate defined term under such security document]* in any manner that would cause a default under any [Noteholder Document]. For avoidance of doubt, the terms [Noteholder Document] and [Working Capital Document] do not include the Intercreditor Agreement.

EXHIBIT 2

Collateral Agreement

COLLATERAL AGREEMENT

DATED AS OF [•], 2016

AMONG

GT ADVANCED TECHNOLOGIES INC.,
as Issuer,

THE SUBSIDIARY PARTIES FROM TIME TO TIME PARTY HERETO

[•],
as Trustee,

and

[•],
as Collateral Agent¹

¹ NTD: Identity of trustee/agent to be confirmed.

COLLATERAL AGREEMENT

THIS COLLATERAL AGREEMENT (as amended, extended, renewed, restated, supplemented, waived or otherwise modified from time to time, this “Agreement”) is entered into as of [•], 2016, by and among GT ADVANCED TECHNOLOGIES INC., a Delaware corporation with an address at 243 Daniel Webster Highway, Merrimack, NH 03054 (the “Issuer”), the SUBSIDIARY PARTIES (as defined below) from time to time party hereto, [•], in its capacity as Trustee (and its successors under the Indenture (as defined below), in such capacity, the “Trustee”), and [•], in its capacity as collateral agent for the Secured Parties (as defined below) (and its successors under the Indenture, in such capacity, the “Collateral Agent”).

PRELIMINARY STATEMENT

WHEREAS pursuant to the terms, conditions and provisions of the Indenture dated as of the date hereof (as amended, extended, renewed, restated, supplemented, waived or otherwise modified from time to time, the “Indenture”), between the Issuer and the Trustee, the Issuer is issuing the Securities (as defined below), which are guaranteed on a senior secured basis by each of the Subsidiary Parties;

WHEREAS the initial aggregate principal amount of the Securities will be \$60,000,000, plus any additional PIK Securities (as defined in the Indenture) issued from time to time after the Issue Date (as defined in the Indenture);

WHEREAS the Indenture permits the Issuer and the Subsidiary Parties to grant a lien and security interest in the Collateral (as defined below) to the Collateral Agent, for the benefit of the Secured Parties, to secure the Obligations (as defined below);

WHEREAS the Issuer is executing and delivering this Agreement pursuant to the terms of the Indenture to induce the Trustee to enter into the Indenture, and to induce certain parties previously identified to the Issuer (collectively, the “Purchasers”) to purchase the Securities; and

WHEREAS the Issuer has duly authorized the execution, delivery and performance by it of this Agreement.

NOW, THEREFORE, for and in consideration of the premises, and of the mutual covenants herein contained, and in order to induce the Trustee to enter into the Indenture and the Purchasers to purchase the Securities, the Issuer, each Subsidiary Party that later becomes bound hereby and the Collateral Agent, on behalf of itself and each Secured Party (and each of their respective successors or assigns), hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Terms Defined in Indenture. All capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Indenture.

Section 1.2 Terms Defined in UCC. Terms defined in the UCC that are not otherwise defined in this Agreement or the Indenture are used herein as defined in the UCC.

Section 1.3 Definitions of Certain Terms Used Herein. As used in this Agreement, in addition to the terms defined in the preamble and Preliminary Statement above, the following terms shall have the following meanings:

“Account” means, with respect to a Person, any of such Person’s now owned and hereafter acquired or arising “accounts”, as defined in the UCC, including any rights to payment for the sale or lease of goods or rendition of services, whether or not they have been earned by performance, and “Accounts” means, with respect to any such Person, all of the foregoing.

“Account Control Agreement” means each of (i) the Account Control Agreement, dated on or around the date hereof, among the Issuer, the Collateral Agent and [•]; and (ii) any other Account Control Agreement entered into pursuant to Section 4.18 of the Indenture.

“Account Debtor” means each Person obligated on an Account.

“Bankruptcy Proceeding” means, with respect to any Person, a general assignment by such Person for the benefit of its creditors, or the institution by or against such Person of any proceeding seeking relief as debtor, or seeking to adjudicate such Person as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment or composition of such Person or its debts, under any Bankruptcy Law, or seeking appointment of a receiver, trustee, custodian or other similar official for such Person or for any substantial part of its property.

“Co-Collateral Agent” means a financial institution appointed by the Collateral Agent in accordance with Sections 7.6(a) and 7.7 hereto to act as co-collateral agent for the Secured Parties.

“Collateral” has the meaning specified in Article II.

“Collateral Agent” has the meaning assigned to such term in the preamble hereof.

“Collateral Agent’s Liens” means the Liens in the Collateral granted to the Collateral Agent (or any Co-Collateral Agent), for the benefit of the Secured Parties, pursuant to this Agreement and the other Indenture Documents.

“Commercial Tort Claims” means, with respect to a Person, all of such Person’s now owned or hereafter acquired “commercial tort claims”, as defined by the UCC, including those commercial tort claims identified on Exhibit C.

“Copyright, Patent, and Trademark Agreements” means each copyright security agreement, patent security agreement, and trademark security agreement executed and delivered by a Grantor to the Collateral Agent to evidence and perfect the Collateral Agent’s security interest in such Grantor’s present and future copyrights, patents, trademarks, and related licenses and rights for the benefit of the Secured Parties.

“Dollars” means United States dollars.

“Effective Date” means the date of this Agreement.

“Equipment” means, with respect to a Person, all of such Person’s now owned and hereafter acquired machinery, “equipment”, as defined by the UCC, furniture, furnishings, fixtures, and other tangible personal property (except Inventory), and office equipment, as well as all of such types of property leased by such Person and all of such Person’s rights and interests with respect thereto under such leases (including options to purchase); together with all present and future additions and accessions thereto, replacements therefor, and all substitutes for any of the foregoing, and all manuals, drawings, instructions, warranties, and rights with respect thereto, wherever any of the foregoing is located.

“General Intangibles” means, with respect to a Person, all of such Person’s now owned or hereafter acquired “general intangibles”, as defined in the UCC, including payment intangibles, choses in action and causes of action and all other intangible personal property of such Person of every kind and nature (other than Accounts), including all contract rights, Proprietary Rights, corporate or other business records, inventions, designs, blueprints, plans, specifications, patents, patent applications, trademarks, service marks, trade names, trade secrets, goodwill, copyrights, computer software, customer lists, registrations, licenses, franchises, tax refund claims, any funds which may become due to such Person in connection with the termination of any Plan or other employee benefit plan or any rights thereto and any other amounts payable to such Person from any Plan or other employee benefit plan, rights and claims against carriers and shippers, rights to indemnification, business interruption insurance and proceeds thereof, property, casualty or any similar type of insurance and any proceeds thereof, proceeds of insurance covering the lives of key employees on which such Person is beneficiary, rights to receive dividends, distributions, cash, instruments (including, without limitation, “instruments” as such term is defined in the UCC) and other property in respect of or in exchange for pledged equity interests or Investment Property, and any letter of credit, guarantee, claim, security interest, or other security held by or granted to such Person.

“Grantors” means the Issuer and the Subsidiary Parties, if any.

“Indenture” has the meaning assigned to such term in the Preliminary Statement.

“Indenture Documents” means (a) the Indenture and the Securities, (b) each other Security Document, including this Agreement and any mortgages entered into in favor of the Collateral Agent and (c) any other related documents or instruments executed and delivered pursuant to or in connection with the Indenture or any other Indenture Document, in each case, as such agreements may be amended, extended, renewed, restated, supplemented, waived or otherwise modified from time to time.

“Intercompany Obligations” means, collectively, all indebtedness, obligations and other amounts at any time owing to any Grantor from any of such Grantor’s Subsidiaries or Affiliates and all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such indebtedness, obligations or other amounts.

“Inventory” means, with respect to a Person, all of such Person’s now owned and hereafter acquired “inventory”, as defined in the UCC, goods, and merchandise, wherever located, in each case to be furnished under any contract of service or held for sale or lease, all returned goods, raw materials, work-in-process and finished goods (including embedded software) and all documents of title or other documents representing them.

“Investment Property Collateral” means Investment Property other than Excluded Equity.

“Investment Property Issuer” means the issuer of any Investment Property Collateral.

“Majority Holders” means, at any time, the holders of at least a majority of the aggregate principal amount of the Securities then outstanding.

“Obligations” means all obligations of every nature of each Grantor under the Indenture Documents from time to time owed to the Trustee, any Holder of Securities, the Collateral Agent and any other Secured Party, whether for principal, interest (including interest which, but for the filing of a petition in any Bankruptcy Proceeding with respect to such Grantor, would have accrued on any Obligation, whether or not a claim is allowed against such Grantor for such interest in such proceeding), premium, fees, expenses, indemnification, performance or otherwise.

“Perfection Certificate” means a certificate substantially in the form of Exhibit G, completed and supplemented with the schedules and attachments contemplated thereby.

“Proprietary Rights” means, with respect to a Person, all of such Person’s now owned and hereafter arising or acquired licenses, franchises, permits, patents, patent rights, copyrights, works which are the subject matter of copyrights, trademarks, service marks, trade names, trade styles, patent, trademark and service mark applications, and all licenses and rights related to any of the foregoing, including those patents and trademarks set forth on Exhibit B, and all other rights under any of the foregoing, all extensions, renewals, reissues, divisions, continuations, and continuations in part of any of the foregoing, and all rights to sue for past, present, and future infringement of any of the foregoing.

“Real Property” means any right, title or interest in and to real property, including any fee interest, leasehold interest, easement, or license and any other right to use or occupy real property, including any right arising by contract.

“Related Person” means, with respect to any specified Person, such Person’s Affiliates, and the respective officers, directors, employees, agents, advisors and attorneys-in-fact of such Person and its Affiliates.

“Requirement of Law” means, as to any Person, any law (statutory or common), treaty, rule, or regulation or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon the Person or any of its property or to which the Person or any of its property is subject.

“Secured Parties” means (a) the Collateral Agent (including any Co-Collateral Agents), (b) each Holder of Securities, (c) the Trustee and (d) the successors and permitted assigns of each of the foregoing.

“Subsidiary Parties” means each Subsidiary of the Issuer or of another Subsidiary Party that becomes a party to this Agreement as a Subsidiary Party after the Effective Date.

“UCC” means the Uniform Commercial Code (or any successor statute), as in effect from time to time, of the State of New York or of any other state the laws of which are required as a result thereof to be applied in connection with the issue or perfection of security interests.

Section 1.4 Construction; Certain Defined Terms. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument, other document, statute or regulation herein shall be construed as referring to such agreement, instrument, other document, statute or regulation as from time to time amended, supplemented or otherwise modified, (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, but shall not be deemed to include the Subsidiaries of such person unless express reference is made to such Subsidiaries, (iii) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to Articles, Sections and Exhibits shall be construed to refer to Articles, Sections and Exhibits of this Agreement, (v) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (vi) the term “or” is not exclusive.

ARTICLE II GRANT OF SECURITY INTEREST

As security for the Obligations, each Grantor hereby grants to the Collateral Agent, for the benefit of the Secured Parties, a continuing security interest in and lien on such Grantor’s right, title and interest in and to all of the following property and assets of such Grantor, whether now owned or existing or hereafter acquired or arising, regardless of where located:

- (i) all Accounts (including any credit enhancement therefor) and Intercompany Obligations;
- (ii) all Chattel Paper;
- (iii) all Commercial Tort Claims;

(iv) all contract rights, leases, letters of credit, letter-of-credit rights, instruments, promissory notes, documents, and documents of title;

(v) all Financial Assets;

(vi) all Equipment;

(vii) all General Intangibles;

(viii) all Investment Property;

(ix) all Inventory;

(x) all Real Property;

(xi) all money, cash, cash equivalents, securities, and other property of any kind of such Grantor;

(xii) all of such Grantor's deposit accounts, securities accounts, commodities accounts, credits, and balances with, and other claims against, any financial institution with which such Grantor maintains deposits;

(xiii) all of such Grantor's books, records, and other property related to or referring to any of the foregoing, including books, records, account ledgers, data processing records, computer software and other property, and General Intangibles at any time evidencing or relating to any of the foregoing;

(xiv) all supporting obligations in respect of any Collateral;

(xv) all other items, kinds and types of personal property, tangible or intangible, of whatever nature, and regardless of whether the creation or perfection or effect of perfection or non-perfection of a security interest therein is governed by the UCC of any particular jurisdiction or by another applicable treaty, convention, statute, law or regulation of any applicable jurisdiction; and

(xvi) all accessions to, substitutions for, and replacements, products, and proceeds of any of the foregoing, including, but not limited to, After-Acquired Property, proceeds of any insurance policies, claims against third parties, and condemnation or requisition payments with respect to all or any of the foregoing.

All of the foregoing, and all other property of the Grantors in which a Secured Party may at any time be granted a Lien to secure the Obligations, is herein collectively referred to as the "Collateral"; provided, however, that notwithstanding the foregoing, the Collateral shall not include, and the security interest shall not attach to, any and all Excluded Assets to the extent and for the period in which any property or asset remains an Excluded Asset.

ARTICLE III REPRESENTATIONS AND WARRANTIES

The Grantors, jointly and severally, represent and warrant to the Collateral Agent, for the benefit of the Secured Parties, that:

Section 3.1 Validity and Priority of Security Interest.

(a) This Agreement and the applicable Security Documents are effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in all Collateral and all proceeds thereof (except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws and to the effect of general principles of equity whether applied by a court of law or equity). When the Investment Property Collateral that consists of Equity Interests in certificated form is delivered to the Collateral Agent, the Lien created under this Agreement and the applicable Security Documents shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Grantors in such Investment Property Collateral, in each case prior and superior in right to any other Person (subject to Permitted Liens to the extent the Indenture permits such Permitted Liens to have priority over the Liens in favor of the Collateral Agent). Upon the execution and delivery of each Account Control Agreement by each party thereto, such Account Control Agreement shall be effective to perfect the security interest in the deposit account(s) or securities entitlements in securities account(s) specified therein, and such security interest shall be perfected. When financing statements in appropriate form are filed in the offices specified on Exhibit E, the Lien created under this Agreement and the applicable Security Documents will constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Grantors in such Collateral in which a security interest can be perfected by filing a financing statement, in each case prior and superior in right to any other Person (subject to Permitted Liens to the extent the Indenture permits such Permitted Liens to have priority over the Liens in favor of the Collateral Agent).

(b) Upon the recordation of this Agreement or the Copyright, Patent, and Trademark Agreements with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, together with the financing statements in appropriate form filed in the offices specified on Exhibit E, the Lien created under this Agreement and the applicable Security Documents shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Grantors in the respective Proprietary Rights in which a security interest may be perfected by filing in the United States and its territories and possessions, prior and superior in right to any other Person (subject to Permitted Liens to the extent the Indenture permits such Permitted Liens to have priority over the Liens in favor of the Collateral Agent).

Section 3.2 Location of Collateral. As of the Effective Date, (a) Exhibit A is a correct and complete list of each Grantor's jurisdiction of organization, the location of its books and records, the locations of the Collateral (other than Inventory that is in transit, consignments of Inventory not in excess of \$250,000, rolling stock, and Collateral in the Collateral Agent's possession or equipment in transit between the locations set forth on Exhibit A and equipment at other locations for purposes of maintenance or repair), and the locations of all of its other material places of business; and (b) Exhibit A correctly identifies any of such facilities and locations that are not owned by such Grantor and sets forth the names of the owners and lessors or sublessors of such facilities and locations.

Section 3.3 Exact Names. As of the Effective Date, the name in which each Grantor has executed this Agreement is the exact name as it appears in such Grantor's organizational documents, as amended, as filed with such Grantor's jurisdiction of organization. Except as set forth on Exhibit A or as permitted by the Indenture or this Agreement, since the date of its organization or acquisition as a Subsidiary of the Issuer, no Grantor has, as of the Effective Date, been known by or used any other corporate or fictitious name, or been a party to any merger or consolidation, or acquired all or substantially all of the assets of any Person.

Section 3.4 Accounts and Chattel Paper. The names of the obligors, amounts owing, due dates and other information with respect to each Grantor's Accounts and Chattel Paper that are Collateral are and will be correctly stated, in all material respects, at the time furnished, in all records of such Grantor relating thereto.

Section 3.5 Documents, Instruments, and Chattel Paper. (a) All documents, instruments, and Chattel Paper of each Grantor describing, evidencing, or constituting Collateral with a value in excess of \$250,000, and all signatures and endorsements thereon, are and will be complete, valid, and genuine in all material respects, and (b) all goods evidenced by such documents, instruments, and Chattel Paper are and will be owned by such Grantor free and clear of all Liens (subject to Permitted Liens). If any Grantor retains possession of any Chattel Paper or other instruments, at the Collateral Agent's request upon an Event of Default, such Chattel Paper or instruments shall be marked with the following legend: "This writing and the obligations evidenced or served hereby are subject to the security interest of [•], as Collateral Agent, for the benefit of Collateral Agent and certain Secured Parties."

Section 3.6 Proprietary Rights. Exhibit B sets forth a correct and complete list of all of each Grantor's registered or applied for patents, copyrights and trademarks material to its business, in each case owned by such Grantor in its own name as of the Effective Date. As of the Effective Date, none of the patents, copyrights and trademarks listed in Exhibit B is subject to any exclusive licensing agreement or similar arrangement except as set forth on Exhibit B.

Section 3.7 Investment Property.

(a) Exhibit D sets forth a correct and complete list of all of the Investment Property Collateral owned by each Grantor as of the Effective Date. As of the Effective Date, each Grantor is the legal and beneficial owner of such Investment Property Collateral, as so reflected, free and clear of any Lien (other than Permitted Liens), and has not sold, granted any option with respect to, assigned or transferred, or otherwise disposed of any of its rights or interest therein. Each Grantor further represents and warrants that (i) to such Grantor's knowledge, all Investment Property constituting an Equity Interest has been (to the extent such concepts are relevant with respect to such Investment Property) duly authorized and validly issued by the Investment Property Issuer thereof and are fully paid and non-assessable, (ii) with respect to any certificates delivered to the Collateral Agent representing an Equity Interest, either such certificates are Securities as defined in Article 8 of the UCC as a result of actions by the Investment Property Issuer thereof or otherwise, or, if such certificates are not Securities as defined in Article 8 of the UCC, such Grantor has filed financing statements in appropriate form to perfect the security interest of the Collateral Agent for the benefit of the Secured Parties therein as a General Intangible, and (iii) to Grantor's knowledge, all Investment Property that

represents Indebtedness owed to any Grantor has been duly authorized, authenticated or issued and delivered by the Investment Property Issuer of such Indebtedness and is the legal, valid and binding obligation of such Investment Property Issuer.

(b) Each Grantor further represents and warrants that, as of the Effective Date, to the best of such Grantor's knowledge, none of the Investment Property Collateral is or will be subject to any option, right of first refusal, shareholders agreement, charter or by-law provisions or contractual restriction of any nature that might prohibit, impair, delay or otherwise affect the pledge of such Investment Property Collateral hereunder, the sale or disposition thereof pursuant hereto or the exercise by the Collateral Agent of rights and remedies hereunder.

Section 3.8 Commercial Tort Claims. As of the Effective Date, no Grantor holds any Commercial Tort Claims the recovery from which could reasonably be expected to exceed \$500,000, for which such Grantor has filed a complaint in a court of competent jurisdiction, except as indicated on Exhibit C hereto.

Section 3.9 Bank Accounts and Related Items. As of the Effective Date, Exhibit J contains a complete and accurate list of all bank accounts, including deposit accounts, securities accounts and commodity accounts, maintained by each Grantor with any bank or other financial institution, broker, securities intermediary, commodity intermediary or other Person.

Section 3.10 Perfection Certificate. The Perfection Certificates delivered by the Grantors as of the Effective Date have been duly prepared, completed and executed and the information set forth therein is correct and complete, in all material respects, as of the Effective Date.

Section 3.11 Leases. Exhibit I sets forth, as of the Effective Date, a correct and complete list of all leases and subleases of personal property by each Grantor as lessee or sublessee (other than any Excluded Assets, and other than any leases of personal property as to which it is lessee or sublessee for which the value of such personal property is less than \$500,000), and all leases and subleases of personal property by each Grantor as lessor or sublessor. As of the Effective Date, each of such leases and subleases listed on Exhibit I is valid and enforceable with respect to the applicable Grantor and, to the Grantors' knowledge, the other parties thereto, in accordance with its terms (except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws and to the effect of general principles of equity whether applied by a court of law or equity) and is in full force and effect, and, to the Grantors' knowledge, no default by any party to any such lease or sublease or the license agreement listed on Exhibit I exists.

Section 3.12 Trade Names. All trade names, business names or corporate names under which, as of the Effective Date, any Grantor sells Inventory or creates Accounts, or to which instruments in payment of Accounts are made payable, are listed on Exhibit K.

Section 3.13 No Financing Statements, Security Agreements. No financing statement, mortgage or security agreement describing all or any portion of the Collateral that has not lapsed or been terminated naming a Grantor as debtor has been filed or is of record in any

jurisdiction except (a) for financing statements, mortgages or security agreements naming the Collateral Agent on behalf of the Secured Parties as the secured party and (b) for financing statements or mortgages in connection with Permitted Liens.

Section 3.14 Location for Purposes of the UCC. As of the Effective Date, the Issuer is “located” (as such term is used in Article 9-307 of the UCC) in the state of Delaware.

ARTICLE IV COVENANTS

From the date hereof, and thereafter until this Agreement is terminated, each Grantor agrees that:

Section 4.1 General.

(a) Collateral Records. Each Grantor shall maintain at all times reasonably detailed, accurate (in all material respects) and updated books and records pertaining to the Collateral and promptly furnish to the Collateral Agent such information relating to the Collateral as the Collateral Agent shall from time to time reasonably request.

(b) Authorization to File Financing Statements; Ratification. The Collateral Agent may, and the Grantors hereby authorize the Collateral Agent to, at any time and from time to time, file financing statements, continuation statements, and amendments thereto that describe the Collateral as “all assets” or words of similar import and which contain any other information required pursuant to Article 9 of the UCC for the sufficiency of filing office acceptance of any financing statement, continuation statement, or amendment, and each Grantor agrees to furnish any such information to the Collateral Agent promptly upon request. The Collateral Agent shall inform the applicable Grantor of any such filing either prior to, or reasonably promptly after, such filing. Each Grantor acknowledges that it is not authorized to file any financing statement covering the Collateral or amendment or termination statement with respect to any financing statement covering the Collateral without the prior written consent of the Collateral Agent and agrees that it will not do so without such consent, subject to (i) the Grantors’ rights under Section 9-509(d)(2) of Article 9 of the UCC and (ii) financing statements that may be filed, in accordance with the Indenture, to perfect or release any Permitted Liens.

(c) Other Perfection, etc. Each Grantor shall, at any time and from time to time, take such steps as are necessary or as the Collateral Agent may reasonably request for the Collateral Agent (i) to use commercially reasonable efforts to obtain an acknowledgment, in form and substance reasonably satisfactory to the Collateral Agent, of any bailee having possession of any of the Collateral in excess of \$500,000 and not having otherwise entered into a subordination agreement for the benefit of the Collateral Agent, stating that the bailee holds such Collateral for the Collateral Agent, (ii) to obtain “control” of any deposit accounts or securities accounts (as such terms are defined by Article 9 of the UCC with corresponding provisions thereof defining what constitutes “control” for such items of Collateral) to the extent required by Section 4.18 of the Indenture, (iii) to obtain “control” of any Investment Property Collateral, letter-of-credit rights, or Electronic Chattel Paper (as such terms are defined by Article 9 of the UCC with corresponding provisions thereof defining what constitutes “control” for such items of

Collateral) in excess of \$500,000 in the aggregate (other than Investment Property Collateral constituting Equity Interests of a Subsidiary, for which no minimum dollar amount shall apply); *provided* that in the case of each of clauses (ii) and (iii), any agreements establishing control shall be in form and substance reasonably satisfactory to the Collateral Agent and (iv) otherwise to insure the continued perfection and priority of the Collateral Agent's security interest in any of the Collateral (to the extent required hereunder) and of the preservation of its rights therein.

(d) Change of Name, Etc. Each Grantor agrees to furnish to the Collateral Agent prompt written notice of any change in: (i) such Grantor's name; (ii) such Grantor's state of organization or form of organization, in each case at least fifteen (15) days prior thereto; (iii) such Grantor's Federal Taxpayer Identification Number or organizational identification number assigned to it by its jurisdiction of incorporation or formation; or (iv) the acquisition by such Grantor of any material property for which additional filings or recordings are necessary to perfect and maintain the Collateral Agent's security interest therein (to the extent perfection of the security interest in such property is required hereby or by the terms of the Indenture). Each Grantor agrees not to effect or permit any change referred to in the preceding sentence unless all filings are promptly made under the UCC or other applicable law that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected, security interest (subject to Permitted Liens) in the Collateral for its benefit and the benefit of the other Secured Parties.

(e) Change in Location of Collateral. No Grantor shall (i) maintain any Collateral with a Fair Market Value in excess of \$250,000 (other than Inventory in transit, consignments of Inventory not in excess of \$250,000, rolling stock, equipment in transit between locations set forth in Exhibit A, equipment at other locations for purposes of maintenance or repair and Collateral in the Collateral Agent's possession) at any location other than those locations listed on Exhibit A, (ii) otherwise change or add to any of such locations, or (iii) change the location of its jurisdiction of organization from the location identified in Exhibit A, unless in each case it gives the Collateral Agent prompt written notice thereof but in any event described in clause (iii) not later than 30 days prior thereto, and executes or authorizes the filing of any and all financing statements and other documents that are necessary or that the Collateral Agent reasonably requests in connection therewith. In the event any Grantor changes or adds any location of Collateral, such Grantor shall prepare and promptly deliver to the Collateral Agent a revised Exhibit A, which shall automatically be adopted as Exhibit A for all purposes. Each Grantor agrees not to effect or permit any change referred to in the preceding sentences unless all filings are promptly made under the UCC or other applicable law that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest (subject to Permitted Liens) in the Collateral for its benefit and the benefit of the other Secured Parties.

Section 4.2 Perfection and Protection of Security Interest.

(a) Perfection and Protection. Each Grantor shall, at its expense, perform all steps necessary or otherwise reasonably requested by the Collateral Agent (at the direction of the Majority Holders) at any time to perfect, maintain, protect, and enforce the Collateral Agent's Liens, including: (i) executing, delivering, and/or filing and recording of the Copyright, Patent, and Trademark Agreements, and executing and filing financing or continuation statements, and

amendments thereof in the United States Patent and Trademark Office and the United States Copyright Office; (ii) delivering to the Collateral Agent the originals of all instruments, documents, and Chattel Paper (in each case in excess of \$500,000), and all other Collateral of which the Collateral Agent is required to have or reasonably requests to have physical possession of in order to perfect and protect the Collateral Agent's security interest therein, duly pledged, endorsed, or assigned to the Collateral Agent as provided herein; (iii) deliver to the Collateral Agent a duly executed amendment to this Agreement, in the form of Exhibit F hereto (each, an "Amendment"), pursuant to which such Grantor will pledge any additional Collateral that constitutes Commercial Tort Claims the recovery from which could reasonably be expected to exceed \$500,000; (iv) upon the occurrence and during the continuation of an Event of Default, delivering to the Collateral Agent (A) warehouse receipts covering any portion of the Collateral located in warehouses and for which warehouse receipts are issued, and (B) if requested by the Collateral Agent, certificates of title reflecting the Collateral Agent's Liens covering any portion of the Collateral for which certificates of title have been issued; (v) when an Event of Default exists, transferring Inventory to warehouses or other locations designated by the Collateral Agent; (vi) upon the occurrence and during the continuance of an Event of Default, delivering to the Collateral Agent all letters of credit constituting Collateral on which such Grantor is named beneficiary; and (vii) taking such other steps as are reasonably deemed necessary or reasonably desirable by the Collateral Agent (acting at the direction of the Majority Holders) to maintain, protect and enforce the Collateral Agent's Liens. To the extent permitted by any Requirement of Law, the Collateral Agent may file, without any Grantor's signature, one or more financing statements disclosing the Collateral Agent's Liens. Each Grantor hereby authorizes the Collateral Agent to attach each Amendment to this Agreement and agrees that all additional collateral set forth in such Amendments shall be considered to be part of the Collateral.

(b) Collateral in Other's Possession. If any Collateral constituting Inventory with a Fair Market Value in excess of \$250,000 is at any time in the possession or control of any warehouseman, bailee, or any of such Grantor's agents or processors (other than any Persons that have previously executed a bailee letter or landlord waiver for the benefit of the Collateral Agent), then such Grantor shall notify the Collateral Agent thereof (including by delivery of the Perfection Certificate on the Effective Date) and shall notify such Person of the Collateral Agent's security interest in such Collateral and instruct such Person to hold all such Collateral for the Collateral Agent's account subject to the Collateral Agent's instructions. If at any time any Collateral with a Fair Market Value in excess of \$250,000 is located at any operating facility of a Grantor which is not owned by such Grantor, such Grantor shall, upon request, use commercially reasonable efforts to obtain written landlord lien waivers or subordinations, in form and substance reasonably satisfactory to the Collateral Agent, of all present and future Liens to which the owner or lessor of such premises may be entitled to assert against such Collateral.

(c) Confirmatory Instruments. From time to time each Grantor shall, upon the Collateral Agent's reasonable request, execute and deliver confirmatory written instruments pledging to the Collateral Agent, for the benefit of the Secured Parties, the Collateral with respect to such Grantor, but the failure to do so shall not affect or limit any security interest or any other rights of the Secured Parties in and to the Collateral with respect to such Grantor.

Section 4.3 Electronic Chattel Paper. If any Grantor at any time holds or acquires an interest in any Electronic Chattel Paper or any “transferable record”, as that term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, such Grantor shall promptly notify the Collateral Agent thereof and shall take such action as is necessary to vest in the Collateral Agent Control under UCC Section 9-105 of such Electronic Chattel Paper or control (to the extent the meaning of “control” has not been clearly established under such provisions, “control” in this Section 4.3 to have such meaning as the Collateral Agent shall reasonably specify in writing after consultation with the Issuer) under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. The Collateral Agent agrees with such Grantor that the Collateral Agent will arrange, pursuant to procedures reasonably satisfactory to the Collateral Agent and so long as such procedures will not result in the Collateral Agent’s loss of Control or control, as applicable, which may be established to the satisfaction of the Collateral Agent pursuant to the delivery to it by the Grantor of an Officers’ Certificate or an Opinion of Counsel, for the Grantor to make alterations to the Electronic Chattel Paper or transferable record permitted under UCC Section 9-105 or, as the case may be, Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or Section 16 of the Uniform Electronic Transactions Act, for a party in Control to allow without loss of Control or control, as applicable, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by such Grantor with respect to such Electronic Chattel Paper or transferable record.

Section 4.4 Investment Property.

(a) Registration in Nominee Name; Denominations. The Collateral Agent, on behalf of the Secured Parties, shall hold certificated Investment Property Collateral in the name of the applicable Grantor, endorsed or assigned in blank or in favor of the Collateral Agent, but following the occurrence and during the continuance of an Event of Default shall have the right (in its sole and absolute discretion) to hold such Investment Property Collateral in its own name as pledgee, or in the name of its nominee (as pledgee or as sub-agent). Following an Event of Default, each Grantor will promptly give to the Collateral Agent copies of any material notices or other material communications received by it with respect to any Investment Property Collateral registered in the name of such Grantor. Following the occurrence and during the continuance of an Event of Default, the Collateral Agent shall at all times have the right to exchange the certificates representing Investment Property Collateral for certificates of smaller or larger denominations for any purpose consistent with this Agreement.

(b) Voting Rights, Distributions, Etc. in Respect of Investment Property Collateral.

(i) Unless an Event of Default exists, (A) each Grantor shall be entitled to exercise any and all voting and other consensual rights (including the right to give consents, waivers, and notifications in respect of any securities) pertaining to its Investment Property Collateral or any part thereof; provided, however, that during an Event of Default, without the prior written consent of the Collateral Agent obtained in

accordance with the Indenture, no vote shall be cast or consent, waiver, or ratification given or action taken which would amend, modify, or waive any term, provision, or condition of the certificate of incorporation, bylaws, certificate of formation, or other charter document or other agreement relating to, evidencing or providing for the issuance of any such Investment Property Collateral, in any manner that would materially impair such Investment Property Collateral, the transferability thereof, or the Collateral Agent's Liens therein, and (B) each Grantor shall be entitled to receive and retain any and all dividends, interest paid and other cash distributions in respect of any of such Investment Property Collateral (unless otherwise required by the Indenture).

(ii) During the existence of an Event of Default, (A) the Collateral Agent may, after delivery of notice to the applicable Grantor, exercise all voting and corporate rights at any meeting of any corporation, partnership, or other business entity issuing any of the Investment Property Collateral and the proceeds thereof (in cash or otherwise) held by the Collateral Agent hereunder, and any and all rights of conversion, exchange, subscription, or any other rights, privileges, or options pertaining to any of the Investment Property Collateral as if it were the absolute owner thereof, including, the right to exchange at its discretion any and all of the Investment Property Collateral upon the merger, consolidation, reorganization, recapitalization, or other readjustment of any Investment Property Issuer or upon the exercise by any such issuer or the Collateral Agent of any right, privilege, or option pertaining to any of the Investment Property Collateral, and in connection therewith, to deposit and deliver any and all of the Investment Property Collateral with any committee, depositary, transfer agent, registrar, or other designated agency upon such terms and conditions as it may determine, all without liability except to account for property actually received by it, but the Collateral Agent shall have no duty to exercise any of the aforesaid rights, privileges, or options, and the Collateral Agent shall not be responsible for any failure to do so or delay in so doing, (B) all rights of any Grantor to exercise the voting and other consensual rights which it would otherwise be entitled to exercise pursuant to Section 4.4(b)(i) and to receive the dividends, interest, and other distributions which it would otherwise be authorized to receive and retain thereunder shall be suspended until such Event of Default shall no longer exist or as the Collateral Agent shall otherwise specify, and all such rights shall, until such Event of Default shall no longer exist or as the Collateral Agent shall otherwise specify, thereupon become vested in the Collateral Agent which shall thereupon have the sole right, but no duty, to exercise such voting and other consensual rights and to receive and hold as Investment Property Collateral such dividends, interest, and other distributions, (C) all dividends, interest, and other distributions which are received by any Grantor contrary to the provisions of this Section 4.4(b)(ii) shall be received in trust for the benefit of the Collateral Agent, shall be segregated from other funds of such Grantor and shall be forthwith paid over to the Collateral Agent as Collateral in the same form as so received (with any necessary endorsement), and (D) each Grantor shall execute and deliver (or cause to be executed and delivered) to the Collateral Agent all such proxies and other instruments as the Collateral Agent may reasonably request for the purpose of enabling the Collateral Agent to exercise the voting and other rights which it is entitled to exercise pursuant to this Section 4.4(b)(ii) and to receive the dividends, interest, and other distributions which it is entitled to receive and retain pursuant to this Section 4.4(b)(ii). The foregoing shall not in any way limit the

Collateral Agent's power and authority granted pursuant to Section 7.4. After all Events of Default have been cured or waived and the applicable Grantor shall have delivered to the Collateral Agent certificates to that effect, the Collateral Agent shall, promptly after all such Events of Default have been cured or waived, repay to each Grantor (without interest) all dividends or other distributions that such Grantor would otherwise be permitted to retain pursuant to the terms of Section 4.4(b)(i) above and that remain in such account.

(c) The Grantors will cause or permit the Collateral Agent from time to time to cause the appropriate Investment Property Issuers (and, if held with a securities intermediary, such securities intermediary) of uncertificated securities or other types of Investment Property Collateral not represented by certificates to mark their books and records with the numbers and face amounts of all such uncertificated securities or other types of Investment Property Collateral not represented by certificates and all rollovers and replacements therefor to reflect the Lien of the Collateral Agent granted pursuant to this Agreement. The Grantors will take any actions reasonably necessary to cause (a) the Investment Property Issuers of uncertificated securities which are Investment Property Collateral, and (b) any securities intermediary which is the holder of any Investment Property Collateral, to cause the Collateral Agent to have and retain Control over such Investment Property Collateral.

Section 4.5 Proprietary Rights. The Issuer, either directly or through any agent, employee, licensee or designee, shall, when delivering the Officer's Certificate required by Section 4.02(e) of the Indenture, inform the Collateral Agent of each application for the registration of any material Proprietary Right owned or licensed by the Issuer or any of its Affiliates with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency filed during the preceding year.

Section 4.6 Commercial Tort Claims. If any Grantor shall at any time, acquire a Commercial Tort Claim, the recovery from which could reasonably be expected to exceed \$500,000, such Grantor shall promptly notify the Collateral Agent thereof in a writing, therein providing a reasonable description and summary thereof, and upon delivery thereof to the Collateral Agent, together with an Amendment as contemplated by Section 4.2(a)(iii), such Grantor shall be deemed thereby to grant to the Collateral Agent a security interest in such Commercial Tort Claim.

Section 4.7 No Interference. Each Grantor agrees that it will not interfere with any right, power and remedy of the Collateral Agent provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, or the exercise or beginning of the exercise by the Collateral Agent of any one or more of such rights, powers or remedies.

Section 4.8 Insurance.

(a) [Reserved].

(b) For each of the insurance policies issued as required by Section 4.19 of the Indenture with respect to Collateral, each Grantor shall cause the Collateral Agent, for the benefit of the Secured Parties, to be named as secured party or mortgagee and loss payee or additional

insured, in a manner reasonably acceptable to the Collateral Agent. Certificates of insurance of the policies shall be delivered to the Collateral Agent if requested.

(c) The Issuer shall promptly provide written notice to the Collateral Agent of any loss, damage, or destruction to the Collateral in excess of \$375,000 if not covered by insurance. During the existence of an Event of Default, the Collateral Agent is hereby authorized to directly collect all insurance proceeds in respect of Collateral and to apply such proceeds in accordance with Section 5.3.

(d) Unless the Grantors provide the Collateral Agent with evidence of the insurance coverage on the Collateral required by Section 4.19 of the Indenture, the Collateral Agent may, upon sixty (60) days' prior notice, purchase insurance at the applicable Grantor's expense to protect the Collateral Agent's Lien on such Collateral owned by the applicable Grantor. This insurance may, but need not, protect the interests of the Grantors. The coverage that the Collateral Agent purchases may (but shall not be required to) pay any claim that the Grantors make or any claim that is made against the Grantors in connection with said Collateral. The Grantors may later cancel any insurance purchased by the Collateral Agent but only after providing the Collateral Agent with evidence that the Grantors have obtained insurance as required by this Agreement. If the Collateral Agent purchases such insurance, the applicable Grantor will be responsible for the costs of that insurance, including interest and any other reasonable charges the Collateral Agent may impose in connection with the placement of insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance shall be added to the Obligations. The costs of the insurance may be more than the cost of insurance that the Grantors may be able to obtain on their own.

Section 4.9 Condemnation. Each Grantor shall, promptly upon learning of the institution of any proceeding for the condemnation or other taking of any of its Collateral with a Fair Market Value in excess of \$375,000, notify the Collateral Agent of the pendency of such proceeding.

Section 4.10 Further Assurances. The Grantors shall, at their own cost and expense, execute and deliver, or cause to be executed and delivered, to the Collateral Agent and/or the Trustee such documents and agreements, and shall take or cause to be taken such actions, as are necessary or that the Collateral Agent and/or the Trustee may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Indenture Documents. Upon the acquisition by any Grantor of any After-Acquired Property (but subject to the limitations, if applicable, set forth herein, in the Indenture), such Grantor shall execute and deliver such security instruments, financing statements, mortgages and certificates and opinions of counsel as shall be reasonably necessary to vest in the Collateral Agent a perfected security interest or other Lien in such After-Acquired Property and to have such After-Acquired Property added to the Collateral and shall promptly deliver such Officers' Certificates and Opinions of Counsel as are customary in secured financing transactions in the relevant jurisdiction(s) or as are reasonably requested by the Trustee or the Collateral Agent (subject to customary assumptions, exceptions and qualifications), and thereupon all provisions of this Agreement relating to the Collateral, shall be deemed to relate to such After-Acquired Property to the same extent and with the same force and effect. If any property or assets of the Issuer or any Grantor originally deemed to be an Excluded Asset at any point ceases to be an Excluded

Asset pursuant to such defined term, all or the applicable portion of such property and assets shall be deemed to be After-Acquired Property and shall be added to the Collateral in accordance with the Indenture and this Agreement. Such security interests and Liens will be created under security agreements and other instruments and documents in form reasonably satisfactory to the Collateral Agent and the Majority Holders, and the Grantors shall deliver or cause to be delivered to the Collateral Agent and the Trustee all such instruments and documents (including Opinions of Counsel, Officers' Certificates, title insurance policies and lien searches) as are necessary or that the Collateral Agent shall reasonably request to evidence compliance with this Section 4.10. The Grantors shall furnish to the Collateral Agent each year at the time of delivery of the annual report required to be delivered by the Company pursuant to Section 4.02(a) of the Indenture, an Officer's Certificate setting forth the information required pursuant to the Perfection Certificate or confirming that there has been no change in such information since the Effective Date or the date of the most recent certificate delivered pursuant to this Section 4.10. To the extent that the Grantors incur Working Capital Indebtedness secured by any Liens, the Grantors and the Collateral Agent shall enter into an intercreditor agreement with the holder(s) of such Working Capital Indebtedness to effect the Lien Subordination Terms, and the execution of such intercreditor agreement by the Grantors, the Collateral Agent and such holder(s) shall be a condition to the grant of any such Lien by the Grantors.

ARTICLE V REMEDIES

Section 5.1 Remedies.

(a) If an Event of Default has occurred and is continuing:

(i) the Collateral Agent shall have, for the benefit of the Secured Parties, in addition to all other rights of the Collateral Agent and the Trustee, the rights and remedies of a secured party under the UCC (whether or not the UCC applies to the affected Collateral) or under any other applicable law when a debtor is in default under a security agreement;

(ii) the Collateral Agent may, at any time, take possession of the Collateral and keep it on any Grantor's premises, at no cost to the Collateral Agent, the Trustee or any other Secured Party or remove any part of it to such other place or places as the Collateral Agent may desire, or any Grantor shall, upon the Collateral Agent's demand, at such Grantor's cost, assemble the Collateral and make it available to the Collateral Agent at a place reasonably convenient to the Collateral Agent;

(iii) the Collateral Agent may sell and deliver any Collateral at public or private sales, for cash, upon credit, or otherwise, at such prices and upon such terms as the Collateral Agent deems advisable, in its sole discretion, and may, if the Collateral Agent deems it reasonable, postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale without giving a new notice of sale;

(iv) the Collateral Agent may give notice of sole control or any other instruction under any deposit account control agreement or securities account control agreement and take any action provided therein with respect to the applicable Collateral; and

(v) the Collateral Agent may, concurrently with or following written notice to the Grantors, transfer and register in its name or in the name of its nominee the whole or any part of the Investment Property Collateral, exchange certificates or instruments representing or evidencing Investment Property Collateral for certificates or instruments of smaller or larger denominations, exercise the voting and all other rights as a holder with respect thereto, collect and receive all cash dividends, interest, principal and other distributions made thereon and otherwise act with respect to the Investment Property Collateral as though the Collateral Agent was the outright owner thereof.

(b) Without in any way requiring notice to be given in the following manner, each Grantor agrees that any notice by the Collateral Agent of sale, disposition, or other intended action hereunder or in connection herewith, whether required by the UCC or otherwise, shall constitute reasonable notice to the Grantors if such notice is mailed by registered or certified mail, return receipt requested, postage prepaid, or is delivered personally against receipt, at least ten (10) Business Days prior to such action to the Grantors' address specified in or pursuant to Section 8.1.

(c) If any Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the Obligations until the Collateral Agent actually receives payment, and if the buyer defaults in payment, the Collateral Agent may resell all or any portion of such Collateral without further notice to any Grantor.

(d) In the event the Collateral Agent seeks to take possession of all or any portion of the Collateral by judicial process, each Grantor irrevocably waives: (i) the posting of any bond, surety, or security with respect thereto which might otherwise be required; (ii) any demand for possession prior to the commencement of any suit or action to recover the Collateral; and (iii) any requirement that the Collateral Agent retain possession and not dispose of any Collateral until after trial or final judgment.

(e) If an Event of Default occurs and is continuing, each Grantor hereby waives all rights to a hearing prior to the exercise by the Collateral Agent of the Collateral Agent's rights to repossess the Collateral without judicial process or to replevy, attach, or levy upon the Collateral.

(f) Each Grantor acknowledges and agrees that the Collateral Agent has no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any Person.

(g) Each Grantor acknowledges and agrees that the compliance by the Collateral Agent, on behalf of the Secured Parties, with any applicable state or federal law requirements may be required in connection with a disposition of the Collateral and such

compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(h) The Collateral Agent shall have the right upon any public sale or sales and, to the extent permitted by law, upon any private sale or sales, to purchase for the benefit of the Collateral Agent and the other Secured Parties, the whole or any part of the Collateral so sold, free of any right of equity redemption, which equity redemption each Grantor hereby expressly releases.

(i) Until the Collateral Agent is able to effect a sale, lease, transfer or other disposition of Collateral, the Collateral Agent shall have the right, but no duty or obligation, to hold or use Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving Collateral or the value of the Collateral, or for any other purpose deemed appropriate by the Collateral Agent. The Collateral Agent may, if it so elects, but shall have no obligation to, seek the appointment of a receiver or keeper to take possession of Collateral and to enforce any of the Collateral Agent's remedies (for the benefit of the Collateral Agent and Secured Parties), with respect to such appointment without prior notice or hearing as to such appointment.

(j) Each Grantor recognizes that the Collateral Agent may be unable to effect a public sale of any or all of the Collateral consisting of securities to be sold by reason of certain prohibitions contained in the laws of any jurisdiction outside the United States or in applicable federal or state securities laws but may be compelled to resort to one or more private sales thereof to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such Collateral or other property to be sold for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall not, by virtue thereof, be deemed to have been made in a commercially unreasonable manner. Unless required by a Requirement of Law, the Collateral Agent shall not be under any obligation to delay a sale of any of the Collateral or other property to be sold for the period of time necessary to permit the issuer of such securities to register such securities under the laws of any jurisdiction outside the United States or under any applicable federal or state securities laws, even if such issuer would agree to do so. Each Grantor further agrees to do or cause to be done, at its own cost and expense, to the extent that such Grantor may do so under Requirements of Law, all such other acts and things as may be necessary to make such sales or resales of any portion or all of the Collateral or other property to be sold valid and binding and in compliance with any and all Requirements of Law at the Grantors' expense.

(k) Any remedy or enforcement action to be taken hereunder by the Collateral Agent with respect to the Collateral shall be at the written direction of the Majority Holders.

Section 5.2 Grant of Intellectual Property License. Effective only upon the occurrence and during the continuance of an Event of Default, for the purpose of enabling the Collateral Agent to exercise the rights and remedies under this Article V at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Collateral Agent a non-exclusive license or other right to use, without

charge, solely during the continuance of an Event of Default, each Grantor's labels, patents, copyrights, name, trade secrets, trade names, trademarks, and advertising matter, or any similar property, to the extent constituting Collateral in completing production of, advertising or selling any Collateral, and, subject to the rights of any licensor or franchisor under such agreements and to the extent not in violation of such agreements, each Grantor's rights under all licenses and all franchise agreements shall inure to the Collateral Agent's benefit for such purpose. To the extent the trademark license should be used for the Collateral, customary quality provisions will apply as required to avoid a loss of trademark rights.

Section 5.3 Application of Proceeds. The Collateral Agent shall apply the proceeds of any collection, sale, foreclosure or other realization upon any Collateral, as well as any Collateral consisting of cash, as follows:

FIRST, to the payment of all reasonable costs and expenses incurred by the Collateral Agent (in its capacity as such hereunder or under the Indenture or any other Indenture Document) and the Trustee in connection with such collection, sale, foreclosure or realization or reasonable costs, expenses, claims or liabilities of the Collateral Agent or the Trustee otherwise relating to or arising in connection with this Agreement, the Indenture or any other Indenture Document or any of the Obligations, including all court costs and the reasonable fees and expenses of its agents and legal counsel, the repayment of all advances made by the Collateral Agent or the Trustee hereunder or under the Indenture or any other Indenture Document on behalf of any Grantor, any other reasonable costs or expenses incurred by the Collateral Agent or the Trustee in connection with the exercise of any remedy hereunder or under the Indenture or any other Indenture Document, and any indemnification of the Collateral Agent and the Trustee required by the terms hereunder, under the Indenture or any other Indenture Document;

SECOND, to the interest due in respect of the Obligations;

THIRD, to the principal of the Obligations;

FOURTH, to all other amounts due by the Issuer or any Grantor under the Indenture or any other Indenture Document; and

FIFTH, to the applicable Grantors, their successors or assigns, or as a court of competent jurisdiction may otherwise direct.

Except as otherwise provided herein, the Collateral Agent shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement. Upon any sale of Collateral by the Collateral Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the Collateral Agent or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Collateral Agent or such officer or be answerable in any way for the misapplication thereof.

ARTICLE VI CONCERNING THE COLLATERAL AGENT

Section 6.1 Reliance by Collateral Agent; Indemnity Against Liabilities, etc.

(a) Whenever in the performance of its duties under this Agreement or any other Indenture Document, the Collateral Agent shall deem it necessary or desirable that a matter be proved or established with respect to the Grantors or any other Person in connection with the taking, suffering or omitting of any action hereunder by the Collateral Agent, such matter may be conclusively deemed to be proved or established by a certificate executed by an Officer of such Person, including an Officers' Certificate or an Opinion of Counsel, and the Collateral Agent shall have no liability with respect to any action taken, suffered or omitted in reliance thereon. The Collateral Agent may at any time solicit written confirmatory instructions, including a direction of the Trustee, any Grantor or an order of a court of competent jurisdiction as to any action that it may be requested or required to take or that it may propose to take in the performance of any of its obligations under this Agreement or any other Indenture Document and shall be fully justified in failing or refusing to act hereunder or under any Indenture Document until it shall have received such requisite instruction.

(b) The Collateral Agent shall be fully protected in relying upon any note, writing, affidavit, electronic communication, fax, resolution, statement, certificate, instrument, opinion, report, notice (including any notice of an Event of Default or of the cure or waiver thereof), request, consent, order or other paper or document or oral conversation (including, telephone conversations) which it in good faith believes to be genuine and correct and to have been signed, presented or made by the proper party. The Collateral Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any notice, certificate or opinion furnished to the Collateral Agent in connection with this Agreement or any other Indenture Document and upon advice and statements of legal counsel (including counsel to the Issuer or any Grantor, independent accountants and other agents consulted by the Collateral Agent).

Section 6.2 Exercise of Remedies. The remedies of the Collateral Agent hereunder and under the other Security Documents shall include, but not be limited to, the disposition of the Collateral by foreclosure or other sale and the exercising of all remedies of a secured lender under the UCC, bankruptcy laws or similar laws of any applicable jurisdiction.

Section 6.3 Authorized Investments. Any and all funds held by the Collateral Agent in its capacity as Collateral Agent, whether pursuant to any provision hereof or of any other Security Document or otherwise, shall, to the extent reasonably practicable following receipt by the Collateral Agent from the Issuer of specific written instructions in form and substance reasonably satisfactory to the Collateral Agent delivered to the Collateral Agent at least three (3) business days prior to the proposed investment, be invested by the Collateral Agent within a reasonable time in the Cash Equivalents identified in such written instructions. Any interest earned on such funds shall be disbursed (i) during an Event of Default, in accordance with Section 5.3 and (ii) at all other times, as the Issuer shall direct. To the extent that the interest rate payable with respect to any such account varies over time, the Collateral Agent may use an average interest rate in making the interest allocations among the respective Secured Parties. In the absence of gross negligence or willful misconduct, the Collateral Agent shall not be responsible for any investment losses in respect of any funds invested in accordance with this Section 6.3. The Collateral Agent shall have no duty or obligation regarding the

reinvestment of any such funds in the absence of updated written instructions from the Issuer in form and substance reasonably satisfactory to the Collateral Agent.

Section 6.4 Bankruptcy Proceedings. The following provisions shall apply during any Bankruptcy Proceeding of any Grantor:

(a) The Collateral Agent shall represent all Secured Parties in connection with all matters directly relating to the Collateral, including any use, sale or lease of Collateral, use of cash collateral, request for relief from the automatic stay and request for adequate protection.

(b) Each Secured Party shall be free to act independently on any issue not affecting the Collateral. Each Secured Party shall give prior notice to the Collateral Agent of any such action that could materially affect the rights or interests of the Collateral Agent or the other Secured Parties to the extent that such notice is reasonably practicable. If such prior notice is not given, such Secured Party shall give prompt notice following any action taken hereunder.

(c) Any proceeds of the Collateral received by any Secured Party as a result of, or during, any Bankruptcy Proceeding will be delivered promptly to the Collateral Agent for distribution in accordance with Section 5.3.

ARTICLE VII
COLLATERAL AGENT AND TRUSTEE RIGHTS, DUTIES AND
LIABILITIES; ATTORNEY IN FACT; PROXY

Section 7.1 The Collateral Agent's and the Trustee's Rights, Duties, and Liabilities.

(a) The Grantors assume all responsibility and liability arising from or relating to the use, maintenance, storage, sale, collection, foreclosure, realization on, conveyance or other disposition of or involving the Collateral. The Obligations shall not be affected by any failure of any Grantor, the Collateral Agent or the Trustee to take any steps to perfect the Collateral Agent's Liens or to collect or realize upon the Collateral, nor shall loss of or damage to the Collateral release any Grantor from any of the Obligations. Following the occurrence and during the continuation of an Event of Default, the Collateral Agent may (but shall not be required to), and at the direction of the Trustee shall, subject to the terms of the Indenture, without notice to or consent from any Grantor sue upon or otherwise collect, extend the time for payment of, modify or amend the terms of, compromise or settle for cash, credit, or otherwise upon any terms, grant other indulgences, extensions, renewals, compositions, or releases, and take or omit to take any other action with respect to the Collateral, any security therefor, any agreement relating thereto, any insurance applicable thereto, or any Person liable directly or indirectly in connection with any of the foregoing, without discharging or otherwise affecting the liability of any Grantor for the Obligations or under the Indenture, any other Indenture Document or any other agreement now or hereafter existing between any Secured Party and any Grantor.

(b) It is expressly agreed by the Grantors that, anything herein to the contrary notwithstanding, each of the Grantors shall remain liable under each of its contracts and each of its licenses to observe and perform all the conditions and obligations to be observed and performed by it thereunder. The Collateral Agent and the Trustee shall not have any obligation

or liability under any contract or license by reason of or arising out of this Agreement or the granting herein of a Lien thereon or the receipt by the Collateral Agent or the Trustee of any payment relating to any contract or license pursuant hereto that is applied as required herein. The Collateral Agent and the Trustee shall not be required or obligated in any manner to perform or fulfill any of the obligations of any Grantor under or pursuant to any contract or license, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any contract or license, or to present or file any claims, or to take any action to collect or enforce any performance or the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

Section 7.2 Right to Cure. The Collateral Agent may (but shall not be required to), in its reasonable discretion, pay any reasonable amount or do any reasonable act required of any Grantor hereunder or under any other Indenture Document in order to preserve, protect, maintain, or enforce the Obligations, the Collateral or the Collateral Agent's Liens therein, and which any Grantor fails to timely pay or do, including payment of any judgment against any Grantor, any insurance premium, any warehouse charge, any finishing or processing charge, any landlord's or bailee's claim, and any other Lien upon or with respect to the Collateral. All payments that the Collateral Agent makes under this Section 7.2 and all reasonable out-of-pocket costs and expenses that the Collateral Agent pays or incurs in connection with any action taken by it hereunder shall be promptly reimbursed by such Grantor, and such reimbursement obligations shall be included in the Obligations. Any payment made or other action taken by the Collateral Agent under this Section 7.2 shall be without prejudice to any right to assert an Event of Default hereunder and to proceed thereafter as herein provided.

Section 7.3 Confidentiality.

(a) The Collateral Agent, in its individual capacity and as Collateral Agent, and the Trustee, in its individual capacity and as Trustee, agree and acknowledge that all information provided to the Collateral Agent or the Trustee by any Grantor may be considered to be proprietary and confidential information ("Confidential Information"). The Trustee and the Collateral Agent each agrees to take all reasonable precautions necessary to keep such information confidential, which precautions shall be no less stringent than those that the Collateral Agent and the Trustee, as applicable, employs to protect its own confidential information. Each of the Collateral Agent and the Trustee shall not disclose to any third party other than as set forth herein, and shall not use for any purpose other than the exercise of the Collateral Agent's and the Trustee's rights and the performance of its respective obligations under this Agreement, any such information without the prior written consent of such Grantor, as applicable. Each of the Collateral Agent and the Trustee shall limit access to such information received hereunder to (a) its directors, officers, managers and employees and (b) its legal advisors, to each of whom disclosure of such information is necessary for the purposes described above; provided, however, that in each case such party has expressly agreed to maintain such information in confidence under terms and conditions substantially identical to the terms of this Section 7.3(a).

(b) Each of the Collateral Agent and the Trustee agree that each Grantor does not have any responsibility whatsoever for any reliance on Confidential Information by the

Collateral Agent or the Trustee or by any Person to whom such information is disclosed in connection with this Agreement, whether related to the purposes described above or otherwise. Without limiting the generality of the foregoing, each of the Collateral Agent and the Trustee agrees that the Grantor makes no representation or warranty whatsoever to it with respect to Confidential Information or its suitability for such purposes. Each of the Collateral Agent and the Trustee further agrees that it shall not acquire any rights against the Grantor or any employee, officer, director, manager, representative or agent of the Grantor (together with the Issuer, “Confidential Parties”) as a result of the disclosure of Confidential Information to the Trustee and that no Confidential Party has any duty, responsibility, liability or obligation to any Person as a result of any such disclosure.

(c) In the event the Collateral Agent or the Trustee is required to disclose any Confidential Information received hereunder in order to comply with any laws, regulations or court orders, it may disclose Confidential Information only to the extent necessary for such compliance; provided, however, that it shall give the Grantor reasonable advance written notice of any such court proceeding in which such disclosure may be required pursuant to a court order so as to afford the Grantor full and fair opportunity to oppose the issuance of such order and to appeal therefrom and shall cooperate reasonably with the Grantor, as applicable, in opposing such order and in securing confidential treatment of any Confidential Information to be disclosed and/or obtaining a protective order narrowing the scope of such disclosure.

Section 7.4 Power of Attorney. Each Grantor, as to itself, hereby appoints the Collateral Agent and the Collateral Agent’s designee as such Grantor’s attorney, with power upon the occurrence and during the continuance of an Event of Default: (a) to endorse such Grantor’s name on any checks, notes, acceptances, money orders, or other forms of payment or security that come into the Collateral Agent’s or any Secured Party’s possession; (b) to sign such Grantor’s name on any invoice, bill of lading, warehouse receipt, or other document of title relating to any Collateral, on drafts against customers, on assignments of Accounts, on notices of assignment, financing statements, and other public records and to file any such financing statements by electronic means with or without a signature as authorized or required by applicable law or filing procedure; (c) to notify the post office authorities to change the address for delivery of such Grantor’s mail to an address designated by the Collateral Agent and to receive, open, and dispose of all mail addressed to such Grantor; (d) to send requests for verification of Accounts to customers or Account Debtors; (e) to clear Inventory through customs in such Grantor’s name, the Collateral Agent’s name, or the name of the Collateral Agent’s designee, and to sign and deliver to customs officials powers of attorney in such Grantor’s name for such purpose; and (f) to do all things the Collateral Agent reasonably determines are necessary to carry out the security interest provisions of the Indenture and the provisions of this Agreement. Each Grantor ratifies and approves all acts of such attorney. Notwithstanding anything in this Agreement or any Indenture Document to the contrary, none of the Trustee, the Collateral Agent, nor their attorneys, employees or Affiliates will be liable for any acts or omissions or for any error of judgment or mistake of fact or law other than any such liability arising from any such Person’s gross negligence or willful misconduct, as finally determined by a court of competent jurisdiction.

Section 7.5 NATURE OF APPOINTMENT; LIMITATION OF DUTY. THE APPOINTMENT OF THE COLLATERAL AGENT AS ATTORNEY-IN-FACT IN THIS

ARTICLE VII IS COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE UNTIL THE DATE ON WHICH THIS AGREEMENT IS TERMINATED IN ACCORDANCE WITH SECTION 8.12. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT OR IN ANY INDENTURE DOCUMENT, NEITHER THE COLLATERAL AGENT, NOR ANY SECURED PARTY, NOR ANY OF THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL HAVE ANY DUTY TO EXERCISE ANY RIGHT OR POWER GRANTED HEREUNDER OR OTHERWISE OR TO PRESERVE THE SAME AND SHALL NOT BE LIABLE FOR ANY FAILURE TO DO SO OR FOR ANY DELAY IN DOING SO, EXCEPT TO THE EXTENT SUCH DAMAGES ARE ATTRIBUTABLE TO THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION; PROVIDED THAT, IN NO EVENT SHALL THEY BE LIABLE FOR ANY PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES.

Section 7.6 Additional Matters Relating to the Collateral Agent.

(a) The Collateral Agent. [•] shall initially act as Collateral Agent for the Secured Parties and shall be authorized to appoint co-collateral agents as necessary in its sole discretion. [•], as Collateral Agent, is authorized and directed to (i) enter into the Indenture Documents, (ii) bind the Secured Parties on the terms as set forth in the Indenture Documents and (iii) perform and observe its obligations under the Indenture Documents.

(b) Role of the Collateral Agent. The rights, duties, liabilities and immunities of the Collateral Agent and its appointment, resignation and replacement hereunder and under the Indenture and the other Indenture Documents shall be governed by this Agreement and the relevant provisions contained in the Indenture (including Article 11 thereof) and the other Indenture Documents. Without limiting the foregoing, the rights, privileges, protections and benefits given to the Collateral Agent under the Indenture are extended to, and shall be enforceable by, the Collateral Agent in connection with the execution, delivery and administration of this Agreement and the other Indenture Documents and any action taken or omitted to be taken by the Collateral Agent in connection with its appointment and performance under this Agreement and the other Indenture Documents to which it is a party.

(c) Absence of Fiduciary Relation. The Collateral Agent undertakes to perform or to observe only such of its agreements and obligations as are specifically set forth in this Agreement, the Indenture and the other Indenture Documents, and no implied agreements, covenants or obligations with respect to any Grantor or any Affiliate of any Grantor, any Secured Party or any other party shall be read into this Agreement against the Collateral Agent. The Collateral Agent in its capacity as such is not a fiduciary of and shall not owe or be deemed to owe any fiduciary duty to any Grantor or any Related Person of any Grantor.

(d) Exculpatory Provisions.

(i) None of the Collateral Agent, the Trustee or any of their respective officers, directors, employees, agents, attorneys-in-fact or Related Persons shall be responsible or liable in any manner (A) to any Grantor or any of their respective Related Persons for any action taken or omitted to be taken by it under or in connection with this

Agreement in compliance herewith, (B) to any Secured Party or any other Person for any recitals, statements, representations, warranties, covenants or agreements contained in this Agreement or in any Indenture Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Collateral Agent under or in connection with, this Agreement or any Indenture Document, (C) to any Secured Party or any other Person for the validity, effectiveness, adequacy, genuineness or enforceability of this Agreement or any Indenture Document, or any Lien purported to be created hereunder or under any Indenture Document, (D) to any Secured Party or any other Person for the validity or sufficiency of the Collateral or the validity of the title of any Grantor to the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral or (E) to any Secured Party or other Person for any failure of any Grantor to perform its obligations hereunder or of the Issuer to perform any of the Obligations.

(ii) Notwithstanding anything to the contrary contained in this Agreement, (A) in no event shall the Trustee or the Collateral Agent be responsible for or have any obligation, duty or liability with respect to the creation, perfection, priority, maintenance, protection or enforcement of any Lien on, security interest in, pledge or other encumbrance involving or relating to the Collateral or any other assets, properties or rights of the Grantors, (B) none of the Trustee or the Collateral Agent shall be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any Liens in the Collateral and (C) none of the Trustee or the Collateral Agent shall be under any obligation to any Person to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or to inspect the properties or records of any Grantor. The permissive rights of the Collateral Agent to do things enumerated in this Agreement shall not be construed as a duty or obligation. The Collateral Agent may rely conclusively on any Opinions of Counsel rendered to the Collateral Agent under the Indenture in determining any necessary or desirable actions under this Agreement. Notwithstanding anything to the contrary herein, the Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under the UCC or otherwise, shall be to deal with it in the same manner as the Collateral Agent deals with similar property for its own account and the Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which comparable secured parties accord comparable collateral. None of the Collateral Agent or the Trustee shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof.

(iii) Notwithstanding anything to the contrary contained herein, none of the Collateral Agent, the Trustee or any of their respective officers, directors, employees, agents, attorneys-in-fact, or Related Persons shall be exonerated from any liability arising from its or their own gross negligence or willful misconduct, as finally determined by a court of competent jurisdiction.

(e) Fees and Expenses. The Grantors agree that they shall reimburse the Collateral Agent in accordance with Section 7.06 of the Indenture.

(f) Filing Fees, Taxes, etc. The Grantors, jointly and severally, shall pay all filing, registration and recording fees or re-filing, re-registration, and re-recording fees, and all federal, state, county, and municipal stamp taxes and other similar taxes, duties, imposts, assessments, and charges arising out of or in connection with the execution and delivery of this Agreement, the Indenture, the other Indenture Documents, and any agreement supplemental hereto or thereto and any instruments of further assurance or termination.

(g) Security Against Costs. Except for action expressly provided for herein and in the other Indenture Documents, the Collateral Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement or any other Indenture Document at the request, order or direction of any Secured Party pursuant to the provisions of the Indenture or any Indenture Document, unless the Collateral Agent shall have been offered reasonable security or indemnity against the costs, expenses and liabilities which may be incurred by it in compliance with such request, order or direction.

(h) No Responsibility for Investments. In no event shall the Collateral Agent or any Secured Party be liable or responsible for any funds or investments of funds held by any Grantor or any Affiliates thereof.

Section 7.7 Appointment of Co-Collateral Agent. In the event that the Collateral Agent appoints a Co-Collateral Agent, or Co-Collateral Agents, in accordance with the provisions of Section 7.6(a) of this Agreement, such Co-Collateral Agent(s) shall enter into an appointment agreement in a form satisfactory to the Collateral Agent and such Co-Collateral Agent, and upon acceptance of the appointment, such Co-Collateral Agent shall be entitled to all of the rights, privileges, limitations on liability and immunities afforded to and subject to all the duties of the Collateral Agent hereunder, and shall be deemed to be a party to this Agreement for all purposes provided in this Section 7.7, in each case, subject to the specific rights and duties vested in the Co-Collateral Agent pursuant to the appointment agreement and related Security Documents. It is accepted and acknowledged by the parties hereto that any Co-Collateral Agent appointed in accordance with Section 7.6(a) and this Section 7.7 shall be entitled to the payment of its fees and expenses as agreed to by the Issuer, and without limitation of any of the other provisions of this Agreement, shall be deemed to be an indemnified party under Section 8.16 of this Agreement with respect to any liability arising under this Agreement or the other Indenture Documents without need for further act by the Issuer or the Subsidiary Parties.

Section 7.8 The Trustee agrees not to issue a notice of exclusive control or any other instruction under any Account Control Agreement unless an Event of Default has occurred and is continuing.

ARTICLE VIII GENERAL PROVISIONS

Section 8.1 Notice. All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

- (a) if to the Collateral Agent, to it at

[_____]
[_____]
[_____]
[_____]
Attention: [_____]
Facsimile: [_____]

- (b) if to the Trustee, to it at

[_____]
[_____]
[_____]
[_____]
Attention: [_____]
Facsimile: [_____]

- (c) if to Grantors, at

GT Advanced Technologies Inc.
243 Daniel Webster Highway
Merrimack, New Hampshire 03054
Attention: Hoil Kim
Facsimile: (603) 595-6993
Email: hoil.kim@gtat.com

and

GT Advanced Technologies Inc.
243 Daniel Webster Highway
Merrimack, New Hampshire 03054
Attention: Michele Rayos
Facsimile: (603) 589-2951
Email: michele.rayos@gtat.com

Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto (and for this purpose a notice to the Issuer shall be deemed to be a notice to each Grantor). All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by facsimile or on the date five (5) Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed)

to such party as provided in this Section 8.1 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 8.1. Notwithstanding the foregoing, notices to the Collateral Agent shall only be effective upon actual receipt.

Section 8.2 Waiver of Notices. Unless otherwise expressly provided herein, each Grantor hereby waives presentment, demand, protest or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Agreement or any Collateral.

Section 8.3 Limitation on Collateral Agent's and Secured Party's Duty with Respect to the Collateral. The Collateral Agent and each Secured Party shall use reasonable care with respect to the Collateral in its possession or under its control. Neither the Collateral Agent nor any Secured Party shall have any other duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of the Collateral Agent or such Secured Party, or any income thereon (other than to account for proceeds therefrom) or as to the preservation of rights against prior parties or any other rights pertaining thereto. To the extent that applicable law imposes duties on the Collateral Agent to exercise remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that it would be commercially reasonable for the Collateral Agent (i) to fail to incur expenses deemed significant by the Collateral Agent to prepare Collateral for disposition or otherwise to transform raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (iv) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other Persons, whether or not in the same business as the Grantor, for expressions of interest in acquiring all or any portion of such Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by the Collateral Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Collateral Agent in the collection or disposition of any of the Collateral. Each Grantor acknowledges that the purpose of this Section 8.3 is to provide non-exhaustive indications of what actions or omissions by the Collateral Agent would be commercially reasonable in the Collateral Agent's exercise of remedies against the Collateral and that other actions or omissions by the Collateral Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 8.3. Without limitation upon the foregoing, nothing contained in this Section 8.3 shall be construed to grant any rights to

any Grantor or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section 8.3.

Section 8.4 Compromises and Collection of Collateral. Each Grantor and the Collateral Agent recognize that setoffs, counterclaims, defenses and other claims may be asserted by obligors with respect to certain of the Accounts, that certain of the Accounts may be or become uncollectible in whole or in part and that the expense and probability of success in litigating a disputed Account may exceed the amount that reasonably may be expected to be recovered with respect to an Account. In view of the foregoing, each Grantor agrees that the Collateral Agent may at any time and from time to time if an Event of Default has occurred and is continuing, compromise with the obligor on any Account, accept in full payment of any Account such amount as the Collateral Agent in its sole discretion shall determine or abandon any Account, and any such action by the Collateral Agent shall be commercially reasonable so long as the Collateral Agent acts in good faith based on information known to it at the time it takes any such action.

Section 8.5 Cumulative Remedies; No Prior Recourse to Collateral. The enumeration herein of the Collateral Agent's and the Trustee's rights and remedies is not intended to be exclusive, and such rights and remedies are in addition to and not by way of limitation of any other rights or remedies that the Collateral Agent and the Trustee may have under the UCC, other applicable law or the Indenture Documents. The Collateral Agent and the Trustee shall have the right, in their sole discretion, to determine which rights and remedies are to be exercised and in which order. The exercise of one right or remedy shall not preclude the exercise of any others, all of which shall be cumulative. The Collateral Agent and the Trustee may, without limitation, proceed directly against any Person liable therefor to collect the Obligations without any prior recourse to the Collateral. No failure to exercise and no delay in exercising, on the part of the Collateral Agent or the Trustee, any right, remedy, power, or privilege hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

Section 8.6 Limitation by Law; Severability of Provisions. All rights, remedies and powers provided in this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they shall not render this Agreement invalid, unenforceable or not entitled to be recorded or registered, in whole or in part. In case any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

Section 8.7 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Grantor for liquidation or reorganization, should any Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of such Grantor's assets. This Agreement shall continue to be effective or be

reinstated, as the case may be, if at any time when there is or has been more than one Grantor, payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, avoided, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a “preference,” “fraudulent transfer,” “fraudulent conveyance,” or otherwise, all as though such payment or performance had not been made. In the event that any such payment, or any part thereof, is avoided, rescinded, reduced, restored or returned, the Obligations shall be automatically reinstated accordingly.

Section 8.8 Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective representatives, successors, and permitted assigns of the parties hereto; provided, however, no Grantor shall assign or delegate any of its rights or duties hereunder without the prior written consent of the Collateral Agent and the Trustee (other than pursuant to a transaction permitted under the Indenture), and any attempted assignment without such consent shall be null and void. The rights and benefits of the Collateral Agent and the Trustee hereunder shall, if such Persons so agree, inure to any party acquiring any interest in the Obligations or any part thereof in accordance with the terms hereof or of the Indenture.

Section 8.9 Survival of Representations. All representations and warranties made by the Grantors in the Indenture Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Indenture Document shall be considered to have been relied upon by the Secured Parties and shall survive the execution and delivery of the Indenture Documents and the purchase of the Securities by the Purchasers, regardless of any investigation made by any Secured Party or on its behalf and notwithstanding that the Collateral Agent, the Trustee or any other Secured Party may have had notice or knowledge of any Default or incorrect representation or warranty. Notwithstanding anything to the contrary set forth herein, the provisions of Section 8.16 and 8.17 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Securities or the termination of this Agreement or any other Indenture Document.

Section 8.10 Guaranties; Third Party Joinder. Within 15 Business Days of the creation or acquisition of any Subsidiary of a Grantor, such Grantor shall, to the extent required pursuant to the terms of the Indenture, cause such new Subsidiary to become a Grantor by executing and delivering to the Collateral Agent such an instrument in the form of Exhibit H hereto and other instruments, certificates, and agreements as the Collateral Agent may reasonably request. Upon execution and delivery of such instruments, certificates, and agreements, such newly created or acquired Subsidiary shall automatically become a Grantor and thereupon shall have all of the rights, benefits, duties, and obligations of a Grantor under the Indenture Documents.

Section 8.11 Table of Contents; Headings. The headings of the Articles and Sections of this Agreement have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

Section 8.12 Termination and Release. This Agreement and the security interests granted hereby shall terminate in accordance with the Indenture.

Section 8.13 Entire Agreement. This Agreement, together with the other Indenture Documents, embodies the entire agreement and understanding between each Grantor and the Collateral Agent relating to the Collateral and supersedes all prior agreements and understandings between any Grantor and the Collateral Agent relating to the Collateral.

Section 8.14 Governing Law; Jurisdiction; Consent to Service of Process.

(a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(b) EACH PARTY HERETO HEREBY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS OF COMPETENT JURISDICTION IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK IN ANY SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY TO THIS AGREEMENT IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 8.1. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

Section 8.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 8.16 Indemnity. EACH GRANTOR, JOINTLY AND SEVERALLY, SHALL INDEMNIFY THE TRUSTEE AND THE COLLATERAL AGENT TO THE EXTENT REQUIRED BY SECTION 7.06 OF THE INDENTURE.

Section 8.17 Limitation of Liability. NO CLAIM MAY BE MADE BY ANY GRANTOR OR OTHER PERSON AGAINST THE COLLATERAL AGENT, THE TRUSTEE, OR THE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS OR THEIR RESPECTIVE RELATED PERSONS OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, THE INDENTURE OR ANY OTHER INDENTURE DOCUMENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH GRANTOR HEREBY IRREVOCABLY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON OR BRING IN ANY JUDICIAL, ARBITRAL OR ADMINISTRATIVE FORUM ANY

CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR. THE AGREEMENTS IN THIS SECTION 8.17 SHALL SURVIVE PAYMENT OF ALL OTHER OBLIGATIONS AND ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT OR ANY OTHER INDENTURE DOCUMENT.

Section 8.18 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart, and a telecopy of any such counterpart shall be valid as an original. Execution by electronic or PDF signature shall be as effective as manual signature hereof.

Section 8.19 Amendments. Other than as permitted pursuant to the Indenture, neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Collateral Agent, the Trustee and the Grantor or Grantors with respect to which such waiver, amendment or modification is to apply, subject to any consent that may be required in accordance with Section 9.02 of the Indenture.

Section 8.20 Incorporation by Reference. It is expressly understood and agreed that [•] is entering into this Agreement solely in its capacity as Collateral Agent as appointed pursuant to the Indenture, and shall be entitled to all of the rights, privileges, immunities and protections under the Indenture as if such rights, privileges, immunities and protections were set forth herein.

[Signature Page Follows]

IN WITNESS WHEREOF, the Issuer, the Trustee and the Collateral Agent have executed this Agreement as of the date first above written.

GT ADVANCED TECHNOLOGIES INC.

By: _____
Name:
Title:

Signature page to Collateral Agreement

[•], as Collateral Agent

By: _____
Name:
Title:

[•], as Trustee

By: _____
Name:
Title:

EXHIBIT B
(See Section 3.6 of Agreement)

PROPRIETARY RIGHTS

1. Patents

FMY	CTY	TITLE	APPL. NO	PAT NO

2. Trademarks

Hit No.	Mark / Source / Status	Application Date/Data	Goods	Owner Name

EXHIBIT C
(See Section 3.8 of Agreement)

COMMERCIAL TORT CLAIMS

EXHIBIT D
(See Section 3.7 of Agreement)

LIST OF INVESTMENT PROPERTY

Company or Firm Name	Description of Investment Property	Value	Certificate or Account Number

EXHIBIT E
(See Section 3.1 of Agreement)

FILING OFFICES

EXHIBIT F
(See Section 4.2 of Agreement)

AMENDMENT

This Amendment, dated [_____, ____] is delivered pursuant to Section 4.2 of the Agreement as defined below. All defined terms herein shall have the meanings ascribed thereto or incorporated by reference in the Agreement. The undersigned further agrees that this Amendment may be attached to that certain Collateral Agreement, dated as of [•], 2016, between the undersigned, as the Grantors, [•], as the Trustee, and [•], as the Collateral Agent (the “Agreement”) and that the Collateral consisting of Commercial Tort Claims listed on Schedule I to this Amendment shall be and become a part of the Collateral referred to in said Agreement and shall secure all Obligations referred to in said Agreement.

By:
Name: _____
Title: _____

SCHEDULE I TO AMENDMENT

[Include description of tort claims with particularity]

EXHIBIT G

FORM OF PERFECTION CERTIFICATE

[To be inserted]

EXHIBIT H

SUPPLEMENT NO. [] dated as of [], (this “Supplement”), to the Collateral Agreement dated as of [•], 2016 (the “Agreement”), among GT ADVANCED TECHNOLOGIES INC., a Delaware corporation with an address at 243 Daniel Webster Highway, Merrimack, NH 03054 (the “Issuer”), each Subsidiary of the Issuer party from time to time thereto (each such subsidiary individually a “Subsidiary Party” and collectively, the “Subsidiary Parties”; the Subsidiary Parties are referred to collectively herein as the “Grantors”), [•], as trustee (and its successors under the Indenture (as defined below), in such capacity, the “Trustee”), and [•], as collateral agent for the Secured Parties (and its successors under the Indenture, in such capacity, the “Collateral Agent”).

WHEREAS pursuant to the terms of the Indenture dated as of [•], 2016 (as amended, restated, supplemented or otherwise modified from time to time, the “Indenture”), among the Issuer, the Subsidiary Parties and the Trustee, the Issuer issued the Securities (as defined in the Indenture), which may be guaranteed on a senior secured basis by each of the Subsidiary Parties;

WHEREAS the Indenture permits the Issuer and the Subsidiary Parties to grant a lien and security interest in the Collateral (as defined in the Indenture) to the Collateral Agent, for the benefit of the Secured Parties, to secure the Obligations (as defined in the Indenture);

WHEREAS each Grantor executed and delivered the Agreement, pursuant to the terms of the Indenture to induce the Trustee to enter into the Indenture, and to induce certain parties previously identified to the Issuer to purchase the Securities; and

WHEREAS Section 8.10 of the Agreement and Section 4.10 of the Indenture provide that additional Restricted Subsidiaries of the Issuer shall become Subsidiary Parties under the Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned Subsidiary (the “New Subsidiary”) is executing this Supplement in accordance with the requirements of the Indenture Documents to become a Subsidiary Party under the Agreement. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Indenture and the Agreement.

Accordingly, the Collateral Agent and the New Subsidiary agree as follows:

SECTION 1. In accordance with Section 8.10 of the Agreement, the New Subsidiary by its signature below becomes a Subsidiary Party and a Grantor under the Agreement with the same force and effect as if originally named therein as a Subsidiary Party and the New Subsidiary hereby expressly assumes, and hereby agrees to perform and observe, each and every one of the covenants, rights, promises, agreements, terms, conditions, obligations, appointments, duties and liabilities applicable to it as a Subsidiary Party and Grantor thereunder and all other Indenture Documents applicable to it as a Subsidiary Party and Grantor under the Agreement. By virtue of the foregoing, the New Subsidiary hereby accepts and assumes any liability of a Grantor (as to itself only) related to each representation, warranty, covenant or obligation made by a Grantor (as to itself only) in the Agreement and hereby

expressly affirms, as of the date hereof, each of such representations, warranties, covenants and obligations. In furtherance of the foregoing, the New Subsidiary, as security for the payment and performance in full of the Obligations, does hereby create and grant to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, their successors and assigns, a security interest in and Lien on all of the New Subsidiary's right, title and interest in and to the Collateral of the New Subsidiary. Each reference to a "Grantor" in the Agreement shall be deemed to include the New Subsidiary. The Agreement is hereby incorporated herein by reference.

SECTION 2. The New Subsidiary represents and warrants to the Collateral Agent and the other Secured Parties that (a) the New Subsidiary has the requisite [corporate, partnership or company] power and authority to enter into and perform its obligations under this Supplement and that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms and (b) the representations and warranties set forth in the Agreement are true and correct in all material respects on and as of the date hereof as such representations and warranties apply to the New Subsidiary (except to the extent that any such representations and warranties expressly relate to an earlier date) with the same force and effect as if made on the date hereof.

SECTION 3. This Supplement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Supplement shall become effective when the Collateral Agent shall have received a counterpart of this Supplement that bears the signature of the New Subsidiary and the Collateral Agent has executed a counterpart hereof. Delivery of an executed signature page to this Supplement by facsimile transmission or by email shall be as effective as delivery of a manually signed counterpart of this Supplement.

SECTION 4. The New Subsidiary hereby represents and warrants that set forth on Schedule I attached hereto is a copy of a fully completed Perfection Certificate executed by the New Subsidiary. The information contained in the Perfection Certificate delivered by the New Subsidiary is correct and complete in all material respects as of the date hereof.

SECTION 5. Except as expressly supplemented hereby, the Agreement shall remain in full force and effect.

SECTION 6. THIS SUPPLEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

SECTION 7. In case any one or more of the provisions contained in this Supplement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and in the Agreement shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 8. All communications and notices hereunder shall be in writing and given as provided in Section 8.1 of the Agreement.

SECTION 9. The New Subsidiary agrees to reimburse the Collateral Agent to the extent required by Section 7.06 of the Indenture.

SECTION 10. It is expressly understood and agreed that [•] is entering into this Supplement solely in its capacity as Collateral Agent as appointed pursuant to the Indenture, and shall be entitled to all of the rights, privileges, immunities and protections under the Indenture as if such rights, privileges, immunities and protections were set forth herein.

IN WITNESS WHEREOF, the New Subsidiary and the Collateral Agent have duly executed this Supplement to the Agreement as of the day and year first above written.

[NAME OF NEW SUBSIDIARY]

by

Name:
Title:

Legal Name:
Jurisdiction of Formation:
Location of Chief Executive office:

[•], as Collateral Agent

By

Name:
Title:

Schedule I
to the Supplement No___ to the
Amended and Restated Collateral Agreement

PERFECTION CERTIFICATE

EXHIBIT I
(see Sections 3.11 of Agreement)

LEASED PROPERTY

EXHIBIT K
(see Section 3.12 of Agreement)

TRADE NAMES

EXHIBIT 3

Certificate of Designations

CERTIFICATE OF DESIGNATIONS
OF SERIES A PREFERRED STOCK
OF
GT ADVANCED TECHNOLOGIES INC.

Pursuant to Section 151 of the General Corporation Law of the State of Delaware, GT Advanced Technologies Inc., as reorganized pursuant to the Plan (defined below), a corporation organized and existing under the General Corporation Law of the State of Delaware (the “**Corporation**”), in accordance with the provisions of Section 103 thereof, does hereby submit the following:

WHEREAS, on [•], 2016, the Bankruptcy Court for the District of New Hampshire in the jointly administered proceeding entitled *In re GT Advanced Technologies Inc., et. al.*, Case No. 14-11916, entered an order (the “**Confirmation Order**”) confirming the Debtors’ Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, dated [•], 2016 (the “**Plan**”);

WHEREAS, pursuant to the Confirmation Order, the Plan and the Amended and Restated Certificate of Incorporation of the Corporation (the “**Certificate of Incorporation**”), the Corporation is authorized to issue up to [_____] shares of preferred stock, par value \$0.01 per share, of the Corporation (“**Preferred Stock**”) in one or more series, and the Board of Directors of the Corporation (the “**Board**”) is authorized, subject to the terms and limitations prescribed by the Plan and Confirmation Order, to provide, out of the unissued shares of Preferred Stock, for series of Preferred Stock, and, with respect to each such series, to establish and fix the number of shares to be included in any series of Preferred Stock and the designation, rights, preferences, powers, restrictions and limitations of the shares of such series; and

WHEREAS, in accordance with the Plan and the Confirmation Order, it is the desire of the Board to establish and fix the number of shares to be included in a new series of Preferred Stock and the designation, rights, preferences and limitations of the shares of such new series.

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby provide for the issue of a series of Preferred Stock and does hereby in this Certificate of Designation (the “**Certificate of Designation**”) establish and fix and herein state and express the designation, rights, preferences, powers, restrictions and limitations of such series of Preferred Stock as follows:

1. Designation. There shall be a series of Preferred Stock that shall be designated as “**Series A Convertible Preferred Stock**” (the “**Series A Preferred Stock**”) and the number of Shares constituting such series shall be [_____]. The rights, preferences, powers, restrictions and limitations of the Series A Preferred Stock shall be as set forth in this Certificate of Designations.
2. Defined Terms. For purposes hereof, the following terms shall have the following meanings:

“**Accreted Value**” means, with respect to one share of Series A Preferred Stock, the amount equal to the Original Issuance Price plus the amount of any dividends added to the Accreted Value in accordance with **Section 4** (which aggregate amount shall be subject to

adjustment whenever there shall occur a stock split, combination, reclassification, or other similar event involving the Series A Preferred Stock occurring after the Closing Date).

“**Additional Consideration**” has the meaning set forth in **Section 5.3(iv)**.

“**Applicable Percentage**” has the meaning set forth in **Section 4(b)**.

“**Available Proceeds**” has the meaning set forth in **Section 5.3(ii)(b)**.

“**Board**” has the meaning set forth in the Recitals.

“**Business Day**” means any day that is not a Saturday, a Sunday or a day on which banks are required or permitted to be closed in New York, New York.

“**Certificate of Designation**” has the meaning set forth in the Recitals.

“**Certificate of Incorporation**” has the meaning set forth in the Recitals.

“**Change of Control**” means (a) any sale, lease or transfer or series of sales, leases or transfers of all or substantially all of the consolidated assets of the Corporation and its Subsidiaries; (b) any sale, transfer or issuance (or series of sales, transfers or issuances) of capital stock by the Corporation or the holders of Common Stock (or other voting stock of the Corporation) that results in the inability of the holders of Common Stock (or other voting stock of the Corporation) immediately prior to such sale, transfer or issuance to designate or elect a majority of the Board; or (c) any merger, consolidation, recapitalization or reorganization of the Corporation with or into another Person (whether or not the Corporation is the surviving corporation) that results in the inability of the holders of Common Stock (or other voting stock of the Corporation) immediately prior to such merger, consolidation, recapitalization or reorganization to designate or elect a majority of the board of directors (or its equivalent) of the resulting entity or its parent company.

“**Closing Date**” shall mean the Effective Date, as such term is defined in the Plan.

“**Common Stock**” shall mean the shares of common stock, \$0.01 par value per share, of the Corporation, as adjusted to reflect any merger, consolidation, recapitalization, reclassification, split-up, stock dividend, rights offering or reverse stock split made, declared or effected with respect to the Common Stock.

“**Common Stock Deemed Outstanding**” means, at any given time, the sum of (a) the number of shares of Common Stock actually outstanding at such time, plus (b) the number of shares of Common Stock issuable upon exercise of Options actually outstanding at such time, plus (c) the number of shares of Common Stock issuable upon conversion or exchange of Convertible Securities actually outstanding at such time (treating as actually outstanding any Common Stock issuable upon conversion of Convertible Securities or exercise of Options, in each case, actually outstanding at such time), in each case, regardless of whether the Options or Convertible Securities are actually exercisable at such time; *provided*, that Common Stock Deemed Outstanding at any given time shall not include shares owned or held by or for the account of the Corporation or any of its wholly owned Subsidiaries.

“**Confirmation Order**” has the meaning set forth in the Recitals.

“**Conversion Price**” has the meaning set forth in **Section 8.1(a)**.

“**Conversion Shares**” means the shares of Common Stock or other capital stock of the Corporation then issuable upon conversion of the Series A Preferred Stock in accordance with the terms of **Section 8**.

“**Convertible Securities**” means any securities (directly or indirectly) convertible into or exchangeable for Common Stock, but excluding Options.

“**Corporation**” has the meaning set forth in the Preamble.

“**Date of Issuance**” means, for any Share, the date on which the Corporation initially issues such Share (without regard to any subsequent transfer of such Share or reissuance of the certificate(s) representing such Share).

“**Deemed Liquidation Event**” has the meaning set forth in **Section 5.3(i)**.

“**Dividend Payment Date**” has the meaning set forth in **Section 4(a)**.

“**Excluded Issuances**” shall mean: (a) the issuance of Common Stock and Options to employees, officers or directors of the Corporation or its Subsidiaries under compensation plans and agreements approved in good faith by the Board representing, in the aggregate, up to [_____] shares of Common Stock outstanding as of the Effective Date (subject to adjustment for stock dividends, stock splits, combinations or other similar recapitalizations); provided that, in the case of Options to purchase Common Stock, the exercise price per share of Common Stock shall not be less than the Fair Market Value per share of Common Stock on the date of issuance of such Options; (b) the issuance of Common Stock upon the conversion or exercise of Options or Convertible Securities as to which the Corporation complied with the provisions of the Stockholders’ Agreement, or the issuance of Common Stock upon exercise of Plan Warrants; (c) shares of Common Stock, Convertible Securities, or Options for Common Stock issued or issuable to banks, equipment lessors or other financial institutions pursuant to a debt financing or commercial leasing transaction, provided that all of the foregoing shall have been approved in good faith by the Board; (d) shares of Common Stock, Convertible Securities, or Options for Common Stock issued or issuable to strategic partners of the Corporation approved in good faith by the Board, provided that in the case of Options for Common Stock, the exercise price per share of Common Stock shall not be less than the Fair Market Value per share of Common Stock on the date of issuance of such Stock; (e) the issuance of Common Stock upon the conversion of the Preferred Stock; (f) the issuance of any Common Stock, Convertible Securities, or Options in connection with an arm’s-length acquisition by the Corporation (either directly or indirectly through a Subsidiary) of another entity or assets constituting a business approved in good faith by the Board; or (g) issuances of Common Stock as otherwise expressly provided for in the Plan.

“**Fair Market Value**” means, (a) with respect to Series A Preferred Stock (including the value of the as-converted portion of the Series A Preferred Stock), the value of a single share of Series A Preferred Stock as mutually agreed upon by the Corporation and the holders of a majority of the shares of Series A Preferred Stock then outstanding, and, in the event that they

are unable to reach agreement, by a third-party appraiser agreed to by the Corporation and the holders of a majority of the shares of Series A Preferred Stock then outstanding, and (b) with respect to Common Stock, the value of a single share of Common Stock as reasonably determined by the board in good faith.

“**Initial Consideration**” has the meaning set forth in **Section 5.3(iv)**.

“**Invested Capital Amount**” means, with respect to any Share on any given date, the sum of (i) the Accreted Value as of such date plus (ii) (A) three times (B) the Original Issuance Price.

“**Junior Securities**” means, collectively, the Common Stock and any other class of securities that is specifically designated as junior to the Series A Preferred Stock.

“**Liquidation**” has the meaning set forth in **Section 5.1**.

“**Liquidation Value**” means, with respect to any Share on any given date, the Accreted Value as of such date.

“**Mandatory Redemption**” has the meaning set forth in **Section 7.1(a)**.

“**Mandatory Redemption Price**” has the meaning set forth in **Section 7.1(a)**.

“**Merger Agreement**” has the meaning set forth in **Section 5.3(ii)(a)**.

“**Options**” means any warrants or other rights or options to subscribe for or purchase Common Stock or Convertible Securities, including but not limited to the Plan Warrants.

“**Original Issuance Price**” means \$[_____] per share.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

“**Plan**” has the meaning set forth in the Recitals.

“**Plan Warrants**” means the DIP Warrants, the 2% Noteholder Warrants and the 3% Noteholder Warrants, as each such term is defined in the Plan.

“**Preferred Stock**” has the meaning set forth in the Recitals.

“**Qualified IPO**” means the sale, in a firm commitment underwritten public offering led by a nationally recognized underwriting firm pursuant to an effective registration statement under the Securities Act, of Common Stock of the Corporation having an aggregate offering value (net of underwriters’ discounts and selling commissions) of at least \$[50 million] [and a price per share of Common Stock of at least \$[_____] (appropriately adjusted for stock splits, stock dividends, combinations, recapitalizations and the like)], following which at least [__]% of the total Common Stock of the Corporation on a fully diluted, as-converted basis shall have been sold to the public and shall be listed on any national securities exchange registered with the

Securities and Exchange Commission under Section 6(a) of the Securities Exchange Act of 1934, as amended.

“**Redemption Breach**” has the meaning set forth in **Section 7.3(b)**.

“**Securities Act**” means the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations thereunder, which shall be in effect at the time.

“**Senior Secured Notes**” has the meaning ascribed to such term in the Plan.

“**Series A Conversion Election Date**” has the meaning set forth in **Section 7.2**.

“**Series A Election Notice**” has the meaning set forth in **Section 7.1(b)**.

“**Series A Liquidation Amount**” has the meaning set forth in **Section 5.2**.

“**Series A Preferred Stock**” has the meaning set forth in **Section 1**.

“**Series A Redemption**” has the meaning set forth in **Section 7.1(b)**.

“**Series A Redemption Date**” has the meaning set forth in **Section 7.2(b)**.

“**Series A Redemption Notice**” has the meaning set forth in **Section 7.2**.

“**Series A Redemption Price**” has the meaning set forth in **Section 7.1(b)**.

“**Share**” means a share of Series A Preferred Stock.

“**Stockholders’ Agreement**” has the meaning set forth in **Section 6.1**.

“**Subsidiary**” means, with respect to any Person, any other Person of which a majority of the outstanding shares or other equity interests having the power to vote for directors or comparable managers are owned, directly or indirectly, by the first Person.

“**Supermajority Interest**” has the meaning set forth in **Section 6.2**.

“**Voluntary Redemption**” has the meaning set forth in **Section 7.1(b)**.

“**Voluntary Redemption Price**” has the meaning set forth in **Section 7.1(b)**.

3. Rank. With respect to payment of dividends and distribution of assets upon liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, all Shares shall rank senior to all Junior Securities.

4. Dividends.

(a) From and after the date of the issuance of any shares of the Series A Preferred Stock, dividends at a rate per annum equal to 9.0% of the Liquidation Value shall accrue on such issued shares of Series A Preferred Stock. Such dividends shall accrue from day to day, whether

or not declared, and shall be cumulative. Holders of the outstanding shares of Series A Preferred Stock will be entitled to receive such dividends in cash out of funds legally available therefor or, at the election of the Corporation, in kind on each share of the Series A Preferred Stock, when and if declared by the Board, quarterly in arrears on March 31, June 30, September 30 and December 31 of each year (unless such day is not a Business Day, in which event such dividends shall be payable on the next succeeding Business Day) (each such date being a “**Dividend Payment Date**” and each such quarterly period being a “**Dividend Period**”), commencing on March 31, 2016. Each such dividend shall be payable to the holders of record of shares of the Series A Preferred Stock as they appear on the stock register of the Corporation at the close of business on the corresponding Record Date. As used in this Certificate of Designations, the term “**Record Date**” means, with respect to the dividend payable on March 31, June 30, September 30 and December 31, respectively, of each year, the preceding March 15, June 15, September 15 and December 15, or such other date, not more than 60 days or less than 10 days preceding the payment dates thereof, as shall be fixed as the record date by the Board. Dividends, whether or not declared to be paid in cash and whether or not there shall be earnings or surplus, will accrue on a daily basis and accumulate on the last day of each Dividend Period in accordance with the following sentence. If cash dividends are not declared by the Board and paid to the holders of the outstanding shares of Series A Preferred Stock on or before the respective Dividend Payment Date, such accrued dividend shall accumulate by adding to the Accreted Value for each share of Series A Preferred Stock as of the immediately preceding Dividend Payment Date an amount equal to the Applicable Percentage multiplied by the Accreted Value as of the immediately preceding Dividend Payment Date.

(b) As used in this Certificate of Designations, the “**Applicable Percentage**” for each full Dividend Period for the Series A Preferred Stock shall be 2.25%. The Applicable Percentage for the initial Dividend Period, or any other period shorter than a full period, shall be computed on the basis of a per annum rate of 9.0% and the actual number of days elapsed over a 360-day year.

(c) All dividends paid with respect to shares of the Series A Preferred Stock shall be paid pro rata to the holders thereof entitled thereto.

(d) So long as any shares of Series A Preferred Stock are outstanding, if the Corporation pays a dividend or distribution in cash on the Common Stock (other than dividends or distributions payable solely in Common Stock) then at the same time the Corporation shall declare and pay a dividend in cash on each share of Series A Preferred Stock (in addition to the dividend payable pursuant to **Section 4(a)**) in the amount equal to the dividends that would be paid with respect to a share of Series A Preferred Stock if converted by the holder thereof into Common Stock on the date established as the record date with respect to such dividend on the Common Stock and there shall be no adjustment to the Conversion Price with respect to such dividend.

5. Liquidation.

5.1 Liquidation Preference. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation (collectively with a Deemed Liquidation Event, a “**Liquidation**”), the holders of shares of Series A Preferred Stock then outstanding shall be

entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, before any payment shall be made to the holders of Junior Securities by reason of their ownership thereof, an amount in cash equal to the aggregate Liquidation Value of all Shares held by such holder, plus all unpaid accrued and accumulated dividends on all such Shares since the most recent Dividend Date (whether or not declared). If upon any Liquidation, the remaining assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of the Shares the full preferential amount to which they are entitled under this **Section 5.1**, (a) the holders of the Shares shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective full preferential amounts which would otherwise be payable in respect of the Series A Preferred Stock in the aggregate upon such Liquidation if all amounts payable on or with respect to such Shares were paid in full, and (b) the Corporation shall not make or agree to make any payments to the holders of Junior Securities.

5.2 Distribution of Remaining Assets. In the event of Liquidation, after the payment of all preferential amounts required to be paid to the holders of shares of Series A Preferred Stock, including amounts referenced in **Section 5.1** above, the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of the shares of Series A Preferred Stock and Common Stock, pro rata based on the number of shares held by each such holder, treating for this purpose all such securities as if they had been converted to Common Stock pursuant to the terms of the Certificate of Incorporation immediately prior to such liquidation, dissolution or winding up of the Corporation. The aggregate amount which a holder of a share of Series A Preferred Stock is entitled to receive under **Sections 5.1** and **5.2** is hereinafter referred to as the “**Series A Liquidation Amount.**”

5.3 Deemed Liquidation Events.

(i) Definition. Each of the following events shall be considered a “**Deemed Liquidation Event**” unless the holders of at least [56%] of the outstanding shares of Series A Preferred Stock elect otherwise by written notice sent to the Corporation at least twenty (20) days prior to the effective date of any such event:

(A) a merger or consolidation in which

(1) the Corporation is a constituent party; or

(2) a Subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation;

except any such merger or consolidation involving the Corporation or a Subsidiary of the Corporation in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned

subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

(B) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any Subsidiary of the Corporation of all or substantially all the assets of the Corporation and its Subsidiaries taken as a whole or the sale or disposition (whether by merger, consolidation or otherwise) of one or more Subsidiaries of the Corporation if substantially all of the assets of the Corporation and its Subsidiaries taken as a whole are held by such Subsidiary or Subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned Subsidiary of the Corporation.

(ii) Effecting a Deemed Liquidation Event.

(a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in **Section 5.3(i)(A)(1)** unless the agreement or plan of merger or consolidation for such transaction (the “**Merger Agreement**”) provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with **Sections 5.1 and 5.2**.

(b) In the event of a Deemed Liquidation Event referred to in **Section 5.3(i)(A)(2)** or **5.3(i)(B)**, if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law of the State of Delaware within ninety (90) days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Series A Preferred Stock no later than the ninetieth (90th) day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (ii) to require the redemption of such shares of Series A Preferred Stock, and (ii) if the holders of at least [56%] of the then outstanding shares of Series A Preferred Stock so request in a written instrument delivered to the Corporation not later than one hundred twenty (120) days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation), together with any other assets of the Corporation available for distribution to its stockholders, all to the extent permitted by Delaware law governing distributions to stockholders (the “**Available Proceeds**”), on the one hundred fiftieth (150th) day after such Deemed Liquidation Event, to redeem all outstanding shares of Series A Preferred Stock at a price per share equal to the Series A Liquidation Amount. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Series A Preferred Stock, the Corporation shall ratably redeem each holder’s shares of Series A Preferred Stock to the fullest extent of

such Available Proceeds, and shall redeem the remaining shares as soon as it may lawfully do so under Delaware law governing distributions to stockholders. The provisions of **Section 7** shall apply, with such necessary changes in the details thereof as are necessitated by the context, to the redemption of the Series A Preferred Stock pursuant to this **Section 5.3(ii)**. Prior to the distribution or redemption provided for in this **Section 5.3(ii)**, the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event.

(iii) Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities paid or distributed to such holders by the Corporation or the acquiring person, firm or other entity. The value of such property, rights or securities shall be determined in good faith by the Board.

(iv) Allocation of Escrow and Contingent Consideration. In the event of a Deemed Liquidation Event pursuant to **Section 5.3(i)(A)(1)**, if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the “**Additional Consideration**”), the Merger Agreement shall provide that (a) the portion of such consideration that is not Additional Consideration (such portion, the “**Initial Consideration**”) shall be allocated among the holders of capital stock of the Corporation in accordance with **Sections 5.1** and **5.2** as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with **Sections 5.1** and **5.2** after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this **Section 5.3**, consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

5.4 Notice.

(a) Notice Requirement. In the event of any Liquidation, the Corporation shall, within ten (10) days of the date the Board approves such action, or no later than twenty (20) days of any stockholders’ meeting called to approve such action, or within twenty (20) days of the commencement of any involuntary proceeding, whichever is earlier, give each holder of Series A Preferred Stock written notice of the proposed action. Such written notice shall describe the material terms and conditions of such proposed action, including a description of the stock, cash and property to be received by the holders of Shares upon consummation of the proposed action and the date of delivery thereof. If any material change in the facts set forth in the initial notice shall occur, the Corporation shall promptly give written notice to each holder of Shares of such material change.

6. Voting.

6.1 Voting Generally. Each holder of Series A Preferred Stock shall be entitled to vote with holders of outstanding shares of Common Stock, voting together as a single class, with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration (whether at a meeting of stockholders of the Corporation, by written action of stockholders in lieu of a meeting or otherwise), except as provided by law, by the provisions of the Certificate of Incorporation or that certain Stockholders' Agreement by and among the Corporation and certain of its stockholders dated as of [the date hereof] (the "**Stockholders' Agreement**"), or by the provisions of **Section 6.2** below. In any such vote, each Share of Series A Preferred Stock shall be entitled to a number of votes equal to the number of shares of Common Stock into which the Share is convertible pursuant to **Section 8** as of the record date for such vote or written consent or, if there is no specified record date, as of the date of such vote or written consent. Each holder of Series A Preferred Stock and Common Stock shall be entitled to notice of all stockholder meetings (or requests for written consent) in accordance with the Corporation's bylaws.

6.2 Other Special Voting Rights. Without the prior written consent of holders of not less than [56%] of the then total outstanding Shares (a "**Supermajority Interest**"), voting separately as a single class with one vote per Share, in person or by proxy, either in writing without a meeting or at an annual or a special meeting of such holders, and any other applicable stockholder approval requirements required by law, the Corporation shall not take, and shall cause its Subsidiaries not to take or consummate, any of the actions or transactions described in this **Section 6.2** (any such action or transaction without such prior written consent being null and void *ab initio* and of no force or effect) as follows:

(a) other than the issuance and exercise of stock options under the [Management Incentive Plan] and the issuance of shares of Common Stock upon the conversion of the Series A Preferred Stock or the exercise of Plan Warrants, or the declaration or payment of any dividend or distribution payable on the Common Stock in shares of Common Stock, create, or authorize the creation of, any additional class or series of capital stock of the Corporation (or any security convertible into or exercisable for any class or series of capital stock of the Corporation) or issue or sell, or obligate itself to issue or sell, any securities of the Corporation or any Subsidiary (or any security convertible into or exercisable for any class or series of capital stock of the Corporation or any Subsidiary), including any class or series of capital stock of the Corporation that ranks superior to or in parity with the Series A Preferred Stock in rights, preferences or privileges (including with respect to dividends, liquidation, redemption or voting);

(b) increase or decrease the number of authorized shares of any series of Preferred Stock or authorize the issuance of or issue any shares of Preferred Stock;

(c) amend, alter, modify or repeal the Certificate of Incorporation, this Certificate of Designation or the by-laws of the Corporation, including the amendment of the Certificate of Incorporation by the adoption or amendment of any Certificate of Designation or similar document, or amend the organizational documents of any Subsidiary;

(d) issue, or cause or allow any Subsidiary of the Corporation to issue, any indebtedness or debt security, other than trade accounts payable and/or letters of credit, performance bonds or other similar credit support incurred in the ordinary course of business, or amend, renew, increase or otherwise alter in any material respect the terms of any indebtedness previously approved or required to be approved by the holders of the Series A Preferred Stock, other than (i) the issuance of, and performance of the Corporation's obligations under, the Senior Secured Notes, (ii) the incurrence of debt solely to fund the payment of dividends on the Series A Preferred Stock that are accrued and unpaid, or (iii) solely to fund the redemption of the Series A Preferred Stock pursuant to **Section 7**;

(e) increase the authorized number of directors constituting the Board from seven (7);

(f) redeem, purchase or otherwise acquire or pay or declare any dividend or other distribution on (or pay into or set aside for a sinking fund for any such purpose) any capital stock of the Corporation; *provided*, that this restriction shall not apply to (i) the mandatory redemption of or the payment of dividends on Series A Preferred Stock pursuant hereto, (ii) the declaration or payment of any dividend or distribution payable on the Common Stock in shares of Common Stock, or (iii) the repurchase of Junior Securities held by employees or consultants of the Corporation at the lower of cost or fair market value upon termination of their employment or services pursuant to agreements providing for such repurchase;

(g) declare bankruptcy, dissolve, liquidate or wind up the affairs of the Corporation or any Subsidiary of the Corporation;

(h) effect, or enter into any agreement to effect, a Change of Control.

(i) modify or change the nature of the Corporation's business such that a material portion of the Corporation's business is devoted to any business other than the business of [producing advanced materials and innovative crystal growth equipment for the global solar, LED and electronics industries].

(j) acquire, or cause or allow a Subsidiary of the Corporation to acquire, in any transaction or series of related transactions, the stock or any material assets of another Person, or enter into any joint venture with any other Person;

(k) sell, transfer, license, lease or otherwise dispose of, in any transaction or series of related transactions, any assets of the Corporation or any Subsidiary outside the ordinary course of business;

(l) enter into, or become subject to, any agreement or instrument or other obligation which by its terms restricts the Corporation's ability to perform its obligations under this Certificate of Designation or the Stockholders' Agreement, including the ability of the Corporation to pay dividends or make any redemption or other liquidation payment required hereunder; or

(m) agree or commit to do any of the foregoing.

7. Redemption.

7.1 Mandatory and Voluntary Redemption.

(a) Mandatory Redemption. At any time and from time to time on or after the third (3rd) anniversary of the Date of Issuance, subject to **Section 6.2** above, the Corporation may, at the direction of the Board and only if it has funds legally available therefor, redeem, out of funds legally available therefor, all or any portion of the then outstanding Series A Preferred Stock (a “**Mandatory Redemption**”) for a price per Share equal to (x) four times the Invested Capital Amount for such Share, plus (y) all unpaid accrued and accumulated dividends on such Share (whether or not declared) which have not been added to the Accreted Value (the “**Mandatory Redemption Price**”); *provided*, that notwithstanding anything to the contrary contained in this Certificate of Designations, each holder of Series A Preferred Stock shall have the right, instead of giving effect to the provisions contained in this **Section 7** with respect to the Shares held by such holder, to elect prior to the Series A Conversion Election Date to convert its Shares, plus all unpaid accrued and accumulated dividends on all such Shares since the most recent Dividend Date (whether or not declared), into Common Stock pursuant to **Section 8**. In exchange for the surrender to the Corporation by the respective holders of Series A Preferred Stock of their certificate or certificates representing such Shares in accordance with **Section 7.3(c)** below, the aggregate Mandatory Redemption Price for all Shares held by each holder of Shares shall be payable in cash in immediately available funds to the respective holders of the Series A Preferred Stock on the applicable Series A Redemption Date, and, to the extent necessary to effect the Mandatory Redemption, the Corporation shall apply all of its assets to the payment thereof, and to no other corporate purpose. Notwithstanding the foregoing, the Mandatory Redemption Price for any Mandatory Redemption closing after the 10th anniversary of the Date of Issuance shall not be less than the Voluntary Redemption Price that would have been payable for a Voluntary Redemption as of such date pursuant to paragraph (b) below.

(b) Voluntary Redemption. At any time and from time to time on or after the tenth (10th) anniversary of the Date of Issuance, the holders of not less than a Supermajority Interest shall have the right to elect to have, out of funds legally available therefor, all (but not less than all) of the then outstanding Shares redeemed by the Corporation (a “**Voluntary Redemption**,” and together with the Mandatory Redemption, each a “**Series A Redemption**”) for a price per Share equal to the greater of (x) the Fair Market Value per share of Series A Preferred Stock at the time of the Voluntary Redemption, and (y) the Liquidation Value for such Share, plus all unpaid accrued and accumulated dividends on such Share which have not been added to the Accreted Value (whether or not declared) (the “**Voluntary Redemption Price**,” and together with the Mandatory Redemption Price, each a “**Series A Redemption Price**”). Any such Voluntary Redemption shall occur not more than sixty (60) days following receipt by the Corporation of a written election notice (the “**Series A Election Notice**”) from the holders of not less than a Supermajority Interest. Upon receipt of a Series A Election Notice, all holders of Series A Preferred Stock shall be deemed to have elected to have all of their Shares redeemed pursuant to this **Section 7.1(b)** and such election shall bind all holders of Series A Preferred Stock; *provided*, that notwithstanding anything to the contrary contained in this Certificate of Designations, each holder of Series A Preferred Stock shall have the right to elect prior to the Series A Conversion Election Date to convert its Shares to Common Stock pursuant to **Section 8** instead of giving effect to the provisions contained in this **Section 7.1(b)** with respect to the Series A Preferred Stock held by such holder. In exchange for the surrender to the Corporation by the respective holders of Series A Preferred Stock of their certificate or certificates

representing such Shares in accordance with **Section 7.3(c)** below, the aggregate Voluntary Redemption Price for all Shares held by each holder of Shares shall be payable in cash in immediately available funds to the respective holders of the Series A Preferred Stock on the applicable Series A Redemption Date and, to the extent necessary to effect the Voluntary Redemption, the Corporation shall apply all of its assets to the payment thereof, and to no other corporate purpose, except to the extent prohibited by applicable Delaware law.

7.2 Redemption Notice. As promptly as practicable, but in no event later than ten (10) days, following (x) the Board's decision to implement a Mandatory Redemption, or (y) receipt of a Series A Election Notice, the Corporation shall send written notice (the "**Series A Redemption Notice**") to each holder of record of Series A Preferred Stock. Each Series A Redemption Notice shall state:

(a) the number of Shares held by the holder that the Corporation shall redeem on the Series A Redemption Date specified in the Series A Redemption Notice;

(b) the date of the closing of the redemption, which shall be no later than sixty (60) days following (x) the Board's decision to implement a Mandatory Redemption, or (y) receipt of a Series A Election Notice (each such date, a "**Series A Redemption Date**") and the applicable Series A Redemption Price;

(c) the date upon which the holder's right to convert its Shares pursuant to **Section 8** terminates, which date shall be no earlier than five (5) days before the Series A Redemption Date (the applicable date, the "**Series A Conversion Election Date**"); and

(d) the manner and place designated for surrender by the holder to the Corporation of his, her or its certificate or certificates representing the Shares to be redeemed.

7.3 Insufficient Funds; Remedies For Nonpayment.

(a) Insufficient Funds. If on any Series A Redemption Date, the assets of the Corporation legally available are insufficient to pay the full Series A Redemption Price for the total number of Shares elected to be redeemed pursuant to **Section 7.1**, the Corporation shall (i) take all appropriate action reasonably within its means to maximize the assets legally available for paying the applicable Series A Redemption Price, (ii) redeem out of all such assets legally available therefor on the applicable Series A Redemption Date the maximum possible number of Shares that it can redeem on such date, *pro rata* among the holders of such Shares to be redeemed in proportion to the aggregate number of Shares elected to be redeemed by each such holder on the applicable Series A Redemption Date and (iii) following the applicable Series A Redemption Date, at any time and from time to time when additional assets of the Corporation become legally available to redeem the remaining Shares, the Corporation shall immediately use such assets to pay the remaining balance of the aggregate applicable Series A Redemption Price.

(b) Remedies For Nonpayment. If on any Series A Redemption Date, all of the Shares elected to be redeemed pursuant to a Series A Election Notice are not redeemed in full by the Corporation by paying the entire Series A Redemption Price (a "**Redemption Breach**"), until such Shares are fully redeemed and the aggregate Series A Redemption Price paid in full, (a) all of the unredeemed Shares shall remain outstanding and continue to have the rights, preferences

and privileges expressed in this Certificate of Designations, including the accrual and accumulation of dividends thereon as provided in **Section 4**; and (b) provided that the Liquidation Value of the Series A Preferred Stock then outstanding is more than 25% of the Liquidation Value of the Series A Preferred Stock on the first Date of Issuance for Series A Preferred Stock, the number of directors constituting the Board shall, at the written request of a Supermajority Interest, be increased by a number of Board seats which, following such increase, shall constitute a majority of the seats on the Board (and the Corporation shall promptly take all necessary action under its organizational documents, including its by-laws, to effectuate such increase and the other rights hereunder). A Supermajority Interest shall have the right to designate the individuals to fill such newly created Board seats, to fill any vacancy of such Board seats and to remove and replace any individuals designated to fill such Board seats. Such additional directors shall have all voting and other rights (including for purposes of determining the existence of a quorum) as the other individuals serving on the Board and shall serve on the Board until all Series A Preferred Stock elected to be redeemed pursuant to a Series A Election Notice shall have been redeemed (at which time the rights hereunder shall terminate subject to revesting in the event of a subsequent Redemption Breach). Upon the termination of the foregoing rights, the term of office on the Board of all individuals who may have been designated as directors hereunder shall cease (and such individuals shall promptly resign from the Board), and the number of directors constituting the Board shall return to the number of directors that constituted the entire Board immediately prior to the occurrence or existence of the initial Redemption Breach giving rise to the foregoing rights. The board appointment and voting rights granted by this **Section 7.3(b)** shall be in addition to any other voting rights granted to the holders of the Series A Preferred Stock in **Section 6** hereof and in the Stockholders Agreement.

(c) Surrender of Certificates. On or before any Series A Redemption Date, each holder of Series A Preferred Stock not otherwise electing prior to the Series A Conversion Election Date to convert its Shares pursuant to **Section 8** shall surrender the certificate or certificates representing such Shares to the Corporation, in the manner and place designated in the Series A Redemption Notice, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), or, in the event the certificate or certificates are lost, stolen or missing, shall deliver an affidavit of loss, in the manner and place designated in the Series A Redemption Notice. Each surrendered certificate shall be canceled and retired and the Corporation shall thereafter make payment of the applicable Series A Redemption Price by certified check or wire transfer to the holder of record of such certificate; *provided*, that if less than all the Shares represented by a surrendered certificate are redeemed, then a new stock certificate representing the unredeemed Shares shall be issued in the name of the applicable holder of record of canceled stock certificate.

(d) Rights Subsequent to Redemption. If on the applicable Series A Redemption Date, the Series A Redemption Price is paid (or tendered for payment) for any of the Shares to be redeemed on such Series A Redemption Date, then on such date all rights of the holder in the Shares so redeemed and paid or tendered, including any rights to dividends on such Shares, shall cease, and such Shares shall no longer be deemed issued and outstanding.

8. Conversion.

8.1 Right to Convert; Automatic Conversion.

(a) Right to Convert. Subject to the provisions of this **Section 8**, at any time and from time to time on or after the Date of Issuance, any holder of Series A Preferred Stock shall have the right by written election to the Corporation to convert all or any portion of the outstanding Shares (including any fraction of a Share) held by such holder along with the aggregate accrued or accumulated and unpaid dividends thereon which have not been added to the Accreted Value into an aggregate number of shares of Common Stock (including any fraction of a share) as is determined by (i) multiplying the number of Shares (including any fraction of a Share) to be converted by the Liquidation Value thereof, (ii) adding to the result all accrued and accumulated and unpaid dividends on such Shares to be converted which have not been added to the Accreted Value, and then (ii) dividing the result by the Conversion Price in effect immediately prior to such conversion. The initial conversion price per Share (the “**Conversion Price**”) shall be the Original Issuance Price of such Share, subject to adjustment as applicable in accordance with **Section 8.6** below.

(b) Automatic Conversion. Subject to the provisions of this **Section 8**, in connection with, and on the closing of, a Qualified IPO by the Corporation, all of the outstanding Shares (including any fraction of a Share) held by stockholders shall automatically convert along with the aggregate accrued or accumulated and unpaid dividends thereon which have not been added to the Accreted Value into an aggregate number of shares of Common Stock (including any fraction of a Share) as is determined by (i) multiplying the number of Shares (including any fraction of a Share) to be converted by the Liquidation Value thereof, (ii) adding to the result all accrued and accumulated and unpaid dividends on such Shares to be converted which have not been added to the Accreted Value, and then (ii) dividing the result by the applicable Conversion Price then in effect. If a closing of a Qualified IPO occurs, such automatic conversion of all of the outstanding Series A Preferred Stock shall be deemed to have been converted into shares of Common Stock as of immediately prior to such closing.

8.2 Procedures for Conversion; Effect of Conversion.

(a) Procedures for Holder Conversion. In order to effectuate a conversion of Shares pursuant to **Section 8.1(a)**, a holder shall (a) submit a written election indicating to the Corporation that such holder elects to convert Shares and specifying the number of Shares elected to be converted, and (b) surrender to the Corporation, along with such written election, the certificate or certificates representing the Shares being converted, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto) or, in the event the certificate or certificates are lost, stolen or missing, accompanied by an affidavit of loss executed by the holder. The conversion of such Shares hereunder shall be deemed effective as of the date of surrender of such Series A Preferred Stock certificate or certificates or delivery of such affidavit of loss. Upon the receipt by the Corporation of a written election and the surrender of such certificate(s) and accompanying materials, the Corporation shall as promptly as practicable (but in any event within ten (10) days thereafter) deliver to the relevant holder (a) a certificate in such holder’s name (or the name of such holder’s designee as stated in the written election) for the number of shares of Common Stock (including any fractional share) to which such holder shall be entitled upon conversion of the applicable Shares as calculated pursuant to **Section 8.1(a)** and, if applicable (b) a certificate in such holder’s (or the name of such holder’s designee as stated in the written election) for the number of Shares (including any fractional share) represented by the certificate or certificates delivered to the

Corporation for conversion but otherwise not elected to be converted pursuant to the written election. All shares of capital stock issued hereunder by the Corporation shall be duly and validly issued, fully paid and nonassessable, free and clear of all taxes, liens, charges and encumbrances with respect to the issuance thereof.

(b) Procedures for Automatic Conversion. As of the closing of a Qualified IPO all outstanding Shares shall be converted to the number of shares of Common Stock calculated pursuant to **Section 8.1(b)** without any further action by the relevant holder of such Shares or the Corporation. As promptly as practicable following such Qualified IPO (but in any event within five (5) days thereafter), the Corporation shall send each holder of Series A Preferred Stock written notice of such event. Upon receipt of such notice, each holder shall surrender to the Corporation the certificate or certificates representing the Shares being converted, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto) or, in the event the certificate or certificates are lost, stolen or missing, accompanied by an affidavit of loss executed by the holder. Upon the surrender of such certificate(s) and accompanying materials, the Corporation shall as promptly as practicable (but in any event within ten (10) days thereafter) deliver to the relevant holder a certificate in such holder's name (or the name of such holder's designee as stated in the written election) for the number of shares of Common Stock (including any fractional share) to which such holder shall be entitled upon conversion of the applicable Shares. All shares of Common Stock issued hereunder by the Corporation shall be duly and validly issued, fully paid and nonassessable, free and clear of all taxes, liens, charges and encumbrances with respect to the issuance thereof.

(c) Effect of Conversion. All Shares converted as provided in **Section 8.1** shall no longer be deemed outstanding as of the effective time of the applicable conversion and all rights with respect to such Shares shall immediately cease and terminate as of such time (including, without limitation, any right of redemption pursuant to **Section 7**), other than the right of the holder to receive shares of Common Stock and payment in lieu of any fraction of a Share in exchange therefor.

8.3 Reservation of Stock. The Corporation shall at all times when any Series A Preferred Stock is outstanding reserve and keep available out of its authorized but unissued shares of capital stock, solely for the purpose of issuance upon the conversion of the Series A Preferred Stock, such number of shares of Common Stock issuable upon the conversion of all outstanding Series A Preferred Stock pursuant to this **Section 8**, taking into account any adjustment to such number of shares so issuable in accordance with **Section 8.6** hereof. The Corporation shall take all such actions as may be necessary to assure that all such shares of Common Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic securities exchange upon which shares of Common Stock may be listed (except for official notice of issuance which shall be immediately delivered by the Corporation upon each such issuance). The Corporation shall not close its books against the transfer of any of its capital stock in any manner which would prevent the timely conversion of the Series A Preferred Stock.

8.4 No Charge or Payment. The issuance of certificates for shares of Common Stock upon conversion of Shares pursuant to **Section 8.1** shall be made without payment of additional consideration by, or other charge, cost or tax to, the holder in respect thereof.

8.5 Termination of Conversion Rights. In the event of a Series A Election Notice or a Series A Redemption Notice relating to a redemption of any Series A Preferred Stock pursuant to **Section 7**, the conversion rights described in this Certificate of Designations of the Shares designated for redemption shall terminate at the close of business on the applicable Series A Conversion Election Date, unless the Series A Redemption Price is not fully paid in cash on such redemption date, in which case the conversion rights for such Shares shall continue until such price is paid in full in cash.

8.6 Adjustment to Conversion Price and Number of Conversion Shares. In order to prevent dilution of the conversion rights granted under this **Section 8**, the Conversion Price and the number of Conversion Shares issuable on conversion of the Series A Preferred Stock shall be subject to adjustment from time to time as provided in this **Section 8.6**.

(a) Adjustment to Conversion Price upon Issuance of Common Stock. Except as provided in **Section 8.6(c)** and except in the case of an event described in either **Section 8.6(e)** or **Section 8.6(f)**, if the Corporation shall, at any time or from time to time after the Date of Issuance, issue or sell, or in accordance with **Section 8.6(d)** is deemed to have issued or sold, any shares of Common Stock without consideration or for consideration per share less than the Conversion Price in effect immediately prior to such issuance or sale (or deemed issuance or sale), then immediately upon such issuance or sale (or deemed issuance or sale), the Conversion Price in effect immediately prior to such issuance or sale (or deemed issuance or sale) shall be reduced (and in no event increased) to a Conversion Price equal to the quotient obtained by dividing:

(i) the sum of (A) the product obtained by multiplying the Common Stock Deemed Outstanding immediately prior to such issuance or sale (or deemed issuance or sale) by the Conversion Price then in effect plus (B) the aggregate consideration, if any, received by the Corporation upon such issuance or sale (or deemed issuance or sale); by

(ii) the sum of (A) the Common Stock Deemed Outstanding immediately prior to such issuance or sale (or deemed issuance or sale) plus (B) the aggregate number of shares of Common Stock issued or sold (or deemed issued or sold) by the Corporation in such issuance or sale (or deemed issuance or sale).

Whenever following the Date of Issuance, the Corporation shall issue or sell, or in accordance with **Section 8.6(d)** is deemed to have issued or sold, any shares of Common Stock, the Corporation shall prepare a certificate signed by an executive officer setting forth, in reasonable detail, the number of shares issued or sold, or deemed issued or sold, the amount and the form of the consideration received by the Corporation and the method of computation of such amount and shall cause copies of such certificate to be mailed to the holders of record of Series A Preferred Stock at the address specified for such holder in the books and records of the Corporation (or at such other address as may be provided to the Corporation in writing by such holder).

(b) Adjustment to Number of Conversion Shares Upon Adjustment to Conversion Price. Upon any and each adjustment of the Conversion Price as provided in **Section 8.6(a)**, the number of Conversion Shares issuable upon the conversion of the Series A Preferred Stock

immediately prior to any such adjustment shall be increased to a number of Conversion Shares equal to the quotient obtained by dividing:

(i) the product of (A) the Conversion Price in effect immediately prior to any such adjustment multiplied by (B) the number of Conversion Shares issuable upon conversion of the Series A Preferred Stock immediately prior to any such adjustment; by

(ii) the Conversion Price resulting from such adjustment.

(c) Exceptions To Adjustment Upon Issuance of Common Stock. Anything in this Certificate of Designations to the contrary notwithstanding, there shall be no adjustment to the Conversion Price or the number of Conversion Shares issuable upon conversion of the Series A Preferred Stock with respect to any Excluded Issuance.

(d) Effect of Certain Events on Adjustment to Conversion Price. For purposes of determining the adjusted Conversion Price under **Section 8.6(a)** hereof, the following shall be applicable:

(i) Issuance of Options. If the Corporation shall, at any time or from time to time after the Date of Issuance, in any manner grant or sell (whether directly or by assumption in a merger or otherwise) any Options, whether or not such Options or the right to convert or exchange any Convertible Securities issuable upon the exercise of such Options are immediately exercisable, and the price per share (determined as provided in this paragraph and in **Section 8.6(d)(v)**) for which Common Stock is issuable upon the exercise of such Options or upon the conversion or exchange of Convertible Securities issuable upon the exercise of such Options is less than the Conversion Price in effect immediately prior to the time of the granting or sale of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of Convertible Securities issuable upon the exercise of such Options shall be deemed to have been issued as of the date of granting or sale of such Options (and thereafter shall be deemed to be outstanding for purposes of adjusting the Conversion Price under **Section 8.6(a)**), at a price per share equal to the quotient obtained by dividing (A) the sum (which sum shall constitute the applicable consideration received for purposes of **Section 8.6(a)**) of (x) the total amount, if any, received or receivable by the Corporation as consideration for the granting or sale of all such Options, plus (y) the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of all such Options, plus (z), in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the issuance or sale of all such Convertible Securities and the conversion or exchange of all such Convertible Securities, by (B) the total maximum number of shares of Common Stock issuable upon the exercise of all such Options or upon the conversion or exchange of all Convertible Securities issuable upon the exercise of all such Options. Except as otherwise provided in **Section 8.6(d)(iii)**, no further adjustment of the Conversion Price shall be made upon the actual issuance of Common Stock or of Convertible Securities upon exercise of such Options or upon the actual issuance of Common Stock upon conversion or exchange of Convertible Securities issuable upon exercise of such Options.

(ii) Issuance of Convertible Securities. If the Corporation shall, at any time or from time to time after the Date of Issuance,¹ in any manner grant or sell (whether directly or by assumption in a merger or otherwise) any Convertible Securities, whether or not the right to convert or exchange any such Convertible Securities is immediately exercisable, and the price per share (determined as provided in this paragraph and in **Section 8.6(d)(v)**) for which Common Stock is issuable upon the conversion or exchange of such Convertible Securities is less than the Conversion Price in effect immediately prior to the time of the granting or sale of such Convertible Securities, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of the total maximum amount of such Convertible Securities shall be deemed to have been issued as of the date of granting or sale of such Convertible Securities (and thereafter shall be deemed to be outstanding for purposes of adjusting the Conversion Price pursuant to **Section 8.6(a)**), at a price per share equal to the quotient obtained by dividing (A) the sum (which sum shall constitute the applicable consideration received for purposes of **Section 8.6(a)**) of (x) the total amount, if any, received or receivable by the Corporation as consideration for the granting or sale of such Convertible Securities, plus (y) the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange of all such Convertible Securities, by (B) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities. Except as otherwise provided in **Section 8.6(d)(iii)**, (A) no further adjustment of the Conversion Price shall be made upon the actual issuance of Common Stock upon conversion or exchange of such Convertible Securities and (B) no further adjustment of the Conversion Price shall be made by reason of the issue or sale of Convertible Securities upon exercise of any Options to purchase any such Convertible Securities for which adjustments of the Conversion Price have been made pursuant to the other provisions of this **Section 8.6(d)**.

(iii) Change in Terms of Options or Convertible Securities. Upon any change in any of (A) the total amount received or receivable by the Corporation as consideration for the granting or sale of any Options or Convertible Securities referred to in **Section 8.6(d)(i)** or **Section 8.6(d)(ii)** hereof, (B) the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the exercise of any Options or upon the issuance, conversion or exchange of any Convertible Securities referred to in **Section 8.6(d)(i)** or **Section 8.6(d)(ii)** hereof, (C) the rate at which Convertible Securities referred to in **Section 8.6(d)(i)** or **Section 8.6(d)(ii)** hereof are convertible into or exchangeable for Common Stock, or (D) the maximum number of shares of Common Stock issuable in connection with any Options referred to in **Section 8.6(d)(i)** hereof or any Convertible Securities referred to in **Section 8.6(d)(ii)** hereof (in each case, other than in connection with an Excluded Issuance), then (whether or not the original issuance or sale of such Options or Convertible Securities resulted in an adjustment to the Conversion Price pursuant to this **Section 8.6**) the Conversion Price in effect at the time of such change shall be adjusted or readjusted, as applicable, to the Conversion Price which would have been in effect at such time pursuant to the provisions of this **Section**

¹ This assumes Plan Warrants will be issued on Plan date, as with the rest of the equity. If for any reason, Plan Warrants or other securities contemplated thereby are to be issued after the Plan date, this should be accounted for here.

8.6 had such Options or Convertible Securities still outstanding provided for such changed consideration, conversion rate or maximum number of shares, as the case may be, at the time initially granted, issued or sold, but only if as a result of such adjustment or readjustment the Conversion Price then in effect is reduced, and the number of Conversion Shares issuable upon the conversion of the Series A Preferred Stock immediately prior to any such adjustment or readjustment shall be correspondingly adjusted or readjusted pursuant to the provisions of **Section 8.6(b)**.

(iv) Treatment of Expired or Terminated Options or Convertible Securities. Upon the expiration or termination of any unexercised Option (or portion thereof) or any unconverted or unexchanged Convertible Security (or portion thereof) for which any adjustment (either upon its original issuance or upon a revision of its terms) was made pursuant to this **Section 8.6** (including without limitation upon the redemption or purchase for consideration of all or any portion of such Option or Convertible Security by the Corporation), the Conversion Price then in effect hereunder shall forthwith be changed pursuant to the provisions of this **Section 8.6** to the Conversion Price which would have been in effect at the time of such expiration or termination had such unexercised Option (or portion thereof) or unconverted or unexchanged Convertible Security (or portion thereof), to the extent outstanding immediately prior to such expiration or termination, never been issued.

(v) Calculation of Consideration Received. If the Corporation shall, at any time or from time to time after the Date of Issuance, issue or sell, or is deemed to have issued or sold in accordance with **Section 8.6(d)**, any shares of Common Stock, Options or Convertible Securities: (A) for cash, the consideration received therefor shall be deemed to be the net amount received by the Corporation therefor; (B) for consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be the fair value of such consideration, except where such consideration consists of marketable securities, in which case the amount of consideration received by the Corporation shall be the market price (as reflected on any securities exchange, quotation system or association or similar pricing system covering such security) for such securities as of the end of business on the date of receipt of such securities; (C) for no specifically allocated consideration in connection with an issuance or sale of other securities of the Corporation, together comprising one integrated transaction, the amount of the consideration therefor shall be deemed to be the fair value of such portion of the aggregate consideration received by the Corporation in such transaction as is attributable to such shares of Common Stock, Options or Convertible Securities, as the case may be, issued in such transaction; or (D) to the owners of the non-surviving entity in connection with any merger in which the Corporation is the surviving corporation, the amount of consideration therefor shall be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such shares of Common Stock, Options or Convertible Securities, as the case may be, issued to such owners. The net amount of any cash consideration and the fair value of any consideration other than cash or marketable securities shall be determined in good faith jointly by the Board and a Supermajority Interest.

(vi) Record Date. For purposes of any adjustment to the Conversion Price or the number of Conversion Shares in accordance with this **Section 8.6**, in case the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them (A) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities or (B) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(vii) Treasury Shares. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation or any of its wholly-owned subsidiaries, and the disposition of any such shares (other than the cancellation or retirement thereof or the transfer of such shares among the Corporation and its wholly-owned subsidiaries) shall be considered an issue or sale of Common Stock for the purpose of this **Section 8.6**.

(e) Adjustment to Conversion Price and Conversion Shares Upon Dividend, Subdivision or Combination of Common Stock. If the Corporation shall, at any time or from time to time after the Date of Issuance, (i) pay a dividend or make any other distribution upon the Common Stock or any other capital stock of the Corporation payable in shares of Common Stock or in Options or Convertible Securities, or (ii) subdivide (by any stock split, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to any such dividend, distribution or subdivision shall be proportionately reduced and the number of Conversion Shares issuable upon conversion of the Series A Preferred Stock shall be proportionately increased. If the Corporation at any time combines (by combination, reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately increased and the number of Conversion Shares issuable upon conversion of the Series A Preferred Stock shall be proportionately decreased. Any adjustment under this **Section 8.6(e)** shall become effective at the close of business on the date the dividend, subdivision or combination becomes effective.

(f) Adjustment to Conversion Price and Conversion Shares Upon Reorganization, Reclassification, Consolidation or Merger. In the event of any (i) capital reorganization of the Corporation, (ii) reclassification of the stock of the Corporation (other than a change in par value or from par value to no par value or from no par value to par value or as a result of a stock dividend or subdivision, split-up or combination of shares), (iii) consolidation or merger of the Corporation with or into another Person, (iv) sale of all or substantially all of the Corporation's assets to another Person or (v) other similar transaction (other than any such transaction covered by **Section 8.6(e)**), in each case which entitles the holders of Common Stock to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for Common Stock, each Share shall, immediately after such reorganization, reclassification, consolidation, merger, sale or similar transaction, remain outstanding and shall thereafter, in lieu of or in addition to (as the case may be) the number of Conversion Shares then convertible for such Share, be exercisable for the kind and number of shares of stock or other securities or assets of the Corporation or of the successor Person resulting from such transaction to which such

Share would have been entitled upon such reorganization, reclassification, consolidation, merger, sale or similar transaction if the Share had been converted in full immediately prior to the time of such reorganization, reclassification, consolidation, merger, sale or similar transaction and acquired the applicable number of Conversion Shares then issuable hereunder as a result of such conversion (without taking into account any limitations or restrictions on the convertibility of such Share, if any); and, in such case, appropriate adjustment shall be made with respect to such holder's rights under this Certificate of Designation to insure that the provisions of this **Section 8** hereof shall thereafter be applicable, as nearly as possible, to the Series A Preferred Stock in relation to any shares of stock, securities or assets thereafter acquirable upon conversion of Series A Preferred Stock (including, in the case of any consolidation, merger, sale or similar transaction in which the successor or purchasing Person is other than the Corporation, an immediate adjustment in the Conversion Price to the value per share for the Common Stock reflected by the terms of such consolidation, merger, sale or similar transaction, and a corresponding immediate adjustment to the number of Conversion Shares acquirable upon conversion of the Series A Preferred Stock without regard to any limitations or restrictions on conversion, if the value so reflected is less than the Conversion Price in effect immediately prior to such consolidation, merger, sale or similar transaction). The provisions of this **Section 8.6(f)** shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, sales or similar transactions. The Corporation shall not effect any such reorganization, reclassification, consolidation, merger, sale or similar transaction unless, prior to the consummation thereof, the successor Person (if other than the Corporation) resulting from such reorganization, reclassification, consolidation, merger, sale or similar transaction, shall assume, by written instrument substantially similar in form and substance to this Certificate of Designation, the obligation to deliver to the holders of Series A Preferred Stock such shares of stock, securities or assets which, in accordance with the foregoing provisions, such holders shall be entitled to receive upon conversion of the Series A Preferred Stock. Notwithstanding anything to the contrary contained in this Certificate of Designations, with respect to any corporate event or other transaction contemplated by the provisions of this **Section 8.6(f)**, each holder of Series A Preferred Stock shall have the right to elect prior to the consummation of such event or transaction, to give effect to the provisions of **Section 7.1** or **Section 8** hereunder, instead of giving effect to the provisions contained in this **Section 8.6(f)** with respect to such holder's Series A Preferred Stock.

(g) Certain Events. If any event of the type contemplated by the provisions of this **Section 8.6** but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features) occurs, then the Board shall make an appropriate adjustment in the Conversion Price and the number of Conversion Shares issuable upon conversion of Series A Preferred Stock so as to protect the rights of the holder of such Shares in a manner consistent with the provisions of this **Section 8**; *provided*, that no such adjustment pursuant to this **Section 8.6(g)** shall increase the Conversion Price or decrease the number of Conversion Shares issuable as otherwise determined pursuant to this **Section 8**.

(h) Certificate as to Adjustment.

(i) As promptly as reasonably practicable following any adjustment of the Conversion Price, but in any event not later than twenty (20) days thereafter, the

Corporation shall furnish to each holder of record of Series A Preferred Stock at the address specified for such holder in the books and records of the Corporation (or at such other address as may be provided to the Corporation in writing by such holder) a certificate of an executive officer setting forth in reasonable detail such adjustment and the facts upon which it is based and certifying the calculation thereof.

(ii) As promptly as reasonably practicable following the receipt by the Corporation of a written request by any holder of Series A Preferred Stock, but in any event not later than twenty (20) days thereafter, the Corporation shall furnish to such holder a certificate of an executive officer certifying the Conversion Price then in effect and the number of Conversion Shares or the amount, if any, of other shares of stock, securities or assets then issuable to such holder upon conversion of the Shares held by such holder.

(i) Notices. In the event:

(i) that the Corporation shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Series A Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, to vote at a meeting (or by written consent), to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security;

(ii) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, any consolidation or merger of the Corporation with or into another Person, or sale of all or substantially all of the Corporation's assets to another Person; or

(iii) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation;

then, and in each such case, the Corporation shall send or cause to be sent to each holder of record of Series A Preferred Stock at the address specified for such holder in the books and records of the Corporation (or at such other address as may be provided to the Corporation in writing by such holder) at least twenty (20) days prior to the applicable record date or the applicable expected effective date, as the case may be, for the event, a written notice specifying, as the case may be, (A) the record date for such dividend, distribution, meeting or consent or other right or action, and a description of such dividend, distribution or other right or action to be taken at such meeting or by written consent, or (B) the effective date on which such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up is proposed to take place, and the date, if any is to be fixed, as of which the books of the Corporation shall close or a record shall be taken with respect to which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon conversion of the Series A Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-

up, and the amount per share and character of such exchange applicable to the Series A Preferred Stock and the Conversion Shares.

9. Reissuance of Series A Preferred Stock. Any Shares redeemed, converted or otherwise acquired by the Corporation or any Subsidiary shall be cancelled and retired as authorized and issued shares of capital stock of the Corporation and no such Shares shall thereafter be reissued, sold or transferred.

10. Notices. Except as otherwise provided in this Certificate of Designations, all notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent (a) to the Corporation, at its principal executive offices and (b) to any stockholder, at such holder's address as it appears in the stock records of the Corporation (or at such other address for a stockholder as shall be specified in a notice given in accordance with this **Section 10**).

11. Amendment and Waiver. No provision of this Certificate of Designation may be amended, modified or waived except by an instrument in writing executed by the Corporation and a Supermajority Interest and any such written amendment, modification or waiver will be binding upon the Corporation and each holder of Series A Preferred Stock; *provided, further*, that no amendment, modification or waiver of the terms or relative priorities of the Series A Preferred Stock may be accomplished by the merger, consolidation or other transaction of the Corporation with another corporation or entity unless the Corporation has obtained the prior written consent of the holders in accordance with this **Section 11**.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation this [__] day of [_____], 2016.

GT Advanced Technologies Inc.

By:

Title:

EXHIBIT 4

DIP Warrant Agreement

DIP WARRANT AGREEMENT

dated as of [____] [•], 2016

between

GT ADVANCED TECHNOLOGIES INC.

(as Reorganized)

and

[AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC],

as Warrant Agent

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EXHIBIT C	WARRANT AGENT FEE SCHEDULE	

DIP WARRANT AGREEMENT

This DIP Warrant Agreement (as it may be amended from time to time, this “**Warrant Agreement**”), is dated as of [____] [●], 2016, between GT Advanced Technologies Inc., a Delaware corporation (the “**Company**”), and [American Stock Transfer & Trust Company, LLC], a [New York State chartered limited purpose trust company] (the “**Warrant Agent**”).

WITNESSETH THAT:

WHEREAS, pursuant to the terms and conditions of the Plan of Reorganization, dated [____] [●], [2016] (as the same may be amended, modified or restated, the “**Plan**”) relating to the reorganization under Chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) of the Company and certain of its direct and indirect Subsidiaries, each holder of an Allowed GT Inc. Notes Claim (as defined in the Plan) (the “**Initial Beneficial Holders**”) are to be issued DIP Warrants (as defined in the Plan and referred to herein as the “**Warrants**”), exercisable until the Expiration Date, to purchase in the aggregate up to _____¹ Common Shares, as the same may be adjusted pursuant to Article 4 hereof, at an exercise price of [\$0.01 per share] (the “**Exercise Price**”);

WHEREAS, the Warrants have the terms and conditions set forth in this Warrant Agreement (including the Exhibits hereto);

WHEREAS, the Company desires that the Warrant Agent act on behalf of the Company, and the Warrant Agent is willing to so act, in connection with the issuance, exchange, Transfer, substitution and exercise of Warrants; and

WHEREAS, the Warrants and the underlying Common Shares are being offered and sold in reliance on the exemption from the registration requirements of the Securities Act and any applicable state securities or “blue sky” laws afforded by Section 1145(a)(2) of the Bankruptcy Code.

NOW THEREFORE in consideration of the mutual agreements herein contained, the Company and the Warrant Agent agree as follows:

Article 1

Definitions

Section 1.01 Certain Definitions. As used in this Warrant Agreement, the following terms shall have their respective meanings set forth below:

“**Affiliate**” shall mean, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such first specified Person. For the purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of

¹ [1.5% of the fully-diluted Reorganized Common Stock.]

such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Affiliated Buyer**” means, with respect to an Asset Sale or tender offer, any Person (i) who is an Affiliate of the Company, (ii) who is an officer, director, employee or member of the Company or any Affiliate of the Company, or (iii) a majority of which Person’s total outstanding equity, upon consummation of such transaction, is held by Persons who are equityholders in the Company immediately prior to the consummation of such transaction.

“**Affiliated Asset Sale**” has the meaning set forth in Section 4.04(c).

“**Appropriate Officer**” has the meaning set forth in Section 2.02(a).

“**Asset Sale**” has the meaning set forth in Section 4.04(c).

“**Authentication Order**” means a Company Order for authentication and delivery of Warrants.

“**Bankruptcy Code**” has the meaning set forth in the Recitals.

“**Beneficial Owner**” means any Person, the account of which is credited with a beneficial interest in the Global Warrant through the book-entry system maintained by the Depository (or its agent).

“**Board**” means the board of directors of the Company or any committee of such board duly authorized to exercise the power of the board of directors with respect to the matters provided for in this Warrant Agreement as to which the board of directors is authorized or required to act.

“**Business Day**” means any day other than (x) a Saturday or Sunday or (y) any day which is a legal holiday in the State of New York or a day on which banking institutions and trust companies in the state in which the Warrant Agent is located are authorized or obligated by Law, regulation or executive order to close.

“**Cash**” means such coin or currency of the United States as at any time of payment is legal tender for the payment of public and private debts.

“**Change of Control**” means (i) an Asset Sale to a Person or Persons who are not Affiliated Buyers, (ii) a Non-Affiliate Combination, (iii) a Third Party Tender Offer, in each case, in one or a series of related transactions or (iv) the issuance of Common Shares, Convertible Securities or other Securities of the Company representing more than 50% of the total voting power of the Company with respect to the election of directors (or in the case of Convertible Securities, the right to acquire such voting Securities) to a Person or group of Affiliated Persons. For the avoidance of doubt, none of the transactions contemplated by the Plan shall be deemed a Change of Control.

“**Close of Business**” means 5:00 p.m., New York City time.

“**Closing Date**” means the effective date of the Plan.

“**Common Shares**” means shares of the common stock, par value \$0.01 per share, of the reorganized Company.

“**Company**” has the meaning set forth in the preamble.

“**Company Order**” means a written request or order signed in the name of the Company by any Appropriate Officer or other duly authorized officer of the Company and delivered to the Warrant Agent.

“**Convertible Securities**” means options, rights, warrants or other securities convertible into or exchangeable or exercisable for Common Shares (including the Warrants).

“**Depository**” means the Transfer Agent, its nominees, and their respective successors.

“**DIP Warrants**” has the meaning set forth in the Plan.

“**Effective Consideration**” means the amount paid or payable to acquire Common Shares (or in the case of Convertible Securities, the amount paid or payable to acquire the Convertible Security, if any, plus the applicable exercise price for the underlying Common Share).

“**Exercise Date**” has the meaning set forth in Section 3.02(b).

“**Ex-Date**” means with respect to a dividend or distribution to holders of the Common Shares, the first date on which the Common Shares can be traded without the right to receive such dividend or distribution.

“**Exercise Notice**” means, for any Warrant, an exercise notice substantially in the form set forth in Exhibit B hereto.

“**Exercise Price**” has the meaning set forth in the Recitals.

“**Expiration Date**” means, for any Warrant, the Close of Business on [____] [●], 2019.²

“**Fair Value**,” as of a specified date, means the price per Common Share, other Securities or other distributed property determined as follows:

- (i) in the case of Common Shares or other Securities listed on the New York Stock Exchange or the NASDAQ Stock Market, the VWAP of a Common Share or a single unit of such other Security for the 20 Trading Days ending on, but excluding, the specified date (or if the Common Shares or other Security has been listed for less than 20 Trading Days, the VWAP for such lesser period of time);

² NTD: Three year anniversary of the closing.

(ii) in the case of Common Shares or other Securities not listed on the New York Stock Exchange or the NASDAQ Stock Market, the VWAP of a Common Share or a single unit of such other Security in composite trading for the principal U.S. national or regional securities exchange on which such securities are then listed for the 20 Trading Days ending on, but excluding, the specified date (or if the Common Shares or other Security has been listed for less than 20 Trading Days, the VWAP for such lesser period of time); or

(iii) in all other cases, the fair value per Common Share, other Securities or other distributed property as of a date not earlier than 10 Business Days preceding the specified date as determined in good faith by the Board and, if the Board elects to engage the same, upon the advice of an independent investment banking, financial advisory or valuation firm or appraiser selected by the Board (a “**Representative**”); provided, however, that

(iv) notwithstanding the foregoing, if the Board determines in good faith that the application of clauses (i) or (ii) of this definition would result in a VWAP based on the trading prices of a thinly-traded Security such that the price resulting therefrom may not represent an accurate measurement of the fair value of such Security, the Board at its election may apply the provisions of clause (iii) of this definition in lieu of the applicable clause (i) or (ii) with respect to the determination of the fair value of such Security; provided, further, that

(v) if the Board determines the Fair Value pursuant to clauses (iii) or (iv) of this definition and a Beneficial Owner disputes the Fair Value, if the Board and such Beneficial Owner are unable to agree upon the Fair Value within [10] Business Days of the Beneficial Owner giving notice of such dispute to the Company, the Board and such Beneficial Owner shall refer the matter to an independent investment banking, financial advisory or valuation firm or appraiser (an “**Independent Representative**”), mutually acceptable to the Company and the Beneficial Owner. The Company and the Beneficial Owner shall submit such materials as each of them, in their sole discretion, may deem necessary or appropriate to assist the Independent Representative in making its valuation, including an amount representing what it believes should be the Fair Value. Within [30] days of its appointment, the Independent Representative shall calculate a Fair Value based solely on the materials submitted to it by the Company and the Beneficial Owner, and report such Fair Value to the Company and the Beneficial Owner, which report shall be final, conclusive and binding on the Company and the Beneficial Owner absent manifest error or fraud; provided that the Fair Value calculated by the Independent Representative shall not be higher than the highest Fair Value, nor lower than the lowest Fair Value, submitted by the Company and the Beneficial Owner. Each of the Company and the Beneficial Owner shall be responsible for its own fees and expenses, including legal and other advisory fees, but the fees and expenses of the Independent Representative initially shall be borne 50% by the Company and 50% by the Beneficial Owner; provided, however, that the fees and expenses of the Independent Representative shall ultimately be allocated between the Company and the Beneficial Owner on a proportionate basis based on the difference between the Fair Value submitted by each of them and the Fair Value as determined by the Independent Representative.

“**Full Physical Settlement**” means the settlement method pursuant to which an exercising Beneficial Owner shall be entitled to receive from the Company, for each Warrant exercised, a number of Common Shares equal to the Full Physical Share Amount in exchange for payment by the Beneficial Owner of the applicable Exercise Price.

“**Full Physical Share Amount**” means, for each Warrant exercised as to which Full Physical Settlement is applicable, one Common Share.

“**Fundamental Equity Change**” has the meaning set forth in Section 4.04(a).

“**Global Warrant**” means a Warrant in the form of a Global Warrant.

“**Global Warrant Certificate**” means any certificate representing Warrants satisfying the requirements set forth in Section 2.04.

“**Global Warrant Holder**” means the Person acting as the Depository or nominee of the Depository in whose name Warrants are registered in the Warrant Register. The initial Global Warrant Holder shall be [•], as the Depository’s nominee.

“**Independent Representative**” has the meaning set forth in clause (v) of the definition of Fair Value.

“**Initial Beneficial Owners**” has the meaning set forth in the Recitals.

“**Law**” means any federal, state, local, foreign or provincial law, statute, ordinance, rule, regulation, judgment, order, injunction, decree or agency requirement having the force of law or any undertaking to or agreement with any governmental authority, including common law.

“**Management Incentive Plan**” has the meaning set forth in the Plan.

“**Net Share Amount**” means for each Warrant exercised as to which Net Share Settlement is applicable, a fraction of a Common Share equal to (i) the Fair Value (as of the Exercise Date for such Warrant) of one Common Share minus the Exercise Price for one Common Share specified in such Warrant *divided* by (ii) such Fair Value. The number of Common Shares issuable upon exercise, on the same Exercise Date, of Warrants as to which Net Share Settlement is applicable shall be aggregated, with Cash paid in respect of any fractional Common Share as provided in Section 3.05. In no event shall the Company deliver a fractional Common Share in connection with an exercise of Warrants as to which Net Share Settlement is applicable.

“**Net Share Settlement**” means the settlement method pursuant to which an exercising Beneficial Owner shall be entitled to receive from the Company, for each Warrant exercised, a number of Common Shares equal to the Net Share Amount without any payment of Cash therefor.

“**Non-Affiliate Combination**” means a Fundamental Equity Change where (i) the acquirer is a true third party and not an Affiliate of the Company or any of its or its Affiliates’ officers, directors, employees or members and (ii) all of the equity held by equity holders of the

Company (other than management) is extinguished or replaced by equity in a different Person (other than a Fundamental Equity Change in which the equity interests in the Company are replaced in a merger or other corporate combination with equity in the surviving Person that represents more than 50% of the total equity in the surviving Person).

“**Number of Warrants**” means the “Number of Warrants” specified on the face of the Global Warrant Certificate, subject to adjustment pursuant to Article 4.

“**Officer’s Certificate**” means a certificate signed by any Appropriate Officer or other duly authorized officer of the Company.

“**Open of Business**” means 9:00 a.m., New York City time.

“**Person**” means an individual, partnership, firm, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

“**Plan**” has the meaning set forth in the Recitals.

“**Record Date**” means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Shares have the right to receive any Cash, Securities or other property or in which Common Shares (or another applicable Security) are exchanged for or converted into, or any combination of, Cash, Securities or other property, the date fixed for determination of holders of Common Shares entitled to receive such Cash, Securities or other property or participate in such exchange or conversion (whether such date is fixed by the Board or by statute, contract or otherwise).

“**Reference Property**” has the meaning set forth in Section 4.05(a).

“**Reorganization Event**” has the meaning set forth in Section 4.05(a).

“**Representative**” has the meaning set forth in clause (iii) of the definition of Fair Value.

“**Securities**” means (i) any capital stock (whether Common Shares or preferred stock, voting or non-voting), partnership, membership or limited liability company interest or other equity or voting interest, (ii) any right, option, warrant or other security or evidence of indebtedness convertible into, or exercisable or exchangeable for, directly or indirectly, any interest described in clause (i), (iii) any notes, bonds, debentures, trust receipts and other obligations, instruments or evidences of indebtedness, and (iv) any other “securities,” as such term is defined or determined under the Securities Act.

“**Securities Act**” means the Securities Act of 1933, as amended from time to time, and the related rules and regulations promulgated thereunder.

“**Settlement Date**” means, in respect of a Warrant that is exercised hereunder, the third Business Day immediately following the Exercise Date for such Warrant.

“**Subsidiary**” means, as to any Person, any corporation, partnership, limited liability company or other organization, whether incorporated or unincorporated, of which at least a majority of the securities or other interests having by their terms voting power to elect a majority of the Board or others performing similar functions with respect to such corporation or other organization is directly or indirectly beneficially owned or controlled by such party or by any one or more of its subsidiaries, or by such party and one or more of its subsidiaries.

“**Third Party Tender Offer**” means the acquisition by a Person (other than (i) the Company or a wholly-owned Subsidiary of the Company or (ii) a Person or Persons who are Affiliated Buyers) in a tender offer or exchange offer of 50% or more of the outstanding Common Shares (determined on a fully-diluted basis).

“**Trading Day**” means each Monday, Tuesday, Wednesday, Thursday and Friday, other than any day on which Securities are not traded on the applicable securities exchange.

“**Transfer**” means, with respect to any Warrant, to directly or indirectly (whether by act, omission or operation of law), sell, exchange, transfer, hypothecate, negotiate, gift, convey in trust, pledge, assign, encumber, or otherwise dispose of, or by adjudication of a Person as bankrupt, by assignment for the benefit of creditors, by attachment, levy or other seizure by any creditor (whether or not pursuant to judicial process), or by passage or distribution of Warrants under judicial order or legal process, carry out or permit the transfer or other disposition of, all or any portion of such Warrant.

“**Transferee**” means a Person to whom any Warrant (or interest in the Global Warrant) is Transferred.

“**Unit of Reference Property**” has the meaning set forth in Section 4.05(a).

“**VWAP**” means, for any Trading Day, the price for Securities (including Common Shares) determined by the daily volume weighted average price per unit of such Securities for such Trading Day on the trading market on which such Securities are then listed or quoted, in each case, for the regular trading session (including any extensions thereof, without regard to pre-open or after hours trading outside of such regular trading session) as reported on the New York Stock Exchange or NASDAQ Stock Market, or if such Securities are not listed or quoted on the New York Stock Exchange or NASDAQ Stock Market, as reported by the principal U.S. national or regional securities exchange on which such Securities are then listed or quoted, whichever is applicable, as published by Bloomberg at 4:15 P.M., New York City time (or 15 minutes following the end of any extension of the regular trading session), on such Trading Day, or if such volume weighted average price is unavailable or in manifest error, the price per unit of such Securities using a volume weighted average price method selected by an independent nationally recognized investment bank or other qualified financial institution selected by the Board.

“**Warrants**” has the meaning set forth in the preamble.

“**Warrant Agent**” has the meaning set forth in the preamble.

“**Warrant Agreement**” has the meaning set forth in the preamble.

“**Warrant Register**” has the meaning set forth in Section 2.03(a).

Article 2

Issuance, Execution and Transfer of Warrants

Section 2.01 Issuance and Delivery of Warrants.

(a) On the Closing Date, the Company shall initially issue and execute (i) one Global Warrant (in accordance with Section 2.02) evidencing an initial aggregate Number of Warrants equal to [•] Common Shares (such Number of Warrants to be subject to adjustment from time to time as described herein), in accordance with the terms of this Warrant Agreement and shall deliver such Global Warrant to the Warrant Agent for authentication, along with a duly executed Authentication Order. The Warrant Agent shall then Transfer such Global Warrants to the Global Warrant Holder for crediting to the accounts of the applicable Initial Beneficial Owners pursuant to the procedures of the Depository and in accordance with the Plan on or after the Closing Date. The Global Warrant shall evidence one or more Warrants. Each Warrant evidenced thereby shall be exercisable (upon payment of the Exercise Price, unless Net Share Settlement has been specified with respect to such exercise, and compliance with the procedures set forth in this Warrant Agreement) for one Common Share. On the Closing Date, the Warrant Agent shall, upon receipt of such Global Warrant and Authentication Order, authenticate such Global Warrant in accordance with Section 2.02 and register such Global Warrant in the Warrant Register. The Global Warrant shall be dated as of the Closing Date and, subject to the terms hereof, shall evidence the only Warrants issued or outstanding under this Warrant Agreement. The Global Warrant Certificate shall be deposited on or after the date hereof with the Warrant Agent.

(b) All Warrants issued under this Warrant Agreement shall in all respects be equally and ratably entitled to the benefits hereof, without preference, priority, or distinction on account of the actual time of the issuance and authentication or any other terms thereof. Each Warrant shall be, and shall remain, subject to the provisions of this Warrant Agreement until such time as all of the Warrants evidenced thereby shall have been duly exercised or shall have expired or been canceled in accordance with the terms hereof. The Global Warrant Holder shall be bound by all of the terms and provisions of this Warrant Agreement as fully and effectively as if the Global Warrant Holder had signed the same.

(c) Any Warrant that is forfeited by a Beneficial Owner, cancelled as a result of being unclaimed in accordance with [Section 9.7] of the Plan, or repurchased by the Company shall be deemed to be no longer outstanding for all purposes of this Warrant Agreement.

Section 2.02 Execution and Authentication of Warrants.

(a) Each Global Warrant Certificate shall be executed on behalf of the Company by the Chief Executive Officer, President, the Chief Financial Officer, any Executive Vice President, any Senior Vice President or any Vice President, any Treasurer or Secretary (each, an “**Appropriate Officer**”) of the Company. The signature of any of the Appropriate Officers on a Global Warrant Certificate may be in the form of a facsimile or other electronically

transmitted signature (including, without limitation, electronic transmission in portable document format (.pdf)).

(b) Any Global Warrant Certificate bearing the signatures of individuals, each of whom was, at the time he or she signed such Global Warrant Certificate or his or her facsimile signature was affixed to such Global Warrant Certificate, as the case may be, an Appropriate Officer, shall bind the Company, notwithstanding that such individuals or any of them have ceased to be such an Appropriate Officer prior to the authentication of such Global Warrant by the Warrant Agent or was not such an Appropriate Officer at the date of such Global Warrant.

(c) No Global Warrant shall be entitled to any benefit under this Warrant Agreement or be valid or obligatory for any purpose unless there appears on the applicable Global Warrant Certificate a certificate of authentication substantially in the form provided for herein executed by the Warrant Agent, and such signature upon any Global Warrant Certificate shall be conclusive evidence, and the only evidence, that such Global Warrant has been duly authenticated and delivered hereunder. The signature of the Warrant Agent on any Global Warrant Certificate may be in the form of a facsimile or other electronically transmitted signature (including, without limitation) electronic transmission in portable document format (.pdf)).

Section 2.03 Registration, Transfer, Exchange and Substitution.

(a) The Company shall cause to be kept at the office of the Warrant Agent, and the Warrant Agent shall maintain, a register (the “**Warrant Register**”) in which the Company shall provide for the registration of any Global Warrant and Transfers, exchanges or substitutions of any Global Warrant as provided herein. Any Global Warrant issued upon any registration of Transfer or exchange of or substitution for any Global Warrant shall be a valid obligation of the Company, evidencing the same obligations, and entitled to the same benefits under this Warrant Agreement, as any Global Warrant surrendered for such registration of Transfer, exchange or substitution.

(b) Transfers of a Global Warrant shall be limited to Transfers in whole, and not in part, to the Company, the Depositary, their successors, and their respective nominees. A Global Warrant may be Transferred to such parties upon the delivery of a written instruction of Transfer in form reasonably satisfactory to the Warrant Agent and the Company, duly executed by the Global Warrant Holder or by such Global Warrant Holder’s attorney, duly authorized in writing. No such Transfer shall be effected until, and the Transferee shall succeed to the rights of the Global Warrant Holder only upon, final acceptance and registration of the Transfer in the Warrant Register by the Warrant Agent. Prior to the registration of any Transfer of a Global Warrant by the Global Warrant Holder as provided herein, the Company, the Warrant Agent, and any agent of the Company or the Warrant Agent may treat the Person in whose name such Global Warrant is registered as the owner thereof for all purposes, notwithstanding any notice to the contrary. To permit a registration of a Transfer of a Global Warrant, the Company shall execute a Global Warrant Certificate at the Warrant Agent’s request and the Warrant Agent shall authenticate such Global Warrant Certificates. Any such Global Warrant Certificate shall be deposited on or after the date hereof with the Warrant Agent. No service charge shall be made for any such registration of Transfer. A party requesting transfer of a Global Warrant must

provide any evidence of authority that may be required by the Warrant Agent, including but not limited to, a medallion signature guarantee from an eligible guarantor institution participating in a medallion signature guarantee program approved by the Securities Transfer Association, Inc.

(c) Interests of Beneficial Owners in a Global Warrant registered in the name of the Depository or its nominee shall only be Transferred in accordance with the procedures of the Depository and applicable Law.

(d) So long as any Global Warrant is registered in the name of the Depository or its nominee, the Beneficial Owners shall have no rights under this Warrant Agreement with respect to such Global Warrant held on their behalf by the Depository, and the Depository may be treated by the Company, the Warrant Agent and any agent of the Company or the Warrant Agent as the absolute owner of such Global Warrant for all purposes. Accordingly, any such Beneficial Owner's interest in such Global Warrant will be shown only on, and the Transfer of such interest shall be effected only through, records maintained by the Depository or its nominee, and neither the Company nor the Warrant Agent, acting in its capacity as such, shall have any responsibility or liability with respect to such records maintained by the Depository or its nominee. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Warrant Agent or any agent of the Company or the Warrant Agent from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair the operation of customary practices of the Depository governing the exercise of the rights of a Beneficial Owner.

Section 2.04 Form of Global Warrant Certificates. Each Global Warrant Certificate shall be in substantially the form set forth in Exhibit A hereto and each Global Warrant Certificate shall have such insertions as are appropriate or required by this Warrant Agreement and may have such letters, numbers or other marks of identification and such legends and endorsements, stamped, printed, lithographed or engraved thereon, as the Company may deem appropriate and as are not inconsistent with the provisions of this Warrant Agreement, such as may be required to comply with this Warrant Agreement, any Law or any rule of any securities exchange on which Warrants may be listed, and such as may be necessary to conform to customary usage.

Section 2.05 Cancellation of the Global Warrant Certificates. Any Global Warrant Certificate shall be promptly cancelled by the Warrant Agent upon the earlier of (i) the Expiration Date, (ii) the mutilation of the Global Warrant Certificate as described in Section 5.02, or (iii) registration of Transfer or exercise of all Warrants represented thereby and, except as provided in this Article 2 in case of a Transfer or Section 5.02 in case of mutilation, no Global Warrant Certificate shall be issued hereunder in lieu thereof.

Section 2.06 Limitations on Transfer. Notwithstanding any other provision of this Warrant Agreement, the Warrants are being offered and sold, and the Common Shares issuable upon exercise thereof are being offered and sold, pursuant to an exemption from the registration requirement of Section 5 of the Securities Act provided by Section 1145 of the Bankruptcy Code, and to the extent that any Beneficial Owner is an "underwriter" as defined in Section 1145(b)(1) of the Bankruptcy Code, such Beneficial Owner may not be able to sell or transfer any Warrants in the absence of an effective registration statement under the Securities Act or an exemption

from registration thereunder. Notwithstanding anything contained in this Warrant Agreement (but without limiting or modifying any express obligation of the Warrant Agent hereunder), the Warrant Agent shall not be under any duty or responsibility to ensure compliance by the Company, the Global Warrant Holder, any Beneficial Owner or any other Person with any applicable federal or state securities or bankruptcy Laws.

Article 3

Exercise and Settlement of Warrants

Section 3.01 Exercise of Warrants. At any time following the Closing Date and prior to Close of Business on the Expiration Date, each Warrant may be exercised, in accordance with this Article 3. Any Warrants not exercised prior to the Expiration Date shall expire unexercised and all rights thereunder and all rights in respect thereof under this Warrant Agreement shall cease as of the Close of Business on the Expiration Date. Only whole Warrants may be exercised.

Section 3.02 Procedure for Exercise.

(a) To exercise each Warrant, a Beneficial Owner must arrange for (i) the delivery of the Exercise Notice, duly completed and executed thereby, to the principal office of the Warrant Agent and the Company, (ii) if Full Physical Settlement is elected, payment to the Warrant Agent in an amount equal to the Exercise Price for each Warrant to be exercised together with all applicable taxes and charges thereto, (iii) delivery of each Warrant to be exercised through the facilities of the Depository and (iv) compliance with all other procedures established by the Depository and the Warrant Agent for the exercise of Warrants.

(b) The date on which all the requirements for exercise set forth in this Section 3.02 in respect of a Warrant are satisfied is the “**Exercise Date**” for such Warrant.

(c) Subject to Section 3.02(e) and Section 3.02(f), any exercise of a Warrant pursuant to the terms of this Warrant Agreement shall be irrevocable and enforceable in accordance with its terms.

(d) All funds received by the Warrant Agent under this Agreement that are to be distributed or applied by the Warrant Agent in the performance of services in accordance with this Agreement (the “**Funds**”) shall be held by the Warrant Agent as agent for the Company and deposited in one or more bank accounts to be maintained by the Warrant Agent in its name as agent for the Company (the “**Funds Account**”). Until paid pursuant to the terms of this Agreement, the Warrant Agent will hold the Funds through the Funds Account in: deposit accounts of commercial banks with Tier 1 capital exceeding \$1 billion or with an average rating above investment grade by S&P (LT Local Issuer Credit Rating), Moody’s (Long Term Rating) and Fitch Ratings, Inc. (LT Issuer Default Rating) (each as reported by Bloomberg Finance L.P.). The Warrant Agent shall have no responsibility or liability for any diminution of the Funds that may result from any deposit made by the Warrant Agent in accordance with this paragraph, including any losses resulting from a default by any bank, financial institution or other third party. The Warrant Agent may from time to time receive interest, dividends or other

earnings in connection with such deposits. The Warrant Agent shall pay such interest, dividends or earnings to the Company promptly upon receipt.

(e) The Company shall assist and cooperate with any Beneficial Owner required to make any governmental filings or obtain any governmental approvals prior to or in connection with any exercise of a Warrant (including, without limitation, making any filings required to be made by the Company), and any exercise of a Warrant may be made contingent upon the making of any such filing and the receipt of any such approval.

(f) Notwithstanding any other provision of this Warrant Agreement, if the exercise of any Warrant is to be made in connection with a registered public offering or a Change of Control, such exercise may, upon proper election in the Exercise Notice, be conditioned upon consummation of such transaction or event in which case such exercise shall not be deemed effective until the consummation of such transaction or event.

(g) The Warrant Agent shall forward funds deposited in the Funds Account in a given month by the fifth Business Day of the following month by wire transfer to an account designated by the Company.

(h) The Company hereby instructs the Warrant Agent to record tax basis for newly issued Common Shares as follows: the tax basis of each newly issued Common Share equals the tax basis of the exercised Warrant plus the Exercise Price. The Company shall provide the tax basis of the Warrants no later than 90 days after the Closing Date.

(i) Payment of the Exercise Price by or on behalf of a Beneficial Owner upon exercise of Warrants, in the case of Full Physical Settlement, shall be by federal wire or other immediately available funds payable to the order of the Company to the account maintained by the Warrant Agent in its name as agent for the Company. The Warrant Agent shall provide an exercising Beneficial Owner, upon request, with the appropriate payment instructions.

Section 3.03 Settlement of Warrants.

(a) Full Physical Settlement shall apply to each Warrant unless the Beneficial Owner elects for Net Share Settlement to apply upon exercise of such Warrant. Such election shall be made in the Exercise Notice for such Warrant.

(b) If Full Physical Settlement applies to the exercise of a Warrant, upon the proper and valid exercise thereof by a Beneficial Owner the Company shall cause to be delivered to the exercising Beneficial Owner the Full Physical Settlement Amount.

(c) If Net Share Settlement applies to the exercise of a Warrant, upon the proper and valid exercise thereof by a Beneficial Owner the Company shall cause to be delivered to the exercising Beneficial Owner the Net Share Amount, together with Cash in respect of any fractional Common Share as provided in Section 3.05.

(d) If there is a dispute as to the calculation of the number of Common Shares to be delivered to an exercising Beneficial Owner, the Company shall cause to be promptly delivered to the number of Common Shares and Cash that is not in dispute.

Section 3.04 Delivery of Common Shares.

(a) In connection with the exercise of Warrants, the Warrant Agent shall:

(1) examine all Exercise Notices and all other documents delivered to it to ascertain whether, on their face, such Exercise Notices and any such other documents have been executed and completed in accordance with their terms;

(2) where an Exercise Notice or other document appears on its face to have been improperly completed or executed or some other irregularity in connection with the exercise of the Warrant exists, endeavor to inform the appropriate parties (including the Person submitting such instrument) of the need for fulfillment of all requirements, specifying those requirements which appear to be unfulfilled;

(3) inform the Company of and cooperate with and assist the Company in resolving any reconciliation problems between the Exercise Notices received and delivery of Warrants to the Warrant Agent's account;

(4) advise the Company with respect to an exercise, no later than two Business Days following the satisfaction of each of the applicable procedures for exercise set forth in Section 3.02(a), of (v) the receipt of such Exercise Notice and the number of Warrants exercised in accordance with the terms and conditions of this Warrant Agreement, (w) the number of Common Shares and amount of Cash in lieu of any fractional share interest to be delivered and paid by the Company; (x) the instructions with respect to issuance of the Common Shares and Cash in lieu of any fractional share interest, subject to the timely receipt from the Depository of the necessary information, (y) the number of Persons who will become holders of record of the Company (who were not previously holders of record) as a result of receiving Common Shares upon exercise of the Warrants and (z) such other information as the Company shall reasonably require;

(5) promptly deposit in the Funds Account all Funds received in payment of the Exercise Price in connection with Full Physical Settlement of Warrants;

(6) promptly cancel and destroy a Global Warrant Certificate if all Warrants represented thereby have been exercised in full and deliver a certificate of destruction to the Company, unless the Company shall otherwise direct in writing;

(7) if all Warrants represented by a Global Warrant Certificate shall not have been exercised in full, note and authenticate such decrease in the Number of Warrants on Schedule A of such Global Warrant Certificate; and

(8) provide to the Company, upon the Company's request, the number of Warrants previously exercised, the number of Common Shares issued in connection with such exercises and the number of remaining outstanding Warrants.

(b) With respect to each properly exercised Warrant in accordance with this Warrant Agreement, the Company shall cause its transfer agent to issue, in book-entry form at the transfer agent or through the Depository, the Common Shares due in connection with such

exercise for the benefit and in the name of the Person designated by the Beneficial Owner submitting the applicable Exercise Notice. The Person on whose behalf and in whose name any Common Shares are registered shall for all purposes be deemed to have become the holder of record of such Common Shares as of the Close of Business on the applicable Exercise Date.

(c) Promptly after the Warrant Agent shall have taken the action required by this Section 3.04 (or at such later time as may be mutually agreeable to the Company and the Warrant Agent), the Warrant Agent shall account to the Company with respect to the consummation of any exercise of any Warrants.

Section 3.05 No Fractional Common Shares to Be Issued.

(a) Notwithstanding anything to the contrary in this Warrant Agreement, the Company shall not be required to issue any fraction of a Common Share upon exercise of any Warrants.

(b) If any fraction of a Common Share would, except for the provisions of this Section 3.05, be issuable on the exercise of any Warrants, the Company shall instead pay to the Person designated in the applicable Exercise Notice to receive such payment Cash in an amount equal to the quotient determined by multiplying the Fair Value of one Common Share on the related Exercise Date by such fraction. All Warrants exercised by a Beneficial Owner on the same Exercise Date shall be aggregated for purposes of determining the number of Common Shares to be delivered pursuant to Section 3.04(b) and Cash in lieu of any fractional share interest pursuant to this Section 3.05.

(c) Each Beneficial Owner, by its acceptance of an interest in a Warrant, expressly waives its right to any fraction of a Common Share upon its exercise of such Warrant in favor of the Cash payment contemplated by this Section 3.05.

Section 3.06 Acquisition of Warrants by Company. The Company shall have the right, except as limited by Law or the certificate of incorporation as in effect as of the Closing Date, to purchase or otherwise to acquire one or more Warrants at such times, in such manner and for such consideration as it may deem appropriate.

Section 3.07 Validity of Exercise. All questions as to the validity, form and sufficiency (including time of receipt) of a Warrant exercise shall be determined by the Company, which determination shall be final and binding with respect to the Warrant Agent. The Warrant Agent shall incur no liability for or in respect of and, except to the extent such liability arises from the Warrant Agent's gross negligence, willful misconduct or bad faith (as determined by a court of competent jurisdiction in a final non-appealable judgment), shall be indemnified and held harmless by the Company for acting or refraining from acting upon, or as a result of such determination by the Company. The Company reserves the absolute right to waive any of the conditions to the exercise of Warrants or defects in Exercise Notices with regard to any particular exercise of Warrants.

Section 3.08 Certain Calculations .

(a) The Warrant Agent shall be responsible for performing all calculations required in connection with the exercise and settlement of the Warrants as described in this Article 3. In connection therewith, the Warrant Agent shall provide prompt written notice to the Company, in accordance with Section 3.04(a)(4), of the number of Common Shares deliverable and Cash in lieu of any fractional share interest payable upon exercise and settlement of Warrants. For the avoidance of doubt, the Warrant Agent shall not be responsible for performing the calculations set forth in Article 4.

(b) The Warrant Agent shall not be accountable with respect to the validity or value of any Common Shares or Units of Reference Property that may at any time be issued or delivered upon the exercise of any Warrant, and it makes no representation with respect thereto. The Warrant Agent shall not be responsible, to the extent not arising from the Warrant Agent's gross negligence, willful misconduct or bad faith (as determined by a court of competent jurisdiction in a final non-appealable judgment), for any failure of the Company to make any Cash payment or to issue, transfer or deliver any Common Shares or Units of Reference Property, or to comply with any of the covenants of the Company contained in this Article 3.

Article 4

Adjustments

Section 4.01 Adjustments to Number of Warrants. In the event of the issuance of Common Shares (or Convertible Securities) as a dividend or distribution to all holders of Common Shares, or a subdivision, combination, split, reverse split or reclassification of the outstanding Common Shares into a greater or smaller number of Common Shares, the Number of Warrants will be adjusted such that the Number of Warrants in effect immediately following the effectiveness of such adjustment will be equal to the Number of Warrants in effect immediately prior to such adjustment, multiplied by a fraction, (i) the numerator of which is the total number of issued and outstanding Common Shares immediately following such event and (ii) the denominator of which is the total number of issued and outstanding Common Shares immediately prior to such event, provided that, for the purpose of calculations pursuant to Section 4.01, the number of Common Shares outstanding shall be equal to the sum of (i) the number of Common Shares issued and outstanding and (ii) the number of Common Shares issuable pursuant to the conversion or exercise of Convertible Securities (on the basis of Full Physical Settlement, if applicable) that are outstanding, in each case on the applicable date of determination.

Section 4.02 Stockholder Rights Plans. If the Company has a stockholder rights plan in effect with respect to the Common Shares, upon exercise of a Warrant the holder shall be entitled to receive, in addition to the Common Shares, the rights under such stockholder rights plan, unless, prior to such exercise, such rights have separated from the Common Shares, in which case the Number of Warrants shall be adjusted at the time of separation as if the Company had made a distribution to all holders of Common Shares as described in Section 4.01, subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 4.03 Restrictions on Adjustments.

(a) Except in accordance with Section 4.01, the Number of Warrants will not be adjusted for the issuance of Common Shares or other Securities of the Company.

(b) For the avoidance of doubt, neither the Number of Warrants will be adjusted:

(1) upon the issuance of any Securities by the Company on or after the Closing Date pursuant to the Plan or upon the issuance of Common Shares upon the exercise of such Securities;

(2) upon the issuance of any Common Shares or other Securities or any payments pursuant to the Management Incentive Plan or any other equity incentive plan of the Company;

(3) upon any issuance of any Common Shares (or Convertible Securities) pursuant to the exercise of the Warrants;

(4) upon the offer and sale of Common Shares by the Company in a registered primary offering at a price that is less than Fair Value for Common Shares at the time of such offer and sale;

(5) upon the issuance of Common Shares or other Securities of the Company in connection with a business acquisition transaction (except to the extent otherwise expressly required by this Warrant Agreement); and

(6) upon the issuance of any Common Shares or other Securities of the Company upon the conversion or exercise of any Convertible Securities issued after the Closing Date if such issuance has been subject to the provisions of this Section 4, whether or not any adjustments were made upon such original issuance.

(c) No adjustment shall be made to the Number of Warrants for any of the transactions described in Section 4.01 if the Company makes provisions for participation in any such transaction with respect to Warrants without exercise of such Warrants on the same basis as with respect to Common Shares with notice that the Board determines in good faith to be fair and appropriate.

(d) If the Company takes a record of the holders of Common Shares for the purpose of entitling them to receive a dividend or other distribution, and thereafter (and before the dividend or distribution has been paid or delivered to members) legally abandons its plan to pay or deliver such dividend or distribution, then thereafter no adjustment to the Number of Warrants then in effect shall be required by reason of the taking of such record.

Section 4.04 Successor upon Consolidation, Merger and Sale of Assets.

(a) Other than with respect to a Non-Affiliate Combination, the Company may consolidate or merge with another Person (a “**Fundamental Equity Change**”) only (i) if the Company is the surviving Person or (ii), if the Company is not the surviving Person, then:

(1) the successor to the Company assumes all of the Company’s obligations under this Warrant Agreement and the Warrants; and

(2) the successor to the Company provides written notice of such assumption to the Warrant Agent promptly following the Fundamental Equity Change.

(b) In the case of a Fundamental Equity Change other than a Non-Affiliate Combination, the successor Person to the Company shall succeed to and be substituted for the Company with the same effect as if it had been named herein as the Company, and the Company shall thereupon be released from all obligations and covenants under this Warrant Agreement and the Warrants. Such successor Person shall provide in writing the Warrant Agent with such identifying corporate information as may be reasonably requested by the Warrant Agent. Such successor Person thereafter may cause to be signed, and may issue any or all of, the Global Warrants issuable pursuant to this Warrant Agreement which theretofore shall not have been issued by the Company; and, upon the order of such successor Person, instead of the Company, and subject to all the terms, conditions and limitations in this Warrant Agreement prescribed, the Warrant Agent shall authenticate and deliver, as applicable, any Global Warrants that previously shall have been signed and delivered by the officers of the Company to the Warrant Agent for authentication, and any Warrants which such successor Person thereafter shall cause to be signed and delivered to the Warrant Agent for such purpose.

(c) If the Company desires to sell, lease, convey or otherwise transfer in one transaction or a series of related transactions all or substantially all of the consolidated assets of the Company and its Subsidiaries (an “**Asset Sale**”) to any Affiliated Buyer (such Asset Sale, an “**Affiliated Asset Sale**”), the Company may only consummate such Affiliated Asset Sale if such Affiliated Buyer agrees (i) to enter into a warrant agreement in form and substance substantially similar to this Warrant Agreement and (ii) to issue warrants for equity in such Affiliated Buyer (or a Person to which all or substantially all of the assets of the Company and its Subsidiaries acquired in such Asset Sale are transferred or conveyed) to the Global Warrant Holder on terms (including economic) and conditions substantially similar to the Global Warrant (taking into account any Warrants that are exercised prior to the Expiration Date (as defined in clause (ii)(A) of the definition of Expiration Date and taking into account the materiality of the transferred assets to the total assets and operations of the Affiliated Buyer, taken as a whole), for crediting to the accounts of the applicable Beneficial Owners pursuant to the procedures of the Depository.

Section 4.05 Adjustment upon Reorganization Event.

(a) If there occurs any Fundamental Equity Change (whether or not a Non-Affiliate Combination) or any recapitalization, reorganization, consolidation, reclassification, change in the outstanding Common Shares (other than changes resulting from a subdivision or combination to which Section 4.01 applies), statutory share exchange or other transaction (each

such event a “**Reorganization Event**”), in each case as a result of which the Common Shares would be converted into, changed into or exchanged for, stock, other securities, other property or assets (including Cash or any combination thereof) (the “**Reference Property**”) while any Warrants remain outstanding and unexpired, then following the effective time of the Reorganization Event, the right to receive Common Shares upon exercise of a Warrant shall be changed to a right to receive, upon exercise of such Warrant, the kind and amount of shares of stock, other securities or other property or assets (including Cash or any combination thereof) that a holder of one Common Share would have owned or been entitled to receive in connection with such Reorganization Event (such kind and amount of Reference Property per Common Share, a “**Unit of Reference Property**”). In the event holders of Common Shares have the opportunity to elect the form of consideration to be received in a Reorganization Event, the type and amount of consideration into which the Warrants shall be exercisable from and after the effective time of such Reorganization Event shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Shares in such Reorganization Event. The Company hereby agrees not to become a party to, nor to cause or permit, any Reorganization Event unless its terms are consistent with this Section 4.05.

(b) At any time from, and including, the effective time of a Reorganization Event:

(1) each Warrant shall be exercisable for a single Unit of Reference Property instead of one Common Share; and

(2) the Fair Value shall be calculated with respect to a Unit of Reference Property.

(c) On or prior to the effective time of any Reorganization Event (whether or not a Non-Affiliate Combination), the Company or the successor or purchasing Person, as the case may be, shall execute an amendment to this Warrant Agreement providing that the Warrants shall be exercisable for Units of Reference Property in accordance with the terms of this Section 4.05. If the Reference Property in connection with any Reorganization Event includes shares of stock or other securities and assets of a Person other than the successor or purchasing Person, as the case may be, in such Reorganization Event, then the Company shall cause such amendment to this Warrant Agreement to be executed by such other Person and such amendment shall contain such additional provisions to protect the interests of the Global Warrant Holder (for the benefit of the Beneficial Owners) as the Board shall reasonably consider necessary by reason of the foregoing. Any such amendment to this Warrant Agreement shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 4. In the event the Company shall execute an amendment to this Warrant Agreement pursuant to this Section 4.05, the Company shall promptly file with the Warrant Agent an Officers’ Certificate briefly stating the reasons therefor, the kind or amount of Cash, securities or property or assets that will comprise a Unit of Reference Property after the relevant Reorganization Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with. The Company shall cause notice of the execution of the amendment to be mailed to the Global Warrant Holder within 20 Business Days after execution thereof.

(d) The above provisions of this Section 4.05 shall similarly apply to successive Reorganization Events.

(e) If this Section 4.05 applies to any event or occurrence, no other provision of this Article 4 shall apply to such event or occurrence (other than Section 4.04).

Section 4.06 Common Shares Outstanding; Common Shares Reserved for Issuance on Exercise.

(a) For the purposes of this Article 4, the number of Common Shares at any time outstanding shall not include Common Shares held, directly or indirectly, by the Company or any of its Subsidiaries.

(b) The Board has authorized and reserved for issuance such number of Common Shares as will be issuable upon the exercise of all outstanding Warrants for Common Shares, and the Board shall authorized and reserve for issuance such additional number of Common Shares as may be required as a result of any of the adjustments set forth in this Article 4. The Company covenants that all Common Shares that shall be so issuable shall be duly and validly issued, fully paid and non-assessable.

(c) The Company agrees to authorize and direct its current and future transfer agents for the Common Shares to reserve for issuance the number of Common Shares specified in this Section 4.06 and shall take all action required to increase the authorized number of Common Shares if at any time there shall be insufficient authorized but unissued Common Shares to permit such reservation or to permit the exercise of a Warrant, including an increase as may be required as a result of adjustments set forth in this Article 4. Promptly after the Expiration Date, the Warrant Agent shall certify to the Company the aggregate Number of Warrants then outstanding, and thereafter no Common Shares shall be required to be reserved in respect of such Warrants.

Section 4.07 Calculations; Instructions to Warrant Agent .

(a) Subject to Section 4.07(b), the Company shall be responsible for making all calculations called for under this Article 4 for purposes of determining any adjustments to the Number of Warrants, including determinations as to Fair Value and the composition of Units of Reference Property. Such calculations and determinations shall be final and binding on the Global Warrant Holder and all Beneficial Owners absent manifest error. The Company shall provide a schedule of the Company's calculations and determinations to the Warrant Agent, and the Warrant Agent is entitled to rely upon the accuracy of the Company's calculations without independent verification.

(b) In the event the Board engages a Representative to advise it with respect to the determination of Fair Value, the Board shall be entitled to rely upon the determination of such Representative. Subject to the last sentence of clause (v) of the definition of "Fair Value", the Company shall pay the fees and expenses of any Representative.

Section 4.08 Notice of Adjustments. The Company shall mail, or cause to be mailed, to the Global Warrant Holder and the Warrant Agent, in accordance with Section 6.14, a notice of

any adjustment or readjustment to the Number of Warrants no less than three Business Days prior to the effective date of such adjustment or readjustment. The Company shall file with the Warrant Agent such notice and an Officer's Certificate setting forth such adjustment or readjustment and kind and amount of securities, Cash or other property for which a Warrant shall thereafter be exercisable, showing in reasonable detail the facts upon which such adjustment or readjustment is based. The Officer's Certificate shall be conclusive evidence that the adjustment or readjustment is correct, and the Warrant Agent shall not be deemed to have any knowledge of any adjustments or readjustments unless and until it has received such Officer's Certificate. The Warrant Agent shall not be under any duty or responsibility with respect to any such Officer's Certificate except to exhibit the same to the Global Warrant Holder.

Section 4.09 Warrant Agent Not Responsible for Adjustments or Validity. The Warrant Agent shall at no time be under any duty or responsibility to determine whether any facts exist that may require an adjustment or readjustment of the Number of Warrants, or with respect to the nature or extent of any such adjustment or readjustment when made, or with respect to the method employed, herein or in any supplemental agreement provided to be employed, in making the same. The Warrant Agent shall have no duty to verify or confirm any calculation called for hereunder. The Warrant Agent shall have no liability for any failure or delay in performing its duties hereunder caused by any failure or delay of the Company in providing such calculations to the Warrant Agent. The Warrant Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any Common Shares or of any Securities or property which may at any time be issued or delivered upon the exercise of any Warrant or upon any adjustment or readjustment pursuant to this Article 4, and it makes no representation with respect thereto. The Warrant Agent shall not be responsible for any failure of the Company to make any Cash payment or to issue, transfer or deliver any Common Shares or stock certificates or other securities or property or scrip upon the surrender of any Warrant for the purpose of exercise or upon any adjustment pursuant to this Article 4, or to comply with any of the covenants of the Company contained in this Article 4.

Section 4.10 Statements on Warrants. Other than notation of any applicable increase or decrease in the Number of Warrants on Schedule A of such Global Warrant Certificate, the form of Global Warrant Certificate need not be changed because of any adjustment or readjustment made pursuant to this Article 4, and Global Warrant Certificates issued after such adjustment or readjustment may state the same information (other than the adjusted Number of Warrants) as are stated in the Global Warrant Certificates initially issued pursuant to this Warrant Agreement.

Section 4.11 Effect of Adjustment. The Depository and applicable shall effect any applicable adjustments, changes or payments to the Beneficial Owners with respect to beneficial interests in the Global Warrants resulting from any adjustments or readjustments, changes or payments effected pursuant to this Article 4 in accordance with the procedures of the Depository.

Article 5

Other Provisions Relating to Rights of Global Warrant Holder

Section 5.01 No Rights as Stockholders. Nothing contained in this Warrant Agreement or in any Global Warrant Certificate shall be construed as conferring upon any Person, by virtue

of holding or having a beneficial interest in the Global Warrant, the right to vote, to consent, to receive any Cash dividends, stock dividends, allotments or rights or other distributions paid, allotted or distributed or distributable to the holders of Common Shares, or to exercise any rights whatsoever as a stockholder of the Company unless, until and only to the extent such Persons become holders of record of Common Shares issued upon settlement of Warrants.

Section 5.02 Mutilated or Missing Global Warrant Certificates. If any Global Warrant Certificate held by the Warrant Agent at any time is mutilated, defaced, lost, destroyed or stolen, then on the terms set forth in this Warrant Agreement, such Global Warrant Certificate may be replaced with a new Global Warrant Certificate, of like date and tenor and representing the same number of Warrants, at the cost of the Company at the office of the Warrant Agent subject to the replacement procedures of the Warrant Agent which shall include obtaining an open penalty surety bond satisfactory to the Warrant Agent holding the Company and the Warrant Agent harmless. Any such new Global Warrant Certificate shall constitute an original contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated or destroyed Global Warrant Certificate shall be at any time enforceable by anyone. All Global Warrant Certificates shall be issued upon the express condition that the foregoing provisions are exclusive with respect to the substitution for lost, stolen, mutilated or destroyed Global Warrant Certificates, and shall preclude any and all other rights or remedies notwithstanding any Law or statute existing or hereafter enacted to the contrary with respect to the substitution for and replacement of negotiable instruments or other securities without their surrender.

Section 5.03 Modification, Waiver and Meetings.

(a) This Warrant Agreement may be modified or amended by the Company and the Warrant Agent, without the consent of the Global Warrant Holder or any Beneficial Owner of any Warrant with respect to any Warrant, for the purposes of curing any ambiguity or correcting or supplementing any defective provision contained in this Warrant Agreement or to make any other provisions in regard to matters or questions arising in this Warrant Agreement which the Company and the Warrant Agent may deem necessary or desirable; provided that such modification or amendment does not adversely affect the interests of the Global Warrant Holder or the Beneficial Owners in any material respect. As a condition precedent to the Warrant Agent's execution of any amendment, the Company shall deliver to the Warrant Agent a certificate from an Appropriate Officer that states that the proposed amendment is in compliance with the terms of this Section 5.03.

(b) Modifications and amendments to this Warrant Agreement or to the terms and conditions of Warrants not contemplated by Section 5.03(a) may also be made by the Company and the Warrant Agent, and noncompliance with any provision of the Warrant Agreement or Warrants may be waived, by the Global Warrant Holder (pursuant to a proper vote or consent of a majority of the Warrants at the time outstanding). Notwithstanding anything to the contrary herein, the Company may amend Schedule I from time to time to accurately reflect the name and address of the Global Warrant Holder after the Closing Date without any further consent or agreement from any other Person.

(c) However, no modification, amendment or waiver may, without the written consent of:

(1) the Global Warrant Holder (pursuant to a proper vote or consent of each Warrant):

(A) change the Expiration Date; or

(B) increase an Exercise Price or decrease the Number of Warrants (except as set forth in Article 4);

(2) the Global Warrant Holder (pursuant to a proper vote or consent of 66.66% of the Warrants affected):

(A) impair the right to institute suit for the enforcement of any payment or delivery with respect to the exercise and settlement of any Warrant;

(B) except as otherwise expressly permitted by provisions of this Warrant Agreement concerning specified reclassifications or corporate reorganizations, impair or adversely affect the exercise rights with respect to Warrants, including any change to the calculation or payment of the number of Common Shares received upon exercise of each Warrant;

(C) reduce the percentage of Warrants outstanding necessary to modify or amend this Warrant Agreement or to waive any past default;

(D) amend any of the terms of Article 4 in any matter that could adversely effect the rights of the Beneficial Owners with respect to any adjustments to the number of Warrants as set forth therein; or

(E) reduce the percentage in Warrants outstanding required for any other waiver under this Warrant Agreement.

Section 5.04 Notices of Date, etc. In the event of any Change of Control, then, and in each such case, the Company will mail or cause to be mailed to the Global Warrant Holder, at least 15 days prior to the effective date, a notice specifying the effective date on which such Change of Control is or is expected to take place, and the time, if any is to be fixed, as of which the holders of record of Common Shares (or such other stock or Securities at the time deliverable upon the exercise of a Warrant) shall be entitled to exchange their Common Shares (or such other stock or Securities) for Securities or other property deliverable upon such Change of Control.

Section 5.05 Notice. In the event:

(1) that the Company shall take a record of the holders of its Common Shares (or other capital stock or securities at the time issuable upon conversion of the Series A Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, to vote at a meeting (or by written consent), to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security;

(2) of any capital reorganization of the Company, any reclassification of the Common Stock of the Corporation, any consolidation or merger of the Corporation with or into another Person, or sale of all or substantially all of the Company's assets to another Person;

(3) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company;

(4) of the payment of any stock dividends or distributions; or

(5) of a pro rata offer to purchase shares of the Company;

then, and in each such case, the Company shall send or cause to be sent to each Beneficial Owner at the address specified for such Beneficial Owner in the book-entry system maintained by the Depository (or its agent) at least ten (10) days prior to the applicable record date or the applicable expected effective date, as the case may be, for the event, a written notice specifying, as the case may be, (A) the record date for such dividend, distribution, pro rata stock repurchase, meeting, offer or consent or other right or action, and a description of such dividend, distribution, pro rata stock repurchase, meeting, offer or consent or other right or action to be taken at such meeting or by written consent, or (B) the effective date on which such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up is proposed to take place, and the date, if any is to be fixed, as of which the books of the Company shall close or a record shall be taken with respect to which the holders of record of Common Shares shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up.

Article 6

Concerning the Warrant Agent and Other Matters³

Section 6.01 Payment of Certain Taxes.

(a) The Company shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable upon the initial issuance of the Global Warrant hereunder and delivery to the Global Warrant Holder.

(b) The Company shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable upon the issuance of Common Shares upon the exercise of Warrants hereunder.

Section 6.02 Change of Warrant Agent.

(a) The Warrant Agent, or any successor to it hereafter appointed, may resign its duties and be discharged from all further duties and liabilities hereunder (except for liability arising as a result of the Warrant Agent's own gross negligence, willful misconduct or bad faith)

³ NTD: To be reviewed by the Warrant Agent.

after giving sixty days' notice in writing to the Company, except that such shorter notice may be given as the Company shall, in writing, accept as sufficient. If the office of the Warrant Agent becomes vacant by resignation or incapacity to act or otherwise, the Company shall appoint in writing a successor warrant agent in place of the Warrant Agent. If the Company shall fail to make such appointment within a period of thirty days after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated warrant agent or by the Global Warrant Holder, then the Global Warrant Holder may apply to any court of competent jurisdiction for the appointment of a successor warrant agent.

(b) The Warrant Agent may be removed by the Company at any time upon sixty days' written notice to the Warrant Agent; provided, however, that the Company shall not remove the Warrant Agent until a successor warrant agent meeting the qualifications hereof shall have been appointed; provided, further, that, until such successor warrant agent has been appointed, the Company shall compensate the Warrant Agent in accordance with Section 6.03.

(c) Any successor warrant agent, whether appointed by the Company or by such a court, shall be a corporation or banking association organized, in good standing and doing business under the Laws of the United States of America or any state thereof or the District of Columbia, and authorized under such Laws to exercise corporate trust powers and subject to supervision or examination by federal or state authority and having a combined capital and surplus of not less than \$50,000,000. The combined capital and surplus of any such successor warrant agent shall be deemed to be the combined capital and surplus as set forth in the most recent report of its condition published prior to its appointment; provided that such reports are published at least annually pursuant to Law or to the requirements of a federal or state supervising or examining authority. After acceptance in writing of such appointment by the successor warrant agent, such successor warrant agent shall be vested with all the authority, powers, rights, immunities, duties and obligations of its predecessor warrant agent with like effect as if originally named as warrant agent hereunder, without any further act or deed; but if for any reason it becomes necessary or appropriate, the predecessor warrant agent shall execute and deliver, at the expense of the Company, an instrument transferring to such successor warrant agent all the authority, powers and rights of such predecessor warrant agent hereunder; and upon request of any successor warrant agent, the Company shall make, execute, acknowledge and deliver any and all instruments in writing to more fully and effectually vest in and conform to such successor warrant agent all such authority, powers, rights, immunities, duties and obligations. Upon assumption by a successor warrant agent of the duties and responsibilities hereunder, the predecessor warrant agent shall deliver and transfer, at the expense of the Company, to the successor warrant agent any property at the time held by it hereunder. As soon as practicable after such appointment, the Company shall give notice thereof to the predecessor warrant agent, the Global Warrant Holder and each transfer agent for its Common Shares. Failure to give such notice, or any defect therein, shall not affect the validity of the appointment of the successor warrant agent.

(d) Any entity into which the Warrant Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Warrant Agent shall be a party, or any Person succeeding to all or substantially all of the corporate trust or agency business of the Warrant Agent, shall be the successor warrant agent under this Warrant Agreement without the execution or filing of any

paper or any further act on the part of any of the parties hereto; provided that such entity would be eligible for appointment as a successor warrant agent under Section 6.02(c). In case at the time such successor to the Warrant Agent shall succeed to the agency created by this Warrant Agreement, any Global Warrant Certificate shall have been countersigned but not delivered, any such successor to the Warrant Agent may adopt the countersignature of the original Warrant Agent and deliver such Global Warrant Certificate so countersigned, and in case at that time any Global Warrant Certificates shall not have been countersigned, any successor to the Warrant Agent may countersign such Global Warrant Certificate either in the name of the predecessor Warrant Agent or in the name of the successor Warrant Agent; and in all such cases such Global Warrant Certificate shall have the full force provided in the Global Warrant Certificate and in this Warrant Agreement.

(e) In case at any time the name of the Warrant Agent shall be changed and at such time any Global Warrant Certificate shall have been countersigned but not delivered, the Warrant Agent may adopt the countersignatures under its prior name and deliver such Global Warrant Certificate so countersigned; and in case at that time any Global Warrant Certificate shall not have been countersigned, the Warrant Agent may countersign such Global Warrant Certificate either in its prior name or in its changed name; and in all such cases such Global Warrant Certificate shall have the full force provided in the Global Warrant Certificate and in this Warrant Agreement.

Section 6.03 Compensation; Further Assurances. The Company agrees that it will (a) pay the Warrant Agent reasonable compensation for its services as Warrant Agent in accordance with Exhibit C attached hereto and, except as otherwise expressly provided, will pay or reimburse the Warrant Agent upon written demand for all reasonable and documented expenses, disbursements and advances incurred or made by the Warrant Agent in accordance with any of the provisions of this Warrant Agreement (including the reasonable compensation, expenses and disbursements of its agents and counsel incurred in connection with the execution and administration of this Agreement), except any such expense, disbursement or advance as may arise from its or any of their gross negligence, willful misconduct or bad faith, and (b) perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Warrant Agent for the carrying out or performing of the provisions of this Warrant Agreement.

Section 6.04 Reliance on Counsel. The Warrant Agent may consult with legal counsel (who may be legal counsel for the Company), and the written opinion of such counsel or any advice of legal counsel subsequently confirmed by a written opinion of such counsel shall be full and complete authorization and protection to the Warrant Agent as to any action taken or omitted by it in good faith and in accordance with such written opinion or advice.

Section 6.05 Proof of Actions Taken. Whenever in the performance of its duties under this Warrant Agreement the Warrant Agent shall deem it necessary or desirable that any matter be proved or established by the Company prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Warrant Agent, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Warrant Agent;

and such Officer's Certificate shall, in the absence of bad faith on the part of the Warrant Agent, be full warrant to the Warrant Agent for any action taken, suffered or omitted in good faith by it under the provisions of this Warrant Agreement in reliance upon such Officer's Certificate; but in its discretion the Warrant Agent may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as to it may seem reasonable.

Section 6.06 Correctness of Statements. The Warrant Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Warrant Agreement or any Global Warrant Certificate (except its countersignature thereof) or be required to verify the same, and all such statements and recitals are and shall be deemed to have been made by the Company only.

Section 6.07 Validity of Agreement. From time to time, the Warrant Agent may apply to any Appropriate Officer for instruction and the Company shall provide the Warrant Agent with such instructions concerning the services to be provided hereunder. The Warrant Agent shall not be held to have notice of any change of authority of any Person, until receipt of notice thereof from the Company. The Warrant Agent shall not be under any responsibility in respect of the validity of this Warrant Agreement or the execution and delivery hereof or in respect of the validity or execution of any Global Warrant Certificate (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Warrant Agreement or in any Global Warrant Certificate; nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any Common Shares to be issued pursuant to this Warrant Agreement or any Warrants or as to whether any Common Shares will, when issued, be validly issued and fully paid and nonassessable. The Warrant Agent and its agents and subcontractors shall not be liable and shall be indemnified by the Company for any action taken or omitted by Warrant Agent in reliance upon any Company instructions except to the extent that the Warrant Agent had actual knowledge of facts and circumstances that would render such reliance unreasonable.

Section 6.08 Use of Agents. The Warrant Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents provided that the Warrant Agent shall remain responsible for the activities or omissions of any such agent or attorney and reasonable care has been exercised in the selection and in the continued employment of such attorney or agent.

Section 6.09 Liability of Warrant Agent. The Warrant Agent shall incur no liability or responsibility to the Company or to any Global Warrant Holder for any action taken or not taken (i) in reliance on any notice, resolution, waiver, consent, order, certificate, or other paper, document or instrument believed by it to be genuine and to have been signed, sent or presented by the proper party or parties or (ii) in relation to its services under this Warrant Agreement, unless such liability arises out of or is attributable to the Warrant Agent's gross negligence, material breach of this Warrant Agreement, or willful misconduct or bad faith or material breach of any representation or warranty of the Warrant Agent hereunder. The Company agrees to indemnify the Warrant Agent and save it harmless against any and all losses, expenses and liabilities, including judgments, costs and reasonable counsel fees, for anything done or omitted in good faith by the Warrant Agent in the execution of this Warrant Agreement or otherwise arising in connection with this Warrant Agreement, except as a result of the Warrant Agent's

gross negligence, material breach of this Warrant Agreement, willful misconduct or bad faith (as determined by a court of competent jurisdiction in a final non-appealable judgment) or material breach of any representation or warranty of the Warrant Agent hereunder. The Warrant Agent shall be liable hereunder only for its gross negligence, material breach of this Warrant Agreement, willful misconduct or bad faith (as determined by a court of competent jurisdiction in a final non-appealable judgment) or its material breach of any representation or warranty of the Warrant Agent hereunder, for which the Warrant Agent is not entitled to indemnification under this Warrant Agreement. Notwithstanding anything contained herein to the contrary, the Warrant Agent's aggregate liability during any term of this Agreement with respect to, arising from, or arising in connection with this Agreement, or from all services provided or omitted to be provided under this Agreement, whether in contract, or in tort, or otherwise, is limited to, and shall not exceed, the amounts paid hereunder by the Company to the Warrant Agent as fees and charges, but not including reimbursable expenses, during the twelve (12) months immediately preceding the event for which recovery from Warrant Agent is being sought. Neither party to this Agreement shall be liable to the other party for any consequential, indirect, punitive, special or incidental damages under any provisions of this Agreement or for any consequential, indirect, punitive, special or incidental damages arising out of any act or failure to act hereunder even if that party has been advised of or has foreseen the possibility of such damages.

Section 6.10 Legal Proceedings. The Warrant Agent shall be under no obligation to institute any action, suit or legal proceeding or to take any other action likely to involve expense unless the Company, the Global Warrant Holder or the Beneficial Owner shall furnish the Warrant Agent with reasonable indemnity for any costs and expenses which may be incurred, but this provision shall not affect the power of the Warrant Agent to take such action as the Warrant Agent may consider proper, whether with or without any such security or indemnity. The Warrant Agent shall promptly notify the Company and the Global Warrant Holder in writing of any claim made or action, suit or proceeding instituted against it arising out of or in connection with this Warrant Agreement.

Section 6.11 Actions as Agent. The Warrant Agent shall act hereunder solely as agent and not in a ministerial or fiduciary capacity, and its duties shall be determined solely by the provisions hereof. The duties and obligations of the Warrant Agent shall be determined solely by the express provisions of the Warrant Agreement, and the Warrant Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in the Warrant Agreement. No implied covenants or obligations shall be read into the Warrant Agreement against the Warrant Agent. The Warrant Agent shall not be liable for anything that it may do or refrain from doing in good faith in connection with this Warrant Agreement except for its own gross negligence, willful misconduct or bad faith.

Section 6.12 Appointment and Acceptance of Agency. The Company hereby appoints the Warrant Agent to act as agent for the Company in accordance with the instructions set forth in this Warrant Agreement, and the Warrant Agent hereby accepts the agency established by this Warrant Agreement and agrees to perform the same upon the terms and conditions herein set forth or as the Company and the Warrant Agent may hereafter agree.

Section 6.13 Successors and Assigns. All the covenants and provisions of this Warrant Agreement by or for the benefit of the Company or the Warrant Agent shall bind and inure to the

benefit of their respective successors and assigns hereunder. The Warrant Agent may assign this Agreement or any rights and obligations hereunder, in whole or in part, to an Affiliate thereof with the prior consent of the Company, provided that the Warrant Agent may make such an assignment without consent of the Company to any successor to the Warrant Agent by consolidation, merger or transfer of its assets subject to the terms and conditions of the Agreement.

Section 6.14 Notices. Any notice or demand authorized by this Warrant Agreement to be given or made to the Company shall be sufficiently given or made if sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by the Company with the Warrant Agent), as follows:

[GT Advanced Technologies Inc.
Daniel Webster Highway
Merrimack, NH 03054
Attention: Hoil Kim]

Facsimile: [____]
Email: [____]

with a copy to counsel designated by the Company.

Any notice or demand authorized by this Warrant Agreement to be given or made to the Warrant Agent shall be sufficiently given or made if sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by the Warrant Agent with the Company), as follows:

[American Stock Transfer & Trust Company, LLC
6201 15th Avenue
Brooklyn, NY 11219

Attention: Legal Department
Email: legalteam@amstock.com]

Any notice or demand authorized by this Warrant Agreement to be given or made to the Global Warrant Holder shall be sufficiently given or made if sent by first-class mail, postage prepaid to the last address of the Global Warrant Holder as it shall appear on the Warrant Register.

Section 6.15 Applicable Law; Jurisdiction. The validity, interpretation and performance of this Warrant Agreement and of the Global Warrant Certificates shall be governed in accordance with the Laws of the State of New York, without giving effect to the principles of conflicts of Laws thereof. The parties hereto irrevocably consent to the exclusive jurisdiction of the courts of the State of New York and any federal court located in such state in connection with any action, suit or proceeding arising out of or relating to this Warrant Agreement.

Section 6.16 Waiver of Jury Trial. EACH OF THE COMPANY AND THE WARRANT AGENT ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY

WHICH MAY ARISE UNDER THIS WARRANT AGREEMENT OR A WARRANT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PERSON HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PERSON MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS WARRANT AGREEMENT OR A WARRANT. EACH OF THE COMPANY AND THE WARRANT AGENT CERTIFIES AND ACKNOWLEDGES THAT (a) NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (b) SUCH PERSON UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (c) SUCH PERSON MAKES THIS WAIVER VOLUNTARILY, AND (d) SUCH PERSON HAS BEEN INDUCED TO ENTER INTO THIS WARRANT AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 6.17 Benefit of this Warrant Agreement. Nothing in this Warrant Agreement expressed and nothing that may be implied from any of the provisions hereof is intended, or shall be construed, to confer upon, or give to, any Person or corporation other than the parties hereto and the Global Warrant Holder any right, remedy or claim under or by reason of this Warrant Agreement or of any covenant, condition, stipulation, promise or agreement hereof, and all covenants, conditions, stipulations, promises and agreements in this Warrant Agreement contained shall be for the sole and exclusive benefit of the parties hereto and their successors and of the Global Warrant Holder.

Section 6.18 Registered Global Warrant Holder. Prior to due presentment for registration of Transfer, the Company and the Warrant Agent may deem and treat the Person in whose name any Warrants are registered in the Warrant Register as the absolute owner thereof for all purposes whatever (notwithstanding any notation of ownership or other writing thereon made by anyone other than the Company or the Warrant Agent) and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary or be bound to recognize any equitable or other claim to or interest in any Warrants on the part of any other Person and shall not be liable for any registration of Transfer of Warrants that are registered or to be registered in the name of a fiduciary or the nominee of a fiduciary unless made with actual knowledge that a fiduciary or nominee is committing a breach of trust in requesting such registration of Transfer or with such knowledge of such facts that its participation therein amounts to bad faith.

Section 6.19 Headings. The Article and Section headings herein are for convenience only and are not a part of this Warrant Agreement and shall not affect the interpretation thereof.

Section 6.20 Counterparts. This Warrant Agreement may be executed in any number of counterparts on separate counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

Section 6.21 Entire Agreement. This Warrant Agreement and the Global Warrant Certificate constitute the entire agreement of the Company, the Warrant Agent and Global Warrant Holder with respect to the subject matter hereof and supersede all prior agreements and

undertakings, both written and oral, among the Company, the Warrant Agent and the Global Warrant Holder with respect to the subject matter hereof.

Section 6.22 Severability. Wherever possible, each provision of this Warrant Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Warrant Agreement shall be prohibited by or invalid under applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Warrant Agreement.

Section 6.23 Termination. This Warrant Agreement shall terminate at the Expiration Date (or Close of Business on the Settlement Date with respect to any Exercise Notice delivered prior to the Expiration Date). Notwithstanding the foregoing, this Warrant Agreement will terminate on such earlier date on which all outstanding Warrants have been exercised. All provisions regarding indemnification, warranty, liability and limits thereon shall survive the termination or expiration of this Warrant Agreement.

Section 6.24 Confidentiality. The Warrant Agent and the Company agree that (a) inter alia, personal, non-public Global Warrant Holder and Beneficial Owner information which is exchanged or received pursuant to the negotiation or the carrying out of this Agreement and (b) the fees for services set forth in the attached schedule shall remain confidential, and shall not be voluntarily disclosed to any other person, except disclosures pursuant to applicable securities Laws or otherwise as may be required by Law, including, without limitation, pursuant to subpoenas from state or federal government authorities (e.g., in divorce and criminal actions).

Section 6.25 Force Majeure. Notwithstanding anything to the contrary contained herein, the Warrant Agent will not be liable for any delays or failures in performance resulting from acts beyond its control including, without limitation, acts of God, terrorist acts, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, war, or civil unrest.

[signature pages follow]

IN WITNESS WHEREOF, this Warrant Agreement has been duly executed by the parties hereto as of the day and year first above written.

GT ADVANCED TECHNOLOGIES INC.

By: _____
Name:
Title:

[AMERICAN STOCK TRANSFER & TRUST
COMPANY, LLC]

By: _____
Name:
Title:

SCHEDULE A

SCHEDULE OF INCREASES OR DECREASES IN WARRANTS

The initial Number of Warrants is [1.5% of the Common Shares]. In accordance with the Warrant Agreement dated as of [____] [•], 2016 among the Company and [American Stock Transfer & Trust Company, LLC], as Warrant Agent, the following increases or decreases in the Number of Warrants have been made:

<u>Date</u>	<u>Amount of increase in Number of Warrants evidenced by this Global Warrant</u>	<u>Amount of decrease in Number of Warrants evidenced by this Global Warrant</u>	<u>Number of Warrants evidenced by this Global Warrant following such decrease or increase</u>	<u>Signature of authorized signatory</u>
-------------	--	--	--	--

EXHIBIT A

FORM OF GLOBAL WARRANT CERTIFICATE

No. _____

CUSIP NO. [•]

UNLESS THIS GLOBAL WARRANT CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF [AMERICAN STOCK TRANSFER & TRUST COMPANY LLC], A NEW YORK CORPORATION (THE “**WARRANT AGENT**”), TO GT ADVANCED TECHNOLOGIES INC. (THE “**COMPANY**”), THE CUSTODIAN OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE WARRANT AGENT (AND ANY PAYMENT IS MADE TO [•] OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE WARRANT AGENT), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, [•], HAS AN INTEREST HEREIN.

TRANSFER OF THIS GLOBAL WARRANT CERTIFICATE SHALL BE LIMITED TO TRANSFERS IN WHOLE, AND NOT IN PART, TO THE COMPANY, THE WARRANT AGENT, THEIR SUCCESSORS AND THEIR RESPECTIVE NOMINEES.

GT Advanced Technologies Inc.

[____] [•], 2016

NUMBER OF WARRANTS: Initially, [1.5% of the Common Shares], subject to adjustment as described in the Warrant Agreement dated as of [____] [•], 2016 between GT Advanced Technologies Inc. and [American Stock Transfer & Trust Company, LLC], as Warrant Agent (as supplemented or amended, the “**Warrant Agreement**”).

EXERCISE PRICE: [\$0.01 per share].

FORM OF SETTLEMENT:

Full Physical Settlement: If Full Physical Settlement is elected, the Company shall deliver, against payment of the Exercise Price, a number of Common Shares equal to the number of Warrants exercised.

Net Share Settlement: If Net Share Settlement is elected, the Company shall deliver, without any Cash payment therefor, a number of Common Shares equal to the quotient determined by dividing (i) the Fair Value (as of the Exercise Date) of the number of Common Shares deliverable pursuant to Full Physical Settlement minus the Exercise Price that would be payable pursuant to Full Physical Settlement by (ii) the Fair Value determined pursuant to the above clause (i).

DATES OF EXERCISE: At any time, and from time to time, prior to the Close of Business on the Expiration Date.

EXPIRATION DATE: The Close of Business on [____] [•], 2019.

This Global Warrant Certificate certifies that:

_____, or its registered assigns, is the Global Warrant Holder of the Number of Warrants (the “**Warrants**”) specified above (such number subject to adjustment from time to time as described in the Warrant Agreement).

Reference is hereby made to the further provisions of this Global Warrant Certificate set forth on the reverse hereof, and such further provisions shall for all purposes have the same effect as though fully set forth in this place.

This Global Warrant Certificate shall not be valid unless countersigned by the Warrant Agent.

In the event of any inconsistency between the Warrant Agreement and this Global Warrant Certificate, the Warrant Agreement shall govern.

IN WITNESS WHEREOF, GT Advanced Technologies Inc. has caused this instrument to be duly executed as of the date first written above.

GT ADVANCED TECHNOLOGIES INC.

By: _____
Name:
Title:

Certificate of Authentication

These are the Warrants referred to in the above-mentioned Warrant Agreement.

Countersigned as of the date above written:

[AMERICAN STOCK TRANSFER & TRUST COMPANY], as Warrant Agent

By: _____
Authorized Officer

GT ADVANCED TECHNOLOGIES INC.

The Warrants evidenced by this Global Warrant Certificate are part of a duly authorized issue of Warrants issued by the Company pursuant to the Warrant Agreement, dated as of [____] [●], 2016 (as it may be amended or supplemented, the “**Warrant Agreement**”), between the Company and [American Stock Transfer & Trust Company, LLC], as Warrant Agent, and are subject to the terms and provisions contained in the Warrant Agreement, to all of which terms and provisions the Global Warrant Holder consents by issuance of this Global Warrant Certificate. Without limiting the foregoing, all capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Warrant Agreement.

The Warrant Agreement and the terms of the Warrants are subject to amendment as provided in the Warrant Agreement.

This Warrant Certificate shall be governed by, and interpreted in accordance with, the Laws of the State of New York without regard to the conflicts of Laws principles thereof.

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers the Warrant(s) represented by this Certificate to:

Name, Address and Zip Code of Assignee

and irrevocably appoints _____
Name of Agent

as its agent to transfer this Warrant Certificate on the books of the Warrant Agent.

[Signature page follows]

Date: [_____]

Name of Assignor

By: _____
Name:
Title:

(Sign exactly as your name appears on this Certificate)

NOTICE: The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.

EXHIBIT B

Form of Exercise Notice

[American Stock Transfer & Trust Company, LLC
6201 15th Avenue
Brooklyn, NY 11219]

Attention: Transfer Department

Re: Warrant Agreement dated as of [____] [●], 2016 between GT Advanced Technologies Inc. (the “**Company**”) and [American Stock Transfer & Trust Company, LLC], as Warrant Agent (as it may be supplemented or amended, the “**Warrant Agreement**”)

The undersigned hereby irrevocably elects to exercise the right, represented by the Global Warrant Certificate No. ____ held for its benefit through the book-entry facilities of the Warrant Agent, to exercise ____ Warrants and receive the consideration deliverable in exchange therefor pursuant to the following settlement method (check one):

Full Physical Settlement

Net Sale Settlement

If Full Physical Settlement is elected, the undersigned shall tender payment of the Exercise Price therefore in accordance with instructions received from the Warrant Agent.

Please check below if this exercise is contingent upon a registered public offering or any Change of Control in accordance with Section 3.02(e) of the Warrant Agreement.

This exercise is being made in connection with a registered public offering or any other Change of Control; provided, that in the event that such transaction shall not be consummated, then this exercise shall be deemed revoked.

THIS EXERCISE NOTICE MUST BE DELIVERED TO THE WARRANT AGENT, PRIOR TO CLOSE OF BUSINESS ON THE EXPIRATION DATE. THE WARRANT AGENT SHALL NOTIFY YOU OF THE ADDRESS AND PHONE NUMBER WHERE YOU CAN CONTACT THE WARRANT AGENT AND TO WHICH WARRANT EXERCISE NOTICES ARE TO BE SUBMITTED.

ALL CAPITALIZED TERMS USED HEREIN AND NOT OTHERWISE DEFINED SHALL HAVE THE MEANINGS SET FORTH IN THE WARRANT AGREEMENT.

By: _____
Authorized Signature
Address:
Telephone:

EXHIBIT C

Fee Schedule

The Company shall pay the Warrant Agent for performance of its services under this Agreement such compensation as shall be agreed in writing between the Company and the Warrant Agent.

EXHIBIT 5

Noteholder Warrant Agreement

WARRANT AGREEMENT

dated as of [____] [•], 2016

between

GT ADVANCED TECHNOLOGIES INC.

(as Reorganized)

and

[AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC],

as Warrant Agent

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SCHEDULE A	SCHEDULE OF INCREASES OR DECREASES IN WARRANTS
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EXHIBIT B	FORM OF EXERCISE NOTICE
EXHIBIT C	WARRANT AGENT FEE SCHEDULE

WARRANT AGREEMENT

Warrant Agreement (as it may be amended from time to time, this “**Warrant Agreement**”), dated as of [____] [•], 2016, between GT Advanced Technologies Inc., a Delaware corporation (the “**Company**”), and [American Stock Transfer & Trust Company, LLC], a [New York State chartered limited purpose trust company] (the “**Warrant Agent**”).

WITNESSETH THAT:

WHEREAS, pursuant to the terms and conditions of the Plan of Reorganization, dated [____] [•], [2016] (as the same may be amended, modified or restated, the “**Plan**”) relating to the reorganization under Chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) of the Company and certain of its direct and indirect Subsidiaries, each holder of an Allowed GT Inc. Notes Claim (as defined in the Plan) (the “**Initial Beneficial Holders**”) are to be issued (i) 2% Noteholder Warrants (as defined in the Plan), exercisable until the Expiration Date, to purchase in the aggregate up to _____¹ Common Shares at an exercise price of [\$• per share]], as the same may be adjusted pursuant to Article 4 hereof (the “**2% Exercise Price**”) and (ii) 3% Noteholder Warrants (as defined in the Plan, and collectively with the 2% Noteholder Warrants, the “**Warrants**”), exercisable until the Expiration Date, to purchase in the aggregate up to _____ Common Shares at an exercise price of [\$• per share], as the same may be adjusted pursuant to Article 4 hereof (the “**3% Exercise Price**,” and together with the 2% Exercise Price, the “**Exercise Prices**”);

WHEREAS, the Warrants have the terms and conditions set forth in this Warrant Agreement (including the Exhibits hereto);

WHEREAS, the Company desires that the Warrant Agent act on behalf of the Company, and the Warrant Agent is willing to so act, in connection with the issuance, exchange, Transfer, substitution and exercise of Warrants; and

WHEREAS, the Warrants and the underlying Common Shares are being offered and sold in reliance on the exemption from the registration requirements of the Securities Act and any applicable state securities or “blue sky” laws afforded by Section 1145(a)(2) of the Bankruptcy Code.

NOW THEREFORE in consideration of the mutual agreements herein contained, the Company and the Warrant Agent agree as follows:

¹ It’s important to clarify that the only adjustment to the baseline number of shares is as set forth in Article 4 and that there is not some other gross-up based on this statement that they are entitled to 2%/3%. For purposes of this agreement, those percentages should be translated into an actual number of shares as of the date of the agreement. Sections 2.01 does that—let’s be consistent by stating that number here too.

Article 1

Definitions

Section 1.01 Certain Definitions. As used in this Warrant Agreement, the following terms shall have their respective meanings set forth below:

“**2% Exercise Price**” has the meaning set forth in the preamble.

“**2% Global Warrant**” means a Warrant in the form of a 2% Global Warrant Certificate.

“**2% Global Warrant Certificate**” means any certificate representing 2% Noteholder Warrants satisfying the requirements set forth in Section 2.04.

“**2% Noteholder Warrants**” has the meaning set forth in the Plan.

“**3% Exercise Price**” has the meaning set forth in the preamble.

“**3% Global Warrant**” means a Warrant in the form of a 3% Global Warrant Certificate.

“**3% Global Warrant Certificate**” means any certificate representing 3% Noteholder Warrants satisfying the requirements set forth in Section 2.04.

“**3% Noteholder Warrants**” has the meaning set forth in the Plan.

“**Affiliate**” shall mean, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such first specified Person. For the purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Affiliated Buyer**” means, with respect to an Asset Sale or tender offer, any Person (i) who is an Affiliate of the Company, (ii) who is an officer, director, employee or member of the Company or any Affiliate of the Company, or (iii) a majority of which Person’s total outstanding equity, upon consummation of such transaction, is held by Persons who are equityholders in the Company immediately prior to the consummation of such transaction.

“**Affiliated Asset Sale**” has the meaning set forth in Section 4.06(c).

“**Appropriate Officer**” has the meaning set forth in Section 2.02(a).

“**Asset Sale**” has the meaning set forth in Section 4.06(c).

“**Authentication Order**” means a Company Order for authentication and delivery of Warrants.

“**Bankruptcy Code**” has the meaning set forth in the Recitals.

“**Beneficial Owner**” means any Person, the account of which is credited with a beneficial interest in the Global Warrant through the book-entry system maintained by the Depository (or its agent).

“**Board**” means the board of directors of the Company or any committee of such board duly authorized to exercise the power of the board of directors with respect to the matters provided for in this Warrant Agreement as to which the board of directors is authorized or required to act.

“**Business Day**” means any day other than (x) a Saturday or Sunday or (y) any day which is a legal holiday in the State of New York or a day on which banking institutions and trust companies in the state in which the Warrant Agent is located are authorized or obligated by Law, regulation or executive order to close.

“**Cash**” means such coin or currency of the United States as at any time of payment is legal tender for the payment of public and private debts.

“**Change of Control**” means (i) an Asset Sale to a Person or Persons who are not Affiliated Buyers, (ii) a Non-Affiliate Combination, (iii) a Third Party Tender Offer, in each case, in one or a series of related transactions or (iv) the issuance of Common Shares, Convertible Securities or other Securities of the Company representing more than 50% of the total voting power of the Company with respect to the election of directors (or in the case of Convertible Securities, the right to acquire such voting Securities) to a Person or group of Affiliated Persons. For the avoidance of doubt, none of the transactions contemplated by the Plan shall be deemed a Change of Control.

“**Close of Business**” means 5:00 p.m., New York City time.

“**Closing Date**” means the effective date of the Plan.

“**Common Shares**” means shares of the common stock, par value \$0.01 per share, of the reorganized Company.

“**Company**” has the meaning set forth in the preamble.

“**Company Order**” means a written request or order signed in the name of the Company by any Appropriate Officer or other duly authorized officer of the Company and delivered to the Warrant Agent.

“**Convertible Securities**” means options, rights, warrants or other securities convertible into or exchangeable or exercisable for Common Shares (including the Warrants).

“**Depository**” means the Transfer Agent, its nominees, and their respective successors.

“**Effective Consideration**” means the amount paid or payable to acquire Common Shares (or in the case of Convertible Securities, the amount paid or payable to acquire the Convertible Security, if any, plus the applicable exercise price for the underlying Common Share).

“**Exercise Date**” has the meaning set forth in Section 3.02(b).

“**Ex-Date**” means with respect to a dividend or distribution to holders of the Common Shares, the first date on which the Common Shares can be traded without the right to receive such dividend or distribution.

“**Exercise Notice**” means, for any Warrant, an exercise notice substantially in the form set forth in Exhibit B hereto.

“**Exercise Prices**” has the meaning set forth in the Recitals.

“**Expiration Date**” means, for any Warrant, the Close of Business on [____] [●], 2019.²

“**Fair Value**,” as of a specified date, means the price per Common Share, other Securities or other distributed property determined as follows:

(i) in the case of Common Shares or other Securities listed on the New York Stock Exchange or the NASDAQ Stock Market, the VWAP of a Common Share or a single unit of such other Security for the 20 Trading Days ending on, but excluding, the specified date (or if the Common Shares or other Security has been listed for less than 20 Trading Days, the VWAP for such lesser period of time);

(ii) in the case of Common Shares or other Securities not listed on the New York Stock Exchange or the NASDAQ Stock Market, the VWAP of a Common Share or a single unit of such other Security in composite trading for the principal U.S. national or regional securities exchange on which such securities are then listed for the 20 Trading Days ending on, but excluding, the specified date (or if the Common Shares or other Security has been listed for less than 20 Trading Days, the VWAP for such lesser period of time); or

(iii) in all other cases, the fair value per Common Share, other Securities or other distributed property as of a date not earlier than 10 Business Days preceding the specified date as determined in good faith by the Board and, if the Board elects to engage the same, upon the advice of an independent investment banking, financial advisory or valuation firm or appraiser selected by the Board (a “**Representative**”); provided, however, that

(iv) notwithstanding the foregoing, if the Board determines in good faith that the application of clauses (i) or (ii) of this definition would result in a VWAP based on the trading prices of a thinly-traded Security such that the price resulting therefrom may not represent an accurate measurement of the fair value of such Security, the Board at its election may apply the provisions of clause (iii) of this definition in lieu of the applicable clause (i) or (ii) with respect to the determination of the fair value of such Security; provided, further, that

² NTD: Three year anniversary of the closing.

(v) if the Board determines the Fair Value pursuant to clauses (iii) or (iv) of this definition and a Beneficial Owner disputes the Fair Value, if the Board and such Beneficial Owner are unable to agree upon the Fair Value within [10] Business Days of the Beneficial Owner giving notice of such dispute to the Company, the Board and such Beneficial Owner shall refer the matter to an independent investment banking, financial advisory or valuation firm or appraiser (an “**Independent Representative**”), mutually acceptable to the Company and the Beneficial Owner. The Company and the Beneficial Owner shall submit such materials as each of them, in their sole discretion, may deem necessary or appropriate to assist the Independent Representative in making its valuation, including an amount representing what it believes should be the Fair Value. Within [30] days of its appointment, the Independent Representative shall calculate a Fair Value based solely on the materials submitted to it by the Company and the Beneficial Owner, and report such Fair Value to the Company and the Beneficial Owner, which report shall be final, conclusive and binding on the Company and the Beneficial Owner absent manifest error or fraud; provided that the Fair Value calculated by the Independent Representative shall not be higher than the highest Fair Value, nor lower than the lowest Fair Value, submitted by the Company and the Beneficial Owner. Each of the Company and the Beneficial Owner shall be responsible for its own fees and expenses, including legal and other advisory fees, but the fees and expenses of the Independent Representative initially shall be borne 50% by the Company and 50 by the Beneficial Owner; provided, however, that the fees and expenses of the Independent Representative shall ultimately be allocated between the Company and the Beneficial Owner on a proportionate basis based on the difference between the Fair Value submitted by each of them and the Fair Value as determined by the Independent Representative.

“**Full Physical Settlement**” means the settlement method pursuant to which an exercising Beneficial Owner shall be entitled to receive from the Company, for each Warrant exercised, a number of Common Shares equal to the Full Physical Share Amount in exchange for payment by the Beneficial Owner of the applicable Exercise Price.

“**Full Physical Share Amount**” means, for each Warrant exercised as to which Full Physical Settlement is applicable, one Common Share.

“**Fundamental Equity Change**” has the meaning set forth in Section 4.06(a).

“**Global Warrant**” means the 2% Global Warrant and the 3% Global Warrant.

“**Global Warrant Certificates**” means the 2% Global Warrant Certificate and the 3% Global Warrant Certificate.

“**Global Warrant Holder**” means the Person acting as the Depository or nominee of the Depository in whose name Warrants are registered in the Warrant Register. The initial Global Warrant Holder shall be [•], as the Depository’s nominee.

“**Independent Representative**” has the meaning set forth in clause (v) of the definition of Fair Value.

“**Initial Beneficial Owners**” has the meaning set forth in the Recitals.

“**Law**” means any federal, state, local, foreign or provincial law, statute, ordinance, rule, regulation, judgment, order, injunction, decree or agency requirement having the force of law or any undertaking to or agreement with any governmental authority, including common law.

“**Management Incentive Plan**” has the meaning set forth in the Plan.

“**Net Share Amount**” means for each Warrant exercised as to which Net Share Settlement is applicable, a fraction of a Common Share equal to (i) the Fair Value (as of the Exercise Date for such Warrant) of one Common Share minus the applicable Exercise Price for one Common Share specified in such Warrant *divided* by (ii) such Fair Value. The number of Common Shares issuable upon exercise, on the same Exercise Date, of Warrants as to which Net Share Settlement is applicable shall be aggregated, with Cash paid in respect of any fractional Common Share as provided in Section 3.05. In no event shall the Company deliver a fractional Common Share in connection with an exercise of Warrants as to which Net Share Settlement is applicable.

“**Net Share Settlement**” means the settlement method pursuant to which an exercising Beneficial Owner shall be entitled to receive from the Company, for each Warrant exercised, a number of Common Shares equal to the Net Share Amount without any payment of Cash therefor.

“**Non-Affiliate Combination**” means a Fundamental Equity Change where (i) the acquirer is a true third party and not an Affiliate of the Company or any of its or its Affiliates’ officers, directors, employees or members and (ii) all of the equity held by equity holders of the Company (other than management) is extinguished or replaced by equity in a different Person (other than a Fundamental Equity Change in which the equity interests in the Company are replaced in a merger or other corporate combination with equity in the surviving Person that represents more than 50% of the total equity in the surviving Person).

“**Number of Warrants**” means the “Number of Warrants” specified on the face of the Global Warrant Certificate, subject to adjustment pursuant to Article 4.

“**Offer Expiration Date**” has the meaning set forth in 0.

“**Officer’s Certificate**” means a certificate signed by any Appropriate Officer or other duly authorized officer of the Company.

“**Open of Business**” means 9:00 a.m., New York City time.

“**Person**” means an individual, partnership, firm, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

“**Plan**” has the meaning set forth in the Recitals.

“**Record Date**” means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Shares have the right to receive any Cash, Securities or other property or in which Common Shares (or another applicable Security) are exchanged for or converted into, or any combination of, Cash, Securities or other property, the date fixed for determination of holders of Common Shares entitled to receive such Cash, Securities or other property or participate in such exchange or conversion (whether such date is fixed by the Board or by statute, contract or otherwise).

“**Reference Property**” has the meaning set forth in Section 4.07(a).

“**Reorganization Event**” has the meaning set forth in Section 4.07(a).

“**Representative**” has the meaning set forth in clause (iii) of the definition of Fair Value.

“**Securities**” means (i) any capital stock (whether Common Shares or preferred stock, voting or non-voting), partnership, membership or limited liability company interest or other equity or voting interest, (ii) any right, option, warrant or other security or evidence of indebtedness convertible into, or exercisable or exchangeable for, directly or indirectly, any interest described in clause (i), (iii) any notes, bonds, debentures, trust receipts and other obligations, instruments or evidences of indebtedness, and (iv) any other “securities,” as such term is defined or determined under the Securities Act.

“**Securities Act**” means the Securities Act of 1933, as amended from time to time, and the related rules and regulations promulgated thereunder.

“**Settlement Date**” means, in respect of a Warrant that is exercised hereunder, the third Business Day immediately following the Exercise Date for such Warrant.

“**Subsidiary**” means, as to any Person, any corporation, partnership, limited liability company or other organization, whether incorporated or unincorporated, of which at least a majority of the securities or other interests having by their terms voting power to elect a majority of the Board or others performing similar functions with respect to such corporation or other organization is directly or indirectly beneficially owned or controlled by such party or by any one or more of its subsidiaries, or by such party and one or more of its subsidiaries.

“**Third Party Tender Offer**” means the acquisition by a Person (other than (i) the Company or a wholly-owned Subsidiary of the Company or (ii) a Person or Persons who are Affiliated Buyers) in a tender offer or exchange offer of 50% or more of the outstanding Common Shares (determined on a fully-diluted basis).

“**Trading Day**” means each Monday, Tuesday, Wednesday, Thursday and Friday, other than any day on which Securities are not traded on the applicable securities exchange.

“**Transfer**” means, with respect to any Warrant, to directly or indirectly (whether by act, omission or operation of law), sell, exchange, transfer, hypothecate, negotiate, gift, convey in trust, pledge, assign, encumber, or otherwise dispose of, or by adjudication of a Person as bankrupt, by assignment for the benefit of creditors, by attachment, levy or other seizure by any creditor (whether or not pursuant to judicial process), or by passage or distribution of Warrants

under judicial order or legal process, carry out or permit the transfer or other disposition of, all or any portion of such Warrant.

“**Transferee**” means a Person to whom any Warrant (or interest in the Global Warrant) is Transferred.

“**Trigger Event**” has the meaning set forth in Section 4.03(a).

“**Unit of Reference Property**” has the meaning set forth in Section 4.07(a).

“**VWAP**” means, for any Trading Day, the price for Securities (including Common Shares) determined by the daily volume weighted average price per unit of such Securities for such Trading Day on the trading market on which such Securities are then listed or quoted, in each case, for the regular trading session (including any extensions thereof, without regard to pre-open or after hours trading outside of such regular trading session) as reported on the New York Stock Exchange or NASDAQ Stock Market, or if such Securities are not listed or quoted on the New York Stock Exchange or NASDAQ Stock Market, as reported by the principal U.S. national or regional securities exchange on which such Securities are then listed or quoted, whichever is applicable, as published by Bloomberg at 4:15 P.M., New York City time (or 15 minutes following the end of any extension of the regular trading session), on such Trading Day, or if such volume weighted average price is unavailable or in manifest error, the price per unit of such Securities using a volume weighted average price method selected by an independent nationally recognized investment bank or other qualified financial institution selected by the Board.

“**Warrants**” has the meaning set forth in the preamble.

“**Warrant Agent**” has the meaning set forth in the preamble.

“**Warrant Agreement**” has the meaning set forth in the preamble.

“**Warrant Register**” has the meaning set forth in Section 2.03(a).

Article 2

Issuance, Execution and Transfer of Warrants

Section 2.01 Issuance and Delivery of Warrants.

(a) On the Closing Date, the Company shall initially issue and execute (i) one 2% Global Warrant (in accordance with Section 2.02) evidencing an initial aggregate Number of 2% Noteholder Warrants equal to [•]Common Shares (such Number of Warrants to be subject to adjustment from time to time as described herein) and (ii) one 3% Global Warrant (in accordance with Section 2.02) evidencing an initial aggregate Number of 3% Noteholder Warrants equal to [•]Common Shares (such Number of Warrants to be subject to adjustment from time to time as described herein), each in accordance with the terms of this Warrant Agreement and shall deliver such Global Warrants to the Warrant Agent for authentication, along with a duly executed Authentication Order. The Warrant Agent shall then Transfer such Global Warrants to the Global

Warrant Holder for crediting to the accounts of the applicable Initial Beneficial Owners pursuant to the procedures of the Depository and in accordance with the Plan on or after the Closing Date. The Global Warrant shall evidence one or more Warrants. Each Warrant evidenced thereby shall be exercisable (upon payment of the applicable Exercise Price, unless Net Share Settlement has been specified with respect to such exercise, and compliance with the procedures set forth in this Warrant Agreement) for one Common Share. On the Closing Date, the Warrant Agent shall, upon receipt of such Global Warrant and Authentication Order, authenticate such Global Warrant in accordance with Section 2.02 and register such Global Warrant in the Warrant Register. The Global Warrant shall be dated as of the Closing Date and, subject to the terms hereof, shall evidence the only Warrants issued or outstanding under this Warrant Agreement. The Global Warrant Certificate shall be deposited on or after the date hereof with the Warrant Agent.

(b) All Warrants issued under this Warrant Agreement shall in all respects be equally and ratably entitled to the benefits hereof, without preference, priority, or distinction on account of the actual time of the issuance and authentication or any other terms thereof. Each Warrant shall be, and shall remain, subject to the provisions of this Warrant Agreement until such time as all of the Warrants evidenced thereby shall have been duly exercised or shall have expired or been canceled in accordance with the terms hereof. The Global Warrant Holder shall be bound by all of the terms and provisions of this Warrant Agreement as fully and effectively as if the Global Warrant Holder had signed the same.

(c) Any Warrant that is forfeited by a Beneficial Owner, cancelled as a result of being unclaimed in accordance with [Section 9.7] of the Plan, or repurchased by the Company shall be deemed to be no longer outstanding for all purposes of this Warrant Agreement.

Section 2.02 Execution and Authentication of Warrants.

(a) Each Global Warrant Certificate shall be executed on behalf of the Company by the Chief Executive Officer, President, the Chief Financial Officer, any Executive Vice President, any Senior Vice President or any Vice President, any Treasurer or Secretary (each, an “**Appropriate Officer**”) of the Company. The signature of any of the Appropriate Officers on a Global Warrant Certificate may be in the form of a facsimile or other electronically transmitted signature (including, without limitation, electronic transmission in portable document format (.pdf)).

(b) Any Global Warrant Certificate bearing the signatures of individuals, each of whom was, at the time he or she signed such Global Warrant Certificate or his or her facsimile signature was affixed to such Global Warrant Certificate, as the case may be, an Appropriate Officer, shall bind the Company, notwithstanding that such individuals or any of them have ceased to be such an Appropriate Officer prior to the authentication of such Global Warrant by the Warrant Agent or was not such an Appropriate Officer at the date of such Global Warrant.

(c) No Global Warrant shall be entitled to any benefit under this Warrant Agreement or be valid or obligatory for any purpose unless there appears on the applicable Global Warrant Certificate a certificate of authentication substantially in the form provided for

herein executed by the Warrant Agent, and such signature upon any Global Warrant Certificate shall be conclusive evidence, and the only evidence, that such Global Warrant has been duly authenticated and delivered hereunder. The signature of the Warrant Agent on any Global Warrant Certificate may be in the form of a facsimile or other electronically transmitted signature (including, without limitation) electronic transmission in portable document format (.pdf)).

Section 2.03 Registration, Transfer, Exchange and Substitution.

(a) The Company shall cause to be kept at the office of the Warrant Agent, and the Warrant Agent shall maintain, a register (the “**Warrant Register**”) in which the Company shall provide for the registration of any Global Warrant and Transfers, exchanges or substitutions of any Global Warrant as provided herein. Any Global Warrant issued upon any registration of Transfer or exchange of or substitution for any Global Warrant shall be a valid obligation of the Company, evidencing the same obligations, and entitled to the same benefits under this Warrant Agreement, as any Global Warrant surrendered for such registration of Transfer, exchange or substitution.

(b) Transfers of a Global Warrant shall be limited to Transfers in whole, and not in part, to the Company, the Depositary, their successors, and their respective nominees. A Global Warrant may be Transferred to such parties upon the delivery of a written instruction of Transfer in form reasonably satisfactory to the Warrant Agent and the Company, duly executed by the Global Warrant Holder or by such Global Warrant Holder’s attorney, duly authorized in writing. No such Transfer shall be effected until, and the Transferee shall succeed to the rights of the Global Warrant Holder only upon, final acceptance and registration of the Transfer in the Warrant Register by the Warrant Agent. Prior to the registration of any Transfer of a Global Warrant by the Global Warrant Holder as provided herein, the Company, the Warrant Agent, and any agent of the Company or the Warrant Agent may treat the Person in whose name such Global Warrant is registered as the owner thereof for all purposes, notwithstanding any notice to the contrary. To permit a registration of a Transfer of a Global Warrant, the Company shall execute a Global Warrant Certificate at the Warrant Agent’s request and the Warrant Agent shall authenticate such Global Warrant Certificates. Any such Global Warrant Certificate shall be deposited on or after the date hereof with the Warrant Agent. No service charge shall be made for any such registration of Transfer. A party requesting transfer of a Global Warrant must provide any evidence of authority that may be required by the Warrant Agent, including but not limited to, a medallion signature guarantee from an eligible guarantor institution participating in a medallion signature guarantee program approved by the Securities Transfer Association, Inc.

(c) Interests of Beneficial Owners in a Global Warrant registered in the name of the Depositary or its nominee shall only be Transferred in accordance with the procedures of the Depositary and applicable Law.

(d) So long as any Global Warrant is registered in the name of the Depositary or its nominee, the Beneficial Owners shall have no rights under this Warrant Agreement with respect to such Global Warrant held on their behalf by the Depositary, and the Depositary may be treated by the Company, the Warrant Agent and any agent of the Company or the Warrant Agent as the absolute owner of such Global Warrant for all purposes. Accordingly, any such

Beneficial Owner's interest in such Global Warrant will be shown only on, and the Transfer of such interest shall be effected only through, records maintained by the Depository or its nominee, and neither the Company nor the Warrant Agent, acting in its capacity as such, shall have any responsibility or liability with respect to such records maintained by the Depository or its nominee. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Warrant Agent or any agent of the Company or the Warrant Agent from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair the operation of customary practices of the Depository governing the exercise of the rights of a Beneficial Owner.

Section 2.04 Form of Global Warrant Certificates. Each 2% Global Warrant Certificate shall be in substantially the form set forth in Exhibit A-1 hereto and each 3% Global Warrant Certificate shall be in substantially the form set forth in Exhibit A-2 and each 2% Global Warrant Certificate and 3% Global Warrant Certificate shall have such insertions as are appropriate or required by this Warrant Agreement and may have such letters, numbers or other marks of identification and such legends and endorsements, stamped, printed, lithographed or engraved thereon, as the Company may deem appropriate and as are not inconsistent with the provisions of this Warrant Agreement, such as may be required to comply with this Warrant Agreement, any Law or any rule of any securities exchange on which Warrants may be listed, and such as may be necessary to conform to customary usage.

Section 2.05 Cancellation of the Global Warrant Certificates. Any Global Warrant Certificate shall be promptly cancelled by the Warrant Agent upon the earlier of (i) the Expiration Date, (ii) the mutilation of the Global Warrant Certificate as described in Section 5.02, or (iii) registration of Transfer or exercise of all Warrants represented thereby and, except as provided in this Article 2 in case of a Transfer or Section 5.02 in case of mutilation, no Global Warrant Certificate shall be issued hereunder in lieu thereof.

Section 2.06 Limitations on Transfer. Notwithstanding any other provision of this Warrant Agreement, the Warrants are being offered and sold, and the Common Shares issuable upon exercise thereof are being offered and sold, pursuant to an exemption from the registration requirement of Section 5 of the Securities Act provided by Section 1145 of the Bankruptcy Code, and to the extent that any Beneficial Owner is an "underwriter" as defined in Section 1145(b)(1) of the Bankruptcy Code, such Beneficial Owner may not be able to sell or transfer any Warrants in the absence of an effective registration statement under the Securities Act or an exemption from registration thereunder. Notwithstanding anything contained in this Warrant Agreement (but without limiting or modifying any express obligation of the Warrant Agent hereunder), the Warrant Agent shall not be under any duty or responsibility to ensure compliance by the Company, the Global Warrant Holder, any Beneficial Owner or any other Person with any applicable federal or state securities or bankruptcy Laws.

Article 3

Exercise and Settlement of Warrants

Section 3.01 Exercise of Warrants. At any time following the Closing Date and prior to Close of Business on the Expiration Date, each Warrant may be exercised, in accordance with

this Article 3. Any Warrants not exercised prior to the Expiration Date shall expire unexercised and all rights thereunder and all rights in respect thereof under this Warrant Agreement shall cease as of the Close of Business on the Expiration Date. Only whole Warrants may be exercised.

Section 3.02 Procedure for Exercise.

(a) To exercise each Warrant, a Beneficial Owner must arrange for (i) the delivery of the Exercise Notice, duly completed and executed thereby, to the principal office of the Warrant Agent and the Company, (ii) if Full Physical Settlement is elected, payment to the Warrant Agent in an amount equal to the applicable Exercise Price for each Warrant to be exercised together with all applicable taxes and charges thereto, (iii) delivery of each Warrant to be exercised through the facilities of the Depository and (iv) compliance with all other procedures established by the Depository and the Warrant Agent for the exercise of Warrants.

(b) The date on which all the requirements for exercise set forth in this Section 3.02 in respect of a Warrant are satisfied is the “**Exercise Date**” for such Warrant.

(c) Subject to Section 3.02(e) and Section 3.02(f), any exercise of a Warrant pursuant to the terms of this Warrant Agreement shall be irrevocable and enforceable in accordance with its terms.

(d) All funds received by the Warrant Agent under this Agreement that are to be distributed or applied by the Warrant Agent in the performance of services in accordance with this Agreement (the “**Funds**”) shall be held by the Warrant Agent as agent for the Company and deposited in one or more bank accounts to be maintained by the Warrant Agent in its name as agent for the Company (the “**Funds Account**”). Until paid pursuant to the terms of this Agreement, the Warrant Agent will hold the Funds through the Funds Account in: deposit accounts of commercial banks with Tier 1 capital exceeding \$1 billion or with an average rating above investment grade by S&P (LT Local Issuer Credit Rating), Moody’s (Long Term Rating) and Fitch Ratings, Inc. (LT Issuer Default Rating) (each as reported by Bloomberg Finance L.P.). The Warrant Agent shall have no responsibility or liability for any diminution of the Funds that may result from any deposit made by the Warrant Agent in accordance with this paragraph, including any losses resulting from a default by any bank, financial institution or other third party. The Warrant Agent may from time to time receive interest, dividends or other earnings in connection with such deposits. The Warrant Agent shall pay such interest, dividends or earnings to the Company promptly upon receipt.

(e) The Company shall assist and cooperate with any Beneficial Owner required to make any governmental filings or obtain any governmental approvals prior to or in connection with any exercise of a Warrant (including, without limitation, making any filings required to be made by the Company), and any exercise of a Warrant may be made contingent upon the making of any such filing and the receipt of any such approval.

(f) Notwithstanding any other provision of this Warrant Agreement, if the exercise of any Warrant is to be made in connection with a registered public offering or a Change of Control, such exercise may, upon proper election in the Exercise Notice, be

conditioned upon consummation of such transaction or event in which case such exercise shall not be deemed effective until the consummation of such transaction or event.

(g) The Warrant Agent shall forward funds deposited in the Funds Account in a given month by the fifth Business Day of the following month by wire transfer to an account designated by the Company.

(h) The Company hereby instructs the Warrant Agent to record tax basis for newly issued Common Shares as follows: the tax basis of each newly issued Common Share equals the tax basis of the exercised Warrant plus the applicable Exercise Price. The Company shall provide the tax basis of the Warrants no later than 90 days after the Closing Date.

(i) Payment of the applicable Exercise Price by or on behalf of a Beneficial Owner upon exercise of Warrants, in the case of Full Physical Settlement, shall be by federal wire or other immediately available funds payable to the order of the Company to the account maintained by the Warrant Agent in its name as agent for the Company. The Warrant Agent shall provide an exercising Beneficial Owner, upon request, with the appropriate payment instructions.

Section 3.03 Settlement of Warrants.

(a) Full Physical Settlement shall apply to each Warrant unless the Beneficial Owner elects for Net Share Settlement to apply upon exercise of such Warrant. Such election shall be made in the Exercise Notice for such Warrant.

(b) If Full Physical Settlement applies to the exercise of a Warrant, upon the proper and valid exercise thereof by a Beneficial Owner the Company shall cause to be delivered to the exercising Beneficial Owner the Full Physical Settlement Amount.

(c) If Net Share Settlement applies to the exercise of a Warrant, upon the proper and valid exercise thereof by a Beneficial Owner the Company shall cause to be delivered to the exercising Beneficial Owner the Net Share Amount, together with Cash in respect of any fractional Common Share as provided in Section 3.05.

(d) If there is a dispute as to the determination of the applicable Exercise Price or the calculation of the number of Common Shares to be delivered to an exercising Beneficial Owner, the Company shall cause to be promptly delivered to the number of Common Shares and Cash that is not in dispute.

Section 3.04 Delivery of Common Shares.

(a) In connection with the exercise of Warrants, the Warrant Agent shall:

(1) examine all Exercise Notices and all other documents delivered to it to ascertain whether, on their face, such Exercise Notices and any such other documents have been executed and completed in accordance with their terms;

(2) where an Exercise Notice or other document appears on its face to have been improperly completed or executed or some other irregularity in connection with the exercise of the Warrant exists, endeavor to inform the appropriate parties (including the Person submitting such instrument) of the need for fulfillment of all requirements, specifying those requirements which appear to be unfulfilled;

(3) inform the Company of and cooperate with and assist the Company in resolving any reconciliation problems between the Exercise Notices received and delivery of Warrants to the Warrant Agent's account;

(4) advise the Company with respect to an exercise, no later than two Business Days following the satisfaction of each of the applicable procedures for exercise set forth in Section 3.02(a), of (v) the receipt of such Exercise Notice and the number of Warrants exercised in accordance with the terms and conditions of this Warrant Agreement, (w) the number of Common Shares and amount of Cash in lieu of any fractional share interest to be delivered and paid by the Company; (x) the instructions with respect to issuance of the Common Shares and Cash in lieu of any fractional share interest, subject to the timely receipt from the Depository of the necessary information, (y) the number of Persons who will become holders of record of the Company (who were not previously holders of record) as a result of receiving Common Shares upon exercise of the Warrants and (z) such other information as the Company shall reasonably require;

(5) promptly deposit in the Funds Account all Funds received in payment of the applicable Exercise Price in connection with Full Physical Settlement of Warrants;

(6) promptly cancel and destroy a Global Warrant Certificate if all Warrants represented thereby have been exercised in full and deliver a certificate of destruction to the Company, unless the Company shall otherwise direct in writing;

(7) if all Warrants represented by a Global Warrant Certificate shall not have been exercised in full, note and authenticate such decrease in the Number of Warrants on Schedule A of such Global Warrant Certificate; and

(8) provide to the Company, upon the Company's request, the number of Warrants previously exercised, the number of Common Shares issued in connection with such exercises and the number of remaining outstanding Warrants.

(b) With respect to each properly exercised Warrant in accordance with this Warrant Agreement, the Company shall cause its transfer agent to issue, in book-entry form at the transfer agent or through the Depository, the Common Shares due in connection with such exercise for the benefit and in the name of the Person designated by the Beneficial Owner submitting the applicable Exercise Notice. The Person on whose behalf and in whose name any Common Shares are registered shall for all purposes be deemed to have become the holder of record of such Common Shares as of the Close of Business on the applicable Exercise Date.

(c) Promptly after the Warrant Agent shall have taken the action required by this Section 3.04 (or at such later time as may be mutually agreeable to the Company and the

Warrant Agent), the Warrant Agent shall account to the Company with respect to the consummation of any exercise of any Warrants.

Section 3.05 No Fractional Common Shares to Be Issued.

(a) Notwithstanding anything to the contrary in this Warrant Agreement, the Company shall not be required to issue any fraction of a Common Share upon exercise of any Warrants.

(b) If any fraction of a Common Share would, except for the provisions of this Section 3.05, be issuable on the exercise of any Warrants, the Company shall instead pay to the Person designated in the applicable Exercise Notice to receive such payment Cash in an amount equal to the quotient determined by multiplying the Fair Value of one Common Share on the related Exercise Date by such fraction. All Warrants exercised by a Beneficial Owner on the same Exercise Date shall be aggregated for purposes of determining the number of Common Shares to be delivered pursuant to Section 3.04(b) and Cash in lieu of any fractional share interest pursuant to this Section 3.05.

(c) Each Beneficial Owner, by its acceptance of an interest in a Warrant, expressly waives its right to any fraction of a Common Share upon its exercise of such Warrant in favor of the Cash payment contemplated by this Section 3.05.

Section 3.06 Acquisition of Warrants by Company. The Company shall have the right, except as limited by Law or the certificate of incorporation as in effect as of the Closing Date, to purchase or otherwise to acquire one or more Warrants at such times, in such manner and for such consideration as it may deem appropriate.

Section 3.07 Validity of Exercise. All questions as to the validity, form and sufficiency (including time of receipt) of a Warrant exercise shall be determined by the Company, which determination shall be final and binding with respect to the Warrant Agent. The Warrant Agent shall incur no liability for or in respect of and, except to the extent such liability arises from the Warrant Agent's gross negligence, willful misconduct or bad faith (as determined by a court of competent jurisdiction in a final non-appealable judgment), shall be indemnified and held harmless by the Company for acting or refraining from acting upon, or as a result of such determination by the Company. The Company reserves the absolute right to waive any of the conditions to the exercise of Warrants or defects in Exercise Notices with regard to any particular exercise of Warrants.

Section 3.08 Certain Calculations.

(a) The Warrant Agent shall be responsible for performing all calculations required in connection with the exercise and settlement of the Warrants as described in this Article 3. In connection therewith, the Warrant Agent shall provide prompt written notice to the Company, in accordance with Section 3.04(a)(4), of the number of Common Shares deliverable and Cash in lieu of any fractional share interest payable upon exercise and settlement of Warrants. For the avoidance of doubt, the Warrant Agent shall not be responsible for performing the calculations set forth in Article 4.

(b) The Warrant Agent shall not be accountable with respect to the validity or value of any Common Shares or Units of Reference Property that may at any time be issued or delivered upon the exercise of any Warrant, and it makes no representation with respect thereto. The Warrant Agent shall not be responsible, to the extent not arising from the Warrant Agent's gross negligence, willful misconduct or bad faith (as determined by a court of competent jurisdiction in a final non-appealable judgment), for any failure of the Company to make any Cash payment or to issue, transfer or deliver any Common Shares or Units of Reference Property, or to comply with any of the covenants of the Company contained in this Article 3.

Article 4

Adjustments

Section 4.01 Adjustments to Exercise Price. After the date on which the Warrants are first issued and while any Warrants remain outstanding and unexpired, the Exercise Prices shall be subject to adjustment (without duplication) upon the occurrence of any of the following events, provided that, for the purpose of calculations pursuant to Section 4.01, the number of Common Shares outstanding shall be equal to the sum of (i) the number of Common Shares issued and outstanding and (ii) the number of Common Shares issuable pursuant to the conversion or exercise of Convertible Securities (on the basis of Full Physical Settlement, if applicable) that are outstanding, in each case on the applicable date of determination:

(a) The issuance of Common Shares as a dividend or distribution to all holders of Common Shares, or a subdivision, combination, split, reverse split or reclassification of the outstanding Common Shares into a greater or smaller number of Common Shares, in which event each of the Exercise Prices shall be adjusted based on the following formula:

$$E_1 = E_0 \times \frac{N_0}{N_1}$$

where:

E_1 = the applicable Exercise Price in effect immediately after (i) the Open of Business on the Ex-Date in the case of a dividend or distribution or (ii) the consummation of the transaction in the case of a subdivision, combination, split, reverse split or reclassification;

E_0 = the applicable Exercise Price in effect immediately prior to (i) the Open of Business on the Ex-Date in the case of a dividend or distribution or (ii) the consummation of the transaction in the case of a subdivision, combination, split, reverse split or reclassification;

N_0 = the number of Common Shares outstanding immediately prior to (i) the Open of Business on the Record Date in the case of a dividend or distribution or (ii) the consummation of the transaction in the case of a subdivision, combination, split, reverse split or reclassification; and

N_1 = the number of Common Shares equal to (i) in the case of a dividend or distribution, the sum of the number of Common Shares outstanding immediately prior to the Open of Business on the Record Date for such dividend or distribution plus the total number of Common Shares issued pursuant to such dividend or distribution or (ii) in the case of a subdivision, combination, split, reverse split or reclassification, the number of Common Shares outstanding immediately after such subdivision, combination, split, reverse split or reclassification.

Such adjustment shall become effective immediately after (i) the Open of Business on the Ex-Date in the case of a dividend or distribution or (ii) the consummation of the transaction in the case of a subdivision, combination, split, reverse split or reclassification. If any dividend or distribution or subdivision, combination, split, reverse split or reclassification of the type described in this Section 4.01(a) is declared or announced but not so paid or made, the Exercise Prices shall again be adjusted to the Exercise Prices that would then be in effect if such dividend or distribution or subdivision, combination, split, reverse split or reclassification had not been declared or announced, as the case may be.

(b) The issuance to all holders of Common Shares of Common Shares (or Convertible Securities) at an Effective Consideration per share that is below the Fair Value of a Common Share on the Trading Day immediately preceding the date of the announcement of such issuance, in which event the Exercise Prices will be adjusted based on the following formula:

$$E_1 = E_0 \times \frac{N_0 + C/M}{N_0 + N_A}$$

where:

E_1 = the applicable Exercise Price in effect immediately after the Open of Business on the Ex-Date for such issuance;

E_0 = the applicable Exercise Price in effect immediately prior to the Open of Business on the Ex-Date for such issuance;

N_0 = the number of Common Shares outstanding immediately prior to the Open of Business on the Ex-Date for such issuance;

N_A = the number of Common Shares issued in such transaction and, if applicable, issuable upon exercise, conversion or exchange of any Convertible Securities issued in such transaction assuming Full Physical Settlement;

C = the total consideration receivable by the Company on issuance and, if applicable, the exercise, conversion or exchange of any Convertible Securities assuming full physical settlement; and

M = the Fair Value of a share of Common Shares on the Trading Day immediately preceding the date of the announcement of such issuance.

Such adjustment shall become effective immediately after the Open of Business on the Ex-Date for such issuance. In the event that an issuance of such Common Shares or Convertible Securities is announced but such Common Shares or Convertible Securities are not so issued, the Exercise Prices shall again be adjusted to be the Exercise Prices that would then be in effect if the Ex-Date for such issuance had not occurred. To the extent that any Convertible Securities are not exercised prior to their expiration or shares of Common Shares are otherwise not delivered upon exercise of such Convertible Securities, upon the expiration, termination or maturity of such Convertible Securities, the Exercise Prices shall be readjusted to the Exercise Prices that would then be in effect had the adjustments made upon the issuance of such Convertible Securities been made on the basis of the delivery of only the number of shares of Common Shares actually delivered. Except as set forth in the preceding two sentences, if the application of this clause (b) to any issuance would result in an increase in an Exercise Price, no adjustment shall be made to such Exercise Price for such issuance under this clause (b).

(c) The issuance of Common Shares (or Convertible Securities) at an Effective Consideration that is less than the applicable Exercise Price in effect immediately prior to the Open of Business on the date of such issuance, in which event the applicable Exercise Price will be adjusted based on the following formula:

$$E_1 = \frac{(E_0 \times N_0) + C}{N_0 + N_A}$$

where:

- E_1 = the applicable Exercise Price in effect immediately after the Open of Business on the date of such issuance;
- E_0 = the applicable Exercise Price in effect immediately prior to the Open of Business on the date of such issuance;
- N_0 = the number of Common Shares outstanding immediately prior to the Open of Business on the date of such issuance;
- N_A = the number of Common Shares issued and, if applicable, issuable upon exercise, conversion or exchange of any Convertible Securities assuming full physical settlement; and
- C = the total consideration receivable by the Company on issuance and, if applicable, the exercise, conversion or exchange of any Convertible Securities assuming full physical settlement.

Such adjustment shall become effective immediately after the Open of Business on the date of such issuance. In the event that an issuance of such Common Shares or Convertible Securities is announced but such Common Shares or Convertible Securities are not so issued, the Exercise

Price(s) shall again be adjusted to be the Exercise Price(s) that would then be in effect if the issuance had not occurred. To the extent that such Convertible Securities are not exercised prior to their expiration or shares of Common Shares are otherwise not delivered pursuant to such Convertible Securities, upon the expiration, termination or maturity of such Convertible Securities, the Exercise Price(s) shall be readjusted to the Exercise Price(s) that would then be in effect had the adjustments made upon the issuance of such Convertible Securities been made on the basis of the delivery of only the number of shares of Common Shares actually delivered. Except as set forth in the preceding two sentences, if the application of this clause (c) to any issuance would result in an increase in an Exercise Price, no adjustment shall be made to such Exercise Price for such issuance under this clause (c).

(d) The issuance as a dividend or distribution to all holders of Common Shares of evidences of indebtedness, Securities of the Company or any other Person (other than Common Shares), Cash or other property (excluding any dividend or distribution covered by Section 4.01(a)), in which event the Exercise Prices will be adjusted based on the following formula:

$$E_1 = E_0 \times \frac{P - FMV}{P}$$

where:

E_1 = the applicable Exercise Price in effect immediately after the Open of Business on the Ex-Date for such dividend or distribution;

E_0 = the applicable Exercise Price in effect immediately prior to the Open of Business on the Ex-Date for such dividend or distribution;

P = the Fair Value of a Common Share as of immediately prior to the Open of Business on the second Business Day preceding the Ex-Date for such dividend or distribution; and

FMV = the Fair Value of the portion of such dividend or distribution applicable to one Common Share as of the Open of Business on the date of such dividend or distribution.

Such decrease shall become effective immediately after the Open of Business on the Ex-Date for such dividend or distribution. In the event that such dividend or distribution is declared or announced but not so paid or made, the Exercise Prices shall again be adjusted to be the Exercise Prices which would then be in effect if such distribution had not been declared or announced.

However, if the transaction that gives rise to an adjustment pursuant to this clause Section 4.01(d) is one pursuant to which the payment of a dividend or other distribution on Common Shares consists of shares of capital stock of, or similar equity interests in, a Subsidiary of the Company or other business unit of the Company (i.e., a spin-off) that are, or, when issued, will be, traded or quoted on the New York Stock Exchange or any other national or regional

securities exchange or market, then the Exercise Prices will instead be adjusted based on the following formula:

$$E_1 = E_0 \times \frac{P_0}{P_0 + FMV_0}$$

where:

E_1 = the applicable Exercise Price in effect immediately after the Open of Business on the Ex-Date for such dividend or distribution;

E_0 = the applicable Exercise Price in effect immediately prior to the Open of Business on the Ex-Date for such dividend or distribution;

FMV_0 = the average of the Fair Values of the capital stock or similar equity interests distributed to holders of Common Shares applicable to one Common Share over the 10 consecutive Trading Days commencing on, and including, the third Trading Day following the effective date of such spin-off (the “**Valuation Period**”); and

P_0 = the average of the Fair Values of the Common Shares over the Valuation Period for such dividend or distribution.

Such decrease shall be made immediately after the Close of Business on the last Trading Day of the Valuation Period for such dividend or distribution, but shall be given effect immediately after the Open of Business on the Ex-Date for such dividend or distribution; provided that in respect of any exercise during the Valuation Period, references to 10 consecutive Trading Days in the definition of Valuation Period shall be deemed replaced with such lesser number of Trading Days as have elapsed commencing on, and including, the third Trading Day following the effective date of such spin-off and the Exercise Date in determining the applicable Exercise Price. In the event that such dividend or distribution is declared or announced but not so paid or made, the Exercise Prices shall again be adjusted to be the Exercise Prices which would then be in effect if such distribution had not been declared or announced.

(e) The payment in respect of any tender offer or exchange offer by the Company for Common Shares, where the Cash and Fair Value of any other consideration included in the payment per Common Share exceeds the Fair Value of a Common Share as of the Open of Business on the second Business Day preceding the expiration date of the tender or exchange offer (the “**Offer Expiration Date**”), in which event the Exercise Prices will be adjusted based on the following formula:

$$E_1 = E_0 \times \frac{(N_0 \times P) - A}{(P \times N_1)}$$

where:

- E_1 = the applicable Exercise Price in effect immediately after the Close of Business on the Offer Expiration Date;
- E_0 = the applicable Exercise Price in effect immediately prior to the Close of Business on the Offer Expiration Date;
- N_0 = the number of Common Shares outstanding immediately prior to the expiration of the tender or exchange offer (prior to giving effect to the purchase or exchange of Common Shares);
- N_1 = the number of Common Shares outstanding immediately after the expiration of the tender or exchange offer (after giving effect to the purchase or exchange of Common Shares);
- A = the aggregate Cash and Fair Value of any other consideration payable for Common Shares purchased in such tender offer or exchange offer; and
- P = the Fair Value of a Common Share as of the Open of Business on the second Business Day preceding the Offer Expiration Date.

An adjustment, if any, to the Exercise Prices pursuant to this clause (c) shall become effective immediately after the Close of Business on the Offer Expiration Date. In the event that the Company or a Subsidiary of the Company is obligated to purchase Common Shares pursuant to any such tender offer or exchange offer, but the Company or such Subsidiary is permanently prevented by applicable Law from effecting any such purchases, or all such purchases are rescinded, then the Exercise Prices shall again be adjusted to be the Exercise Prices which would then be in effect if such tender offer or exchange offer had not been made. Except as set forth in the preceding sentence, if the application of this clause (c) to any tender offer or exchange offer would result in an increase in the Exercise Price, no adjustment shall be made for such tender offer or exchange offer under this clause (c).

(f) If any single action would require adjustment of the Exercise Prices pursuant to more than one subsection of this Section 4.01, only one adjustment shall be made and such adjustment shall be the amount of adjustment that has the highest, relative to the rights and interests of the registered holders of the Warrants then outstanding, absolute value.

(g) The Company may from time to time, to the extent permitted by Law, decrease either Exercise Price and/or increase the Number of Warrants by any amount for any period of at least twenty days. In that case, the Company shall give the Global Warrant Holder and the Warrant Agent at least ten days' prior written notice of such increase or decrease, and such notice shall state the decreased Exercise Price and/or increased Number of Warrants and the period during which the decrease and/or increase will be in effect. The Company may make such decreases in the Exercise Prices and/or increases in the Number of Warrants, in addition to those set forth in this Article 4, as the Board deems advisable, including to avoid or diminish any income tax to holders of the Common Shares resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

(h) Notwithstanding this Section 4.01 or any other provision of this Warrant Agreement or the Warrants, if an Exercise Price adjustment becomes effective on any Ex-Date, and a Warrant has been exercised on or after such Ex-Date and on or prior to the related Record Date resulting in the Person issued Common Shares being treated as the record holder of the Common Shares on or prior to the Record Date, then, notwithstanding the Exercise Price adjustment provisions in this Section 4.01, the Exercise Price adjustment relating to such Ex-Date will not be made with respect to such Warrant. Instead, such Person will be treated as if it were the record owner of Common Shares on an un-adjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

Section 4.02 Adjustments to Number of Warrants. Concurrently with any adjustment to the Exercise Price under Section 4.01, except to the extent pursuant to Section 4.01(h), the Number of Warrants will be adjusted such that the Number of Warrants in effect immediately following the effectiveness of such adjustment will be equal to the Number of Warrants in effect immediately prior to such adjustment, multiplied by a fraction, (i) the numerator of which is the Exercise Price in effect immediately prior to such adjustment and (ii) the denominator of which is the Exercise Price in effect immediately following such adjustment.

Section 4.03 Certain Distributions of Rights and Warrants.

(a) Rights or warrants distributed by the Company to all holders of Common Shares entitling the holders thereof to subscribe for or purchase the Company's Securities (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events (a "**Trigger Event**"):

- (1) are deemed to be transferred with such Common Shares;
- (2) are not exercisable; and
- (3) are also issued in respect of future issuances of Common Shares,

shall be deemed not to have been distributed for purposes of Article 4 (and no adjustment to the Exercise Price or the Number of Warrants under this Article 4 will be made) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Exercise Prices and the Number of Warrants shall be made under this Article 4 (subject in all respects to Section 4.04).

(b) If any such right or warrant is subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new rights or warrants with such rights (subject in all respects to Section 4.04).

(c) In addition, except as set forth in Section 4.04, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in Section 4.03(b)) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Exercise Prices and the Number of Warrants under Article 4 was made (including any adjustment contemplated in Section 4.04):

(1) in the case of any such rights or warrants that shall all have been redeemed or repurchased without exercise by the holders thereof, the applicable Exercise Price and the Number of Warrants shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a distribution under Section 4.01(b), equal to the per share redemption or repurchase price received by a holder or holders of Common Shares with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Shares as of the date of such redemption or repurchase; and

(2) in the case of such rights or warrants that shall have expired or been terminated without exercise by the holders thereof, the applicable Exercise Price and the Number of Warrants shall be readjusted as if such rights and warrants had not been issued or distributed.

Section 4.04 Stockholder Rights Plans. If the Company has a stockholder rights plan in effect with respect to the Common Shares, upon exercise of a Warrant the holder shall be entitled to receive, in addition to the Common Shares, the rights under such stockholder rights plan, unless, prior to such exercise, such rights have separated from the Common Shares, in which case the Exercise Prices and the Number of Warrants shall be adjusted at the time of separation as if the Company had made a distribution to all holders of Common Shares as described in the first paragraph of Section 4.01(b), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 4.05 Restrictions on Adjustments.

(a) Except in accordance with Section 4.01, the Exercise Price and the Number of Warrants will not be adjusted for the issuance of Common Shares or other Securities of the Company.

(b) For the avoidance of doubt, neither the Exercise Price nor the Number of Warrants will be adjusted:

(1) upon the issuance of any Securities by the Company on or after the Closing Date pursuant to the Plan or upon the issuance of Common Shares upon the exercise of such Securities;

(2) upon the issuance of any Common Shares or other Securities or any payments pursuant to the Management Incentive Plan or any other equity incentive plan of the Company;

(3) upon any issuance of any Common Shares (or Convertible Securities) pursuant to the exercise of the Warrants;

(4) upon the offer and sale of Common Shares by the Company in a registered primary offering at a price that is less than Fair Value for Common Shares at the time of such offer and sale;

(5) upon the issuance of Common Shares or other Securities of the Company in connection with a business acquisition transaction or strategic relationship, the principal purposes of which is not to raise capital (except to the extent otherwise expressly required by this Warrant Agreement); and

(6) upon the issuance of any Common Shares or other Securities of the Company upon the conversion or exercise of any Convertible Securities issued after the Closing Date if such issuance has been subject to the provisions of this Section 4, whether or not any adjustments were made upon such original issuance.

(c) No adjustment shall be made to the Exercise Price or the Number of Warrants for any of the transactions described in Section 4.01 if the Company makes provisions for participation in any such transaction with respect to Warrants without exercise of such Warrants on the same basis as with respect to Common Shares with notice that the Board determines in good faith to be fair and appropriate.

(d) No adjustment shall be made to the Exercise Price, nor will any corresponding adjustment be made to the Number of Warrants, unless the adjustment would result in a change of at least 1% of the Exercise Price; provided, however, that any adjustment of less than 1% that was not made by reason of this Section 4.05(d) shall be carried forward and made as soon as such adjustment, together with any other adjustments not previously made by reason of this Section 4.05(d), would result in a change of at least 1% in the aggregate. All calculations under this Article 4 shall be made to the nearest cent or to the nearest 1/100th of a Common Share, as the case may be.

(e) If the Company takes a record of the holders of Common Shares for the purpose of entitling them to receive a dividend or other distribution, and thereafter (and before the dividend or distribution has been paid or delivered to members) legally abandons its plan to pay or deliver such dividend or distribution, then thereafter no adjustment to the Exercise Price or the Number of Warrants then in effect shall be required by reason of the taking of such record.

Section 4.06 Successor upon Consolidation, Merger and Sale of Assets.

(a) Other than with respect to a Non-Affiliate Combination, the Company may consolidate or merge with another Person (a “**Fundamental Equity Change**”) only (i) if the Company is the surviving Person or (ii), if the Company is not the surviving Person, then:

(1) the successor to the Company assumes all of the Company’s obligations under this Warrant Agreement and the Warrants; and

(2) the successor to the Company provides written notice of such assumption to the Warrant Agent promptly following the Fundamental Equity Change.

(b) In the case of a Fundamental Equity Change other than a Non-Affiliate Combination, the successor Person to the Company shall succeed to and be substituted for the Company with the same effect as if it had been named herein as the Company, and the Company shall thereupon be released from all obligations and covenants under this Warrant Agreement and the Warrants. Such successor Person shall provide in writing the Warrant Agent with such

identifying corporate information as may be reasonably requested by the Warrant Agent. Such successor Person thereafter may cause to be signed, and may issue any or all of, the Global Warrants issuable pursuant to this Warrant Agreement which theretofore shall not have been issued by the Company; and, upon the order of such successor Person, instead of the Company, and subject to all the terms, conditions and limitations in this Warrant Agreement prescribed, the Warrant Agent shall authenticate and deliver, as applicable, any Global Warrants that previously shall have been signed and delivered by the officers of the Company to the Warrant Agent for authentication, and any Warrants which such successor Person thereafter shall cause to be signed and delivered to the Warrant Agent for such purpose.

(c) If the Company desires to sell, lease, convey or otherwise transfer in one transaction or a series of related transactions all or substantially all of the consolidated assets of the Company and its Subsidiaries (an “**Asset Sale**”) to any Affiliated Buyer (such Asset Sale, an “**Affiliated Asset Sale**”), the Company may only consummate such Affiliated Asset Sale if such Affiliated Buyer agrees (i) to enter into a warrant agreement in form and substance substantially similar to this Warrant Agreement and (ii) to issue warrants for equity in such Affiliated Buyer (or a Person to which all or substantially all of the assets of the Company and its Subsidiaries acquired in such Asset Sale are transferred or conveyed) to the Global Warrant Holder on terms (including economic) and conditions substantially similar to the Global Warrant (taking into account any Warrants that are exercised prior to the Expiration Date (as defined in clause (ii)(A) of the definition of Expiration Date and taking into account the materiality of the transferred assets to the total assets and operations of the Affiliated Buyer, taken as a whole), for crediting to the accounts of the applicable Beneficial Owners pursuant to the procedures of the Depository.

Section 4.07 Adjustment upon Reorganization Event.

(a) If there occurs any Fundamental Equity Change (whether or not a Non-Affiliate Combination) or any recapitalization, reorganization, consolidation, reclassification, change in the outstanding Common Shares (other than changes resulting from a subdivision or combination to which Section 4.01(a) applies), statutory share exchange or other transaction (each such event a “**Reorganization Event**”), in each case as a result of which the Common Shares would be converted into, changed into or exchanged for, stock, other securities, other property or assets (including Cash or any combination thereof) (the “**Reference Property**”) while any Warrants remain outstanding and unexpired, then following the effective time of the Reorganization Event, the right to receive Common Shares upon exercise of a Warrant shall be changed to a right to receive, upon exercise of such Warrant, the kind and amount of shares of stock, other securities or other property or assets (including Cash or any combination thereof) that a holder of one Common Share would have owned or been entitled to receive in connection with such Reorganization Event (such kind and amount of Reference Property per Common Share, a “**Unit of Reference Property**”). In the event holders of Common Shares have the opportunity to elect the form of consideration to be received in a Reorganization Event, the type and amount of consideration into which the Warrants shall be exercisable from and after the effective time of such Reorganization Event shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Shares in such Reorganization Event. The Company hereby agrees not to become a party to, nor to cause or permit, any Reorganization Event unless its terms are consistent with this Section 4.07.

(b) At any time from, and including, the effective time of a Reorganization Event:

(1) each Warrant shall be exercisable for a single Unit of Reference Property instead of one Common Share; and

(2) the Fair Value shall be calculated with respect to a Unit of Reference Property.

(c) On or prior to the effective time of any Reorganization Event (whether or not a Non-Affiliate Combination), the Company or the successor or purchasing Person, as the case may be, shall execute an amendment to this Warrant Agreement providing that the Warrants shall be exercisable for Units of Reference Property in accordance with the terms of this Section 4.07. If the Reference Property in connection with any Reorganization Event includes shares of stock or other securities and assets of a Person other than the successor or purchasing Person, as the case may be, in such Reorganization Event, then the Company shall cause such amendment to this Warrant Agreement to be executed by such other Person and such amendment shall contain such additional provisions to protect the interests of the Global Warrant Holder (for the benefit of the Beneficial Owners) as the Board shall reasonably consider necessary by reason of the foregoing. Any such amendment to this Warrant Agreement shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 4. In the event the Company shall execute an amendment to this Warrant Agreement pursuant to this Section 4.07, the Company shall promptly file with the Warrant Agent an Officers' Certificate briefly stating the reasons therefor, the kind or amount of Cash, securities or property or assets that will comprise a Unit of Reference Property after the relevant Reorganization Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with. The Company shall cause notice of the execution of the amendment to be mailed to the Global Warrant Holder within 20 Business Days after execution thereof.

(d) The above provisions of this Section 4.07 shall similarly apply to successive Reorganization Events.

(e) If this Section 4.07 applies to any event or occurrence, no other provision of this Article 4 shall apply to such event or occurrence (other than Section 4.06).

Section 4.08 Common Shares Outstanding; Common Shares Reserved for Issuance on Exercise.

(a) For the purposes of this Article 4, the number of Common Shares at any time outstanding shall not include Common Shares held, directly or indirectly, by the Company or any of its Subsidiaries.

(b) The Board has authorized and reserved for issuance such number of Common Shares as will be issuable upon the exercise of all outstanding Warrants for Common Shares, and the Board shall authorized and reserve for issuance such additional number of Common Shares as may be required as a result of any of the adjustments set forth in this Article

IV. The Company covenants that all Common Shares that shall be so issuable shall be duly and validly issued, fully paid and non-assessable.

(c) The Company agrees to authorize and direct its current and future transfer agents for the Common Shares to reserve for issuance the number of Common Shares specified in this Section 4.08 and shall take all action required to increase the authorized number of Common Shares if at any time there shall be insufficient authorized but unissued Common Shares to permit such reservation or to permit the exercise of a Warrant, including an increase as may be required as a result of adjustments set forth in this Article IV. Promptly after the Expiration Date, the Warrant Agent shall certify to the Company the aggregate Number of Warrants then outstanding, and thereafter no Common Shares shall be required to be reserved in respect of such Warrants.

Section 4.09 Calculations; Instructions to Warrant Agent .

(a) Subject to Section 4.09(b), the Company shall be responsible for making all calculations called for under this Article 4 for purposes of determining any adjustments to the Exercise Prices and the Number of Warrants, including determinations as to Fair Value and the composition of Units of Reference Property. Such calculations and determinations shall be final and binding on the Global Warrant Holder and all Beneficial Owners absent manifest error. The Company shall provide a schedule of the Company's calculations and determinations to the Warrant Agent, and the Warrant Agent is entitled to rely upon the accuracy of the Company's calculations without independent verification.

(b) In the event the Board engages a Representative to advise it with respect to the determination of Fair Value, the Board shall be entitled to rely upon the determination of such Representative. Subject to the last sentence of clause (v) of the definition of "Fair Value", the Company shall pay the fees and expenses of any Representative.

Section 4.10 Notice of Adjustments. The Company shall mail, or cause to be mailed, to the Global Warrant Holder and the Warrant Agent, in accordance with Section 6.14, a notice of any adjustment or readjustment to the Exercise Prices or the Number of Warrants no less than three Business Days prior to the effective date of such adjustment or readjustment. The Company shall file with the Warrant Agent such notice and an Officer's Certificate setting forth such adjustment or readjustment and kind and amount of securities, Cash or other property for which a Warrant shall thereafter be exercisable and the Exercise Prices, showing in reasonable detail the facts upon which such adjustment or readjustment is based. The Officer's Certificate shall be conclusive evidence that the adjustment or readjustment is correct, and the Warrant Agent shall not be deemed to have any knowledge of any adjustments or readjustments unless and until it has received such Officer's Certificate. The Warrant Agent shall not be under any duty or responsibility with respect to any such Officer's Certificate except to exhibit the same to the Global Warrant Holder.

Section 4.11 Warrant Agent Not Responsible for Adjustments or Validity. The Warrant Agent shall at no time be under any duty or responsibility to determine whether any facts exist that may require an adjustment or readjustment of the Exercise Prices and the Number of Warrants, or with respect to the nature or extent of any such adjustment or readjustment when

made, or with respect to the method employed, herein or in any supplemental agreement provided to be employed, in making the same. The Warrant Agent shall have no duty to verify or confirm any calculation called for hereunder. The Warrant Agent shall have no liability for any failure or delay in performing its duties hereunder caused by any failure or delay of the Company in providing such calculations to the Warrant Agent. The Warrant Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any Common Shares or of any Securities or property which may at any time be issued or delivered upon the exercise of any Warrant or upon any adjustment or readjustment pursuant to this Article 4, and it makes no representation with respect thereto. The Warrant Agent shall not be responsible for any failure of the Company to make any Cash payment or to issue, transfer or deliver any Common Shares or stock certificates or other securities or property or scrip upon the surrender of any Warrant for the purpose of exercise or upon any adjustment pursuant to this Article 4, or to comply with any of the covenants of the Company contained in this Article 4.

Section 4.12 Statements on Warrants. Other than notation of any applicable increase or decrease in the Number of Warrants on Schedule A of such Global Warrant Certificate, the form of Global Warrant Certificate need not be changed because of any adjustment or readjustment made pursuant to this Article 4, and Global Warrant Certificates issued after such adjustment or readjustment may state the same information (other than the adjusted Exercise Prices and the adjusted Number of Warrants) as are stated in the Global Warrant Certificates initially issued pursuant to this Warrant Agreement.

Section 4.13 Effect of Adjustment. The Depository and applicable shall effect any applicable adjustments, changes or payments to the Beneficial Owners with respect to beneficial interests in the Global Warrants resulting from any adjustments or readjustments, changes or payments effected pursuant to this Article 4 in accordance with the procedures of the Depository.

Article 5

Other Provisions Relating to Rights of Global Warrant Holder

Section 5.01 No Rights as Stockholders. Nothing contained in this Warrant Agreement or in any Global Warrant Certificate shall be construed as conferring upon any Person, by virtue of holding or having a beneficial interest in the Global Warrant, the right to vote, to consent, to receive any Cash dividends, stock dividends, allotments or rights or other distributions paid, allotted or distributed or distributable to the holders of Common Shares, or to exercise any rights whatsoever as a stockholder of the Company unless, until and only to the extent such Persons become holders of record of Common Shares issued upon settlement of Warrants.

Section 5.02 Mutilated or Missing Global Warrant Certificates. If any Global Warrant Certificate held by the Warrant Agent at any time is mutilated, defaced, lost, destroyed or stolen, then on the terms set forth in this Warrant Agreement, such Global Warrant Certificate may be replaced with a new Global Warrant Certificate, of like date and tenor and representing the same number of Warrants, at the cost of the Company at the office of the Warrant Agent subject to the replacement procedures of the Warrant Agent which shall include obtaining an open penalty surety bond satisfactory to the Warrant Agent holding the Company and the Warrant Agent harmless. Any such new Global Warrant Certificate shall constitute an original contractual

obligation of the Company, whether or not the allegedly lost, stolen, mutilated or destroyed Global Warrant Certificate shall be at any time enforceable by anyone. All Global Warrant Certificates shall be issued upon the express condition that the foregoing provisions are exclusive with respect to the substitution for lost, stolen, mutilated or destroyed Global Warrant Certificates, and shall preclude any and all other rights or remedies notwithstanding any Law or statute existing or hereafter enacted to the contrary with respect to the substitution for and replacement of negotiable instruments or other securities without their surrender.

Section 5.03 Modification, Waiver and Meetings.

(a) This Warrant Agreement may be modified or amended by the Company and the Warrant Agent, without the consent of the Global Warrant Holder or any Beneficial Owner of any Warrant with respect to any Warrant, for the purposes of curing any ambiguity or correcting or supplementing any defective provision contained in this Warrant Agreement or to make any other provisions in regard to matters or questions arising in this Warrant Agreement which the Company and the Warrant Agent may deem necessary or desirable; provided that such modification or amendment does not adversely affect the interests of the Global Warrant Holder or the Beneficial Owners in any material respect. As a condition precedent to the Warrant Agent's execution of any amendment, the Company shall deliver to the Warrant Agent a certificate from an Appropriate Officer that states that the proposed amendment is in compliance with the terms of this Section 5.03.

(b) Modifications and amendments to this Warrant Agreement or to the terms and conditions of Warrants not contemplated by Section 5.03(a) may also be made by the Company and the Warrant Agent, and noncompliance with any provision of the Warrant Agreement or Warrants may be waived, by the Global Warrant Holder (pursuant to a proper vote or consent of a majority of the Warrants at the time outstanding). Notwithstanding anything to the contrary herein, the Company may amend Schedule I from time to time to accurately reflect the name and address of the Global Warrant Holder after the Closing Date without any further consent or agreement from any other Person.

(c) However, no modification, amendment or waiver may, without the written consent of:

(1) the Global Warrant Holder (pursuant to a proper vote or consent of each Warrant):

(A) change the Expiration Date; or

(B) increase an Exercise Price or decrease the Number of Warrants (except as set forth in Article 4);

(2) the Global Warrant Holder (pursuant to a proper vote or consent of 66.66% of the Warrants affected):

(A) impair the right to institute suit for the enforcement of any payment or delivery with respect to the exercise and settlement of any Warrant;

(B) except as otherwise expressly permitted by provisions of this Warrant Agreement concerning specified reclassifications or corporate reorganizations, impair or adversely affect the exercise rights with respect to Warrants, including any change to the calculation or payment of the number of Common Shares received upon exercise of each Warrant;

(C) reduce the percentage of Warrants outstanding necessary to modify or amend this Warrant Agreement or to waive any past default;

(D) amend any of the terms of Article IV in any matter that could adversely effect the rights of the Beneficial Owners with respect to any adjustments to an Exercise Price and/or number of Warrants as set forth therein; or

(E) reduce the percentage in Warrants outstanding required for any other waiver under this Warrant Agreement.

Section 5.04 Notices of Date, etc. In the event of any Change of Control, then, and in each such case, the Company will mail or cause to be mailed to the Global Warrant Holder, at least 15 days prior to the effective date, a notice specifying the effective date on which such Change of Control is or is expected to take place, and the time, if any is to be fixed, as of which the holders of record of Common Shares (or such other stock or Securities at the time deliverable upon the exercise of a Warrant) shall be entitled to exchange their Common Shares (or such other stock or Securities) for Securities or other property deliverable upon such Change of Control.³

Article 6

Concerning the Warrant Agent and Other Matters⁴

Section 6.01 Payment of Certain Taxes.

(a) The Company shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable upon the initial issuance of the Global Warrant hereunder and delivery to the Global Warrant Holder.

(b) The Company shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable upon the issuance of Common Shares upon the exercise of Warrants hereunder.

Section 6.02 Change of Warrant Agent.

(a) The Warrant Agent, or any successor to it hereafter appointed, may resign its duties and be discharged from all further duties and liabilities hereunder (except for liability arising as a result of the Warrant Agent's own gross negligence, willful misconduct or bad faith) after giving sixty days' notice in writing to the Company, except that such shorter notice may be

³ [Warrant should not terminate if not exercised in connection with Change of Control.]

⁴ NTD: To be reviewed by the Warrant Agent.

given as the Company shall, in writing, accept as sufficient. If the office of the Warrant Agent becomes vacant by resignation or incapacity to act or otherwise, the Company shall appoint in writing a successor warrant agent in place of the Warrant Agent. If the Company shall fail to make such appointment within a period of thirty days after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated warrant agent or by the Global Warrant Holder, then the Global Warrant Holder may apply to any court of competent jurisdiction for the appointment of a successor warrant agent.

(b) The Warrant Agent may be removed by the Company at any time upon sixty days' written notice to the Warrant Agent; provided, however, that the Company shall not remove the Warrant Agent until a successor warrant agent meeting the qualifications hereof shall have been appointed; provided, further, that, until such successor warrant agent has been appointed, the Company shall compensate the Warrant Agent in accordance with Section 6.03.

(c) Any successor warrant agent, whether appointed by the Company or by such a court, shall be a corporation or banking association organized, in good standing and doing business under the Laws of the United States of America or any state thereof or the District of Columbia, and authorized under such Laws to exercise corporate trust powers and subject to supervision or examination by federal or state authority and having a combined capital and surplus of not less than \$50,000,000. The combined capital and surplus of any such successor warrant agent shall be deemed to be the combined capital and surplus as set forth in the most recent report of its condition published prior to its appointment; provided that such reports are published at least annually pursuant to Law or to the requirements of a federal or state supervising or examining authority. After acceptance in writing of such appointment by the successor warrant agent, such successor warrant agent shall be vested with all the authority, powers, rights, immunities, duties and obligations of its predecessor warrant agent with like effect as if originally named as warrant agent hereunder, without any further act or deed; but if for any reason it becomes necessary or appropriate, the predecessor warrant agent shall execute and deliver, at the expense of the Company, an instrument transferring to such successor warrant agent all the authority, powers and rights of such predecessor warrant agent hereunder; and upon request of any successor warrant agent, the Company shall make, execute, acknowledge and deliver any and all instruments in writing to more fully and effectually vest in and conform to such successor warrant agent all such authority, powers, rights, immunities, duties and obligations. Upon assumption by a successor warrant agent of the duties and responsibilities hereunder, the predecessor warrant agent shall deliver and transfer, at the expense of the Company, to the successor warrant agent any property at the time held by it hereunder. As soon as practicable after such appointment, the Company shall give notice thereof to the predecessor warrant agent, the Global Warrant Holder and each transfer agent for its Common Shares. Failure to give such notice, or any defect therein, shall not affect the validity of the appointment of the successor warrant agent.

(d) Any entity into which the Warrant Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Warrant Agent shall be a party, or any Person succeeding to all or substantially all of the corporate trust or agency business of the Warrant Agent, shall be the successor warrant agent under this Warrant Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto; provided that such entity would

be eligible for appointment as a successor warrant agent under Section 6.02(c). In case at the time such successor to the Warrant Agent shall succeed to the agency created by this Warrant Agreement, any Global Warrant Certificate shall have been countersigned but not delivered, any such successor to the Warrant Agent may adopt the countersignature of the original Warrant Agent and deliver such Global Warrant Certificate so countersigned, and in case at that time any Global Warrant Certificates shall not have been countersigned, any successor to the Warrant Agent may countersign such Global Warrant Certificate either in the name of the predecessor Warrant Agent or in the name of the successor Warrant Agent; and in all such cases such Global Warrant Certificate shall have the full force provided in the Global Warrant Certificate and in this Warrant Agreement.

(e) In case at any time the name of the Warrant Agent shall be changed and at such time any Global Warrant Certificate shall have been countersigned but not delivered, the Warrant Agent may adopt the countersignatures under its prior name and deliver such Global Warrant Certificate so countersigned; and in case at that time any Global Warrant Certificate shall not have been countersigned, the Warrant Agent may countersign such Global Warrant Certificate either in its prior name or in its changed name; and in all such cases such Global Warrant Certificate shall have the full force provided in the Global Warrant Certificate and in this Warrant Agreement.

Section 6.03 Compensation; Further Assurances. The Company agrees that it will (a) pay the Warrant Agent reasonable compensation for its services as Warrant Agent in accordance with Exhibit C attached hereto and, except as otherwise expressly provided, will pay or reimburse the Warrant Agent upon written demand for all reasonable and documented expenses, disbursements and advances incurred or made by the Warrant Agent in accordance with any of the provisions of this Warrant Agreement (including the reasonable compensation, expenses and disbursements of its agents and counsel incurred in connection with the execution and administration of this Agreement), except any such expense, disbursement or advance as may arise from its or any of their gross negligence, willful misconduct or bad faith, and (b) perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Warrant Agent for the carrying out or performing of the provisions of this Warrant Agreement.

Section 6.04 Reliance on Counsel. The Warrant Agent may consult with legal counsel (who may be legal counsel for the Company), and the written opinion of such counsel or any advice of legal counsel subsequently confirmed by a written opinion of such counsel shall be full and complete authorization and protection to the Warrant Agent as to any action taken or omitted by it in good faith and in accordance with such written opinion or advice.

Section 6.05 Proof of Actions Taken. Whenever in the performance of its duties under this Warrant Agreement the Warrant Agent shall deem it necessary or desirable that any matter be proved or established by the Company prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Warrant Agent, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Warrant Agent; and such Officer's Certificate shall, in the absence of bad faith on the part of the Warrant Agent,

be full warrant to the Warrant Agent for any action taken, suffered or omitted in good faith by it under the provisions of this Warrant Agreement in reliance upon such Officer's Certificate; but in its discretion the Warrant Agent may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as to it may seem reasonable.

Section 6.06 Correctness of Statements. The Warrant Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Warrant Agreement or any Global Warrant Certificate (except its countersignature thereof) or be required to verify the same, and all such statements and recitals are and shall be deemed to have been made by the Company only.

Section 6.07 Validity of Agreement. From time to time, the Warrant Agent may apply to any Appropriate Officer for instruction and the Company shall provide the Warrant Agent with such instructions concerning the services to be provided hereunder. The Warrant Agent shall not be held to have notice of any change of authority of any Person, until receipt of notice thereof from the Company. The Warrant Agent shall not be under any responsibility in respect of the validity of this Warrant Agreement or the execution and delivery hereof or in respect of the validity or execution of any Global Warrant Certificate (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Warrant Agreement or in any Global Warrant Certificate; nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any Common Shares to be issued pursuant to this Warrant Agreement or any Warrants or as to whether any Common Shares will, when issued, be validly issued and fully paid and nonassessable. The Warrant Agent and its agents and subcontractors shall not be liable and shall be indemnified by the Company for any action taken or omitted by Warrant Agent in reliance upon any Company instructions except to the extent that the Warrant Agent had actual knowledge of facts and circumstances that would render such reliance unreasonable.

Section 6.08 Use of Agents. The Warrant Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents provided that the Warrant Agent shall remain responsible for the activities or omissions of any such agent or attorney and reasonable care has been exercised in the selection and in the continued employment of such attorney or agent.

Section 6.09 Liability of Warrant Agent. The Warrant Agent shall incur no liability or responsibility to the Company or to any Global Warrant Holder for any action taken or not taken (i) in reliance on any notice, resolution, waiver, consent, order, certificate, or other paper, document or instrument believed by it to be genuine and to have been signed, sent or presented by the proper party or parties or (ii) in relation to its services under this Warrant Agreement, unless such liability arises out of or is attributable to the Warrant Agent's gross negligence, material breach of this Warrant Agreement, or willful misconduct or bad faith or material breach of any representation or warranty of the Warrant Agent hereunder. The Company agrees to indemnify the Warrant Agent and save it harmless against any and all losses, expenses and liabilities, including judgments, costs and reasonable counsel fees, for anything done or omitted in good faith by the Warrant Agent in the execution of this Warrant Agreement or otherwise arising in connection with this Warrant Agreement, except as a result of the Warrant Agent's gross negligence, material breach of this Warrant Agreement, willful misconduct or bad faith (as

determined by a court of competent jurisdiction in a final non-appealable judgment) or material breach of any representation or warranty of the Warrant Agent hereunder. The Warrant Agent shall be liable hereunder only for its gross negligence, material breach of this Warrant Agreement, willful misconduct or bad faith (as determined by a court of competent jurisdiction in a final non-appealable judgment) or its material breach of any representation or warranty of the Warrant Agent hereunder, for which the Warrant Agent is not entitled to indemnification under this Warrant Agreement. Notwithstanding anything contained herein to the contrary, the Warrant Agent's aggregate liability during any term of this Agreement with respect to, arising from, or arising in connection with this Agreement, or from all services provided or omitted to be provided under this Agreement, whether in contract, or in tort, or otherwise, is limited to, and shall not exceed, the amounts paid hereunder by the Company to the Warrant Agent as fees and charges, but not including reimbursable expenses, during the twelve (12) months immediately preceding the event for which recovery from Warrant Agent is being sought. Neither party to this Agreement shall be liable to the other party for any consequential, indirect, punitive, special or incidental damages under any provisions of this Agreement or for any consequential, indirect, punitive, special or incidental damages arising out of any act or failure to act hereunder even if that party has been advised of or has foreseen the possibility of such damages.

Section 6.10 Legal Proceedings. The Warrant Agent shall be under no obligation to institute any action, suit or legal proceeding or to take any other action likely to involve expense unless the Company, the Global Warrant Holder or the Beneficial Owner shall furnish the Warrant Agent with reasonable indemnity for any costs and expenses which may be incurred, but this provision shall not affect the power of the Warrant Agent to take such action as the Warrant Agent may consider proper, whether with or without any such security or indemnity. The Warrant Agent shall promptly notify the Company and the Global Warrant Holder in writing of any claim made or action, suit or proceeding instituted against it arising out of or in connection with this Warrant Agreement.

Section 6.11 Actions as Agent. The Warrant Agent shall act hereunder solely as agent and not in a ministerial or fiduciary capacity, and its duties shall be determined solely by the provisions hereof. The duties and obligations of the Warrant Agent shall be determined solely by the express provisions of the Warrant Agreement, and the Warrant Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in the Warrant Agreement. No implied covenants or obligations shall be read into the Warrant Agreement against the Warrant Agent. The Warrant Agent shall not be liable for anything that it may do or refrain from doing in good faith in connection with this Warrant Agreement except for its own gross negligence, willful misconduct or bad faith.

Section 6.12 Appointment and Acceptance of Agency. The Company hereby appoints the Warrant Agent to act as agent for the Company in accordance with the instructions set forth in this Warrant Agreement, and the Warrant Agent hereby accepts the agency established by this Warrant Agreement and agrees to perform the same upon the terms and conditions herein set forth or as the Company and the Warrant Agent may hereafter agree.

Section 6.13 Successors and Assigns. All the covenants and provisions of this Warrant Agreement by or for the benefit of the Company or the Warrant Agent shall bind and inure to the benefit of their respective successors and assigns hereunder. The Warrant Agent may assign this

Agreement or any rights and obligations hereunder, in whole or in part, to an Affiliate thereof with the prior consent of the Company, provided that the Warrant Agent may make such an assignment without consent of the Company to any successor to the Warrant Agent by consolidation, merger or transfer of its assets subject to the terms and conditions of the Agreement.

Section 6.14 Notices. Any notice or demand authorized by this Warrant Agreement to be given or made to the Company shall be sufficiently given or made if sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by the Company with the Warrant Agent), as follows:

[GT Advanced Technologies Inc.
Daniel Webster Highway
Merrimack, NH 03054
Attention: Hoil Kim]

Facsimile: [____]
Email: [____]

with a copy to counsel designated by the Company.

Any notice or demand authorized by this Warrant Agreement to be given or made to the Warrant Agent shall be sufficiently given or made if sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by the Warrant Agent with the Company), as follows:

[American Stock Transfer & Trust Company, LLC
6201 15th Avenue
Brooklyn, NY 11219

Attention: Legal Department
Email: legalteam@amstock.com]

Any notice or demand authorized by this Warrant Agreement to be given or made to the Global Warrant Holder shall be sufficiently given or made if sent by first-class mail, postage prepaid to the last address of the Global Warrant Holder as it shall appear on the Warrant Register.

Section 6.15 Applicable Law; Jurisdiction. The validity, interpretation and performance of this Warrant Agreement and of the Global Warrant Certificates shall be governed in accordance with the Laws of the State of New York, without giving effect to the principles of conflicts of Laws thereof. The parties hereto irrevocably consent to the exclusive jurisdiction of the courts of the State of New York and any federal court located in such state in connection with any action, suit or proceeding arising out of or relating to this Warrant Agreement.

Section 6.16 Waiver of Jury Trial. EACH OF THE COMPANY AND THE WARRANT AGENT ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY

WHICH MAY ARISE UNDER THIS WARRANT AGREEMENT OR A WARRANT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PERSON HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PERSON MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS WARRANT AGREEMENT OR A WARRANT. EACH OF THE COMPANY AND THE WARRANT AGENT CERTIFIES AND ACKNOWLEDGES THAT (a) NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (b) SUCH PERSON UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (c) SUCH PERSON MAKES THIS WAIVER VOLUNTARILY, AND (d) SUCH PERSON HAS BEEN INDUCED TO ENTER INTO THIS WARRANT AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 6.17 Benefit of this Warrant Agreement. Nothing in this Warrant Agreement expressed and nothing that may be implied from any of the provisions hereof is intended, or shall be construed, to confer upon, or give to, any Person or corporation other than the parties hereto and the Global Warrant Holder any right, remedy or claim under or by reason of this Warrant Agreement or of any covenant, condition, stipulation, promise or agreement hereof, and all covenants, conditions, stipulations, promises and agreements in this Warrant Agreement contained shall be for the sole and exclusive benefit of the parties hereto and their successors and of the Global Warrant Holder.

Section 6.18 Registered Global Warrant Holder. Prior to due presentment for registration of Transfer, the Company and the Warrant Agent may deem and treat the Person in whose name any Warrants are registered in the Warrant Register as the absolute owner thereof for all purposes whatever (notwithstanding any notation of ownership or other writing thereon made by anyone other than the Company or the Warrant Agent) and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary or be bound to recognize any equitable or other claim to or interest in any Warrants on the part of any other Person and shall not be liable for any registration of Transfer of Warrants that are registered or to be registered in the name of a fiduciary or the nominee of a fiduciary unless made with actual knowledge that a fiduciary or nominee is committing a breach of trust in requesting such registration of Transfer or with such knowledge of such facts that its participation therein amounts to bad faith.

Section 6.19 Headings. The Article and Section headings herein are for convenience only and are not a part of this Warrant Agreement and shall not affect the interpretation thereof.

Section 6.20 Counterparts. This Warrant Agreement may be executed in any number of counterparts on separate counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

Section 6.21 Entire Agreement. This Warrant Agreement and the Global Warrant Certificate constitute the entire agreement of the Company, the Warrant Agent and Global Warrant Holder with respect to the subject matter hereof and supersede all prior agreements and

undertakings, both written and oral, among the Company, the Warrant Agent and the Global Warrant Holder with respect to the subject matter hereof.

Section 6.22 Severability. Wherever possible, each provision of this Warrant Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Warrant Agreement shall be prohibited by or invalid under applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Warrant Agreement.

Section 6.23 Termination. This Warrant Agreement shall terminate at the Expiration Date (or Close of Business on the Settlement Date with respect to any Exercise Notice delivered prior to the Expiration Date). Notwithstanding the foregoing, this Warrant Agreement will terminate on such earlier date on which all outstanding Warrants have been exercised. All provisions regarding indemnification, warranty, liability and limits thereon shall survive the termination or expiration of this Warrant Agreement.

Section 6.24 Confidentiality. The Warrant Agent and the Company agree that (a) inter alia, personal, non-public Global Warrant Holder and Beneficial Owner information which is exchanged or received pursuant to the negotiation or the carrying out of this Agreement and (b) the fees for services set forth in the attached schedule shall remain confidential, and shall not be voluntarily disclosed to any other person, except disclosures pursuant to applicable securities Laws or otherwise as may be required by Law, including, without limitation, pursuant to subpoenas from state or federal government authorities (e.g., in divorce and criminal actions).

Section 6.25 Force Majeure. Notwithstanding anything to the contrary contained herein, the Warrant Agent will not be liable for any delays or failures in performance resulting from acts beyond its control including, without limitation, acts of God, terrorist acts, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, war, or civil unrest.

[signature pages follow]

IN WITNESS WHEREOF, this Warrant Agreement has been duly executed by the parties hereto as of the day and year first above written.

GT ADVANCED TECHNOLOGIES INC.

By: _____
Name:
Title:

[AMERICAN STOCK TRANSFER & TRUST
COMPANY, LLC]

By: _____
Name:
Title:

SCHEDULE A

SCHEDULE OF INCREASES OR DECREASES IN WARRANTS

The initial Number of Warrants is [2% of the Common Shares]. In accordance with the Warrant Agreement dated as of [____] [•], 2016 among the Company and [American Stock Transfer & Trust Company, LLC], as Warrant Agent, the following increases or decreases in the Number of Warrants have been made:

Date	Amount of increase in Number of Warrants evidenced by this Global Warrant	Amount of decrease in Number of Warrants evidenced by this Global Warrant	Number of Warrants evidenced by this Global Warrant following such decrease or increase	Signature of authorized signatory
-------------	--	--	--	--

EXHIBIT A-1

FORM OF 2% GLOBAL WARRANT CERTIFICATE

No. _____

CUSIP NO. [•]

UNLESS THIS 2% GLOBAL WARRANT CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF [AMERICAN STOCK TRANSFER & TRUST COMPANY LLC], A NEW YORK CORPORATION (THE “**WARRANT AGENT**”), TO GT ADVANCED TECHNOLOGIES INC. (THE “**COMPANY**”), THE CUSTODIAN OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE WARRANT AGENT (AND ANY PAYMENT IS MADE TO [•] OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE WARRANT AGENT), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, [•], HAS AN INTEREST HEREIN.

TRANSFER OF THIS 2% GLOBAL WARRANT CERTIFICATE SHALL BE LIMITED TO TRANSFERS IN WHOLE, AND NOT IN PART, TO THE COMPANY, THE WARRANT AGENT, THEIR SUCCESSORS AND THEIR RESPECTIVE NOMINEES.

GT Advanced Technologies Inc.

[____] [●], 2016

NUMBER OF WARRANTS: Initially, 2% of the Common Shares, subject to adjustment as described in the Warrant Agreement dated as of [____] [●], 2016 between GT Advanced Technologies Inc. and [American Stock Transfer & Trust Company, LLC], as Warrant Agent (as supplemented or amended, the “**Warrant Agreement**”).

EXERCISE PRICE: Initially, [\$● per share], subject to adjustment as described in the Warrant Agreement.

FORM OF SETTLEMENT:

Full Physical Settlement: If Full Physical Settlement is elected, the Company shall deliver, against payment of the Exercise Price, a number of Common Shares equal to the number of Warrants exercised.

Net Share Settlement: If Net Share Settlement is elected, the Company shall deliver, without any Cash payment therefor, a number of Common Shares equal to the quotient determined by dividing (i) the Fair Value (as of the Exercise Date) of the number of Common Shares deliverable pursuant to Full Physical Settlement minus the Exercise Price that would be payable pursuant to Full Physical Settlement by (ii) the Fair Value determined pursuant to the above clause (i).

DATES OF EXERCISE: At any time, and from time to time, prior to the Close of Business on the Expiration Date.

EXPIRATION DATE: The Close of Business on [____] [●], 2019.

This 2% Global Warrant Certificate certifies that:

_____, or its registered assigns, is the Global Warrant Holder of the Number of Warrants (the “**Warrants**”) specified above (such number subject to adjustment from time to time as described in the Warrant Agreement).

Reference is hereby made to the further provisions of this 2% Global Warrant Certificate set forth on the reverse hereof, and such further provisions shall for all purposes have the same effect as though fully set forth in this place.

This 2% Global Warrant Certificate shall not be valid unless countersigned by the Warrant Agent.

In the event of any inconsistency between the Warrant Agreement and this 2% Global Warrant Certificate, the Warrant Agreement shall govern.

IN WITNESS WHEREOF, GT Advanced Technologies Inc. has caused this instrument to be duly executed as of the date first written above.

GT ADVANCED TECHNOLOGIES INC.

By: _____
Name:
Title:

Certificate of Authentication

These are the Warrants referred to in the above-mentioned Warrant Agreement.

Countersigned as of the date above written:

[AMERICAN STOCK TRANSFER & TRUST COMPANY], as Warrant Agent

By: _____
Authorized Officer

GT ADVANCED TECHNOLOGIES INC.

The Warrants evidenced by this 2% Global Warrant Certificate are part of a duly authorized issue of Warrants issued by the Company pursuant to the Warrant Agreement, dated as of [____] [●], 2016 (as it may be amended or supplemented, the “**Warrant Agreement**”), between the Company and [American Stock Transfer & Trust Company, LLC], as Warrant Agent, and are subject to the terms and provisions contained in the Warrant Agreement, to all of which terms and provisions the Global Warrant Holder consents by issuance of this Global Warrant Certificate. Without limiting the foregoing, all capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Warrant Agreement.

The Warrant Agreement and the terms of the Warrants are subject to amendment as provided in the Warrant Agreement.

This Warrant Certificate shall be governed by, and interpreted in accordance with, the Laws of the State of New York without regard to the conflicts of Laws principles thereof.

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers the Warrant(s) represented by this Certificate to:

Name, Address and Zip Code of Assignee

and irrevocably appoints _____
Name of Agent

as its agent to transfer this 2% Warrant Certificate on the books of the Warrant Agent.

[Signature page follows]

Date: [_____]

Name of Assignor

By: _____
Name:
Title:

(Sign exactly as your name appears on this Certificate)

NOTICE: The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.

EXHIBIT A-2

FORM OF 3% GLOBAL WARRANT CERTIFICATE

No. _____

CUSIP NO. [•]

UNLESS THIS 3% GLOBAL WARRANT CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF [AMERICAN STOCK TRANSFER & TRUST COMPANY LLC], A NEW YORK CORPORATION (THE “**WARRANT AGENT**”), TO GT ADVANCED TECHNOLOGIES INC. (THE “**COMPANY**”), THE CUSTODIAN OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF [•] OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE WARRANT AGENT (AND ANY PAYMENT IS MADE TO [•] OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE WARRANT AGENT), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, [•], HAS AN INTEREST HEREIN.

TRANSFER OF THIS 3% GLOBAL WARRANT CERTIFICATE SHALL BE LIMITED TO TRANSFERS IN WHOLE, AND NOT IN PART, TO THE COMPANY, THE WARRANT AGENT, THEIR SUCCESSORS AND THEIR RESPECTIVE NOMINEES.

GT Advanced Technologies Inc.

[____] [●], 2016

NUMBER OF WARRANTS: Initially, 3% of the Common Shares, subject to adjustment as described in the Warrant Agreement dated as of [____] [●], 2016 between GT Advanced Technologies Inc. and [American Stock Transfer & Trust Company, LLC], as Warrant Agent (as supplemented or amended, the “**Warrant Agreement**”).

EXERCISE PRICE: Initially, [\$● per share], subject to adjustment as described in the Warrant Agreement.

FORM OF SETTLEMENT:

Full Physical Settlement: If Full Physical Settlement is elected, the Company shall deliver, against payment of the Exercise Price, a number of Common Shares equal to the number of Warrants exercised.

Net Share Settlement: If Net Share Settlement is elected, the Company shall deliver, without any Cash payment therefor, a number of Common Shares equal to the quotient determined by dividing (i) the Fair Value (as of the Exercise Date) of the number of Common Shares deliverable pursuant to Full Physical Settlement minus the Exercise Price that would be payable pursuant to Full Physical Settlement by (ii) the Fair Value determined pursuant to the above clause (i).

DATES OF EXERCISE: At any time, and from time to time, prior to the Close of Business on the Expiration Date.

EXPIRATION DATE: The Close of Business on [____] [●], 2019.

This 3% Global Warrant Certificate certifies that:

_____, or its registered assigns, is the Global Warrant Holder of the Number of Warrants (the “**Warrants**”) specified above (such number subject to adjustment from time to time as described in the Warrant Agreement).

Reference is hereby made to the further provisions of this 3% Global Warrant Certificate set forth on the reverse hereof, and such further provisions shall for all purposes have the same effect as though fully set forth in this place.

This 3% Global Warrant Certificate shall not be valid unless countersigned by the Warrant Agent.

In the event of any inconsistency between the Warrant Agreement and this 3% Global Warrant Certificate, the Warrant Agreement shall govern.

IN WITNESS WHEREOF, GT Advanced Technologies Inc. has caused this instrument to be duly executed as of the date first written above.

GT ADVANCED TECHNOLOGIES INC.

By: _____
Name:
Title:

Certificate of Authentication

These are the Warrants referred to in the above-mentioned Warrant Agreement.

Countersigned as of the date above written:

[AMERICAN STOCK TRANSFER & TRUST COMPANY], as Warrant Agent

By: _____
Authorized Officer

GT ADVANCED TECHNOLOGIES INC.

The Warrants evidenced by this 3% Global Warrant Certificate are part of a duly authorized issue of Warrants issued by the Company pursuant to the Warrant Agreement, dated as of [____] [●], 2016 (as it may be amended or supplemented, the “**Warrant Agreement**”), between the Company and [American Stock Transfer & Trust Company, LLC], as Warrant Agent, and are subject to the terms and provisions contained in the Warrant Agreement, to all of which terms and provisions the Global Warrant Holder consents by issuance of this Global Warrant Certificate. Without limiting the foregoing, all capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Warrant Agreement.

The Warrant Agreement and the terms of the Warrants are subject to amendment as provided in the Warrant Agreement.

This Warrant Certificate shall be governed by, and interpreted in accordance with, the Laws of the State of New York without regard to the conflicts of Laws principles thereof.

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers the Warrant(s) represented by this Certificate to:

Name, Address and Zip Code of Assignee

and irrevocably appoints _____
Name of Agent

as its agent to transfer this 3% Warrant Certificate on the books of the Warrant Agent.

[Signature page follows]

Date: [_____]

Name of Assignor

By: _____
Name:
Title:

(Sign exactly as your name appears on this Certificate)

NOTICE: The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.

EXHIBIT B

Form of Exercise Notice

[American Stock Transfer & Trust Company, LLC
6201 15th Avenue
Brooklyn, NY 11219]

Attention: Transfer Department

Re: Warrant Agreement dated as of [___] [●], 2016 between GT Advanced Technologies Inc. (the “**Company**”) and [American Stock Transfer & Trust Company, LLC], as Warrant Agent (as it may be supplemented or amended, the “**Warrant Agreement**”)

The undersigned hereby irrevocably elects to exercise the right, represented by the [2%][3%] Global Warrant Certificate No. ___ held for its benefit through the book-entry facilities of the Warrant Agent, to exercise ___ Warrants and receive the consideration deliverable in exchange therefor pursuant to the following settlement method (check one):

___ Full Physical Settlement

___ Net Sale Settlement

If Full Physical Settlement is elected, the undersigned shall tender payment of the Exercise Price therefore in accordance with instructions received from the Warrant Agent.

Please check below if this exercise is contingent upon a registered public offering or any Change of Control in accordance with Section 3.02(e) of the Warrant Agreement.

[_] This exercise is being made in connection with a registered public offering or any other Change of Control; provided, that in the event that such transaction shall not be consummated, then this exercise shall be deemed revoked.

THIS EXERCISE NOTICE MUST BE DELIVERED TO THE WARRANT AGENT, PRIOR TO CLOSE OF BUSINESS ON THE EXPIRATION DATE. THE WARRANT AGENT SHALL NOTIFY YOU OF THE ADDRESS AND PHONE NUMBER WHERE YOU CAN CONTACT THE WARRANT AGENT AND TO WHICH WARRANT EXERCISE NOTICES ARE TO BE SUBMITTED.

ALL CAPITALIZED TERMS USED HEREIN AND NOT OTHERWISE DEFINED SHALL HAVE THE MEANINGS SET FORTH IN THE WARRANT AGREEMENT.

By: _____
Authorized Signature
Address:
Telephone:

EXHIBIT C

Fee Schedule

The Company shall pay the Warrant Agent for performance of its services under this Agreement such compensation as shall be agreed in writing between the Company and the Warrant Agent.

EXHIBIT 6

Board Members of Reorganized GT Inc.

Board Members of Reorganized GT Inc.

Board Member	Annual Compensation
Eugene Davis, Chairman	\$100,000 cash/\$100,000 stock
Alexandre Zyngier	\$50,000 cash/\$50,000 stock
Greg Knight	\$50,000 cash/\$50,000 stock
Matthew Aronsky	\$50,000 cash/\$50,000 stock
David Keck	N/A—no additional compensation beyond what is provided under management agreement
[TBD]*	\$50,000 cash/\$50,000 stock
[TBD]*	\$50,000 cash/\$50,000 stock

* Additional candidates are being interviewed to be the sixth and seventh members of the Board. The compensation for such members will be as provided above. The names of any sixth or seventh member identified will be disclosed prior to or at the Confirmation Hearing if known at such time, provided, however, that in the event such members have not been identified by the Confirmation Hearing, the total number of members of the Board would remain at seven with up to two vacancies to be filled later in accordance with the terms of the Stockholders Agreement.

Biographies of the above members of the Board are available upon request by contacting Jocelyn Kuo at Paul Hastings, LLP, under the telephone number (212) 318 6749.

EXHIBIT 7

New Employment Agreements of Messrs. Keck, Bal, and Kim

GT ADVANCED TECHNOLOGIES INC.

EMPLOYMENT AGREEMENT

THIS AGREEMENT (this "Agreement") is made between GT Advanced Technologies Inc., a Delaware corporation (the "Company"), and David Keck ("Executive") as of February 16, 2016 (the "Effective Date").

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Employment. The Company shall employ Executive, and Executive hereby accepts employment with the Company, upon the terms and conditions set forth in this Agreement for the period beginning on the date of this Agreement and ending as provided in paragraph 4 hereof (the "Employment Period").

2. Position and Duties.

(a) During the Employment Period, Executive shall serve as President and Chief Executive Officer of the Company and shall have the normal duties, responsibilities, functions and authority corresponding to such roles, subject to the power and authority of the Company's board of directors (the "Board") to expand or limit such duties, responsibilities, functions and authority and to overrule actions of officers of the Company. During the Employment Period, Executive shall render such executive and managerial services to the Company and its Subsidiaries which are consistent with Executive's position as the Board may from time to time direct.

(b) During the Employment Period, Executive shall report to the President and Chief Executive Officer and shall devote his best efforts and his full business time and attention (except for permitted vacation periods and reasonable periods of illness or other incapacity) to the business and affairs of the Company and its Subsidiaries. Executive shall perform his duties, responsibilities and functions to the Company and its Subsidiaries hereunder to the best of his abilities in a diligent, trustworthy, professional and efficient manner and shall comply with the Company's and its Subsidiaries' policies and procedures in all material respects. In performing his duties and exercising his authority under the Agreement, Executive shall support and implement the business and strategic plans approved from time to time by the Board and shall support and cooperate with the Company's and its Subsidiaries' efforts to expand their businesses and operate profitably and in conformity with the business and strategic plans approved by the Board. So long as Executive is employed by the Company, Executive shall not, without the prior written consent of the Board, accept other employment or perform other services for compensation. During the Employment Period, Executive shall not serve as an officer or director of, or otherwise perform services for compensation for, any other entity without the prior approval of the Board; provided that Executive may serve as an officer or director of or otherwise participate in solely educational, welfare, social, religious, sporting club and civic organizations so long as such activities do not interfere with Executive's employment with the Company and its Subsidiaries. Executive shall be primarily based at the Company's

facility in Missoula, Montana, but may work from time to time at the Company's headquarters in Merrimack, New Hampshire in accordance with the needs of the Company. Executive understands and agrees that his employment will require travel from time to time.

(c) For purposes of this Agreement, "Subsidiaries" shall mean any corporation or other entity of which the securities or other ownership interests having the voting power to elect a majority of the board of directors or other governing body are, at the time of determination, owned by the Company, directly or through one or more Subsidiaries.

3. Compensation and Benefits.

(a) During the Employment Period, Executive's base salary shall be at the rate of \$575,000 per annum or such higher rate as the Compensation Committee of the Board (the "Compensation Committee") may determine from time to time (as adjusted from time to time, the "Base Salary"), which salary shall be payable by the Company in proportionate installments and in accordance with the Company's general payroll practices in effect from time to time. In addition, during the Employment Period, Executive shall be eligible to participate in all of the Company's employee benefit programs for which senior executive employees of the Company and its Subsidiaries are generally eligible, and Executive shall be eligible to earn four (4) weeks of paid vacation and six (6) days of paid leave for illness each calendar year in accordance with the Company's policies. Executive's participation in the Company's benefit plans will be subject to the terms of applicable plan documents and the Company's generally applicable policies, and the Company, in its sole discretion, may from time to time adopt, modify, interpret or discontinue such plans or policies.

(b) During the Employment Period, the Company shall reimburse Executive for all reasonable business expenses incurred by him in the course of performing his duties and responsibilities under this Agreement in accordance with the Company's policies in effect from time to time with respect to travel, entertainment and other business expenses, subject to the Company's requirements with respect to reporting and documentation of such expenses.

(c) In addition to the Base Salary, during the Employment Period, Executive shall be eligible to participate in the Annual Incentive Program of the Company (the "AIP"), under which Executive may be eligible to receive a bonus based upon the achievement of such performance targets and other conditions as stated in the AIP. Executive's initial target bonus shall be 100% of Base Salary. The terms of the AIP may change from time to time as determined by the Compensation Committee of the Board of Directors. While the Company does not guarantee the existence or the terms and conditions of any incentive plan in future years, participation in such plans (including equity plans), if any, shall be extended to Executive to the extent commensurate with Executive's position.

(d) Executive will be eligible to participate in the Company's equity incentive plan (the "Equity Incentive Plan") as may be approved by the Board from time to time.

(e) Executive will be eligible for an emergence bonus in the amount of \$133,796 within 30 days following the effectiveness of the bankruptcy plan.

(f) Executive shall be entitled to the payment of a special bonus in the amount of \$96,208 upon the Effective Date of this Agreement.

(g) All amounts payable to Executive as compensation hereunder shall be subject to all required and customary withholding by the Company and its Subsidiaries.

4. Termination.

(a) The Employment Period shall begin on the date of this Agreement and continue until the Employment Period is terminated by (i) Executive's resignation (with or without Good Reason, as defined below) or death or Disability (as defined below) as determined by the Board in its good faith judgment or (ii) the Company at any time prior to such date with or without Cause (as defined below). Except as otherwise provided herein, any termination of the Employment Period by the Company shall be effective as specified in a written notice from the Company to Executive. Executive shall provide at least thirty (30) days advance written notice of Executive's resignation of employment, with or without Good Reason (as defined below), to the Board.

(b) If the Employment Period is terminated by the Company without Cause, or as a result of Executive's resignation with Good Reason, Executive shall be entitled to:

(i) continue to receive his Base Salary, subject to applicable withholding, (paid in accordance with the Company's general payroll practices in effect on the termination date) as special severance payments from the date of termination for a period of twelve (12) months thereafter (the "Severance Period");

(ii) to the extent permitted by the applicable benefit plans, continued participation during the Severance Period in medical and dental insurance plans sponsored by the Company on terms and conditions in effect at the time of such termination (including cost sharing, if applicable) substantially similar to those applicable to employees of the Company generally;

provided, however, Executive shall be entitled to the payments and benefits described in clauses (b)(i) and (b)(ii) of this paragraph if and only if Executive has executed and delivered to the Company the Separation Agreement and General Release ("Release") substantially in form and substance as set forth in Exhibit A attached hereto within sixty (60) days or such earlier time as designated by the Company, following the date of termination and the Release has become effective, provided that if the end of the 60-day period following the termination date falls in a calendar year subsequent to the calendar year in which the Executive's separation from service occurs, payment will not be made before the first payroll of that subsequent year. In addition, the Company may end its payment of premiums earlier (but not the Executive's eligibility for post-employment medical coverage to the extent the Executive is eligible for and elects COBRA coverage) if it reasonably determines that applicable laws or regulations will cause the payment of these premiums to trigger taxes or penalties on the Company or other participants or, to the extent the Executive would be taxed on more than the amount of premiums, to the Executive. Additionally, Executive shall be entitled to (a) and (b) above only so long as Executive has not revoked or breached the provisions of the Release or breached the provisions of paragraphs 5, 6

and 7 hereof. Executive shall not be entitled to any other salary, compensation or benefits after termination of the Employment Period, except accrued unpaid salary through the end of the pay period in which the termination occurred, and accrued unused vacation as well as unreimbursed business expenses and as otherwise specifically provided in this Agreement including any exhibits, addenda or modifications thereto, in the Company's employee benefit plans, or by applicable law.

(c) If the Employment Period is (i) terminated by the Company for Cause or (ii) terminated by Executive without Good Reason (as defined below), Executive shall only be entitled to receive his Base Salary through the end of the pay period in which the termination occurs, accrued unpaid vacation, as well as unreimbursed business expenses and any COBRA rights and shall not be entitled to any other salary, compensation or benefits from the Company or its Subsidiaries thereafter, except as otherwise specifically provided in this Agreement including any exhibits, addenda or modifications thereto, under the Company's employee benefit plans, or by applicable law. The termination of the Employment Period for Cause shall preclude Executive's resignation with Good Reason. If this Agreement is terminated due to Executive's death or Disability, Executive shall only be entitled to receive (x) his Base Salary through the end of the pay period in which the termination occurs, (y) any benefits Executive or his eligible family members are eligible for under COBRA, and (z) at the sole discretion of the Board, a pro-rata portion (based on the number of days Executive was employed during the fiscal year in which the death or disability occurred) of any annual target bonus Executive would have been entitled to for such fiscal year had the Employment Period not been terminated during such year, payable at the time Executive would have been entitled to receive such bonus had the Employment Period not been terminated. The Board shall retain full discretionary authority to determine whether any bonus is paid, and the amount thereof, pursuant to this paragraph 4(c), based upon the Company's performance as well as Executive's contribution toward business objectives as demonstrated by the achievement of functional/individual goals.

(d) Except as otherwise expressly provided herein, all of Executive's rights to salary, bonuses, employee benefits and other compensation hereunder which would have accrued or become payable after the termination of the Employment Period shall cease upon such termination, other than those expressly required under applicable law (such as COBRA).

(e) For purposes of this Agreement, "Cause" shall mean with respect to Executive, one or more of the following: (i) the commission of a felony or the commission of a crime involving moral turpitude; or with respect to the Company or any of its Subsidiaries or any of their customers or suppliers, the commission of any other act or omission involving dishonesty, disloyalty or fraud; (ii) reporting to work under the influence of alcohol or illegal drugs, the use of illegal drugs in the workplace or other conduct causing the Company or any of its Subsidiaries substantial public disgrace or disrepute or substantial economic harm, (iii) substantial failure to perform duties as reasonably directed by the Board or the Company's President and CEO, (iv) any act or omission aiding or abetting a supplier or customer of the Company or any of its Subsidiaries to the material disadvantage or detriment of the Company and its Subsidiaries, (v) breach of fiduciary duty, gross negligence or willful misconduct with respect to the Company or any of its Subsidiaries or (vi) any other material breach of this Agreement. With respect to clauses (iii) or (vi), cause shall be deemed to exist only upon the

Executive's failure to cure, if curable, to the Company's reasonable satisfaction within fifteen (15) days after written notice to Executive.

(f) For purposes of this Agreement, "Disability" shall mean Executive's inability to perform the essential duties, responsibilities and functions of his position with the Company and its Subsidiaries for a period of 90 consecutive days or for a total of 180 days during any 12-month period as a result of any mental or physical illness, disability or incapacity even with reasonable accommodations for such illness, disability or incapacity provided by the Company and its Subsidiaries or if providing such accommodations would be unreasonable, all as determined by the Compensation Committee in its reasonable good faith judgment. Executive shall cooperate in all reasonable respects with the Company if a question arises as to whether he has become disabled (including, without limitation, submitting to reasonable examinations by one or more medical doctors and other health care specialists selected by the Company and authorizing such medical doctors and other health care specialists to discuss Executive's condition with the Company).

(g) For purposes of this Agreement. "Good Reason" shall mean if Executive resigns from employment with the Company and its Subsidiaries prior to the end of the Employment Period as a result of the occurrence of one or more of the following events: (i) the Company reduces the amount of the Base Salary other than an equivalent across the board salary reduction that does not exceed 25% of the Executive's salary and applicable to all senior executives of the Company (x) elects to eliminate the AIP without permitting Executive to participate in an annual incentive bonus plan in place of the AIP which offers a potential bonus payment substantially comparable to that earnable by Executive under the AIP or (y) does not extend to Executive participation in equity plans commensurate with Executive's position, to the extent senior executives of the Company participate in such equity plans, (ii) the Company changes Executive's title and reduces his responsibilities or authority in a manner materially inconsistent with that of the position of President and Chief Executive Officer or (iii) the Company changes Executive's place of work to a location more than 50 miles from Missoula, Montana; provided that in order for Executive's resignation for Good Reason to be effective hereunder, Executive must provide written notice to the Company stating Executive's intent to resign for Good Reason and the grounds therefor within thirty (30) days after such grounds exist and grant the Company thirty (30) days from receipt of such notice to remedy or otherwise remove the grounds supporting Executive's resignation for Good Reason and actually resign within thirty (30) days after the end of the period for remedy if not remedied.

(h) Notwithstanding anything to the contrary herein, and in lieu of that certain letter agreement dated October 12, 2012 by and between the Executive and GTAT Corporation regarding "Sales Incentive Compensation", the Independent Consultant Agreement attached as Exhibit B hereto, pursuant to which the Company shall pay Executive \$2,500,000 in six (6) quarterly installments as set forth therein, shall become effective upon the termination of Executive's employment for any reason other than termination by the Company for Cause; provided, however, that in the event Executive terminates without Good Reason, the Company shall have the right to decline to have the Independent Consultant Agreement go into effect and render it null and void by giving written notice thereof to the Executive within sixty (60) days after the date of the Executive's termination without Good Reason. In the event that the

Independent Consultant Agreement does not become effective, the Executive will be relieved of his non-competition obligations under Section 7(a) of this Agreement.

5. Proprietary and Confidential Information.

(a) The Executive agrees that all information and know-how, whether or not in writing, of a private, secret or confidential nature concerning the Company's business or financial affairs (collectively, "Proprietary Information") is and shall be the exclusive property of the Company. By way of illustration, but not limitation, Proprietary Information may include discoveries, inventions, products, product improvements, product enhancements, processes, methods, techniques, formulas, compositions, compounds, negotiation strategies and positions, projects, developments, plans (including business and marketing plans), research data, clinical data, financial data (including sales costs, profits, pricing methods), personnel data, computer programs (including software used pursuant to a license agreement), customer, prospect and supplier lists, and contacts at or knowledge of customers or prospective customers of the Company. The Executive will not disclose any Proprietary Information to any person or entity other than Executives of the Company or use the same for any purposes (other than in the performance of his/her duties as an Executive of the Company) without written approval by an officer of the Company, either during or after his/her employment with the Company, unless and until such Proprietary Information has become public knowledge without fault by the Executive. While employed by the Company, the Executive will use the Executive's best efforts to prevent unauthorized publication or disclosure of any of the Company's Proprietary Information.

Proprietary Information shall not include information which: (i) was already known to Executive prior to his employment by the Company; (ii) is or becomes publicly available without fault of Executive; (iii) is rightfully obtained by Executive from an independent third party free of any nondisclosure obligation; or (iv) is required to be disclosed by law, provided that Executive provides reasonable notice to the Company of such required disclosure and reasonably cooperates with the Company in limiting such disclosure. The provisions of this Section 5 shall be construed so that Executive is not prohibited from using his general knowledge, abilities or experience in any work he may perform after the termination of this Agreement or the Independent Consultant Agreement, consistent with Executive's non-competition obligations under Section 7(a). Notwithstanding any other provision of this Agreement or any exhibit, addendum or modification thereto, the Company shall notify the Executive prior to filing any action alleging misappropriation of trade secrets, breach of Section 5 (Confidential Information), or breach of any other nondisclosure, Proprietary Information or Confidential Information agreement or provision, identify the claimed misappropriation or breach and provide the Executive with fifteen (15) days to respond to or rebut the claimed misappropriation or breach.

(b) The Executive agrees that all files, documents, letters, memoranda, reports, records, data, sketches, drawings, models, laboratory notebooks, program listings, computer equipment or devices, computer programs or other written, photographic, or other tangible or intangible material containing Proprietary Information, whether created by the Executive or others, which shall come into his/her custody or possession, shall be and are the exclusive property of the Company to be used by the Executive only in the performance of his/her duties for the Company and shall not be copied or removed from the Company premises

except in the pursuit of the business of the Company. All such materials or copies thereof and all tangible property of the Company in the custody or possession of the Executive shall be delivered to the Company, upon the earlier of (i) a request by the Company or (ii) termination of his/her employment for any reason. After such delivery, the Executive shall not retain any such materials or copies thereof or any such tangible property.

(c) The Executive agrees that his/her obligation not to disclose or to use information and materials of the types set forth in paragraphs 5(a) and 5(b) above, and his/her obligation to return materials and tangible property, set forth in paragraph 5(b) above, also extends to such types of information, materials and tangible property of customers of the Company or suppliers to the Company or other third parties who may have disclosed or entrusted the same to the Company or to the Executive in the course of the Company's business.

6. Developments.

(a) The Executive will make full and prompt disclosure to the Company of all discoveries, inventions, improvements, enhancements, processes, methods, techniques, developments, software, and works of authorship, whether patentable or not, which are created, made, conceived or reduced to practice by him/her or under his/her direction or jointly with others during his/her employment by the Company, whether or not during normal working hours or on the premises of the Company (all of which are collectively referred to in this Agreement as "Developments").

(b) The Executive agrees to assign and does hereby assign to the Company (or any person or entity designated by the Company) all his/her right, title and interest in and to all Developments and all related patents, patent applications, copyrights and copyright applications. However, this paragraph 6(b) shall not apply to Developments which do not relate to the business or research and development conducted or planned to be conducted by the Company at the time such Development is created, made, conceived or reduced to practice and which are made and conceived by the Executive not during normal working hours, not on the Company's premises and not using the Company's tools, devices, equipment or Proprietary Information. The Executive understands that, to the extent this Agreement shall be construed in accordance with the laws of any state which precludes a requirement in an Executive agreement to assign certain classes of inventions made by an Executive, this paragraph 3(b) shall be interpreted not to apply to any invention which a court rules and/or the Company agrees falls within such classes. The Executive also hereby waives all claims to moral rights in any Developments.

(c) The Executive agrees to cooperate fully with the Company, both during and after his/her employment with the Company, with respect to the procurement, maintenance and enforcement of copyrights, patents and other intellectual property rights (both in the United States and foreign countries) relating to Developments. The Executive shall sign all papers, including, without limitation, copyright applications, patent applications, declarations, oaths, formal assignments, assignments of priority rights, and powers of attorney, which the Company may deem necessary or desirable in order to protect its rights and interests in any Development. The Executive further agrees that if the Company is unable, after reasonable effort, to secure the signature of the Executive on any such papers, any executive officer of the Company shall be entitled to execute any such papers as the agent and the attorney-in-fact of the Executive, and the

Executive hereby irrevocably designates and appoints each executive officer of the Company as his/her agent and attorney-in-fact to execute any such papers on his/her behalf, and to take any and all actions as the Company may deem necessary or desirable in order to protect its rights and interests in any Development, under the conditions described in this sentence.

7. Non-Compete, Non-Solicitation.

(a) Executive agrees that, during the Employment Period and for two (2) years thereafter (the “Noncompete Period”), he shall not directly or indirectly own any interest in, or, in a business capacity, manage, control, participate in, consult with, render services for, be employed by, or in any manner engage in, any business or entity competing with any of the businesses of the Company or its Subsidiaries as such businesses exist or are in process during the Employment Period or on the date of the termination of the Employment Period, within any geographical area in which the Company or its Subsidiaries engage in such businesses, or actively plan to engage in such businesses, at the time of Executive’s departure from the Company. Nothing herein shall prohibit Executive from being a passive owner of not more than 2% of the outstanding stock of any class of a corporation which is publicly traded, so long as Executive has no active participation in the business of such corporation.

(b) In addition, during the Noncompete Period, Executive shall not directly, or indirectly through another person or entity, (i) induce or attempt to induce any employee of the Company or any Subsidiary to leave the employ of the Company or such Subsidiary, or in any way interfere with the relationship between the Company or any Subsidiary and any employee thereof, or (ii) hire any person who was an employee of the Company or any Subsidiary during the six month period prior to the date of Executive’s termination or (iii) induce or attempt to induce any customer, supplier, licensee, licensor, franchisee or other business relation of the Company or any Subsidiary with whom Executive had any material contact while employed by the Company to cease doing business with the Company or such Subsidiary, or in any way interfere with the relationship between any such customer, supplier, licensee or business relation and the Company or any Subsidiary.

(c) During and after the Employment Period, Executive shall not directly or indirectly through another person or entity, disparage, criticize, defame, slander or otherwise make negative statements or communications regarding the Company or its subsidiaries or affiliates or the respective past and present investors, officers, directors or employees.

8. Enforcement. If, at the time of enforcement of Sections 5, 6 or 7 of this Agreement, a court holds that the restrictions stated herein are unreasonable under circumstances then existing, the parties hereto agree that the maximum period, scope or geographical area reasonable under such circumstances shall be substituted for the stated period, scope or area and that the court shall be allowed to revise the restrictions contained herein to cover the maximum period, scope and area permitted by law. Because Executive’s services are unique and because Executive has access to Confidential Information and Work Product, the parties hereto agree that the restrictions contained in Sections 5, 6 and 7 are necessary for the protection of the business and goodwill of the Company and the Company and its Subsidiaries would suffer irreparable harm from a breach of Sections 5, 6 or 7 by Executive and that money damages would not be an adequate remedy for any such breach of this Agreement. Therefore, in the event a breach or

threatened breach of this Agreement, the Company and its Subsidiaries and their successors or assigns, in addition to other rights and remedies existing in their favor, shall be entitled to specific performance and/or injunctive or other equitable relief from a court of competent jurisdiction in order to enforce, or prevent any violations of, the provisions hereof (without posting a bond or other security). In addition, in the event of a breach or violation by Executive of Section 7, the Noncompete Period shall be automatically extended by the amount of time between the initial occurrence of the breach or violation and when such breach or violation has been duly cured. Executive acknowledges that the restrictions contained in Section 7 are reasonable and that he has reviewed the provisions of this Agreement with his legal counsel.

9. Additional Acknowledgments. In addition, Executive acknowledges that the provisions of Sections 5, 6 and 7 are in consideration of employment with the Company and additional good and valuable consideration as set forth in this Agreement. Executive also acknowledges that (i) the restrictions contained in Sections 5, 6 and 7 do not preclude Executive from earning a livelihood, nor do they unreasonably impose limitations on Executive's ability to earn a living, (ii) the business of the Company and its Subsidiaries is international in scope and without geographical limitation and (iii) notwithstanding the state of formation or principal office of the Company or residence of any of its executives or employees (including Executive), the Company and its Subsidiaries have business activities and have valuable business relationships within its industry throughout the world. Executive agrees and acknowledges that the potential harm to the Company and its Subsidiaries of the non-enforcement of Sections 5, 6 and 7 outweighs any potential harm to Executive of its enforcement by injunction or otherwise. Executive acknowledges that he has carefully read this Agreement and has given careful consideration to the restraints imposed upon Executive by this Agreement and is in full accord as to their necessity for the reasonable and proper protection of confidential and proprietary information of the Company and its Subsidiaries now existing or to be developed in the future and the Company's good will and that each and every restraint imposed by this Agreement is reasonable with respect to subject matter, time period and geographical area.

10. Executive's Representations. Executive hereby represents and warrants to the Company that (i) the execution, delivery and performance of this Agreement by Executive do not and shall not conflict with, breach, violate or cause a default under any contract, agreement, instrument, order, judgment or decree to which Executive is a party or by which he is bound, (ii) Executive is not a party to or bound by any employment agreement, noncompete agreement, confidentiality agreement or other restriction with any other person or entity, which would be breached by entering into this Agreement and (iii) upon the execution and delivery of this Agreement by the Company, this Agreement shall be the valid and binding obligation of Executive, enforceable in accordance with its terms. Executive hereby acknowledges and represents that he has consulted with independent legal counsel regarding his rights and obligations under this Agreement and that he fully understands the terms and conditions contained herein.

11. Survival. Paragraphs 5 through 9, and 25 shall survive and continue in full force in accordance with their terms notwithstanding the termination of the Employment Period.

12. Notices. Any notice provided for in this Agreement shall be in writing and shall be either personally delivered, sent by reputable overnight courier service or mailed by first class mail, return receipt requested, to the recipient at the address below indicated:

Notices to Executive:

David Keck
c/o most recent address on file in the Company's personnel records

Notices to the Company:

GT Advanced Technologies Inc.
243 Daniel Webster Highway
Merrimack, New Hampshire 03054
Attention: President and Chief Executive Officer

or such other address or to the attention of such other person as the recipient party shall have specified by prior written notice to the sending party. Any notice under this Agreement shall be deemed to have been given when so delivered, sent or mailed.

13. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any action in any other jurisdiction, but this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

14. Complete Agreement. This Agreement embodies the complete agreement and understanding among the parties and supersedes and preempts any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

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

16. Counterparts. This Agreement may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one and the same agreement.

17. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by Executive, the Company and their respective heirs, successors and assigns, except that Executive may not assign his rights or delegate his duties or obligations hereunder without the prior written consent of the Company.

18. Choice of Law. All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement and the exhibits and schedules hereto shall be

governed by, and construed in accordance with, the laws of the State of New Hampshire, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of New Hampshire or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New Hampshire. In furtherance of the foregoing, the internal law of the State of New Hampshire shall control the interpretation and construction of this Agreement (and all schedules and exhibits hereto), even though under that jurisdiction's choice of law or conflict of law analysis, the substantive law of some other jurisdiction would ordinarily apply.

19. Amendment and Waiver. The provisions of this Agreement may be amended or waived only with the prior written consent of the Company and Executive, and no course of conduct or course of dealing or failure or delay by any party hereto in enforcing or exercising any of the provisions of this Agreement (including, without limitation, the Company's right to terminate the Employment Period for Cause) shall affect the validity, binding effect or enforceability of this Agreement or be deemed to be an implied waiver of any provision of this Agreement.

20. Insurance. The Company may, at its discretion, apply for and procure in its own name and for its own benefit life and/or disability insurance on Executive in any amount or amounts considered advisable. Executive agrees to cooperate in any medical or other examination, supply any information and execute and deliver any applications or other instruments in writing as may be reasonably necessary to obtain and constitute such insurance.

21. Tax Withholding. The Company and its Subsidiaries shall be entitled to deduct or withhold from any amounts owing from the Company or any of its Subsidiaries to Executive any federal, state, local or foreign withholding taxes, excise tax or employment taxes ("Taxes") imposed with respect to Executive's compensation or other payments from the Company or any of its Subsidiaries or Executive's ownership interest in the Company (including, without limitation, wages, bonuses, dividends, the receipt or exercise of equity options and/or the receipt or vesting of restricted equity).

22. Consent to Jurisdiction. EACH OF THE PARTIES IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE AND ANY COURT OF THE STATE OF NEW HAMPSHIRE, FOR PURPOSES OF ANY DISPUTES AND CLAIMS UNDER AGREEMENT AND FOR THE ENFORCEMENT OF ANY FINAL DETERMINATION. EACH OF THE PARTIES HERETO FURTHER AGREES THAT SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY U.S. REGISTERED MAIL TO SUCH RESPECTIVE PARTY'S ADDRESS SET FORTH ABOVE SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY ACTION, SUIT OR PROCEEDING IN NEW HAMPSHIRE WITH RESPECT TO ANY MATTERS TO WHICH IT HAS SUBMITTED TO JURISDICTION IN THIS PARAGRAPH 22. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY DISPUTES AND CLAIMS UNDER THIS AGREEMENT AND FOR THE ENFORCEMENT OF ANY FINAL DETERMINATION AND THEREBY IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE AND ANY COURT OF THE STATE OF NEW HAMPSHIRE, AND HEREBY AND THEREBY FURTHER IRREVOCABLY AND

UNCONDITIONALLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION, SUIT OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

23. Waiver of Jury Trial. AS A SPECIFICALLY BARGAINED FOR INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT (AFTER HAVING THE OPPORTUNITY TO CONFER WITH COUNSEL), EACH PARTY EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LAWSUIT OR PROCEEDING RELATING TO OR ARISING IN ANY WAY FROM THIS AGREEMENT OR THE MATTERS CONTEMPLATED HEREBY.

24. Corporate Opportunity. Executive shall submit to the Board all business, commercial and investment opportunities, or offers presented to Executive or of which Executive becomes aware at any time during the Employment Period which relate to the business of the Company ("Corporate Opportunities"). Unless approved by the Board, Executive shall not accept or pursue, directly or indirectly, any Corporate Opportunities on Executive's own behalf.

25. Executive's Cooperation. During the Employment Period and thereafter, Executive shall cooperate with the Company and its Subsidiaries in any internal investigation, any administrative, regulatory or judicial investigation or proceeding or any dispute with a third party as reasonably requested by the Company (including, without limitation, Executive being available to the Company upon reasonable notice for interviews and factual investigations, appearing at the Company's request to give testimony without requiring service of a subpoena or other legal process, volunteering to the Company all pertinent information and turning over to the Company all relevant documents which are or may come into Executive's possession, all at times and on schedules that are reasonably consistent with Executive's other activities and commitments). In the event the Company requires Executive's cooperation in accordance with this paragraph, the Company shall reimburse Executive solely for reasonable travel expenses (including lodging and meals) upon submission of receipts.

26. Payments Subject to Section 409A. Subject to the provisions in this Section 25, any severance payments or benefits under this Agreement shall begin only upon the date of Executive's "separation from service" (determined as set forth below) which occurs on or after the date of termination of Executive's employment. The following rules shall apply with respect to distribution of the payments and benefits, if any, to be provided to Executive under this Agreement:

(a) It is intended that each installment of the severance payments and benefits provided under this Agreement shall be treated as a separate "payment" for purposes of Section 409A of the Code and the guidance issued thereunder ("Section 409A"). Neither the Company nor Executive shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A.

(b) If, as of the date of Executive's "separation from service" from the Company, Executive is not a "specified employee" (within the meaning of Section 409A), then each installment of the severance payments and benefits shall be made on the dates and terms set forth in this Agreement.

(c) If, as of the date of Executive's "separation from service" from the Company, Executive is a "specified employee" (within the meaning of Section 409A), then:

(i) Each installment of the severance payments and benefits due under this Agreement that, in accordance with the dates and terms set forth herein, will in all circumstances, regardless of when the separation from service occurs, be paid within the Short-Term Deferral Period (as hereinafter defined), shall be treated as a short-term deferral within the meaning of Treasury Regulation § 1.409A-1(b)(4) to the maximum extent permissible under Section 409A. For purposes of this Agreement, the "Short-Term Deferral Period" means the period ending on the later of the fifteenth day of the third month following the end of Executive's tax year in which the separation from service occurs and the fifteenth day of the third month following the end of the Company's tax year in which the separation from service occurs; and

(ii) Each installment of the severance payments and benefits due under this Agreement that is not described in paragraph c(i) above and that would, absent this subsection, be paid within the six-month period following Executive's "separation from service" from the Company shall not be paid until the date that is six months and one day after such separation from service (or, if earlier, Executive's death), with any such installments that are required to be delayed being accumulated during the six-month period and paid in a lump sum on the date that is six months and one day following Executive's separation from service and any subsequent installments, if any, being paid in accordance with the dates and terms set forth herein; provided, however, that the preceding provisions of this sentence shall not apply to any installment of severance payments and benefits if and to the maximum extent that that such installment is deemed to be paid under a separation pay plan that does not provide for a deferral of compensation by reason of the application of Treasury Regulation §1.409A-1(b)(9)(iii) (relating to separation pay upon an involuntary separation from service). Any installments that qualify for the exception under Treasury Regulation §1.409A-1(b)(9)(iii) must be paid no later than the last day of Executive's second taxable year following the taxable year in which the separation from service occurs.

(d) The determination of whether and when Executive's separation from service from the Company has occurred shall be made and in a manner consistent with, and based on the presumptions set forth in, Treasury Regulation §1.409A-1(h). Solely for purposes of this paragraph d, "Company" shall include all persons with whom the Company would be considered a single employer under Section 414(b) and 414(c) of the Code.

(e) All reimbursements and in-kind benefits provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A to the extent that such reimbursements or in-kind benefits are subject to Section 409A, including, where applicable, the requirements that (i) any reimbursement is for expenses incurred during Executive's lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement during a calendar year may not affect the expenses eligible for reimbursement in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the calendar year following the year in

which the expense is incurred and (iv) the right to reimbursement is not subject to set off or liquidation or exchange for any other benefit.

(f) This Agreement is intended to comply with the provisions of Section 409A and the Agreement shall, to the extent practicable, be construed in accordance therewith. The Company makes no representation or warranty and shall have no liability to Executive or any other person if any provisions of this Agreement are determined to constitute deferred compensation subject to Section 409A and do not satisfy an exemption from, or the conditions of, Section 409A.

GT ADVANCED TECHNOLOGIES INC.

BY: _____

David Keck¹

¹ The terms set forth in this Agreement are the terms proposed by the Financing Support Parties (as defined in the *Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, Dated February 1, 2016* [Docket No. 2998]). The Executive has not agreed to these terms.

Exhibit A

SEPARATION AGREEMENT AND GENERAL RELEASE²

[Insert Date]

[Insert Name and Address]

Dear _____:

Pursuant to paragraph 4(a) of the Employment Agreement dated as of _____, 2016 between GT Advanced Technologies, Inc. (the “Company”) and you (the “Employment Agreement”), the Company is notifying you that it is terminating your employment with the Company without Cause (the “Termination Date”). **[Modify if Executive resigns with Good Reason]** You are eligible to receive the severance benefits described in paragraph 2 below if you sign and return this letter agreement to **[Insert Name and Address]** no earlier than the Termination Date and no later than **[Insert Date]** and it becomes binding between the Company and you; provided, however, that you may not sign this letter agreement prior to the close of business on your Termination Date. By timely signing and returning this letter agreement and not revoking your acceptance, you will be agreeing to the terms and conditions set forth in the numbered paragraphs below, including the release of claims set forth in paragraph 3. Therefore, you are advised to consult with an attorney before signing this letter agreement and you have at least 21 days to do so. [Adjust time period if part of a group termination] If you sign this letter agreement, you may change your mind and revoke your agreement during the seven-day period after you have signed it by notifying me in writing. If you do not so revoke, this letter agreement will become a binding agreement between the Company and you upon the expiration of the seven-day revocation period.

If you choose not to sign and return this letter agreement by **[Insert Date]**, or if you timely revoke your acceptance in writing, you shall not receive any severance benefits from the Company. You will, however, receive payment on your Termination Date, as defined below, for your final wages **[and any unused vacation time]** accrued through the Termination Date. Also, regardless of signing this letter agreement, you may elect to continue receiving group medical insurance pursuant to the federal “COBRA” law, 29 U.S.C. § 1161 et seq. All premium costs for “COBRA” shall be paid by you on a monthly basis for as long as, and to the extent that, you remain eligible for COBRA continuation. You should consult the COBRA materials to be provided by the Company for details regarding these benefits. All other benefits will cease upon your Termination Date in accordance with the plan documents.

² The Executive agrees that the Company may modify this release in connection with his/her termination of employment to reflect changes in law or circumstances to the extent necessary to provide an equally full release at such time.

The following numbered paragraphs set forth the terms and conditions that will apply if you timely sign and return this letter agreement and do not revoke it in writing within the seven (7) day revocation period.

1. **Termination Date** - Your effective date of termination from the Company is [**Insert Date**] (the “Termination Date”).
2. **Description of Severance Benefits** - If you timely sign and return this letter agreement and do not revoke your acceptance, the Company shall provide you with the following severance benefits pursuant to paragraph 4(b) of the Employment Agreement:
 - (a) The Company will pay you severance pay at your current base salary rate for 12 months following the Termination Date (the “Severance Pay Period”). This severance pay will be paid in equal installments in accordance with the Company’s normal payroll procedures but in no event will commence earlier than the eighth (8th) day after execution of this letter agreement.
 - (b) Effective as of the Termination Date, you shall be considered to have elected to continue receiving group medical and dental insurance pursuant to the federal “COBRA” law, 29 U.S.C. § 1161 et seq. During the Severance Pay Period, the Company shall continue to pay the share of the premium for such coverage that is paid by the Company for active and similarly-situated employees who receive the same type of coverage. The remaining balance of any premium costs, and all premium costs after the Severance Pay Period, shall be paid by you on a monthly basis for as long as, and to the extent that, you remain eligible for COBRA continuation. You should consult the COBRA materials to be provided by the Company for details regarding these benefits.
3. **Release** - In consideration of the payment of the severance benefits, which you acknowledge you would not otherwise be entitled to receive, you hereby release and forever discharge as of the date hereof (on behalf of yourself, and your heirs, executors, administrators and assigns) the Company and its affiliates and all present and former directors, officers, agents, representatives, employees, employee benefit plans and plan fiduciaries, successors and assigns of the Company and its affiliates, and the Company’s direct or indirect owners (collectively, the “Released Parties”) from any and all claims, suits, controversies, actions, causes of action, cross-claims, counter-claims, demands, debts, compensatory damages, liquidated damages, punitive or exemplary damages, other damages, claims for costs and attorneys’ fees, or liabilities of any nature whatsoever in law and in equity, both past and present (through the date this letter agreement becomes effective and enforceable) and whether known or unknown, suspected, or claimed against the Company or any of the Released Parties which you, your spouse, or any of your heirs, executors, administrators or assigns, may have, including, but not limited to, any and all claims that arise out of or are connected with your employment with, or your separation or termination from, the Company (including, but not limited to, any allegation, claim or violation, arising under: Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., the Americans

With Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., the Equal Pay Act of 1963, 29 U.S.C. § 206(d), the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., the Family and Medical Leave Act, 29 U.S.C. § 2601 et seq., the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq., Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, 18 U.S.C. 1514(A), the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., Executive Order 11246, Executive Order 11141, the Rehabilitation Act of 1973, 29 U.S.C. § 701, et seq., the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 et seq., the New Hampshire Law Against Discrimination, N.H. Rev. Stat. Ann. § 354-A:1 et seq., N.H. Rev. Stat. Ann. § 275:36 et seq. (New Hampshire equal pay law), and the New Hampshire Whistleblowers’ Protection Act, N.H. Rev. Stat. Ann. § 275-E:1 et seq., all as amended; or under any other federal, state or local civil or human rights law, or under any other local, state, or federal law, regulation or ordinance; or under any public policy, contract or tort, or under common law; or arising under any policies, practices or procedures of the Company; or any claim for wrongful discharge, breach of contract, infliction of emotional distress, defamation; any whistleblower claim to the maximum extent permitted by law; any claim to any non-vested ownership in the Company, contractual or otherwise; or any claim for costs, fees, or other expenses, including attorneys’ fees incurred in these matters or any claim or damage arising out of your employment with and/or separation from the Company (including a claim for retaliation)) (all of the foregoing collectively referred to herein as the “Claims”); provided, however, that nothing in this letter agreement prevents you from filing a charge with, cooperating with or participating in any proceeding before the Equal Employment Opportunity Commission or a state fair employment practices agency (except that you acknowledge that you may not be able to recover any monetary benefits in connection with any such claim, charge or proceeding).

Notwithstanding the foregoing, this release does not include and will not preclude a claim for or with respect to (a) salary payable through the Termination Date, or accrued, unused vacation time as recorded on the Company’s books as of the Termination Date; (b) vested benefits under any welfare, retirement, deferred compensation plan and/or other employee benefit plan (c) your COBRA rights; (d) payments under this letter agreement; (e) claims for unemployment compensation; (f) rights to defense and indemnification, if any, from the Company under its Directors and Officers policy or otherwise for actions taken by you in the course and scope of your employment with the Company and its subsidiaries and affiliates; (g) claims, actions or rights arising under or to enforce the terms of this letter agreement and (h) claims that cannot be released by law.

4. **Recovery, Representations and Agreements** - In signing this letter agreement, you acknowledge and intend that it shall be effective as a bar to each and every one of the Claims hereinabove mentioned or implied, except as otherwise provided in paragraph 3 above. You expressly consent that this letter agreement shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown and unsuspected

Claims (notwithstanding any state statute that expressly limits the effectiveness of a letter agreement of unknown, unsuspected and unanticipated Claims), if any, as well as those relating to any other Claims hereinabove mentioned or implied. You acknowledge and agree that this waiver is an essential and material term of this letter agreement and that without such waiver the Company would not have agreed to the terms of the Employment Agreement or this letter agreement. You further agree that in the event you should bring a Claim seeking damages against the Company, or in the event you should seek to recover against the Company in any Claim brought by a governmental agency on your behalf, this letter agreement shall serve as a complete defense to any monetary relief related to any such Claims. You further agree that you are not aware of any pending claim of the type described in paragraph 3 as of the execution of this letter agreement. You represent that you have made no assignment or transfer of any right, claim, demand, cause of action, or other matter covered by paragraph 3 above. You agree that this letter agreement does not waive or release any rights or claims that you may have under the Age Discrimination in Employment Act of 1967 which arise after the date you execute this letter agreement. You acknowledge and agree that your separation from employment with the Company shall not serve as the basis for any claim or action (including, without limitation, any claim under the Age Discrimination in Employment Act of 1967).

5. **Non-Disclosure, Non-Competition, Non-Solicitation and Developments Obligations** -

You acknowledge and reaffirm your obligations under paragraphs 5, 6 and 7 of the Employment Agreement, including, but not limited to, your obligation to keep confidential and not to disclose any and all non-public information concerning the Company that you acquired during the course of your employment with the Company, as well as your non-competition, non-solicitation and inventions obligations.

6. **Return of Company Property** – You agree that as of the date hereof, you have returned to the Company any and all property, tangible or intangible, relating to its business, which you possessed or had control over at any time (including, but not limited to, company-provided credit cards, building or office access cards, keys, computer equipment, manuals, files, documents, records, software, customer data base and other data) and that you shall not retain any copies, compilations, extracts, excerpts, summaries or other notes of any such manuals, files, documents, records, software, customer data base or other data.

7. **Non-Disparagement** - You agree that you will not disparage, criticize, defame, slander or otherwise make any negative statements or communications regarding the Company or its affiliates or their respective past and present investors, officers, directors or employees. The Company agrees to instruct its officers and Board of Directors not to disparage, criticize, defame, slander or otherwise make any negative statements or communications regarding you.

8. **Cooperation** - You shall cooperate with the Company and its Subsidiaries in any internal investigation, any administrative, regulatory or judicial investigation or proceeding or any dispute with a third party as reasonably requested by the Company (including, without limitation,

you being available to the Company upon reasonable notice for interviews and factual investigations, appearing at the Company's request to give testimony without requiring service of a subpoena or other legal process, volunteering to the Company all pertinent information and turning over to the Company all relevant documents which are or may come into your possession, all at times and on schedules that are reasonably consistent with your other activities and commitments). In the event the Company requires your cooperation in accordance with this paragraph, the Company shall reimburse you solely for reasonable travel expenses (including lodging and meals) upon submission of receipts.

9. **Breach** - You agree that, if there is an arbitral or judicial determination, as the case may be, that you have breached this letter agreement, you will (i) return to the Company any amount paid by the Company in connection with your separation or termination from the Company and pursuant to the Employment Agreement and this letter agreement and (ii) forfeit all remaining amounts payable by the Company pursuant to the Employment Agreement and this letter agreement. Notwithstanding anything in this letter agreement to the contrary, this letter agreement shall not relinquish, diminish, or in any way affect any rights or claims arising out of any breach by the Company or by any Released Party of the Employment Agreement after the date hereof.

10. **Validity** - Whenever possible, each provision of this letter agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this letter agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction, but this letter agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

11. **Nature of Agreement** - You agree that neither this letter agreement, nor the furnishing of the consideration for this letter agreement, shall be deemed or construed at any time to be an admission by the Company, any Released Party or yourself of any improper or unlawful conduct.

12. **Understandings** - You understand that any payments or benefits paid or granted to you under paragraph 4(b) of the Employment Agreement represent, in part, consideration for signing this letter agreement and are not salary, wages or benefits to which you were already entitled. You understand and agree that you will not receive the payments and benefits specified in paragraph 2 herein unless you execute this letter agreement and do not revoke this letter agreement within the time period permitted hereafter or breach this letter agreement. Such payments and benefits will not be considered compensation for purposes of any employee benefit plan, program, policy or arrangement maintained or hereafter established by the Company or its affiliates. You also acknowledge and represent that you have received all payments and benefits that you are entitled to receive (as of the date hereof) by virtue of any employment by the Company.

13. **Acknowledgments** - By signing this letter agreement, you represent and agree that: (i) you have read it carefully; (ii) you understand all of its terms and know that you are giving up important rights, including but not limited to, rights under the Age Discrimination in Employment Act of 1967, as amended; Title VII of the Civil Rights Act of 1964, as amended; the Equal Pay Act of 1963; the Americans with Disabilities Act of 1990; and the Employee Retirement Income Security Act of 1974, as amended; (iii) you voluntarily consent to everything in it; (iv) you have been advised to consult with an attorney before executing it; (v) you have been given all time periods required by law to consider this letter agreement, including the 21-day period required by the Age Discrimination in Employment Act; (vi) you understand that you have seven days after the execution of this letter agreement to revoke it, and such revocation must be in writing and delivered to **[Insert Name]** before the expiration of the revocation period, and that this letter agreement shall not become effective or enforceable until the revocation period has expired; (vii) you have signed this letter agreement knowingly and voluntarily and with the advice of any counsel retained to advise you with respect to it; and (viii) you agree that the provisions of this letter agreement may not be amended, waived, changed or modified except by an instrument in writing signed by an authorized representative of the Company and you.

14. **Entire Agreement** - This letter agreement and the paragraphs that survive pursuant to paragraph 11 of the Employment Agreement embody the complete agreement and understanding among the parties and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

15. **Severability** - Whenever possible, each provision of this letter agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this letter agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this letter agreement or any action in any other jurisdiction, but this letter agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

16. **No Strict Construction** - The language used in this letter agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party.

17. **Counterparts** - This letter agreement may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one and the same agreement.

18. **Successors and Assigns** - This letter agreement is intended to bind and inure to the benefit of and be enforceable by you, the Company and their respective heirs, successors and

assigns, except that you may not assign your rights or delegate your duties or obligations hereunder without the prior written consent of the Company.

19. **Choice of Law** - All issues and questions concerning the construction, validity, enforcement and interpretation of this letter agreement shall be governed by, and construed in accordance with, the laws of the State of New Hampshire, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of New Hampshire or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New Hampshire. In furtherance of the foregoing, the internal law of the State of New Hampshire shall control the interpretation and construction of this letter agreement (and all schedules and exhibits hereto), even though under that jurisdiction's choice of law or conflict of law analysis, the substantive law of some other jurisdiction would ordinarily apply.

20. **Amendment and Waiver** - The provisions of this letter agreement may be amended or waived only with the prior written consent of the Company and you, and no course of conduct or course of dealing or failure or delay by any party hereto in enforcing or exercising any of the provisions of this letter agreement shall affect the validity, binding effect or enforceability of this letter agreement or be deemed to be an implied waiver of any provision of this letter agreement.

21. **Indemnification and Reimbursement of Payments on Behalf of You** - The Company and its Subsidiaries shall be entitled to deduct or withhold from any amounts owing from the Company or any of its Subsidiaries to you any federal, state, local or foreign withholding taxes, excise tax or employment taxes ("Taxes") imposed with respect to the severance benefits described herein.

22. **Consent to Jurisdiction** - EACH OF THE PARTIES IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE AND ANY COURT OF THE STATE OF NEW HAMPSHIRE, FOR PURPOSES OF ANY DISPUTES AND CLAIMS UNDER THIS AGREEMENT AND FOR THE ENFORCEMENT OF ANY FINAL DETERMINATION. EACH OF THE PARTIES HERETO FURTHER AGREES THAT SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY U.S. REGISTERED MAIL TO SUCH RESPECTIVE PARTY'S ADDRESS SET FORTH IN THE EMPLOYMENT AGREEMENT SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY ACTION, SUIT OR PROCEEDING IN NEW HAMPSHIRE WITH RESPECT TO ANY MATTERS TO WHICH IT HAS SUBMITTED TO JURISDICTION IN THIS PARAGRAPH 22. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY DISPUTES AND CLAIMS UNDER THIS AGREEMENT AND FOR THE ENFORCEMENT OF ANY FINAL DETERMINATION AND THEREBY IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE AND ANY COURT OF THE STATE OF NEW HAMPSHIRE, AND HEREBY AND THEREBY FURTHER IRREVOCABLY AND UNCONDITIONALLY

WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION, SUIT OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

23. **Waiver of Jury Trial** - AS A SPECIFICALLY BARGAINED FOR INDUCEMENT FOR EACH OF THE PARTIES HERETO TO ENTER INTO THIS LETTER AGREEMENT (AFTER HAVING THE OPPORTUNITY TO CONSULT WITH COUNSEL), EACH PARTY HERETO EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LAWSUIT OR PROCEEDING RELATING TO OR ARISING IN ANY WAY FROM THIS LETTER AGREEMENT OR THE MATTERS CONTEMPLATED HEREBY.

If you have any questions about the matters covered in this letter agreement, please call me at **[insert phone number]**.

Very truly yours,

By: _____

[Insert Name]

[Insert Title]

I hereby agree to the terms and conditions set forth above. I have been given at least 21 days to consider this letter agreement and I have chosen to execute this on the date below. I intend that this letter agreement will become a binding agreement between the Company and me if I do not revoke my acceptance in writing in seven days.

[Insert Name]

Date

To be returned by [Insert Date].

EXHIBIT B

INDEPENDENT CONSULTANT AGREEMENT

THIS INDEPENDENT CONSULTANT AGREEMENT (this “Agreement”), is entered into as of _____, by and between **GT ADVANCED TECHNOLOGIES INC.** (“**GT**”), a Delaware corporation with an address at 243 Daniel Webster Highway, Merrimack, NH 03054, and **David Keck** having an address at 11754 Windemere Drive, Missoula, MT 59804 (“**Keck**”, “**David Keck**”, or “**Consultant**”). This Agreement shall be effective on the date following the last day of employment of Consultant by GT unless otherwise rendered null and void pursuant to Section 4(h) of the Employment Agreement of even date herewith (the “Employment Agreement”) (the “Effective Date”).

RECITALS

WHEREAS, Consultant is employed by GT pursuant to the Employment Agreement; and

WHEREAS, Consultant possesses special knowledge, abilities, and experience regarding engineering and technology related to the polysilicon business; and

WHEREAS, subsequent to Consultant’s employment by GT pursuant to the Employment Agreement, GT desires to engage the services of Consultant and Consultant desires to provide services to GT as an independent contractor with respect to GT’s businesses upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, both GT and Consultant (each a “Party,” and collectively the “Parties”) agree as follows:

SECTION 1. SCOPE OF SERVICES

1.1 Services. As used in this Agreement, the term “Services” shall mean, principally, consulting on business and technology matters related to GT’s polysilicon business, as more fully set forth in Exhibit A hereto.

1.2 Time Commitment. Consultant shall perform the Services on a part-time basis as may be mutually agreed between GT and the Consultant from time to time, up to 100 hours per quarter (the “Time Commitment”).

1.3 Method of Performing Services. GT shall provide Consultant with access to its premises and equipment to the extent necessary for the performance of the Services. GT shall not control the manner or means by which Consultant shall perform the Services. GT shall, however, be entitled to exercise general power of review over the work performed by Consultant to assure satisfactory performance of the Services, including the right to inspect work, the right to stop work, the right to make suggestions or recommendations as to the details of the work, and the right to propose modifications to the work.

1.4 Conduct of Services. Consultant shall comply with all applicable policies of GT relating to business and office conduct, health and safety and use of GT's facilities, supplies, information technology, equipment, networks and other resources.

1.5 Scheduling. Consultant shall perform the Services in accordance with schedules agreed upon by both Parties. Additionally, Consultant will use Consultant's best efforts to accommodate GT's requests for the performance of unscheduled Services.

SECTION 2. TERM AND TERMINATION

2.1 Term. Subject to the provisions of Section 2.2, below, the term of this Agreement shall be the eighteen (18) month period commencing on the Effective Date (the "Term").

2.2 Termination. This Agreement may be terminated (i) immediately by either party upon written notice if the other party breaches any obligation hereunder; or (ii) by GT if the Consultant materially breaches this Agreement, including but not limited to, a breach of Section 5 herein, or for Cause as defined in Section 4(e) of the Employment Agreement. In the event of a termination under (ii), the Consultant shall not be entitled to any further installments set forth in Section 3.1 below and shall not be relieved of any of his continuing obligations as set forth in Section 5 herein and this shall be without prejudice to GT's right to sue the Consultant for fees paid covering a period in which the Consultant was in breach and for injunctive relief or other damages. In the event GT fails to pay the fees set forth in Section 3.1 below, after notice from Consultant to GT and failure by GT to cure within thirty (30) days from GT's receipt of the notice, Consultant will be relieved of his non-competition obligations under Section 7(a) of the Employment Agreement, without prejudice to Consultant's right to sue GT for any amounts owed pursuant to this Agreement or otherwise. Upon termination of this Agreement, sections 4, 5, 6 and 7 hereof shall survive and continue in full force and effect except as otherwise set forth in this Agreement. In the event of Consultant's death prior to the expiration of this Agreement, GT shall pay any unpaid portion of the Compensation (as defined below) to the Consultant's estate.

2.3 Remaining Payments. Within 30 days after termination of this Agreement, Consultant shall submit to GT an itemized invoice for any unbilled fees or expenses payable under this Agreement.

SECTION 3. FEES, EXPENSES, AND PAYMENT

3.1 Fees. In consideration of the Services to be performed by Consultant during the Term of this Agreement and other valuable consideration including but not limited to Consultant's obligations set forth in Section 7 (Non-Compete, Non-Solicitation) of the Employment Agreement, Consultant shall be paid a total amount of Two Million Five Hundred Thousand Dollars (\$2,500,000) (the "Compensation"). The Compensation shall be paid to Consultant in six (6) equal installments of \$416,666 every three months with the first installment to be paid 90 days after the Effective Date.

3.2 Reimbursement of Expenses. In addition to the foregoing, GT shall pay Consultant reasonable, actual out-of-pocket expenses incurred by Consultant which are related to the Services and approved in advance by GT (the “Reimbursable Expenses”). Consultant agrees to provide GT with such receipts, ledgers, and other records as may be reasonably requested by GT to verify the amount and nature of any such Reimbursable Expenses. The Reimbursable Expenses shall be reimbursed within thirty (30) days after receipt of Consultant’s invoice for such expenses.

SECTION 4. RESPONSIBILITIES OF CONSULTANT FOR TAXES AND OTHER MATTERS

4.1 Taxes. As an independent contractor, Consultant shall be solely responsible for all federal and state income, withholding, social security, and other taxes, as well as unemployment insurance applicable to Consultant. Consultant shall not be entitled to receive any Consultant benefits or to participate in any Consultant benefit plans, including health or disability insurance, retirement benefits, or other welfare or pension benefits, if any, to which Consultants of GT may be entitled. Any persons employed by Consultant in connection with the performance of the Services shall be Consultant’s Consultants, and Consultant shall be fully responsible for such persons and such persons’ actions.

SECTION 5. CONTINUING OBLIGATIONS

The provisions of Section 5 (Confidential Information), Section 6 (Developments), Section 7 (Non-Compete; Non-Solicitation), Section 8 (Enforcement), and Section 9 (Additional Acknowledgements) of the Employment Agreement shall be incorporated by reference as if fully set forth herein, except that the term “Executive” as set forth therein shall be understood to refer to Consultant, and the term “Company” as set forth therein shall be understood to refer to GT.

SECTION 6. REPRESENTATIONS AND WARRANTIES

6.1 Consultant Representations and Warranties. Consultant represents and warrants to GT that:

- a. Consultant has the right to enter into this Agreement, to grant the rights granted herein and to perform fully all of Consultant’s obligations in this Agreement;
- b. Consultant’s entering into this Agreement with GT and Consultant’s performance of the Services do not and will not conflict with or result in any breach or default under any other agreement to which Consultant is subject;
- c. Consultant has the required skill, experience and qualifications to perform the Services; Consultant shall perform the Services in a professional and workmanlike manner in accordance with generally accepted industry standards for similar services and Consultant shall devote sufficient resources to ensure that the Services are performed in a timely and reliable manner;

- d. Consultant shall perform the Services in compliance with all applicable federal, state and local laws and regulations;
- e. GT will receive good and valid title to all Deliverables, free and clear of all encumbrances and liens of any kind;
- f. all Deliverables are and shall be Consultant's original work (except for material in the public domain or provided by GT) and, to the best of Consultant's knowledge, do not and will not violate or infringe upon the intellectual property right or any other right whatsoever of any person, firm, corporation or other entity.

6.2 GT Representations and Warranties. GT hereby represents and warrants to Consultant that:

- a. GT has the full right, power and authority to enter into this Agreement and to perform GT's obligations hereunder; and
- b. the execution of this Agreement by GT's authorized representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action.

SECTION 7. MISCELLANEOUS

7.1 Governing Law. This Agreement shall be governed and construed in all respects in accordance with the laws of the State of New Hampshire, without giving effect to its Conflict of Laws principles, and the courts of which shall have exclusive jurisdiction over any disputes arising out of this Agreement.

7.2 Independent Contractors. The parties hereto are independent parties and nothing herein shall be deemed to create an agency, partnership, or joint venture relationship between the parties. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and Consultant between GT and the Consultant. Consultant shall have no authority (and shall not hold himself out as having authority) to bind GT and Consultant shall not make any agreements or representations on GT's behalf without the GT's prior written consent.

7.3 Notices. All notices required or permitted hereunder shall be in and shall be delivered by hand or by registered or certified mail, postage prepaid, to the address set forth above for each Party.

7.4 Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and related exhibits and schedules, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

7.5 Amendments. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto, and any of the terms thereof may be waived, only by a written document signed by each party to this Agreement or, in the case of waiver, by the Party or Parties waiving compliance.

7.6 Enforceability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

7.7 Counterparts. This Agreement may be executed in multiple counterparts and by facsimile signature, each of which shall be deemed an original and all of which together shall constitute one instrument.

<<Signature Page to Follow>>

IN WITNESS WHEREOF, the undersigned Parties have executed or have caused this Agreement to be executed by their duly authorized representatives, as applicable, on the date and year first set forth above.

GT ADVANCED TECHNOLOGIES INC.

By: _____

Name: [_____]

Title: [_____]

By: _____

Name: David Keck

Exhibit A

1. Support of litigations and disputes relating to events which occurred during their employment, including any required written responses to relevant inquiries and participation in interviews and depositions.
2. Consultation regarding technology, including the provision of relevant written reports and attendance at meetings with the Company and customers, as appropriate.
3. Consultation regarding customer relationships and contracts, including the provision of relevant written reports and attendance at meetings with the Company and customers, as appropriate.
4. Consultation regarding business opportunities, including the provision of relevant written reports and attendance at meetings with the Company.
5. Consultation regarding strategic opportunities, including the provision of relevant written reports and attendance at meetings with the Company.
6. Consultation regarding supplier relationships, including the provision of relevant written reports and attendance at meetings with the Company and suppliers, as appropriate.

GT ADVANCED TECHNOLOGIES INC.

EMPLOYMENT AGREEMENT

THIS AGREEMENT (this "Agreement") is made between GT Advanced Technologies Inc., a Delaware corporation (the "Company"), and Kanwardev Raja Bal ("Executive") as of February 16, 2016 (the "Effective Date").

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Employment. The Company shall employ Executive, and Executive hereby accepts employment with the Company, upon the terms and conditions set forth in this Agreement for the period beginning on the date of this Agreement and ending as provided in paragraph 4 hereof (the "Employment Period").

2. Position and Duties.

(a) During the Employment Period, Executive shall serve as Chief Financial Officer of the Company and shall have the normal duties, responsibilities, functions and authority corresponding to such roles, subject to the power and authority of the Company's board of directors (the "Board") to expand or limit such duties, responsibilities, functions and authority and to overrule actions of officers of the Company. During the Employment Period, Executive shall render such executive and managerial services to the Company and its Subsidiaries which are consistent with Executive's position as the Board or the Company's President and Chief Executive Officer may from time to time direct.

(b) During the Employment Period, Executive shall report to the President and Chief Executive Officer and shall devote his best efforts and his full business time and attention (except for permitted vacation periods and reasonable periods of illness or other incapacity) to the business and affairs of the Company and its Subsidiaries. Executive shall perform his duties, responsibilities and functions to the Company and its Subsidiaries hereunder to the best of his abilities in a diligent, trustworthy, professional and efficient manner and shall comply with the Company's and its Subsidiaries' policies and procedures in all material respects. In performing his duties and exercising his authority under the Agreement, Executive shall support and implement the business and strategic plans approved from time to time by the Board and shall support and cooperate with the Company's and its Subsidiaries' efforts to expand their businesses and operate profitably and in conformity with the business and strategic plans approved by the Board. So long as Executive is employed by the Company, Executive shall not, without the prior written consent of the Board, accept other employment or perform other services for compensation. During the Employment Period, Executive shall not serve as an officer or director of, or otherwise perform services for compensation for, any other entity without the prior approval of the Board; provided that Executive may serve as an officer or director of or otherwise participate in solely educational, welfare, social, religious, sporting club and civic organizations so long as such activities do not interfere with Executive's employment with the Company and its Subsidiaries. Executive shall be primarily based at the Company's

facility in Merrimack, New Hampshire. Executive understands and agrees that his employment will require travel from time to time.

(c) For purposes of this Agreement, “Subsidiaries” shall mean any corporation or other entity of which the securities or other ownership interests having the voting power to elect a majority of the board of directors or other governing body are, at the time of determination, owned by the Company, directly or through one or more Subsidiaries.

3. Compensation and Benefits.

(a) During the Employment Period, Executive’s base salary shall be at the rate of \$375,000 per annum or such higher rate as the Compensation Committee of the Board (the “Compensation Committee”) may determine from time to time (as adjusted from time to time, the “Base Salary”), which salary shall be payable by the Company in proportionate installments and in accordance with the Company’s general payroll practices in effect from time to time. In addition, during the Employment Period, Executive shall be eligible to participate in all of the Company’s employee benefit programs for which senior executive employees of the Company and its Subsidiaries are generally eligible, and Executive shall be eligible to earn four (4) weeks of paid vacation and six (6) days of paid leave for illness each calendar year in accordance with the Company’s policies. Executive’s participation in the Company’s benefit plans will be subject to the terms of applicable plan documents and the Company’s generally applicable policies, and the Company, in its sole discretion, may from time to time adopt, modify, interpret or discontinue such plans or policies.

(b) During the Employment Period, the Company shall reimburse Executive for all reasonable business expenses incurred by him in the course of performing his duties and responsibilities under this Agreement in accordance with the Company’s policies in effect from time to time with respect to travel, entertainment and other business expenses, subject to the Company’s requirements with respect to reporting and documentation of such expenses.

(c) In addition to the Base Salary, during the Employment Period, Executive shall be eligible to participate in an Annual Incentive Program of the Company (the “AIP”), under which Executive may be eligible to receive a bonus based upon the achievement of such performance targets and other conditions as stated in the AIP. Executive’s initial target bonus shall be 75% of Base Salary. The terms of the AIP may change from time to time as determined by the Compensation Committee of the Board of Directors. While the Company does not guarantee the existence or the terms and conditions of any incentive plan in future years, participation in such plans (including equity plans), if any, shall be extended to Executive to the extent commensurate with Executive’s position.

(d) Executive will be eligible to participate in the Company’s equity incentive plan (the “Equity Incentive Plan”) as may be approved by the Board from time to time.

(e) Executive will be eligible for an emergence bonus in the amount of \$65,444 within 30 days following the effectiveness of the bankruptcy plan.

(f) Executive shall be entitled to the payment of a special bonus in the amount of \$50,000 upon the effective date of this Agreement.

(g) All amounts payable to Executive as compensation hereunder shall be subject to all required and customary withholding by the Company and its Subsidiaries.

4. Termination.

(a) The Employment Period shall begin on the date of this Agreement and continue until the Employment Period is terminated by (i) Executive's resignation (with or without Good Reason, as defined below) or death or Disability (as defined below) as determined by the Board in its good faith judgment or (ii) the Company at any time prior to such date with or without Cause (as defined below). Except as otherwise provided herein, any termination of the Employment Period by the Company shall be effective as specified in a written notice from the Company to Executive. Executive shall provide at least thirty (30) days advance written notice of Executive's resignation of employment, with or without Good Reason (as defined below), to the Board.

(b) If the Employment Period is terminated by the Company without Cause, or as a result of Executive's resignation with Good Reason, Executive shall be entitled to:

(i) continue to receive his Base Salary, subject to applicable withholding, (paid in accordance with the Company's general payroll practices in effect on the termination date) as special severance payments from the date of termination for a period of twelve (12) months thereafter (the "Severance Period");

(ii) to the extent permitted by the applicable benefit plans, continued participation during the Severance Period in medical and dental insurance plans sponsored by the Company on terms and conditions in effect at the time of such termination (including cost sharing, if applicable) substantially similar to those applicable to employees of the Company generally;

provided, however, Executive shall be entitled to the payments and benefits described in clauses (b)(i) and (b)(ii) of this paragraph if and only if Executive has executed and delivered to the Company the Separation Agreement and General Release ("Release") substantially in form and substance as set forth in Exhibit A attached hereto within sixty (60) days or such earlier time as designated by the Company following the date of termination and the Release has become effective, provided that if the end of the 60-day period following the termination date falls in a calendar year subsequent to the calendar year in which the Executive's separation from service occurs, payment will not be made before the first payroll of that subsequent year. In addition, the Company may end its payment of premiums earlier (but not the Executive's eligibility for post-employment medical coverage to the extent the Executive is eligible for and elects COBRA coverage) if it reasonably determines that applicable laws or regulations will cause the payment of these premiums to trigger taxes or penalties on the Company or other participants or, to the extent the Executive would be taxed on more than the amount of premiums, to the Executive. Additionally, Executive shall be entitled to (a) and (b) above only so long as Executive has not revoked or breached the provisions of the Release or breached the provisions of paragraphs 5, 6 and 7 hereof. Executive shall not be entitled to any other salary, compensation or benefits after termination of the Employment Period, except accrued unpaid salary through the end of the pay period in which the termination occurred, and accrued unused vacation as well as unreimbursed

business expenses and as otherwise specifically provided in this Agreement including any exhibits, addenda or modifications thereto, in the Company's employee benefit plans, or by applicable law.

(c) If the Employment Period is (i) terminated by the Company for Cause or (ii) terminated by Executive without Good Reason (as defined below), Executive shall only be entitled to receive his Base Salary through the end of the pay period in which the termination occurs, accrued unpaid vacation, as well as unreimbursed business expenses and any COBRA rights and shall not be entitled to any other salary, compensation or benefits from the Company or its Subsidiaries thereafter, except as otherwise specifically provided in this Agreement including any exhibits, addenda or modifications thereto, under the Company's employee benefit plans, or by applicable law. The termination of the Employment Period for Cause shall preclude Executive's resignation with Good Reason. If this Agreement is terminated due to Executive's death or Disability, Executive shall only be entitled to receive (x) his Base Salary through the end of the pay period in which the termination occurs, (y) any benefits Executive or his eligible family members are eligible for under COBRA, and (z) at the sole discretion of the Board, a pro-rata portion (based on the number of days Executive was employed during the fiscal year in which the death or disability occurred) of any annual target bonus Executive would have been entitled to for such fiscal year had the Employment Period not been terminated during such year, payable at the time Executive would have been entitled to receive such bonus had the Employment Period not been terminated. The Board shall retain full discretionary authority to determine whether any bonus is paid, and the amount thereof, pursuant to this paragraph 4(c), based upon the Company's performance as well as Executive's contribution toward business objectives as demonstrated by the achievement of functional/individual goals.

(d) Except as otherwise expressly provided herein, all of Executive's rights to salary, bonuses, employee benefits and other compensation hereunder which would have accrued or become payable after the termination of the Employment Period shall cease upon such termination, other than those expressly required under applicable law (such as COBRA).

(e) For purposes of this Agreement, "Cause" shall mean with respect to Executive, one or more of the following: (i) the commission of a felony or the commission of a crime involving moral turpitude; or with respect to the Company or any of its Subsidiaries or any of their customers or suppliers, or the commission of any other act or omission involving dishonesty, disloyalty or fraud (ii) reporting to work under the influence of alcohol or illegal drugs, the use of illegal drugs in the workplace or other conduct causing the Company or any of its Subsidiaries substantial public disgrace or disrepute or substantial economic harm, (iii) substantial failure to perform duties as reasonably directed by the Board or the Company's President and CEO, (iv) any act or omission aiding or abetting a supplier or customer of the Company or any of its Subsidiaries to the material disadvantage or detriment of the Company and its Subsidiaries, (v) breach of fiduciary duty, gross negligence or willful misconduct with respect to the Company or any of its Subsidiaries or (vi) any other material breach of this Agreement. With respect to clauses (iii) or (vi), cause shall be deemed to exist only upon the Executive's failure to cure, if curable, to the Company's reasonable satisfaction within fifteen (15) days after written notice to Executive.

(f) For purposes of this Agreement, “Disability” shall mean Executive’s inability to perform the essential duties, responsibilities and functions of his position with the Company and its Subsidiaries for a period of 90 consecutive days or for a total of 180 days during any 12-month period as a result of any mental or physical illness, disability or incapacity even with reasonable accommodations for such illness, disability or incapacity provided by the Company and its Subsidiaries or if providing such accommodations would be unreasonable, all as determined by the Compensation Committee in its reasonable good faith judgment. Executive shall cooperate in all reasonable respects with the Company if a question arises as to whether he has become disabled (including, without limitation, submitting to reasonable examinations by one or more medical doctors and other health care specialists selected by the Company and authorizing such medical doctors and other health care specialists to discuss Executive’s condition with the Company).

(g) For purposes of this Agreement. “Good Reason” shall mean if Executive resigns from employment with the Company and its Subsidiaries prior to the end of the Employment Period as a result of the occurrence of one or more of the following events: (i) the Company reduces the amount of the Base Salary other than an equivalent across the board salary reduction that does not exceed 25% of the Executive’s salary and applicable to all senior executives of the Company (x) elects to eliminate the AIP without permitting Executive to participate in an annual incentive bonus plan in place of the AIP which offers a potential bonus payment substantially comparable to that earnable by Executive under the AIP or (y) does not extend to Executive participation in equity plans commensurate with Executive’s position, to the extent senior executives of the Company participate in such equity plans, (ii) the Company changes Executive’s title and reduces his responsibilities or authority in a manner materially inconsistent with that of the position of Chief Financial Officer, or (iii) the Company changes Executive’s place of work to a location more than 50 miles from Merrimack, New Hampshire; provided that in order for Executive’s resignation for Good Reason to be effective hereunder, Executive must provide written notice to the Company stating Executive’s intent to resign for Good Reason and the grounds therefor within thirty (30) days after such grounds exist and grant the Company thirty (30) days from receipt of such notice to remedy or otherwise remove the grounds supporting Executive’s resignation for Good Reason, and actually resign within thirty (3) days after the end of the period for remedy if not remedied.

5. Proprietary and Confidential Information.

(a) The Executive agrees that all information and know-how, whether or not in writing, of a private, secret or confidential nature concerning the Company’s business or financial affairs (collectively, “Proprietary Information”) is and shall be the exclusive property of the Company. By way of illustration, but not limitation, Proprietary Information may include discoveries, inventions, products, product improvements, product enhancements, processes, methods, techniques, formulas, compositions, compounds, negotiation strategies and positions, projects, developments, plans (including business and marketing plans), research data, clinical data, financial data (including sales costs, profits, pricing methods), personnel data, computer programs (including software used pursuant to a license agreement), customer, prospect and supplier lists, and contacts at or knowledge of customers or prospective customers of the Company. The Executive will not disclose any Proprietary Information to any person or entity other than Executives of the Company or use the same for any purposes (other than in the

performance of his/her duties as an Executive of the Company) without written approval by an officer of the Company, either during or after his/her employment with the Company, unless and until such Proprietary Information has become public knowledge without fault by the Executive. While employed by the Company, the Executive will use the Executive's best efforts to prevent unauthorized publication or disclosure of any of the Company's Proprietary Information.

Proprietary Information shall not include information which: (i) was already known to Executive prior to his employment by the Company; (ii) is or becomes publicly available without fault of Executive; (iii) is rightfully obtained by Executive from an independent third party free of any nondisclosure obligation; or (iv) is required to be disclosed by law, provided that Executive provides reasonable notice to the Company of such required disclosure and reasonably cooperates with the Company in limiting such disclosure.

(b) The Executive agrees that all files, documents, letters, memoranda, reports, records, data, sketches, drawings, models, laboratory notebooks, program listings, computer equipment or devices, computer programs or other written, photographic, or other tangible or intangible material containing Proprietary Information, whether created by the Executive or others, which shall come into his/her custody or possession, shall be and are the exclusive property of the Company to be used by the Executive only in the performance of his/her duties for the Company and shall not be copied or removed from the Company premises except in the pursuit of the business of the Company. All such materials or copies thereof and all tangible property of the Company in the custody or possession of the Executive shall be delivered to the Company, upon the earlier of (i) a request by the Company or (ii) termination of his/her employment for any reason. After such delivery, the Executive shall not retain any such materials or copies thereof or any such tangible property.

(c) The Executive agrees that his/her obligation not to disclose or to use information and materials of the types set forth in paragraphs 5(a) and 5(b) above, and his/her obligation to return materials and tangible property, set forth in paragraph 5(b) above, also extends to such types of information, materials and tangible property of customers of the Company or suppliers to the Company or other third parties who may have disclosed or entrusted the same to the Company or to the Executive in the course of the Company's business.

6. Developments.

(a) The Executive will make full and prompt disclosure to the Company of all discoveries, inventions, improvements, enhancements, processes, methods, techniques, developments, software, and works of authorship, whether patentable or not, which are created, made, conceived or reduced to practice by him/her or under his/her direction or jointly with others during his/her employment by the Company, whether or not during normal working hours or on the premises of the Company (all of which are collectively referred to in this Agreement as "Developments").

(b) The Executive agrees to assign and does hereby assign to the Company (or any person or entity designated by the Company) all his/her right, title and interest in and to all Developments and all related patents, patent applications, copyrights and copyright applications. However, this paragraph 6(b) shall not apply to Developments which do not relate to the

business or research and development conducted or planned to be conducted by the Company at the time such Development is created, made, conceived or reduced to practice and which are made and conceived by the Executive not during normal working hours, not on the Company's premises and not using the Company's tools, devices, equipment or Proprietary Information. The Executive understands that, to the extent this Agreement shall be construed in accordance with the laws of any state which precludes a requirement in an Executive agreement to assign certain classes of inventions made by an Executive, this paragraph 3(b) shall be interpreted not to apply to any invention which a court rules and/or the Company agrees falls within such classes. The Executive also hereby waives all claims to moral rights in any Developments.

(c) The Executive agrees to cooperate fully with the Company, both during and after his/her employment with the Company, with respect to the procurement, maintenance and enforcement of copyrights, patents and other intellectual property rights (both in the United States and foreign countries) relating to Developments. The Executive shall sign all papers, including, without limitation, copyright applications, patent applications, declarations, oaths, formal assignments, assignments of priority rights, and powers of attorney, which the Company may deem necessary or desirable in order to protect its rights and interests in any Development. The Executive further agrees that if the Company is unable, after reasonable effort, to secure the signature of the Executive on any such papers, any executive officer of the Company shall be entitled to execute any such papers as the agent and the attorney-in-fact of the Executive, and the Executive hereby irrevocably designates and appoints each executive officer of the Company as his/her agent and attorney-in-fact to execute any such papers on his/her behalf, and to take any and all actions as the Company may deem necessary or desirable in order to protect its rights and interests in any Development, under the conditions described in this sentence.

7. Non-Compete, Non-Solicitation.

(a) Executive agrees that, during the Employment Period and for two (2) years thereafter (the "Noncompete Period"), he shall not directly or indirectly own any interest in, or, in a business capacity, manage, control, participate in, consult with, render services for, be employed by, or in any manner engage in, any business or entity competing with any of the businesses of the Company or its Subsidiaries as such businesses exist or are in process during the Employment Period or on the date of the termination of the Employment Period, within any geographical area in which the Company or its Subsidiaries engage in such businesses, or actively plan to engage in such businesses, at the time of Executive's departure from the Company. Nothing herein shall prohibit Executive from being a passive owner of not more than 2% of the outstanding stock of any class of a corporation which is publicly traded, so long as Executive has no active participation in the business of such corporation.

(b) In addition, during the Noncompete Period, Executive shall not directly, or indirectly through another person or entity, (i) induce or attempt to induce any employee of the Company or any Subsidiary to leave the employ of the Company or such Subsidiary, or in any way interfere with the relationship between the Company or any Subsidiary and any employee thereof, or (ii) hire any person who was an employee of the Company or any Subsidiary during the six month period prior to the date of Executive's termination or (iii) induce or attempt to induce any customer, supplier, licensee, licensor, franchisee or other business relation of the Company or any Subsidiary with whom Executive had any material contact while employed by

the Company to cease doing business with the Company or such Subsidiary, or in any way interfere with the relationship between any such customer, supplier, licensee or business relation and the Company or any Subsidiary.

(c) During and after the Employment Period, Executive shall not directly or indirectly through another person or entity, disparage, criticize, defame, slander or otherwise make negative statements or communications regarding the Company or its subsidiaries or affiliates or the respective past and present investors, officers, directors or employees.

8. Enforcement. If, at the time of enforcement of Sections 5, 6 or 7 of this Agreement, a court holds that the restrictions stated herein are unreasonable under circumstances then existing, the parties hereto agree that the maximum period, scope or geographical area reasonable under such circumstances shall be substituted for the stated period, scope or area and that the court shall be allowed to revise the restrictions contained herein to cover the maximum period, scope and area permitted by law. Because Executive's services are unique and because Executive has access to Confidential Information and Work Product, the parties hereto agree that the restrictions contained in Sections 5, 6 and 7 are necessary for the protection of the business and goodwill of the Company and the Company and its Subsidiaries would suffer irreparable harm from a breach of Sections 5, 6 or 7 by Executive and that money damages would not be an adequate remedy for any such breach of this Agreement. Therefore, in the event a breach or threatened breach of this Agreement, the Company and its Subsidiaries and their successors or assigns, in addition to other rights and remedies existing in their favor, shall be entitled to specific performance and/or injunctive or other equitable relief from a court of competent jurisdiction in order to enforce, or prevent any violations of, the provisions hereof (without posting a bond or other security). In addition, in the event of a breach or violation by Executive of Section 7, the Noncompete Period shall be automatically extended by the amount of time between the initial occurrence of the breach or violation and when such breach or violation has been duly cured. Executive acknowledges that the restrictions contained in Section 7 are reasonable and that he has reviewed the provisions of this Agreement with his legal counsel.

9. Additional Acknowledgments. In addition, Executive acknowledges that the provisions of Sections 5, 6 and 7 are in consideration of employment with the Company and additional good and valuable consideration as set forth in this Agreement. Executive also acknowledges that (i) the restrictions contained in Sections 5, 6 and 7 do not preclude Executive from earning a livelihood, nor do they unreasonably impose limitations on Executive's ability to earn a living, (ii) the business of the Company and its Subsidiaries is international in scope and without geographical limitation and (iii) notwithstanding the state of formation or principal office of the Company or residence of any of its executives or employees (including Executive), the Company and its Subsidiaries have business activities and have valuable business relationships within its industry throughout the world. Executive agrees and acknowledges that the potential harm to the Company and its Subsidiaries of the non-enforcement of Sections 5, 6 and 7 outweighs any potential harm to Executive of its enforcement by injunction or otherwise. Executive acknowledges that he has carefully read this Agreement and has given careful consideration to the restraints imposed upon Executive by this Agreement and is in full accord as to their necessity for the reasonable and proper protection of confidential and proprietary information of the Company and its Subsidiaries now existing or to be developed in the future

and the Company's good will and that each and every restraint imposed by this Agreement is reasonable with respect to subject matter, time period and geographical area.

10. Executive's Representations. Executive hereby represents and warrants to the Company that (i) the execution, delivery and performance of this Agreement by Executive do not and shall not conflict with, breach, violate or cause a default under any contract, agreement, instrument, order, judgment or decree to which Executive is a party or by which he is bound, (ii) Executive is not a party to or bound by any employment agreement, noncompete agreement, confidentiality agreement or other restriction with any other person or entity, which would be breached by entering into this Agreement and (iii) upon the execution and delivery of this Agreement by the Company, this Agreement shall be the valid and binding obligation of Executive, enforceable in accordance with its terms. Executive hereby acknowledges and represents that he has consulted with independent legal counsel regarding his rights and obligations under this Agreement and that he fully understands the terms and conditions contained herein.

11. Survival. Paragraphs 5 through 9, and 25 shall survive and continue in full force in accordance with their terms notwithstanding the termination of the Employment Period.

12. Notices. Any notice provided for in this Agreement shall be in writing and shall be either personally delivered, sent by reputable overnight courier service or mailed by first class mail, return receipt requested, to the recipient at the address below indicated:

Notices to Executive:

Kanwardev Raja Bal
c/o most recent address on file in the Company's personnel records

Notices to the Company:

GT Advanced Technologies Inc.
243 Daniel Webster Highway
Merrimack, New Hampshire 03054
Attention: President and Chief Executive Officer

or such other address or to the attention of such other person as the recipient party shall have specified by prior written notice to the sending party. Any notice under this Agreement shall be deemed to have been given when so delivered, sent or mailed.

13. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any action in any other jurisdiction, but this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

14. Complete Agreement. This Agreement embodies the complete agreement and understanding among the parties and supersedes and preempts any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

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

16. Counterparts. This Agreement may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one and the same agreement.

17. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by Executive, the Company and their respective heirs, successors and assigns, except that Executive may not assign his rights or delegate his duties or obligations hereunder without the prior written consent of the Company.

18. Choice of Law. All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement and the exhibits and schedules hereto shall be governed by, and construed in accordance with, the laws of the State of New Hampshire, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of New Hampshire or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New Hampshire. In furtherance of the foregoing, the internal law of the State of New Hampshire shall control the interpretation and construction of this Agreement (and all schedules and exhibits hereto), even though under that jurisdiction's choice of law or conflict of law analysis, the substantive law of some other jurisdiction would ordinarily apply.

19. Amendment and Waiver. The provisions of this Agreement may be amended or waived only with the prior written consent of the Company and Executive, and no course of conduct or course of dealing or failure or delay by any party hereto in enforcing or exercising any of the provisions of this Agreement (including, without limitation, the Company's right to terminate the Employment Period for Cause) shall affect the validity, binding effect or enforceability of this Agreement or be deemed to be an implied waiver of any provision of this Agreement.

20. Insurance. The Company may, at its discretion, apply for and procure in its own name and for its own benefit life and/or disability insurance on Executive in any amount or amounts considered advisable. Executive agrees to cooperate in any medical or other examination, supply any information and execute and deliver any applications or other instruments in writing as may be reasonably necessary to obtain and constitute such insurance.

21. Tax Withholding. The Company and its Subsidiaries shall be entitled to deduct or withhold from any amounts owing from the Company or any of its Subsidiaries to Executive any federal, state, local or foreign withholding taxes, excise tax or employment taxes ("Taxes") imposed with respect to Executive's compensation or other payments from the Company or any

of its Subsidiaries or Executive's ownership interest in the Company (including, without limitation, wages, bonuses, dividends, the receipt or exercise of equity options and/or the receipt or vesting of restricted equity).

22. Consent to Jurisdiction. EACH OF THE PARTIES IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE AND ANY COURT OF THE STATE OF NEW HAMPSHIRE, FOR PURPOSES OF ANY DISPUTES AND CLAIMS UNDER AGREEMENT AND FOR THE ENFORCEMENT OF ANY FINAL DETERMINATION. EACH OF THE PARTIES HERETO FURTHER AGREES THAT SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY U.S. REGISTERED MAIL TO SUCH RESPECTIVE PARTY'S ADDRESS SET FORTH ABOVE SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY ACTION, SUIT OR PROCEEDING IN NEW HAMPSHIRE WITH RESPECT TO ANY MATTERS TO WHICH IT HAS SUBMITTED TO JURISDICTION IN THIS PARAGRAPH 22. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY DISPUTES AND CLAIMS UNDER THIS AGREEMENT AND FOR THE ENFORCEMENT OF ANY FINAL DETERMINATION AND THEREBY IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE AND ANY COURT OF THE STATE OF NEW HAMPSHIRE, AND HEREBY AND THEREBY FURTHER IRREVOCABLY AND UNCONDITIONALLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION, SUIT OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

23. Waiver of Jury Trial. AS A SPECIFICALLY BARGAINED FOR INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT (AFTER HAVING THE OPPORTUNITY TO CONFER WITH COUNSEL), EACH PARTY EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LAWSUIT OR PROCEEDING RELATING TO OR ARISING IN ANY WAY FROM THIS AGREEMENT OR THE MATTERS CONTEMPLATED HEREBY.

24. Corporate Opportunity. Executive shall submit to the Board all business, commercial and investment opportunities, or offers presented to Executive or of which Executive becomes aware at any time during the Employment Period which relate to the business of the Company ("Corporate Opportunities"). Unless approved by the Board, Executive shall not accept or pursue, directly or indirectly, any Corporate Opportunities on Executive's own behalf.

25. Executive's Cooperation. During the Employment Period and thereafter, Executive shall cooperate with the Company and its Subsidiaries in any internal investigation, any administrative, regulatory or judicial investigation or proceeding or any dispute with a third party as reasonably requested by the Company (including, without limitation, Executive being available to the Company upon reasonable notice for interviews and factual investigations, appearing at the Company's request to give testimony without requiring service of a subpoena or other legal process, volunteering to the Company all pertinent information and turning over to the Company all relevant documents which are or may come into Executive's possession, all at times and on schedules that are reasonably consistent with Executive's other activities and commitments). In the event the Company requires Executive's cooperation in accordance with

this paragraph, the Company shall reimburse Executive solely for reasonable travel expenses (including lodging and meals) upon submission of receipts.

26. Payments Subject to Section 409A. Subject to the provisions in this Section 25, any severance payments or benefits under this Agreement shall begin only upon the date of Executive's "separation from service" (determined as set forth below) which occurs on or after the date of termination of Executive's employment. The following rules shall apply with respect to distribution of the payments and benefits, if any, to be provided to Executive under this Agreement:

(a) It is intended that each installment of the severance payments and benefits provided under this Agreement shall be treated as a separate "payment" for purposes of Section 409A of the Code and the guidance issued thereunder ("Section 409A"). Neither the Company nor Executive shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A.

(b) If, as of the date of Executive's "separation from service" from the Company, Executive is not a "specified employee" (within the meaning of Section 409A), then each installment of the severance payments and benefits shall be made on the dates and terms set forth in this Agreement.

(c) If, as of the date of Executive's "separation from service" from the Company, Executive is a "specified employee" (within the meaning of Section 409A), then:

(i) Each installment of the severance payments and benefits due under this Agreement that, in accordance with the dates and terms set forth herein, will in all circumstances, regardless of when the separation from service occurs, be paid within the Short-Term Deferral Period (as hereinafter defined), shall be treated as a short-term deferral within the meaning of Treasury Regulation § 1.409A-1(b)(4) to the maximum extent permissible under Section 409A. For purposes of this Agreement, the "Short-Term Deferral Period" means the period ending on the later of the fifteenth day of the third month following the end of Executive's tax year in which the separation from service occurs and the fifteenth day of the third month following the end of the Company's tax year in which the separation from service occurs; and

(ii) Each installment of the severance payments and benefits due under this Agreement that is not described in paragraph c(i) above and that would, absent this subsection, be paid within the six-month period following Executive's "separation from service" from the Company shall not be paid until the date that is six months and one day after such separation from service (or, if earlier, Executive's death), with any such installments that are required to be delayed being accumulated during the six-month period and paid in a lump sum on the date that is six months and one day following Executive's separation from service and any subsequent installments, if any, being paid in accordance with the dates and terms set forth herein; provided, however, that the preceding provisions of this sentence shall not apply to any installment of severance payments and benefits if and to the maximum extent that that such installment is deemed to be paid under a separation pay plan that does not provide for a deferral of

compensation by reason of the application of Treasury Regulation §1.409A-1(b)(9)(iii) (relating to separation pay upon an involuntary separation from service). Any installments that qualify for the exception under Treasury Regulation §1.409A-1(b)(9)(iii) must be paid no later than the last day of Executive's second taxable year following the taxable year in which the separation from service occurs.

(d) The determination of whether and when Executive's separation from service from the Company has occurred shall be made and in a manner consistent with, and based on the presumptions set forth in, Treasury Regulation §1.409A-1(h). Solely for purposes of this paragraph d, "Company" shall include all persons with whom the Company would be considered a single employer under Section 414(b) and 414(c) of the Code.

(e) All reimbursements and in-kind benefits provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A to the extent that such reimbursements or in-kind benefits are subject to Section 409A, including, where applicable, the requirements that (i) any reimbursement is for expenses incurred during Executive's lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement during a calendar year may not affect the expenses eligible for reimbursement in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the calendar year following the year in which the expense is incurred and (iv) the right to reimbursement is not subject to set off or liquidation or exchange for any other benefit.

(f) This Agreement is intended to comply with the provisions of Section 409A and the Agreement shall, to the extent practicable, be construed in accordance therewith. The Company makes no representation or warranty and shall have no liability to Executive or any other person if any provisions of this Agreement are determined to constitute deferred compensation subject to Section 409A and do not satisfy an exemption from, or the conditions of, Section 409A.

GT ADVANCED TECHNOLOGIES INC.

BY: _____

Kanwardev Raja Bal¹

¹ The terms set forth in this Agreement are the terms proposed by the Financing Support Parties (as defined in the *Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, Dated February 1, 2016* [Docket No. 2998]). The Executive has not agreed to these terms.

Exhibit A

SEPARATION AGREEMENT AND GENERAL RELEASE²

[Insert Date]

[Insert Name and Address]

Dear _____:

Pursuant to paragraph 4(a) of the Employment Agreement dated as of _____, 2016 between GT Advanced Technologies, Inc. (the “Company”) and you (the “Employment Agreement”), the Company is notifying you that it is terminating your employment with the Company without Cause (the “Termination Date”). **[Modify if Executive resigns with Good Reason]** You are eligible to receive the severance benefits described in paragraph 2 below if you sign and return this letter agreement to **[Insert Name and Address]** no earlier than the Termination Date and no later than **[Insert Date]** and it becomes binding between the Company and you; provided, however, that you may not sign this letter agreement prior to the close of business on your Termination Date. By timely signing and returning this letter agreement and not revoking your acceptance, you will be agreeing to the terms and conditions set forth in the numbered paragraphs below, including the release of claims set forth in paragraph 3. Therefore, you are advised to consult with an attorney before signing this letter agreement and you have at least 21 days to do so. [Adjust time period if part of a group termination] If you sign this letter agreement, you may change your mind and revoke your agreement during the seven-day period after you have signed it by notifying me in writing. If you do not so revoke, this letter agreement will become a binding agreement between the Company and you upon the expiration of the seven-day revocation period.

If you choose not to sign and return this letter agreement by **[Insert Date]**, or if you timely revoke your acceptance in writing, you shall not receive any severance benefits from the Company. You will, however, receive payment on your Termination Date, as defined below, for your final wages **[and any unused vacation time]** accrued through the Termination Date. Also, regardless of signing this letter agreement, you may elect to continue receiving group medical insurance pursuant to the federal “COBRA” law, 29 U.S.C. § 1161 et seq. All premium costs for “COBRA” shall be paid by you on a monthly basis for as long as, and to the extent that, you remain eligible for COBRA continuation. You should consult the COBRA materials to be provided by the Company for details regarding these benefits. All other benefits will cease upon your Termination Date in accordance with the plan documents.

² The Executive agrees that the Company may modify this release in connection with his/her termination of employment to reflect changes in law or circumstances to the extent necessary to provide an equally full release at such time.

The following numbered paragraphs set forth the terms and conditions that will apply if you timely sign and return this letter agreement and do not revoke it in writing within the seven (7) day revocation period.

1. **Termination Date** - Your effective date of termination from the Company is [**Insert Date**] (the “Termination Date”).
2. **Description of Severance Benefits** - If you timely sign and return this letter agreement and do not revoke your acceptance, the Company shall provide you with the following severance benefits pursuant to paragraph 4(b) of the Employment Agreement:
 - (a) The Company will pay you severance pay at your current base salary rate for 12 months following the Termination Date (the “Severance Pay Period”). This severance pay will be paid in equal installments in accordance with the Company’s normal payroll procedures but in no event will commence earlier than the eighth (8th) day after execution of this letter agreement.
 - (b) Effective as of the Termination Date, you shall be considered to have elected to continue receiving group medical and dental insurance pursuant to the federal “COBRA” law, 29 U.S.C. § 1161 et seq. During the Severance Pay Period, the Company shall continue to pay the share of the premium for such coverage that is paid by the Company for active and similarly-situated employees who receive the same type of coverage. The remaining balance of any premium costs, and all premium costs after the Severance Pay Period, shall be paid by you on a monthly basis for as long as, and to the extent that, you remain eligible for COBRA continuation. You should consult the COBRA materials to be provided by the Company for details regarding these benefits.
3. **Release** - In consideration of the payment of the severance benefits, which you acknowledge you would not otherwise be entitled to receive, you hereby release and forever discharge as of the date hereof (on behalf of yourself, and your heirs, executors, administrators and assigns) the Company and its affiliates and all present and former directors, officers, agents, representatives, employees, employee benefit plans and plan fiduciaries, successors and assigns of the Company and its affiliates, and the Company’s direct or indirect owners (collectively, the “Released Parties”) from any and all claims, suits, controversies, actions, causes of action, cross-claims, counter-claims, demands, debts, compensatory damages, liquidated damages, punitive or exemplary damages, other damages, claims for costs and attorneys’ fees, or liabilities of any nature whatsoever in law and in equity, both past and present (through the date this letter agreement becomes effective and enforceable) and whether known or unknown, suspected, or claimed against the Company or any of the Released Parties which you, your spouse, or any of your heirs, executors, administrators or assigns, may have, including, but not limited to, any and all claims that arise out of or are connected with your employment with, or your separation or termination from, the Company (including, but not limited to, any allegation, claim or violation, arising under: Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., the Americans

With Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., the Equal Pay Act of 1963, 29 U.S.C. § 206(d), the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., the Family and Medical Leave Act, 29 U.S.C. § 2601 et seq., the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq., Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, 18 U.S.C. 1514(A), the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., Executive Order 11246, Executive Order 11141, the Rehabilitation Act of 1973, 29 U.S.C. § 701, et seq., the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 et seq., the New Hampshire Law Against Discrimination, N.H. Rev. Stat. Ann. § 354-A:1 et seq., N.H. Rev. Stat. Ann. § 275:36 et seq. (New Hampshire equal pay law), and the New Hampshire Whistleblowers’ Protection Act, N.H. Rev. Stat. Ann. § 275-E:1 et seq., all as amended; or under any other federal, state or local civil or human rights law, or under any other local, state, or federal law, regulation or ordinance; or under any public policy, contract or tort, or under common law; or arising under any policies, practices or procedures of the Company; or any claim for wrongful discharge, breach of contract, infliction of emotional distress, defamation; any whistleblower claim to the maximum extent permitted by law; any claim to any non-vested ownership in the Company, contractual or otherwise; or any claim for costs, fees, or other expenses, including attorneys’ fees incurred in these matters or any claim or damage arising out of your employment with and/or separation from the Company (including a claim for retaliation)) (all of the foregoing collectively referred to herein as the “Claims”); provided, however, that nothing in this letter agreement prevents you from filing a charge with, cooperating with or participating in any proceeding before the Equal Employment Opportunity Commission or a state fair employment practices agency (except that you acknowledge that you may not be able to recover any monetary benefits in connection with any such claim, charge or proceeding).

Notwithstanding the foregoing, this release does not include and will not preclude a claim for or with respect to (a) salary payable through the Termination Date, or accrued, unused vacation time as recorded on the Company’s books as of the Termination Date; (b) vested benefits under any welfare, retirement, deferred compensation plan and/or other employee benefit plan (c) your COBRA rights; (d) payments under this letter agreement; (e) claims for unemployment compensation; (f) rights to defense and indemnification, if any, from the Company under its Directors and Officers policy or otherwise for actions taken by you in the course and scope of your employment with the Company and its subsidiaries and affiliates; (g) claims, actions or rights arising under or to enforce the terms of this letter agreement and (h) claims that cannot be released by law.

4. **Recovery, Representations and Agreements** - In signing this letter agreement, you acknowledge and intend that it shall be effective as a bar to each and every one of the Claims hereinabove mentioned or implied, except as otherwise provided in paragraph 3 above. You expressly consent that this letter agreement shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown and unsuspected

Claims (notwithstanding any state statute that expressly limits the effectiveness of a letter agreement of unknown, unsuspected and unanticipated Claims), if any, as well as those relating to any other Claims hereinabove mentioned or implied. You acknowledge and agree that this waiver is an essential and material term of this letter agreement and that without such waiver the Company would not have agreed to the terms of the Employment Agreement or this letter agreement. You further agree that in the event you should bring a Claim seeking damages against the Company, or in the event you should seek to recover against the Company in any Claim brought by a governmental agency on your behalf, this letter agreement shall serve as a complete defense to any monetary relief related to any such Claims. You further agree that you are not aware of any pending claim of the type described in paragraph 3 as of the execution of this letter agreement. You represent that you have made no assignment or transfer of any right, claim, demand, cause of action, or other matter covered by paragraph 3 above. You agree that this letter agreement does not waive or release any rights or claims that you may have under the Age Discrimination in Employment Act of 1967 which arise after the date you execute this letter agreement. You acknowledge and agree that your separation from employment with the Company shall not serve as the basis for any claim or action (including, without limitation, any claim under the Age Discrimination in Employment Act of 1967).

5. **Non-Disclosure, Non-Competition, Non-Solicitation and Developments Obligations** -

You acknowledge and reaffirm your obligations under paragraphs 5, 6 and 7 of the Employment Agreement, including, but not limited to, your obligation to keep confidential and not to disclose any and all non-public information concerning the Company that you acquired during the course of your employment with the Company, as well as your non-competition, non-solicitation and inventions obligations.

6. **Return of Company Property** – You agree that as of the date hereof, you have returned to the Company any and all property, tangible or intangible, relating to its business, which you possessed or had control over at any time (including, but not limited to, company-provided credit cards, building or office access cards, keys, computer equipment, manuals, files, documents, records, software, customer data base and other data) and that you shall not retain any copies, compilations, extracts, excerpts, summaries or other notes of any such manuals, files, documents, records, software, customer data base or other data.

7. **Non-Disparagement** - You agree that you will not disparage, criticize, defame, slander or otherwise make any negative statements or communications regarding the Company or its affiliates or their respective past and present investors, officers, directors or employees. The Company agrees to instruct its officers and Board of Directors not to disparage, criticize, defame, slander or otherwise make any negative statements or communications regarding you.

8. **Cooperation** - You shall cooperate with the Company and its Subsidiaries in any internal investigation, any administrative, regulatory or judicial investigation or proceeding or any dispute with a third party as reasonably requested by the Company (including, without limitation,

you being available to the Company upon reasonable notice for interviews and factual investigations, appearing at the Company's request to give testimony without requiring service of a subpoena or other legal process, volunteering to the Company all pertinent information and turning over to the Company all relevant documents which are or may come into your possession, all at times and on schedules that are reasonably consistent with your other activities and commitments). In the event the Company requires your cooperation in accordance with this paragraph, the Company shall reimburse you solely for reasonable travel expenses (including lodging and meals) upon submission of receipts.

9. **Breach** - You agree that, if there is an arbitral or judicial determination, as the case may be, that you have breached this letter agreement, you will (i) return to the Company any amount paid by the Company in connection with your separation or termination from the Company and pursuant to the Employment Agreement and this letter agreement and(ii) forfeit all remaining amounts payable by the Company pursuant to the Employment Agreement and this letter agreement. Notwithstanding anything in this letter agreement to the contrary, this letter agreement shall not relinquish, diminish, or in any way affect any rights or claims arising out of any breach by the Company or by any Released Party of the Employment Agreement after the date hereof.

10. **Validity** - Whenever possible, each provision of this letter agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this letter agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction, but this letter agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

11. **Nature of Agreement** - You agree that neither this letter agreement, nor the furnishing of the consideration for this letter agreement, shall be deemed or construed at any time to be an admission by the Company, any Released Party or yourself of any improper or unlawful conduct.

12. **Understandings** – You understand that any payments or benefits paid or granted to you under paragraph 4(b) of the Employment Agreement represent, in part, consideration for signing this letter agreement and are not salary, wages or benefits to which you were already entitled. You understand and agree that you will not receive the payments and benefits specified in paragraph 2 herein unless you execute this letter agreement and do not revoke this letter agreement within the time period permitted hereafter or breach this letter agreement. Such payments and benefits will not be considered compensation for purposes of any employee benefit plan, program, policy or arrangement maintained or hereafter established by the Company or its affiliates. You also acknowledge and represent that you have received all payments and benefits that you are entitled to receive (as of the date hereof) by virtue of any employment by the Company.

13. **Acknowledgments** - By signing this letter agreement, you represent and agree that: (i) you have read it carefully; (ii) you understand all of its terms and know that you are giving up important rights, including but not limited to, rights under the Age Discrimination in Employment Act of 1967, as amended; Title VII of the Civil Rights Act of 1964, as amended; the Equal Pay Act of 1963; the Americans with Disabilities Act of 1990; and the Employee Retirement Income Security Act of 1974, as amended; (iii) you voluntarily consent to everything in it; (iv) you have been advised to consult with an attorney before executing it; (v) you have been given all time periods required by law to consider this letter agreement, including the 21-day period required by the Age Discrimination in Employment Act; (vi) you understand that you have seven days after the execution of this letter agreement to revoke it, and such revocation must be in writing and delivered to **[Insert Name]** before the expiration of the revocation period, and that this letter agreement shall not become effective or enforceable until the revocation period has expired; (vii) you have signed this letter agreement knowingly and voluntarily and with the advice of any counsel retained to advise you with respect to it; and (viii) you agree that the provisions of this letter agreement may not be amended, waived, changed or modified except by an instrument in writing signed by an authorized representative of the Company and you.

14. **Entire Agreement** - This letter agreement and the paragraphs that survive pursuant to paragraph 11 of the Employment Agreement embody the complete agreement and understanding among the parties and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

15. **Severability** - Whenever possible, each provision of this letter agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this letter agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this letter agreement or any action in any other jurisdiction, but this letter agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

16. **No Strict Construction** - The language used in this letter agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party.

17. **Counterparts** - This letter agreement may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one and the same agreement.

18. **Successors and Assigns** - This letter agreement is intended to bind and inure to the benefit of and be enforceable by you, the Company and their respective heirs, successors and

assigns, except that you may not assign your rights or delegate your duties or obligations hereunder without the prior written consent of the Company.

19. **Choice of Law** - All issues and questions concerning the construction, validity, enforcement and interpretation of this letter agreement shall be governed by, and construed in accordance with, the laws of the State of New Hampshire, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of New Hampshire or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New Hampshire. In furtherance of the foregoing, the internal law of the State of New Hampshire shall control the interpretation and construction of this letter agreement (and all schedules and exhibits hereto), even though under that jurisdiction's choice of law or conflict of law analysis, the substantive law of some other jurisdiction would ordinarily apply.

20. **Amendment and Waiver** - The provisions of this letter agreement may be amended or waived only with the prior written consent of the Company and you, and no course of conduct or course of dealing or failure or delay by any party hereto in enforcing or exercising any of the provisions of this letter agreement shall affect the validity, binding effect or enforceability of this letter agreement or be deemed to be an implied waiver of any provision of this letter agreement.

21. **Indemnification and Reimbursement of Payments on Behalf of You** - The Company and its Subsidiaries shall be entitled to deduct or withhold from any amounts owing from the Company or any of its Subsidiaries to you any federal, state, local or foreign withholding taxes, excise tax or employment taxes ("Taxes") imposed with respect to the severance benefits described herein.

22. **Consent to Jurisdiction** - EACH OF THE PARTIES IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE AND ANY COURT OF THE STATE OF NEW HAMPSHIRE, FOR PURPOSES OF ANY DISPUTES AND CLAIMS UNDER THIS AGREEMENT AND FOR THE ENFORCEMENT OF ANY FINAL DETERMINATION. EACH OF THE PARTIES HERETO FURTHER AGREES THAT SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY U.S. REGISTERED MAIL TO SUCH RESPECTIVE PARTY'S ADDRESS SET FORTH IN THE EMPLOYMENT AGREEMENT SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY ACTION, SUIT OR PROCEEDING IN NEW HAMPSHIRE WITH RESPECT TO ANY MATTERS TO WHICH IT HAS SUBMITTED TO JURISDICTION IN THIS PARAGRAPH 22. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY DISPUTES AND CLAIMS UNDER THIS AGREEMENT AND FOR THE ENFORCEMENT OF ANY FINAL DETERMINATION AND THEREBY IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE AND ANY COURT OF THE STATE OF NEW HAMPSHIRE, AND HEREBY AND THEREBY FURTHER IRREVOCABLY AND UNCONDITIONALLY

WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION, SUIT OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

23. **Waiver of Jury Trial** - AS A SPECIFICALLY BARGAINED FOR INDUCEMENT FOR EACH OF THE PARTIES HERETO TO ENTER INTO THIS LETTER AGREEMENT (AFTER HAVING THE OPPORTUNITY TO CONSULT WITH COUNSEL), EACH PARTY HERETO EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LAWSUIT OR PROCEEDING RELATING TO OR ARISING IN ANY WAY FROM THIS LETTER AGREEMENT OR THE MATTERS CONTEMPLATED HEREBY.

If you have any questions about the matters covered in this letter agreement, please call me at **[insert phone number]**.

Very truly yours,

By: _____

[Insert Name]

[Insert Title]

I hereby agree to the terms and conditions set forth above. I have been given at least 21 days to consider this letter agreement and I have chosen to execute this on the date below. I intend that this letter agreement will become a binding agreement between the Company and me if I do not revoke my acceptance in writing in seven days.

[Insert Name]

Date

To be returned by [Insert Date].

GT ADVANCED TECHNOLOGIES INC.

EMPLOYMENT AGREEMENT

THIS AGREEMENT (this "Agreement") is made between GT Advanced Technologies Inc., a Delaware corporation (the "Company"), and Hoil Kim ("Executive") as of February 16, 2016 (the "Effective Date").

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Employment. The Company shall employ Executive, and Executive hereby accepts employment with the Company, upon the terms and conditions set forth in this Agreement for the period beginning on the date of this Agreement and ending as provided in paragraph 4 hereof (the "Employment Period").

2. Position and Duties.

(a) During the Employment Period, Executive shall serve as Vice President, General Counsel and Secretary of the Company and shall have the normal duties, responsibilities, functions and authority corresponding to such roles, subject to the power and authority of the Company's board of directors (the "Board") to expand or limit such duties, responsibilities, functions and authority and to overrule actions of officers of the Company. During the Employment Period, Executive shall render such executive and managerial services to the Company and its Subsidiaries which are consistent with Executive's position as the Board or the Company's President and Chief Executive Officer may from time to time direct.

(b) During the Employment Period, Executive shall report to the President and Chief Executive Officer and shall devote his best efforts and his full business time and attention (except for permitted vacation periods and reasonable periods of illness or other incapacity) to the business and affairs of the Company and its Subsidiaries. Executive shall perform his duties, responsibilities and functions to the Company and its Subsidiaries hereunder to the best of his abilities in a diligent, trustworthy, professional and efficient manner and shall comply with the Company's and its Subsidiaries' policies and procedures in all material respects. In performing his duties and exercising his authority under the Agreement, Executive shall support and implement the business and strategic plans approved from time to time by the Board and shall support and cooperate with the Company's and its Subsidiaries' efforts to expand their businesses and operate profitably and in conformity with the business and strategic plans approved by the Board. So long as Executive is employed by the Company, Executive shall not, without the prior written consent of the Board, accept other employment or perform other services for compensation. During the Employment Period, Executive shall not serve as an officer or director of, or otherwise perform services for compensation for, any other entity without the prior approval of the Board; provided that Executive may serve as an officer or director of or otherwise participate in solely educational, welfare, social, religious, sporting club and civic organizations so long as such activities do not interfere with Executive's employment with the Company and its Subsidiaries. Executive shall be primarily based at the Company's

facility in Merrimack, New Hampshire, but may work from time to time at the office of the Company's outside counsel (or other appropriate location) in accordance with the needs of the Company and not to exceed 30 days per year. Executive understands and agrees that his employment will require travel from time to time.

(c) For purposes of this Agreement, "Subsidiaries" shall mean any corporation or other entity of which the securities or other ownership interests having the voting power to elect a majority of the board of directors or other governing body are, at the time of determination, owned by the Company, directly or through one or more Subsidiaries.

3. Compensation and Benefits.

(a) During the Employment Period, Executive's base salary shall be at the rate of \$450,000 per annum or such higher rate as the Compensation Committee of the Board (the "Compensation Committee") may determine from time to time (as adjusted from time to time, the "Base Salary"), which salary shall be payable by the Company in proportionate installments and in accordance with the Company's general payroll practices in effect from time to time. In addition, during the Employment Period, Executive shall be eligible to participate in all of the Company's employee benefit programs for which senior executive employees of the Company and its Subsidiaries are generally eligible, and Executive shall be eligible to earn four (4) weeks of paid vacation and six (6) days of paid leave for illness each calendar year in accordance with the Company's policies. Executive's participation in the Company's benefit plans will be subject to the terms of applicable plan documents and the Company's generally applicable policies, and the Company, in its sole discretion, may from time to time adopt, modify, interpret or discontinue such plans or policies.

(b) During the Employment Period, the Company shall reimburse Executive for all reasonable business expenses incurred by him in the course of performing his duties and responsibilities under this Agreement in accordance with the Company's policies in effect from time to time with respect to travel, entertainment and other business expenses, subject to the Company's requirements with respect to reporting and documentation of such expenses.

(c) In addition to the Base Salary, during the Employment Period, Executive shall be eligible to participate in an Annual Incentive Program of the Company (the "AIP"), under which Executive may be eligible to receive a bonus based upon the achievement of such performance targets and other conditions as stated in the AIP. Executive's initial target bonus shall be 75% of Base Salary. The terms of the AIP may change from time to time as determined by the Compensation Committee of the Board of Directors. While the Company does not guarantee the existence or the terms and conditions of any incentive plan in future years, participation in such plans (including equity plans), if any, shall be extended to Executive to the extent commensurate with Executive's position.

(d) Executive will be eligible to participate in the Company's equity incentive plan (the "Equity Incentive Plan") as may be approved by the Board from time to time.

(e) Executive will be eligible for an emergence bonus in the amount of \$78,533 within 30 days of following the effectiveness of the bankruptcy plan.

(f) All amounts payable to Executive as compensation hereunder shall be subject to all required and customary withholding by the Company and its Subsidiaries.

4. Termination.

(a) The Employment Period shall begin on the date of this Agreement and continue until the Employment Period is terminated by (i) Executive's resignation (with or without Good Reason, as defined below) or death or Disability (as defined below) as determined by the Board in its good faith judgment or (ii) the Company at any time prior to such date with or without Cause (as defined below). Except as otherwise provided herein, any termination of the Employment Period by the Company shall be effective as specified in a written notice from the Company to Executive. Executive shall provide at least thirty (30) days advance written notice of Executive's resignation of employment, with or without Good Reason (as defined below), to the Board.

(b) If the Employment Period is terminated by the Company without Cause, or as a result of Executive's resignation with Good Reason, Executive shall be entitled to:

(i) continue to receive his Base Salary, subject to applicable withholding, (paid in accordance with the Company's general payroll practices in effect on the termination date) as special severance payments from the date of termination for a period of twelve (12) months thereafter (the "Severance Period");

(ii) to the extent permitted by the applicable benefit plans, continued participation during the Severance Period in medical and dental insurance plans sponsored by the Company on terms and conditions in effect at the time of such termination (including cost sharing, if applicable) substantially similar to those applicable to employees of the Company generally;

provided, however, Executive shall be entitled to the payments and benefits described in clauses (b)(i) and (b)(ii) of this paragraph if and only if Executive has executed and delivered to the Company the Separation Agreement and General Release ("Release") substantially in form and substance as set forth in Exhibit A attached hereto within sixty (60) days or such earlier time as designated by the Company, following the date of termination and the Release has become effective, provided that if the end of the 60-day period following the termination date falls in a calendar year subsequent to the calendar year in which the Executive's separation from service occurs, payment will not be made before the first payroll of that subsequent year. In addition, the Company may end its payment of premiums earlier (but not the Executive's eligibility for post-employment medical coverage to the extent the Executive is eligible for and elects COBRA coverage) if it reasonably determines that applicable laws or regulations will cause the payment of these premiums to trigger taxes or penalties on the Company or other participants or, to the extent the Executive would be taxed on more than the amount of premiums, to the Executive. Additionally, Executive shall be entitled to (a) and (b) above only so long as Executive has not revoked or breached the provisions of the Release or breached the provisions of paragraphs 5, 6 and 7 hereof. Executive shall not be entitled to any other salary, compensation or benefits after termination of the Employment Period, except accrued unpaid salary through the end of the pay period in which the termination occurred, and accrued unused vacation as well as unreimbursed

business expenses and as otherwise specifically provided in this Agreement including any exhibits, addenda or modifications thereto, in the Company's employee benefit plans, or by applicable law.

(c) If the Employment Period is (i) terminated by the Company for Cause or (ii) terminated by Executive without Good Reason (as defined below), Executive shall only be entitled to receive his Base Salary through the end of the pay period in which the termination occurs, accrued unpaid vacation, as well as unreimbursed business expenses and any COBRA rights and shall not be entitled to any other salary, compensation or benefits from the Company or its Subsidiaries thereafter, except as otherwise specifically provided in this Agreement including any exhibits, addenda or modifications thereto, under the Company's employee benefit plans, or by applicable law. The termination of the Employment Period for Cause shall preclude Executive's resignation with Good Reason. If this Agreement is terminated due to Executive's death or Disability, Executive shall only be entitled to receive (x) his Base Salary through the end of the pay period in which the termination occurs, (y) any benefits Executive or his eligible family members are eligible for under COBRA, and (z) at the sole discretion of the Board, a pro-rata portion (based on the number of days Executive was employed during the fiscal year in which the death or disability occurred) of any annual target bonus Executive would have been entitled to for such fiscal year had the Employment Period not been terminated during such year, payable at the time Executive would have been entitled to receive such bonus had the Employment Period not been terminated. The Board shall retain full discretionary authority to determine whether any bonus is paid, and the amount thereof, pursuant to this paragraph 4(c), based upon the Company's performance as well as Executive's contribution toward business objectives as demonstrated by the achievement of functional/individual goals.

(d) Except as otherwise expressly provided herein, all of Executive's rights to salary, bonuses, employee benefits and other compensation hereunder which would have accrued or become payable after the termination of the Employment Period shall cease upon such termination, other than those expressly required under applicable law (such as COBRA).

(e) For purposes of this Agreement, "Cause" shall mean with respect to Executive, one or more of the following: (i) the commission of a felony or the commission of a crime involving moral turpitude; or with respect to the Company or any of its Subsidiaries or any of their customers or suppliers, or the commission of any other act or omission involving dishonesty, disloyalty or fraud (ii) reporting to work under the influence of alcohol or illegal drugs, the use of illegal drugs in the workplace or other conduct causing the Company or any of its Subsidiaries substantial public disgrace or disrepute or substantial economic harm, (iii) substantial failure to perform duties as reasonably directed by the Board or the Company's President and CEO, (iv) any act or omission aiding or abetting a supplier or customer of the Company or any of its Subsidiaries to the material disadvantage or detriment of the Company and its Subsidiaries, (v) breach of fiduciary duty, gross negligence or willful misconduct with respect to the Company or any of its Subsidiaries or (vi) any other material breach of this Agreement. With respect to clauses (iii) or (vi), cause shall be deemed to exist only upon the Executive's failure to cure, if curable, to the Company's reasonable satisfaction within fifteen (15) days after written notice to Executive.

(f) For purposes of this Agreement, “Disability” shall mean Executive’s inability to perform the essential duties, responsibilities and functions of his position with the Company and its Subsidiaries for a period of 90 consecutive days or for a total of 180 days during any 12-month period as a result of any mental or physical illness, disability or incapacity even with reasonable accommodations for such illness, disability or incapacity provided by the Company and its Subsidiaries or if providing such accommodations would be unreasonable, all as determined by the Compensation Committee in its reasonable good faith judgment. Executive shall cooperate in all reasonable respects with the Company if a question arises as to whether he has become disabled (including, without limitation, submitting to reasonable examinations by one or more medical doctors and other health care specialists selected by the Company and authorizing such medical doctors and other health care specialists to discuss Executive’s condition with the Company).

(g) For purposes of this Agreement. “Good Reason” shall mean if Executive resigns from employment with the Company and its Subsidiaries prior to the end of the Employment Period as a result of the occurrence of one or more of the following events: (i) the Company that does not exceed 25% of the Executives’ salary reduces the amount of the Base Salary other than an equivalent across the board salary reduction applicable to all senior executives of the Company (x) elects to eliminate the AIP without permitting Executive to participate in an annual incentive bonus plan in place of the AIP which offers a potential bonus payment substantially comparable to that earnable by Executive under the AIP or (y) does not extend to Executive participation in equity plans commensurate with Executive’s position, to the extent senior executives of the Company participate in such equity plans, (ii) the Company changes Executive’s title and reduces his responsibilities or authority in a manner materially inconsistent with that of the position of Executive Vice President, Chief Administrative Officer, General Counsel and Secretary or (iii) the Company changes Executive’s place of work to a location more than 50 miles from Boston, Massachusetts; provided that in order for Executive’s resignation for Good Reason to be effective hereunder, Executive must provide written notice to the Company stating Executive’s intent to resign for Good Reason and the grounds therefor within thirty (30) days after such grounds exist and grant the Company thirty (30) days from receipt of such notice to remedy or otherwise remove the grounds supporting Executive’s resignation for Good Reason and actually resign within thirty (30) days after the end of the period for remedy if not remedied.

5. Proprietary and Confidential Information.

(a) The Executive agrees that all information and know-how, whether or not in writing, of a private, secret or confidential nature concerning the Company’s business or financial affairs (collectively, “Proprietary Information”) is and shall be the exclusive property of the Company. By way of illustration, but not limitation, Proprietary Information may include discoveries, inventions, products, product improvements, product enhancements, processes, methods, techniques, formulas, compositions, compounds, negotiation strategies and positions, projects, developments, plans (including business and marketing plans), research data, clinical data, financial data (including sales costs, profits, pricing methods), personnel data, computer programs (including software used pursuant to a license agreement), customer, prospect and supplier lists, and contacts at or knowledge of customers or prospective customers of the Company. The Executive will not disclose any Proprietary Information to any person or entity

other than Executives of the Company or use the same for any purposes (other than in the performance of his/her duties as an Executive of the Company) without written approval by an officer of the Company, either during or after his/her employment with the Company, unless and until such Proprietary Information has become public knowledge without fault by the Executive. While employed by the Company, the Executive will use the Executive's best efforts to prevent unauthorized publication or disclosure of any of the Company's Proprietary Information.

Proprietary Information shall not include information which: (i) was already known to Executive prior to his employment by the Company; (ii) is or becomes publicly available without fault of Executive; (iii) is rightfully obtained by Executive from an independent third party free of any nondisclosure obligation; or (iv) is required to be disclosed by law, provided that Executive provides reasonable notice to the Company of such required disclosure and reasonably cooperates with the Company in limiting such disclosure.

(b) The Executive agrees that all files, documents, letters, memoranda, reports, records, data, sketches, drawings, models, laboratory notebooks, program listings, computer equipment or devices, computer programs or other written, photographic, or other tangible or intangible material containing Proprietary Information, whether created by the Executive or others, which shall come into his/her custody or possession, shall be and are the exclusive property of the Company to be used by the Executive only in the performance of his/her duties for the Company and shall not be copied or removed from the Company premises except in the pursuit of the business of the Company. All such materials or copies thereof and all tangible property of the Company in the custody or possession of the Executive shall be delivered to the Company, upon the earlier of (i) a request by the Company or (ii) termination of his/her employment for any reason. After such delivery, the Executive shall not retain any such materials or copies thereof or any such tangible property.

(c) The Executive agrees that his/her obligation not to disclose or to use information and materials of the types set forth in paragraphs 5(a) and 5(b) above, and his/her obligation to return materials and tangible property, set forth in paragraph 5(b) above, also extends to such types of information, materials and tangible property of customers of the Company or suppliers to the Company or other third parties who may have disclosed or entrusted the same to the Company or to the Executive in the course of the Company's business.

6. Developments.

(a) The Executive will make full and prompt disclosure to the Company of all discoveries, inventions, improvements, enhancements, processes, methods, techniques, developments, software, and works of authorship, whether patentable or not, which are created, made, conceived or reduced to practice by him/her or under his/her direction or jointly with others during his/her employment by the Company, whether or not during normal working hours or on the premises of the Company (all of which are collectively referred to in this Agreement as "Developments").

(b) The Executive agrees to assign and does hereby assign to the Company (or any person or entity designated by the Company) all his/her right, title and interest in and to all Developments and all related patents, patent applications, copyrights and copyright applications.

However, this paragraph 6(b) shall not apply to Developments which do not relate to the business or research and development conducted or planned to be conducted by the Company at the time such Development is created, made, conceived or reduced to practice and which are made and conceived by the Executive not during normal working hours, not on the Company's premises and not using the Company's tools, devices, equipment or Proprietary Information. The Executive understands that, to the extent this Agreement shall be construed in accordance with the laws of any state which precludes a requirement in an Executive agreement to assign certain classes of inventions made by an Executive, this paragraph 3(b) shall be interpreted not to apply to any invention which a court rules and/or the Company agrees falls within such classes. The Executive also hereby waives all claims to moral rights in any Developments.

(c) The Executive agrees to cooperate fully with the Company, both during and after his/her employment with the Company, with respect to the procurement, maintenance and enforcement of copyrights, patents and other intellectual property rights (both in the United States and foreign countries) relating to Developments. The Executive shall sign all papers, including, without limitation, copyright applications, patent applications, declarations, oaths, formal assignments, assignments of priority rights, and powers of attorney, which the Company may deem necessary or desirable in order to protect its rights and interests in any Development. The Executive further agrees that if the Company is unable, after reasonable effort, to secure the signature of the Executive on any such papers, any executive officer of the Company shall be entitled to execute any such papers as the agent and the attorney-in-fact of the Executive, and the Executive hereby irrevocably designates and appoints each executive officer of the Company as his/her agent and attorney-in-fact to execute any such papers on his/her behalf, and to take any and all actions as the Company may deem necessary or desirable in order to protect its rights and interests in any Development, under the conditions described in this sentence.

7. Non-Compete, Non-Solicitation.

(a) Executive agrees that, during the Employment Period and for two (2) years thereafter (the "Noncompete Period"), he shall not directly or indirectly own any interest in, or, in a business capacity, manage, control, participate in, consult with, render services for, be employed by, or in any manner engage in, any business or entity competing with any of the businesses of the Company or its Subsidiaries as such businesses exist or are in process during the Employment Period or on the date of the termination of the Employment Period, within any geographical area in which the Company or its Subsidiaries engage in such businesses, or actively plan to engage in such businesses, at the time of Executive's departure from the Company. Nothing herein shall prohibit Executive from being a passive owner of not more than 2% of the outstanding stock of any class of a corporation which is publicly traded, so long as Executive has no active participation in the business of such corporation.

(b) In addition, during the Noncompete Period, Executive shall not directly, or indirectly through another person or entity, (i) induce or attempt to induce any employee of the Company or any Subsidiary to leave the employ of the Company or such Subsidiary, or in any way interfere with the relationship between the Company or any Subsidiary and any employee thereof, or (ii) hire any person who was an employee of the Company or any Subsidiary during the six month period prior to the date of Executive's termination or (iii) induce or attempt to induce any customer, supplier, licensee, licensor, franchisee or other business relation of the

Company or any Subsidiary with whom Executive had any material contact while employed by the Company to cease doing business with the Company or such Subsidiary, or in any way interfere with the relationship between any such customer, supplier, licensee or business relation and the Company or any Subsidiary.

(c) During and after the Employment Period, Executive shall not directly or indirectly through another person or entity, disparage, criticize, defame, slander or otherwise make negative statements or communications regarding the Company or its subsidiaries or affiliates or the respective past and present investors, officers, directors or employees.

8. Enforcement. If, at the time of enforcement of Sections 5, 6 or 7 of this Agreement, a court holds that the restrictions stated herein are unreasonable under circumstances then existing, the parties hereto agree that the maximum period, scope or geographical area reasonable under such circumstances shall be substituted for the stated period, scope or area and that the court shall be allowed to revise the restrictions contained herein to cover the maximum period, scope and area permitted by law. Because Executive's services are unique and because Executive has access to Confidential Information and Work Product, the parties hereto agree that the restrictions contained in Sections 5, 6 and 7 are necessary for the protection of the business and goodwill of the Company and the Company and its Subsidiaries would suffer irreparable harm from a breach of Sections 5, 6 or 7 by Executive and that money damages would not be an adequate remedy for any such breach of this Agreement. Therefore, in the event a breach or threatened breach of this Agreement, the Company and its Subsidiaries and their successors or assigns, in addition to other rights and remedies existing in their favor, shall be entitled to specific performance and/or injunctive or other equitable relief from a court of competent jurisdiction in order to enforce, or prevent any violations of, the provisions hereof (without posting a bond or other security). In addition, in the event of a breach or violation by Executive of Section 7, the Noncompete Period shall be automatically extended by the amount of time between the initial occurrence of the breach or violation and when such breach or violation has been duly cured. Executive acknowledges that the restrictions contained in Section 7 are reasonable and that he has reviewed the provisions of this Agreement with his legal counsel.

9. Additional Acknowledgments. In addition, Executive acknowledges that the provisions of Sections 5, 6 and 7 are in consideration of employment with the Company and additional good and valuable consideration as set forth in this Agreement. Executive also acknowledges that (i) the restrictions contained in Sections 5, 6 and 7 do not preclude Executive from earning a livelihood, nor do they unreasonably impose limitations on Executive's ability to earn a living, (ii) the business of the Company and its Subsidiaries is international in scope and without geographical limitation and (iii) notwithstanding the state of formation or principal office of the Company or residence of any of its executives or employees (including Executive), the Company and its Subsidiaries have business activities and have valuable business relationships within its industry throughout the world. Executive agrees and acknowledges that the potential harm to the Company and its Subsidiaries of the non-enforcement of Sections 5, 6 and 7 outweighs any potential harm to Executive of its enforcement by injunction or otherwise. Executive acknowledges that he has carefully read this Agreement and has given careful consideration to the restraints imposed upon Executive by this Agreement and is in full accord as to their necessity for the reasonable and proper protection of confidential and proprietary information of the Company and its Subsidiaries now existing or to be developed in the future

and the Company's good will and that each and every restraint imposed by this Agreement is reasonable with respect to subject matter, time period and geographical area.

10. Executive's Representations. Executive hereby represents and warrants to the Company that (i) the execution, delivery and performance of this Agreement by Executive do not and shall not conflict with, breach, violate or cause a default under any contract, agreement, instrument, order, judgment or decree to which Executive is a party or by which he is bound, (ii) Executive is not a party to or bound by any employment agreement, noncompete agreement, confidentiality agreement or other restriction with any other person or entity, which would be breached by entering into this Agreement and (iii) upon the execution and delivery of this Agreement by the Company, this Agreement shall be the valid and binding obligation of Executive, enforceable in accordance with its terms. Executive hereby acknowledges and represents that he has consulted with independent legal counsel regarding his rights and obligations under this Agreement and that he fully understands the terms and conditions contained herein.

11. Survival. Paragraphs 5 through 9, and 25 shall survive and continue in full force in accordance with their terms notwithstanding the termination of the Employment Period.

12. Notices. Any notice provided for in this Agreement shall be in writing and shall be either personally delivered, sent by reputable overnight courier service or mailed by first class mail, return receipt requested, to the recipient at the address below indicated:

Notices to Executive:

Hoil Kim

c/o most recent address on file in the Company's personnel records

Notices to the Company:

GT Advanced Technologies Inc.

243 Daniel Webster Highway

Merrimack, New Hampshire 03054

Attention: President and Chief Executive Officer

or such other address or to the attention of such other person as the recipient party shall have specified by prior written notice to the sending party. Any notice under this Agreement shall be deemed to have been given when so delivered, sent or mailed.

13. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any action in any other jurisdiction, but this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

14. Complete Agreement. This Agreement embodies the complete agreement and understanding among the parties and supersedes and preempts any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

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

16. Counterparts. This Agreement may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one and the same agreement.

17. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by Executive, the Company and their respective heirs, successors and assigns, except that Executive may not assign his rights or delegate his duties or obligations hereunder without the prior written consent of the Company.

18. Choice of Law. All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement and the exhibits and schedules hereto shall be governed by, and construed in accordance with, the laws of the State of New Hampshire, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of New Hampshire or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New Hampshire. In furtherance of the foregoing, the internal law of the State of New Hampshire shall control the interpretation and construction of this Agreement (and all schedules and exhibits hereto), even though under that jurisdiction's choice of law or conflict of law analysis, the substantive law of some other jurisdiction would ordinarily apply.

19. Amendment and Waiver. The provisions of this Agreement may be amended or waived only with the prior written consent of the Company and Executive, and no course of conduct or course of dealing or failure or delay by any party hereto in enforcing or exercising any of the provisions of this Agreement (including, without limitation, the Company's right to terminate the Employment Period for Cause) shall affect the validity, binding effect or enforceability of this Agreement or be deemed to be an implied waiver of any provision of this Agreement.

20. Insurance. The Company may, at its discretion, apply for and procure in its own name and for its own benefit life and/or disability insurance on Executive in any amount or amounts considered advisable. Executive agrees to cooperate in any medical or other examination, supply any information and execute and deliver any applications or other instruments in writing as may be reasonably necessary to obtain and constitute such insurance.

21. Tax Withholding. The Company and its Subsidiaries shall be entitled to deduct or withhold from any amounts owing from the Company or any of its Subsidiaries to Executive any federal, state, local or foreign withholding taxes, excise tax or employment taxes ("Taxes") imposed with respect to Executive's compensation or other payments from the Company or any

of its Subsidiaries or Executive's ownership interest in the Company (including, without limitation, wages, bonuses, dividends, the receipt or exercise of equity options and/or the receipt or vesting of restricted equity).

22. Consent to Jurisdiction. EACH OF THE PARTIES IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE AND ANY COURT OF THE STATE OF NEW HAMPSHIRE, FOR PURPOSES OF ANY DISPUTES AND CLAIMS UNDER AGREEMENT AND FOR THE ENFORCEMENT OF ANY FINAL DETERMINATION. EACH OF THE PARTIES HERETO FURTHER AGREES THAT SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY U.S. REGISTERED MAIL TO SUCH RESPECTIVE PARTY'S ADDRESS SET FORTH ABOVE SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY ACTION, SUIT OR PROCEEDING IN NEW HAMPSHIRE WITH RESPECT TO ANY MATTERS TO WHICH IT HAS SUBMITTED TO JURISDICTION IN THIS PARAGRAPH 22. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY DISPUTES AND CLAIMS UNDER THIS AGREEMENT AND FOR THE ENFORCEMENT OF ANY FINAL DETERMINATION AND THEREBY IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE AND ANY COURT OF THE STATE OF NEW HAMPSHIRE, AND HEREBY AND THEREBY FURTHER IRREVOCABLY AND UNCONDITIONALLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION, SUIT OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

23. Waiver of Jury Trial. AS A SPECIFICALLY BARGAINED FOR INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT (AFTER HAVING THE OPPORTUNITY TO CONFER WITH COUNSEL), EACH PARTY EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LAWSUIT OR PROCEEDING RELATING TO OR ARISING IN ANY WAY FROM THIS AGREEMENT OR THE MATTERS CONTEMPLATED HEREBY.

24. Corporate Opportunity. Executive shall submit to the Board all business, commercial and investment opportunities, or offers presented to Executive or of which Executive becomes aware at any time during the Employment Period which relate to the business of the Company ("Corporate Opportunities"). Unless approved by the Board, Executive shall not accept or pursue, directly or indirectly, any Corporate Opportunities on Executive's own behalf.

25. Executive's Cooperation. During the Employment Period and thereafter, Executive shall cooperate with the Company and its Subsidiaries in any internal investigation, any administrative, regulatory or judicial investigation or proceeding or any dispute with a third party as reasonably requested by the Company (including, without limitation, Executive being available to the Company upon reasonable notice for interviews and factual investigations, appearing at the Company's request to give testimony without requiring service of a subpoena or other legal process, volunteering to the Company all pertinent information and turning over to the Company all relevant documents which are or may come into Executive's possession, all at times and on schedules that are reasonably consistent with Executive's other activities and commitments). In the event the Company requires Executive's cooperation in accordance with

this paragraph, the Company shall reimburse Executive solely for reasonable travel expenses (including lodging and meals) upon submission of receipts.

26. Payments Subject to Section 409A. Subject to the provisions in this Section 25, any severance payments or benefits under this Agreement shall begin only upon the date of Executive's "separation from service" (determined as set forth below) which occurs on or after the date of termination of Executive's employment. The following rules shall apply with respect to distribution of the payments and benefits, if any, to be provided to Executive under this Agreement:

(a) It is intended that each installment of the severance payments and benefits provided under this Agreement shall be treated as a separate "payment" for purposes of Section 409A of the Code and the guidance issued thereunder ("Section 409A"). Neither the Company nor Executive shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A.

(b) If, as of the date of Executive's "separation from service" from the Company, Executive is not a "specified employee" (within the meaning of Section 409A), then each installment of the severance payments and benefits shall be made on the dates and terms set forth in this Agreement.

(c) If, as of the date of Executive's "separation from service" from the Company, Executive is a "specified employee" (within the meaning of Section 409A), then:

(i) Each installment of the severance payments and benefits due under this Agreement that, in accordance with the dates and terms set forth herein, will in all circumstances, regardless of when the separation from service occurs, be paid within the Short-Term Deferral Period (as hereinafter defined), shall be treated as a short-term deferral within the meaning of Treasury Regulation § 1.409A-1(b)(4) to the maximum extent permissible under Section 409A. For purposes of this Agreement, the "Short-Term Deferral Period" means the period ending on the later of the fifteenth day of the third month following the end of Executive's tax year in which the separation from service occurs and the fifteenth day of the third month following the end of the Company's tax year in which the separation from service occurs; and

(ii) Each installment of the severance payments and benefits due under this Agreement that is not described in paragraph c(i) above and that would, absent this subsection, be paid within the six-month period following Executive's "separation from service" from the Company shall not be paid until the date that is six months and one day after such separation from service (or, if earlier, Executive's death), with any such installments that are required to be delayed being accumulated during the six-month period and paid in a lump sum on the date that is six months and one day following Executive's separation from service and any subsequent installments, if any, being paid in accordance with the dates and terms set forth herein; provided, however, that the preceding provisions of this sentence shall not apply to any installment of severance payments and benefits if and to the maximum extent that that such installment is deemed to be paid under a separation pay plan that does not provide for a deferral of

compensation by reason of the application of Treasury Regulation §1.409A-1(b)(9)(iii) (relating to separation pay upon an involuntary separation from service). Any installments that qualify for the exception under Treasury Regulation §1.409A-1(b)(9)(iii) must be paid no later than the last day of Executive's second taxable year following the taxable year in which the separation from service occurs.

(d) The determination of whether and when Executive's separation from service from the Company has occurred shall be made and in a manner consistent with, and based on the presumptions set forth in, Treasury Regulation §1.409A-1(h). Solely for purposes of this paragraph d, "Company" shall include all persons with whom the Company would be considered a single employer under Section 414(b) and 414(c) of the Code.

(e) All reimbursements and in-kind benefits provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A to the extent that such reimbursements or in-kind benefits are subject to Section 409A, including, where applicable, the requirements that (i) any reimbursement is for expenses incurred during Executive's lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement during a calendar year may not affect the expenses eligible for reimbursement in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the calendar year following the year in which the expense is incurred and (iv) the right to reimbursement is not subject to set off or liquidation or exchange for any other benefit.

(f) This Agreement is intended to comply with the provisions of Section 409A and the Agreement shall, to the extent practicable, be construed in accordance therewith. The Company makes no representation or warranty and shall have no liability to Executive or any other person if any provisions of this Agreement are determined to constitute deferred compensation subject to Section 409A and do not satisfy an exemption from, or the conditions of, Section 409A.

GT ADVANCED TECHNOLOGIES INC.

BY: _____

HOIL KIM¹

¹ The terms set forth in this Agreement are the terms proposed by the Financing Support Parties (as defined in the *Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, Dated February 1, 2016* [Docket No. 2998]). The Executive has not agreed to these terms.

Exhibit A

SEPARATION AGREEMENT AND GENERAL RELEASE²

[Insert Date]

[Insert Name and Address]

Dear _____:

Pursuant to paragraph 4(a) of the Employment Agreement dated as of _____, 2016 between GT Advanced Technologies, Inc. (the “Company”) and you (the “Employment Agreement”), the Company is notifying you that it is terminating your employment with the Company without Cause (the “Termination Date”). **[Modify if Executive resigns with Good Reason]** You are eligible to receive the severance benefits described in paragraph 2 below if you sign and return this letter agreement to **[Insert Name and Address]** no earlier than the Termination Date and no later than **[Insert Date]** and it becomes binding between the Company and you; provided, however, that you may not sign this letter agreement prior to the close of business on your Termination Date. By timely signing and returning this letter agreement and not revoking your acceptance, you will be agreeing to the terms and conditions set forth in the numbered paragraphs below, including the release of claims set forth in paragraph 3. Therefore, you are advised to consult with an attorney before signing this letter agreement and you have at least 21 days to do so. [Adjust time period if part of a group termination] If you sign this letter agreement, you may change your mind and revoke your agreement during the seven-day period after you have signed it by notifying me in writing. If you do not so revoke, this letter agreement will become a binding agreement between the Company and you upon the expiration of the seven-day revocation period.

If you choose not to sign and return this letter agreement by **[Insert Date]**, or if you timely revoke your acceptance in writing, you shall not receive any severance benefits from the Company. You will, however, receive payment on your Termination Date, as defined below, for your final wages **[and any unused vacation time]** accrued through the Termination Date. Also, regardless of signing this letter agreement, you may elect to continue receiving group medical insurance pursuant to the federal “COBRA” law, 29 U.S.C. § 1161 et seq. All premium costs for “COBRA” shall be paid by you on a monthly basis for as long as, and to the extent that, you remain eligible for COBRA continuation. You should consult the COBRA materials to be

² The Executive agrees that the Company may modify this release in connection with his/her termination of employment to reflect changes in law or circumstances to the extent necessary to provide an equally full release at such time.

provided by the Company for details regarding these benefits. All other benefits will cease upon your Termination Date in accordance with the plan documents.

The following numbered paragraphs set forth the terms and conditions that will apply if you timely sign and return this letter agreement and do not revoke it in writing within the seven (7) day revocation period.

1. **Termination Date** - Your effective date of termination from the Company is [**Insert Date**] (the “Termination Date”).
2. **Description of Severance Benefits** - If you timely sign and return this letter agreement and do not revoke your acceptance, the Company shall provide you with the following severance benefits pursuant to paragraph 4(b) of the Employment Agreement:
 - (a) The Company will pay you severance pay at your current base salary rate for 12 months following the Termination Date (the “Severance Pay Period”). This severance pay will be paid in equal installments in accordance with the Company’s normal payroll procedures but in no event will commence earlier than the eighth (8th) day after execution of this letter agreement.
 - (b) Effective as of the Termination Date, you shall be considered to have elected to continue receiving group medical and dental insurance pursuant to the federal “COBRA” law, 29 U.S.C. § 1161 et seq. During the Severance Pay Period, the Company shall continue to pay the share of the premium for such coverage that is paid by the Company for active and similarly-situated employees who receive the same type of coverage. The remaining balance of any premium costs, and all premium costs after the Severance Pay Period, shall be paid by you on a monthly basis for as long as, and to the extent that, you remain eligible for COBRA continuation. You should consult the COBRA materials to be provided by the Company for details regarding these benefits.
3. **Release** - In consideration of the payment of the severance benefits, which you acknowledge you would not otherwise be entitled to receive, you hereby release and forever discharge as of the date hereof (on behalf of yourself, and your heirs, executors, administrators and assigns) the Company and its affiliates and all present and former directors, officers, agents, representatives, employees, employee benefit plans and plan fiduciaries, successors and assigns of the Company and its affiliates, and the Company’s direct or indirect owners (collectively, the “Released Parties”) from any and all claims, suits, controversies, actions, causes of action, cross-claims, counter-claims, demands, debts, compensatory damages, liquidated damages, punitive or exemplary damages, other damages, claims for costs and attorneys’ fees, or liabilities of any nature whatsoever in law and in equity, both past and present (through the date this letter agreement becomes effective and enforceable) and whether known or unknown, suspected, or claimed against the Company or any of the Released Parties which you, your spouse, or any of your heirs, executors, administrators or assigns, may have, including, but not limited to, any and all claims that arise out of or are connected with your employment with, or your separation or

termination from, the Company (including, but not limited to, any allegation, claim or violation, arising under: Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., the Americans With Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., the Equal Pay Act of 1963, 29 U.S.C. § 206(d), the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., the Family and Medical Leave Act, 29 U.S.C. § 2601 et seq., the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq., Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, 18 U.S.C. 1514(A), the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., Executive Order 11246, Executive Order 11141, the Rehabilitation Act of 1973, 29 U.S.C. § 701, et seq., the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001 et seq., the New Hampshire Law Against Discrimination, N.H. Rev. Stat. Ann. § 354-A:1 et seq., N.H. Rev. Stat. Ann. § 275:36 et seq. (New Hampshire equal pay law), and the New Hampshire Whistleblowers’ Protection Act, N.H. Rev. Stat. Ann. § 275-E:1 et seq., all as amended; or under any other federal, state or local civil or human rights law, or under any other local, state, or federal law, regulation or ordinance; or under any public policy, contract or tort, or under common law; or arising under any policies, practices or procedures of the Company; or any claim for wrongful discharge, breach of contract, infliction of emotional distress, defamation; any whistleblower claim to the maximum extent permitted by law; any claim to any non-vested ownership in the Company, contractual or otherwise; or any claim for costs, fees, or other expenses, including attorneys’ fees incurred in these matters or any claim or damage arising out of your employment with and/or separation from the Company (including a claim for retaliation)) (all of the foregoing collectively referred to herein as the “Claims”); provided, however, that nothing in this letter agreement prevents you from filing a charge with, cooperating with or participating in any proceeding before the Equal Employment Opportunity Commission or a state fair employment practices agency (except that you acknowledge that you may not be able to recover any monetary benefits in connection with any such claim, charge or proceeding).

Notwithstanding the foregoing, this release does not include and will not preclude a claim for or with respect to (a) salary payable through the Termination Date, or accrued, unused vacation time as recorded on the Company’s books as of the Termination Date; (b) vested benefits under any welfare, retirement, deferred compensation plan and/or other employee benefit plan (c) your COBRA rights; (d) payments under this letter agreement; (e) claims for unemployment compensation; (f) rights to defense and indemnification, if any, from the Company under its Directors and Officers policy or otherwise for actions taken by you in the course and scope of your employment with the Company and its subsidiaries and affiliates; (g) claims, actions or rights arising under or to enforce the terms of this letter agreement and (h) claims that cannot be released by law.

4. **Recovery, Representations and Agreements** - In signing this letter agreement, you acknowledge and intend that it shall be effective as a bar to each and every one of the Claims hereinabove mentioned or implied, except as otherwise provided in paragraph 3 above. You

expressly consent that this letter agreement shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown and unsuspected Claims (notwithstanding any state statute that expressly limits the effectiveness of a letter agreement of unknown, unsuspected and unanticipated Claims), if any, as well as those relating to any other Claims hereinabove mentioned or implied. You acknowledge and agree that this waiver is an essential and material term of this letter agreement and that without such waiver the Company would not have agreed to the terms of the Employment Agreement or this letter agreement. You further agree that in the event you should bring a Claim seeking damages against the Company, or in the event you should seek to recover against the Company in any Claim brought by a governmental agency on your behalf, this letter agreement shall serve as a complete defense to any monetary relief related to any such Claims. You further agree that you are not aware of any pending claim of the type described in paragraph 3 as of the execution of this letter agreement. You represent that you have made no assignment or transfer of any right, claim, demand, cause of action, or other matter covered by paragraph 3 above. You agree that this letter agreement does not waive or release any rights or claims that you may have under the Age Discrimination in Employment Act of 1967 which arise after the date you execute this letter agreement. You acknowledge and agree that your separation from employment with the Company shall not serve as the basis for any claim or action (including, without limitation, any claim under the Age Discrimination in Employment Act of 1967).

5. **Non-Disclosure, Non-Competition, Non-Solicitation and Developments Obligations** - You acknowledge and reaffirm your obligations under paragraphs 5, 6 and 7 of the Employment Agreement, including, but not limited to, your obligation to keep confidential and not to disclose any and all non-public information concerning the Company that you acquired during the course of your employment with the Company, as well as your non-competition, non-solicitation and inventions obligations.

6. **Return of Company Property** – You agree that as of the date hereof, you have returned to the Company any and all property, tangible or intangible, relating to its business, which you possessed or had control over at any time (including, but not limited to, company-provided credit cards, building or office access cards, keys, computer equipment, manuals, files, documents, records, software, customer data base and other data) and that you shall not retain any copies, compilations, extracts, excerpts, summaries or other notes of any such manuals, files, documents, records, software, customer data base or other data.

7. **Non-Disparagement** - You agree that you will not disparage, criticize, defame, slander or otherwise make any negative statements or communications regarding the Company or its affiliates or their respective past and present investors, officers, directors or employees. The Company agrees to instruct its officers and Board of Directors not to disparage, criticize, defame, slander or otherwise make any negative statements or communications regarding you.

8. **Cooperation** - You shall cooperate with the Company and its Subsidiaries in any internal investigation, any administrative, regulatory or judicial investigation or proceeding or any dispute with a third party as reasonably requested by the Company (including, without limitation, you being available to the Company upon reasonable notice for interviews and factual investigations, appearing at the Company's request to give testimony without requiring service of a subpoena or other legal process, volunteering to the Company all pertinent information and turning over to the Company all relevant documents which are or may come into your possession, all at times and on schedules that are reasonably consistent with your other activities and commitments). In the event the Company requires your cooperation in accordance with this paragraph, the Company shall reimburse you solely for reasonable travel expenses (including lodging and meals) upon submission of receipts.

9. **Breach** - You agree that, if there is an arbitral or judicial determination, as the case may be, that you have breached this letter agreement, you will (i) return to the Company any amount paid by the Company in connection with your separation or termination from the Company and pursuant to the Employment Agreement and this letter agreement and(ii) forfeit all remaining amounts payable by the Company pursuant to the Employment Agreement and this letter agreement. Notwithstanding anything in this letter agreement to the contrary, this letter agreement shall not relinquish, diminish, or in any way affect any rights or claims arising out of any breach by the Company or by any Released Party of the Employment Agreement after the date hereof.

10. **Validity** - Whenever possible, each provision of this letter agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this letter agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction, but this letter agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

11. **Nature of Agreement** - You agree that neither this letter agreement, nor the furnishing of the consideration for this letter agreement, shall be deemed or construed at any time to be an admission by the Company, any Released Party or yourself of any improper or unlawful conduct.

12. **Understandings** – You understand that any payments or benefits paid or granted to you under paragraph 4(b) of the Employment Agreement represent, in part, consideration for signing this letter agreement and are not salary, wages or benefits to which you were already entitled. You understand and agree that you will not receive the payments and benefits specified in paragraph 2 herein unless you execute this letter agreement and do not revoke this letter agreement within the time period permitted hereafter or breach this letter agreement. Such payments and benefits will not be considered compensation for purposes of any employee benefit plan, program, policy or arrangement maintained or hereafter established by the

Company or its affiliates. You also acknowledge and represent that you have received all payments and benefits that you are entitled to receive (as of the date hereof) by virtue of any employment by the Company.

13. **Acknowledgments** - By signing this letter agreement, you represent and agree that: (i) you have read it carefully; (ii) you understand all of its terms and know that you are giving up important rights, including but not limited to, rights under the Age Discrimination in Employment Act of 1967, as amended; Title VII of the Civil Rights Act of 1964, as amended; the Equal Pay Act of 1963; the Americans with Disabilities Act of 1990; and the Employee Retirement Income Security Act of 1974, as amended; (iii) you voluntarily consent to everything in it; (iv) you have been advised to consult with an attorney before executing it; (v) you have been given all time periods required by law to consider this letter agreement, including the 21-day period required by the Age Discrimination in Employment Act; (vi) you understand that you have seven days after the execution of this letter agreement to revoke it, and such revocation must be in writing and delivered to **[Insert Name]** before the expiration of the revocation period, and that this letter agreement shall not become effective or enforceable until the revocation period has expired; (vii) you have signed this letter agreement knowingly and voluntarily and with the advice of any counsel retained to advise you with respect to it; and (viii) you agree that the provisions of this letter agreement may not be amended, waived, changed or modified except by an instrument in writing signed by an authorized representative of the Company and you.

14. **Entire Agreement** - This letter agreement and the paragraphs that survive pursuant to paragraph 11 of the Employment Agreement embody the complete agreement and understanding among the parties and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

15. **Severability** - Whenever possible, each provision of this letter agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this letter agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this letter agreement or any action in any other jurisdiction, but this letter agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

16. **No Strict Construction** - The language used in this letter agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party.

17. **Counterparts** - This letter agreement may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one and the same agreement.

18. **Successors and Assigns** - This letter agreement is intended to bind and inure to the benefit of and be enforceable by you, the Company and their respective heirs, successors and assigns, except that you may not assign your rights or delegate your duties or obligations hereunder without the prior written consent of the Company.

19. **Choice of Law** - All issues and questions concerning the construction, validity, enforcement and interpretation of this letter agreement shall be governed by, and construed in accordance with, the laws of the State of New Hampshire, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of New Hampshire or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New Hampshire. In furtherance of the foregoing, the internal law of the State of New Hampshire shall control the interpretation and construction of this letter agreement (and all schedules and exhibits hereto), even though under that jurisdiction's choice of law or conflict of law analysis, the substantive law of some other jurisdiction would ordinarily apply.

20. **Amendment and Waiver** - The provisions of this letter agreement may be amended or waived only with the prior written consent of the Company and you, and no course of conduct or course of dealing or failure or delay by any party hereto in enforcing or exercising any of the provisions of this letter agreement shall affect the validity, binding effect or enforceability of this letter agreement or be deemed to be an implied waiver of any provision of this letter agreement.

21. **Indemnification and Reimbursement of Payments on Behalf of You** - The Company and its Subsidiaries shall be entitled to deduct or withhold from any amounts owing from the Company or any of its Subsidiaries to you any federal, state, local or foreign withholding taxes, excise tax or employment taxes ("Taxes") imposed with respect to the severance benefits described herein.

22. **Consent to Jurisdiction** - EACH OF THE PARTIES IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE AND ANY COURT OF THE STATE OF NEW HAMPSHIRE, FOR PURPOSES OF ANY DISPUTES AND CLAIMS UNDER THIS AGREEMENT AND FOR THE ENFORCEMENT OF ANY FINAL DETERMINATION. EACH OF THE PARTIES HERETO FURTHER AGREES THAT SERVICE OF ANY PROCESS, SUMMONS, NOTICE OR DOCUMENT BY U.S. REGISTERED MAIL TO SUCH RESPECTIVE PARTY'S ADDRESS SET FORTH IN THE EMPLOYMENT AGREEMENT SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY ACTION, SUIT OR PROCEEDING IN NEW HAMPSHIRE WITH RESPECT TO ANY MATTERS TO WHICH IT HAS SUBMITTED TO JURISDICTION IN THIS PARAGRAPH 22. EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION TO THE LAYING OF VENUE OF ANY DISPUTES AND CLAIMS UNDER THIS AGREEMENT AND FOR THE ENFORCEMENT OF ANY FINAL DETERMINATION AND THEREBY IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF

NEW HAMPSHIRE AND ANY COURT OF THE STATE OF NEW HAMPSHIRE, AND
HEREBY AND THEREBY FURTHER IRREVOCABLY AND UNCONDITIONALLY
WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY
SUCH ACTION, SUIT OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN
BROUGHT IN AN INCONVENIENT FORUM.

23. **Waiver of Jury Trial** - AS A SPECIFICALLY BARGAINED FOR INDUCEMENT
FOR EACH OF THE PARTIES HERETO TO ENTER INTO THIS LETTER AGREEMENT
(AFTER HAVING THE OPPORTUNITY TO CONSULT WITH COUNSEL), EACH PARTY
HERETO EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LAWSUIT OR
PROCEEDING RELATING TO OR ARISING IN ANY WAY FROM THIS LETTER
AGREEMENT OR THE MATTERS CONTEMPLATED HEREBY.

If you have any questions about the matters covered in this letter agreement, please call me at
[insert phone number].

Very truly yours,

By: _____
[Insert Name]
[Insert Title]

I hereby agree to the terms and conditions set forth above. I have been given at least 21 days to
consider this letter agreement and I have chosen to execute this on the date below. I intend that
this letter agreement will become a binding agreement between the Company and me if I do not
revoke my acceptance in writing in seven days.

[Insert Name]

Date

To be returned by [Insert Date].

EXHIBIT 8

Contracts and Leases to Be Assumed Under Plan

Contracts and Leases to Be Assumed Under Plan¹

Section 11.1 of the Plan provides as follows:

(a) On the Effective Date, all of the Debtors' executory contracts and unexpired leases will be deemed rejected as of the Effective Date in accordance with, and subject to, the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, except to the extent (i) the Debtors previously have assumed, assumed and assigned, or rejected such executory contract or unexpired lease, (ii) prior to the Effective Date, the Debtors have filed a motion to assume, assume and assign, or reject an executory contract or unexpired lease on which the Bankruptcy Court has not ruled, (iii) an executory contract and unexpired lease is identified in the Plan Supplement as an executory contract or unexpired lease to be assumed or assumed and assigned pursuant to the Plan, or (iv) executory contracts and unexpired leases under which the counterparty has consented to the extension of the time by which the Debtors must assume or reject to a date beyond the Effective Date. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of all rejections of executory contracts and unexpired leases pursuant to this Section 11.1 and sections 365(a) and 1123 of the Bankruptcy Code.

(b) Notwithstanding Section 11.1(a) of the Plan, to the extent (i) any Debtor is a party to any non-disclosure or confidentiality agreement, (ii) any such agreement constitutes an executory contract, and (iii) such agreement (1) has not been assumed or rejected pursuant to a Final Order of the Bankruptcy Court, (2) is not subject to a pending motion for reconsideration or appeal of an order authorizing the assumption or rejection of such executory contract, (3) has not been noticed for rejection and such notice has been served on the applicable counterparty on or prior to the Effective Date, then such agreement will be assumed as of the Effective Date by the corresponding Debtor, in accordance with the provisions and requirements of sections 365 of the Bankruptcy Code. No Cure shall be paid in connection with the assumption of such an agreement.

(c) The listing of a document in the Plan Supplement shall not constitute an admission by the Debtors that such document is an executory contract or an unexpired lease or that the Debtors have any Liability thereunder. At any time before the Effective Date, the Debtors, with the consent of the Majority Financing Support Parties, may withdraw or modify the designation of any executory contract or unexpired lease for assumption or assumption and assignment.

¹ Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the *Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, Dated February 1, 2016* [Docket No. 2998] (as amended, modified, and supplemented, including the Plan Supplement, the "Plan").

Section 11.2 of the Plan provides as follows:

Unless otherwise specified in the Plan Supplement, each executory contract and unexpired lease listed or to be listed therein shall include any and all modifications, amendments, supplements, restatements or other agreements made directly or indirectly by any agreement, instrument or other document that in any manner affects such executory contract or unexpired lease and all executory contracts or unexpired leases appurtenant to the premises thereof, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, usufructs, reciprocal easement agreements, vaults, tunnel or bridge agreements or franchises and any other interests in real estate or rights in rem related to the premises thereof, in each case, without regard to whether such agreement, instrument or other document is listed in the Plan Supplement.

Section 11.3 of the Plan (of which the Plan Supplement is a part) contains specific provisions related to Cure payments and rejection damages.

* * *

In accordance with Section 11.1(a)(iii) of the Plan, the following schedule lists the contracts and leases which are to be assumed by the Debtors under the Plan:

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
1.	GTAT Corporation	A & B PROCESS SYSTEMS CORP., 201 SOUTH WISCONSIN AVENUE, STRATFORD, WI, 54484 UNITED STATES	Confidentiality & Services Agreement Dated 6/15/2013	\$0.00
2.	GTAT Corporation	A&B PROCESS SYSTEMS CORP., 201 S. WISCONSIN AVE, STRATFORD, WI, 54484 UNITED STATES	Purchase Contract / Purchase Order Dated 7/23/2012	\$0.00
3.	GT Advanced Technologies Limited	A.L.M.T.. CORP., 1-11-11 SHIBA, MINATO-KU, ATTN: IZUMI NAKAMURA, TOKYO, 105-0014, JAPAN	Royalty Agreement Dated 6/2/2011	\$0.00
4.	GTAT Corporation	A.L.M.T.. CORP., 1-11-11, SHIBA, MINATO-KU, ATTN: IZUMI NAKAMURA, TOKYO, 105-0014, JAPAN	Royalty Agreement Dated 6/2/2011	\$0.00
5.	GTAT Corporation	ACUREN INSPECTION, INC., 705 ALBANY STREET, DAYTON, OH, 45417, UNITED STATES	Service Contract Dated 5/15/2011	\$0.00
6.	GTAT Corporation	ADJACENT ANALYTICS LLC, 4415 46TH AVENUE SOUTH, MINNEAPOLIS, MN, 55406, UNITED STATES	Service Contract Dated 3/15/2013	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
7.	GTAT Corporation	AMAZON WEB SERVICES LLC, 410 TERRY AVE. N., SEATTLE, WA, 98109	IT Contract Dated 1/14/2011	\$0.00
8.	GTAT Corporation	AMC EQUIPMENT, ATTN: PRESIDENT, 230-6 NONHYEON-DONG, KANGNAM-GU, SEOUL, KOREA, REPUBLIC OF	Sales Rep/Agency Dated 12/1/2006	\$0.00
9.	GTAT Corporation	AMC EQUIPMENT, 230-6 NONHYEON-DONG, KANGNAM-GU, SEOUL, KOREA, REPUBLIC OF	Commission Agreement Dated 5/20/2011	\$0.00
10.	GTAT Corporation	AMERICAN FABRICATION INC., 2517 W OMNI DR., IDAHO FALLS, ID, 83402 UNITED STATES	Service Contract Dated 7/1/2013	\$0.00
11.	GTAT Corporation	AMERICAN PRECISION MANUFACTURING, INC., 164 S. HAMILTON PL., GILBERT, AZ, 85233, UNITED STATES	Service Contract Dated 11/1/2013	\$0.00
12.	GTAT Corporation	AMERICARB, INC., 1025 FAULTLESS DRIVE, ATTN: PRESIDENT, CC: CHIEF FINANCIAL OFFICER, ASHLAND, OH, 44805, UNITED STATES	Commission Agreement Dated 2/24/2008	\$0.00
13.	GT Advanced Technologies Limited	ANCI PROFESSIONAL EDUCATION CENTER, SOUTH SIDE OF RUIFENG AVENUE, CHANGFU ROAD, ANCI DISTRICT, LANGFANG CITY, HEBEI PROVINCE, CONTACT: ZHU DAWEI, GM, CHINA	Supply Agreement Dated 1/29/2013	\$0.00
14.	GTAT Corporation	ANTHEM, 3000 GOFFS FALLS ROAD, MANCHESTER, NH 03111 UNITED STATES	Employee Benefit Plans Dated 1/1/2013	\$0.00
15.	GTAT Corporation	ANTHEM BLUE CROSS AND BLUE SHIELD, 3000 GOFFS FALLS ROAD, MANCHESTER, NH 03111 UNITED STATES	Employee Benefit Plans Dated 1/1/2015	\$0.00
16.	GTAT Corporation	ASIA SILICON (QINGHAI) CO., LTD, 1 JIN GUI ROAD, DONGCHUAN INDUSTRIAL PARK, XINING, QINGHAI CHINA 810007, ATTENTION: TIHU WANG (CEO), CHINA	Supply Agreement Dated 4/25/2011	\$0.00
17.	GTAT Corporation	ASIA SILICON (QINGHAI) CO., LTD, 1 JIN GUI ROAD, DONGCHUAN INDUSTRIAL PARK, XINING, QINGHAI CHINA 810007, CHINA	Supply Agreement Dated 7/1/2014	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
18.	GTAT Corporation	ASIA SILICON (QINGHAI) CO., LTD, 1 JIN GUI ROAD, DONGCHUAN INDUSTRIAL PARK, XINING, QINGHAI CHINA 810007, CHINA	Supply Agreement Dated 9/16/2013	\$0.00
19.	GT Advanced Technologies Limited	AUO CRYSTAL CORPORATION, NO. 1 JHONGKE ROAD, CENTRAL TAIWAN SCIENCE PARK, TAICHUNG CITY, 40763 R.O.C., ATTENTION: MEILING CHANG AND JASPER LIN, TAIWAN, PROVINCE OF CHINA	Supply Agreement Dated 6/30/2011	\$0.00
20.	GT Advanced Technologies Limited	AUO CRYSTAL CORPORATION, NO. 335, SEC. 2 HOUKE RD., HOULI DIST., TAICHUNG CITY, 421 R.O.C., CONTACT: JASPER LIN, TAIWAN, PROVINCE OF CHINA	Supply Agreement Dated 10/31/2013	\$0.00
21.	GT Advanced Technologies Limited	AUO CRYSTAL CORPORATION, NO. 335, SEC. 2 HOUKE RD., HOULI DIST., TAICHUNG CITY, 421 R.O.C., CONTACT: MS. CHRISSY CHUANG, TAIWAN, PROVINCE OF CHINA	Supply Agreement Dated 12/20/2013	\$0.00
22.	GTAT Corporation	AVALON RISK MANAGEMENT, GENERAL AGENT FOR GREAT AMERICAN ALLIANCE INSURANCE COMPANY, 301 E. 4TH ST., CINCINNATI, OH, 45202, UNITED STATES	Finance Agreement (Secured Lenders, Bonds, Mortgages, etc.) Dated 9/23/2014	\$0.00
23.	GTAT Corporation	AVALON RISK MANAGEMENT, GENERAL AGENT FOR GREAT AMERICAN ALLIANCE INSURANCE COMPANY, 301 E. 4TH ST., CINCINNATI, OH, 45202, UNITED STATES	Finance Agreement (Secured Lenders, Bonds, Mortgages, etc.) Dated 7/31/2014	\$0.00
24.	GTAT Corporation	AVID ENGINEERS, LLC, CLOCK TOWER PLAZA, 17 BRIDGE STEET, BILLERICA, MA, 1821, UNITED STATES	Service Contract Dated 7/15/2013	\$0.00
25.	GT Advanced Technologies Limited	AXA GENERAL INSURANCE HONG KONG LTD, PO BOX NO. 90918 TSIM SHA TSUI POST OFFICE, KOWLOON, HONG KONG	Third Party Provider (benefits, payroll, freight) Dated 10/1/2014	\$0.00
26.	GT Advanced Technologies Inc.	BAL, K. RAJA, ADDRESS ON FILE,	Indemnification Agreement	\$0.00
27.	GTAT Corporation	BAL, MR. K. RAJA, ADDRESS ON FILE,	Employee Benefit Plans Dated 1/13/2014	\$0.00
28.	GTAT Corporation	BAL, RAJA, ADDRESS ON FILE,	Employment Agreement Dated 1/6/2014	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
29.	GT Advanced Equipment Holding LLC	BANK OF AMERICA. N.A., 2001 CLAYTON ROAD, BUILDING B, ATTN: BLOCKED ACCOUNT SUPPORT, MAIL CODE: CA4-702-02-37, CONCORD, CA, 94520-2425, UNITED STATES	Banking Service Agreement Dated 6/16/2014	\$0.00
30.	GTAT Corporation	BANK OF AMERICA. N.A., 2001 CLAYTON ROAD, BUILDING B, ATTN: BLOCKED ACCOUNT SUPPORT, MAIL CODE: CA4-702-02-37, CONCORD, CA, 94520-2425, UNITED STATES	Banking Service Agreement Dated 11/15/2013	\$0.00
31.	GTAT Corporation	BEIJING GREAT WALL CO., LTD., 02-05 FENGZHUYUAN, NO. 18 JIAOMEN, FENGTAI DISTRICT, BEIJING, CHINA	Purchase Contract / Purchase Order Dated 9/15/2011	\$0.00
32.	GTAT Corporation	BEPEX INTERNATIONAL LLC, 333 TAFT STREET NE, MINNEAPOLIS, MN, 55413, UNITED STATES	Commission Agreement Dated 8/29/2011	\$0.00
33.	GT Advanced Technologies Limited	BIEL CRYSTAL HK MANUFACTORY LIMITED, BLOCK A, 10/F, A1-A5, MEI HING IND. BLDG. 16-18 HING YIP STREET, KWUN TONG, KOWLOON. HONG KONG, HONG KONG	Supply Agreement Dated 6/3/2014	\$0.00
34.	GT Advanced Technologies Limited	BIEL CRYSTAL HK MANUFACTORY LIMITED, BLOCK A, 10/F, A1-A5, MEI HING IND. BLDG. 16-18 HING YIP STREET, KWUN TONG, KOWLOON. HONG KONG, HONG KONG	Supply Agreement Dated 5/15/2014	\$0.00
35.	GTAT Corporation	CAMBRIDGE CHEMICAL TECHNOLOGIE, 625 MOUNT AUBURN STREET, CAMBRIDGE, MA, 02138, UNITED STATES	Services Agreement	\$37,455.00
36.	GT Advanced Technologies Inc.	CAPGEMINI U.S. LLC, 45 BARTLETT STREET, MARLBROUGH, MA, 01752-3014, UNITED STATES	Purchase Contract / Purchase Order Dated 6/16/2014	\$0.00
37.	GTAT Corporation	CAPGEMINI U.S. LLC, 45 BARTLETT STREET, MARLBROUGH, MA, 01752-3014, UNITED STATES	Service Contract Dated 1/1/2009	\$0.00
38.	GTAT Corporation	CAPGEMINI U.S. LLC, 45 BARTLETT STREET, MARLBROUGH, MA, 01752-3014, UNITED STATES	Service Contract Dated 3/1/2014	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
39.	GTAT Corporation	CENTER FOR ADVANCED MINERAL AND METALLURGICAL PROCESSING OF MONTANA TECH UNIVERSITY OF MONTANA, 1300 WEST PARK STREET, BUTTE, MT, 50701, UNITED STATES	Service Contract and NDA Dated 9/1/2010	\$0.00
40.	GT Advanced Technologies Limited	CHANGZHOU SHUNFENG PHOTOVOLTAIC MATERIALS CO., LTD, ATTN: MR. ZAO XIANJUN, NO. 8 XINDIAN ROAD, WUJIN HIGH-TECH INDUSTRIAL DEVELOPMENT ZONE, JIANGSU PROVINCE, 213164, CHINA	Supply Agreement Dated 3/14/2013	\$0.00
41.	GT Advanced Technologies Limited	CHANGZHOU SHUNFENG PHOTOVOLTAIC MATERIALS CO., LTD, ATTN: MR. CHU JIAN, NO. 8 XINDIAN ROAD, WUJIN HIGH-TECH INDUSTRIAL DEVELOPMENT ZONE, JIANGSU PROVINCE, 213164, CHINA	Supply Agreement Dated 3/14/2013	\$0.00
42.	GTAT Corporation	CHARLES SCHWAB, 4150 KINROSS LAKES PARKWAY, RICHFIELD, OH, 44286, UNITED STATES	Employee Benefit Plans Dated 10/15/2012	\$0.00
43.	GTAT Corporation	CHARLES SCHWAB RETIREMENT PLAN SERVICES, 4150 KINROSS LAKES PARKWAY, RICHFIELD, OH, 44286, UNITED STATES	Employee Benefit Plans Dated 9/14/2014	\$0.00
44.	GTAT Corporation	CHONGQING DAQO NEW ENERGY CO., LTD., 666 LONGDU ROAD, WANZHOU DISTRICT, CHONGQING, PRC 404000, CHINA	Supply Agreement Dated 8/24/2011	\$0.00
45.	GTAT Corporation	CHONGQING DAQO NEW ENERGY CO., LTD., 666 LONGDU ROAD, WANZHOU DISTRICT, CHONGQING, PRC 404000, CHINA	Supply Agreement Dated 11/21/2011	\$0.00
46.	GTAT Corporation	CHONGQING DAQO NEW ENERGY CO., LTD., 666 LONGDU ROAD, WANZHOU DISTRICT, CHONGQING, PRC 404000, CHINA	Supply Agreement Dated 8/27/2014	\$0.00
47.	GTAT Corporation	CINTAS: THE UNIFORM PEOPLE, 200 APOLLO DRIVE, CHELMSFORD, MA, 1824,	Vendor Agreement Dated 5/9/2014	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
48.	GTAT Corporation	CITRIX, CITRIX ONLINE LLC, 7414 HOLLISTER AVENUE, GOLETA, CA, 93117, UNITED STATES	Service Contract Dated 7/18/2013	\$0.00
49.	GTAT Corporation	CITY OF MESA, AZ - FOREIGN TRADE ZONE, 20 EAST MAIN STREET, SUITE 750, MESA, AZ, 85211, UNITED STATES	Operator Agreement Dated 6/24/2014	\$0.00
50.	GT Advanced Technologies Limited	CNIEC SHAANXI CORPORATION, 18TH FLOOR OF BLOCK AB, TANGYAN INTERNATIONAL CENTRE, 3 TANGYAN AVENUE, XI'AN, CHINA	Supply Agreement Dated 9/30/2013	\$0.00
51.	GT Advanced Technologies Limited	CNPV DONGYING SOLAR POWER CO., LTD, NO. 19 ROAD WEST, NO. 8 ROAD SOUTH SHENGLI INDUSTRIAL PARK, DONGYING AREA, DONGYING AREA, DONGYING CITY, SHANGDONG CHINA, CONTACT: VEERAJU CHAUDARY, CHINA	Supply Agreement Dated 2/4/2012	\$0.00
52.	GT Advanced Technologies Limited	COMPUTERSHARE SHAREOWNER SVCS. LLC, 250 ROYALL ST., CANTON, MA, 2021, UNITED STATES	Service Agreement Dated 7/24/08	\$0.00
53.	GTAT Corporation	CORE BUSINESS DEVELOPERS, LLC, 601 SOUTH PIONEER WAY, SUITE F #204, MOSES LAKE, WA, 98837, UNITED STATES	Service Contract Dated 12/31/2011	\$0.00
54.	GT Advanced Technologies Limited	COSMOS CHEMICAL BERHAD, PROJECT AND DEVELOPMENT COMPANY P.O. BOX 11314, AL JUBAIL 31961, KINGDOM OF SAUDI ARABIA, CONTACT: AHMAD H. AL-GHAMDI, SAUDI ARABIA	Supply Agreement	\$0.00
55.	GT Advanced Technologies Limited	COSMOS CHEMICAL BERHAD, PROJECT AND DEVELOPMENT COMPANY P.O. BOX 11314, AL JUBAIL 31961, KINGDOM OF SAUDI ARABIA, CONTACT: AHMAD H. AL-GHAMDI, SAUDI ARABIA	Supply Agreement	\$0.00
56.	GT Advanced Technologies Limited	CUSTOMER AGENT, SUN YANG GENERAL MANAGER,	Supply Agreement Dated 8/15/2013	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
57.	GT Advanced Technologies Limited	CUSTOMER AGENT, SUN YANG GENERAL MANAGER, CHINA	Supply Agreement Dated 8/25/2013	\$0.00
58.	GTAT Corporation	DAEJIN MACHINERY CO. LTD., 10-39, CHEOMDANGIUB-5RO, SANDONG-MYEON, GUMI CITY, GYEONGSANGBUK-DO, KOREA, REPUBLIC OF	Vendor Agreement Dated 6/16/2014	\$0.00
59.	GT Advanced Technologies Limited	DAEJIN MACHINERY CO. LTD., 10-39, CHEOMDANGIUB-5RO, SANDONG- MYEON, GUMI CITY, GYEONGSANGBUK-DO, KOREA, REPUBLIC OF	Vendor Agreement Dated 6/16/2014	\$0.00
60.	GTAT Corporation	DAE-JIN MACHINERY CO. LTD., 1311 SINDANG-RI, SANDONG-MYEON, GUMI SI, GYEONGSANGBUK-DO, KOREA, REPUBLIC OF	Service Contract Dated 1/15/2013	\$0.00
61.	GTAT Corporation	DAKOTA SYSTEMS, INC., 1057 BROADWAY ROAD, ROUTE 113, DRACUT, MA, 1826, UNITED STATES	Service Contract Dated 5/1/2014	\$0.00
62.	GTAT Corporation	DAWONSYS CO. LTD., SHIHW A INDUSTRIAL COMPLEX 3 NA, 505, 1277-4, JEONGWANG-DONG, GYEONGGI-DO, KOREA, REPUBLIC OF	Vendor Agreement Dated 2/8/2013	\$0.00
63.	GT Advanced Technologies Limited	DAWONSYS CO. LTD., SHIHW A INDUSTRIAL COMPLEX 3 NA, 505, 1277-4, JEONGWANG-DONG, GYEONGGI-DO, KOREA, REPUBLIC OF	Vendor Agreement Dated 2/8/2013	\$0.00
64.	GTAT Corporation	DKT CO., LTD., 492, YONGJAM-DONG, ULSAN, NAM-GU, KOREA, REPUBLIC OF	Service Contract Dated 7/15/2012	\$0.00
65.	GT Advanced Technologies Limited	DONGGUAN CHANG'AN DONGYUANGGUANG ALUMINUM RESEARCH & DEVELOPMENT CO., LTD, NO. 368 ZHEN'AN ROAD, CHANG'AN TOWNSHIP, DANGGUAN CITY, CHINA, CONTACT: LUO XIAN, CHINA	Supply Agreement Dated 3/1/2013	\$0.00
66.	GT Advanced Technologies Limited	DONGGUAN CHANG'AN DONGYUANGGUANG ALUMINUM RESEARCH & DEVELOPMENT CO., LTD, NO. 368 ZHEN'AN ROAD, CHANG'AN TOWNSHIP, DANGGUAN CITY, CHINA, CHINA	Supply Agreement Dated 3/18/2013	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
67.	GT Advanced Technologies Limited	DONGHAI JA SOLAR TECHNOLOGY CO., LTD, NO. 1 GUANGMING ROAD, WESTERN DEVELOPMENT AREA, DONGHAI COUNTY, JIANGSU 222300 CHINA, ATTN: JI HONG, CHINA	Supply Agreement Dated 11/21/2012	\$0.00
68.	GTAT Corporation	EAST SIDE PLATING, INC., 8400 SE 26TH PLACE, PORTLAND, OR, 97202, UNITED STATES	Service Contract Dated 1/1/2012	\$0.00
69.	GTAT Corporation	ELECTRODES, INC., 252 DEPOT ROAD, MILFORD, CT, 06460, UNITED STATES	Service Contract Dated 7/1/2013	\$0.00
70.	GT Advanced Technologies Limited	EMERGING MATERIALS TECHNOLOGY INC, 1491 LITTLEFIELD COURT, LAKE FOREST, IL, 60045, UNITED STATES	Vendor Agreement Dated 2/8/2011	\$0.00
71.	GTAT Corporation	EMERGING MATERIALS TECHNOLOGY INC, 1491 LITTLEFIELD COURT, LAKE FOREST, IL, 60045, UNITED STATES	Vendor Agreement Dated 2/8/2011	\$0.00
72.	GTAT Corporation	EPIC SYSTEMS, INC., 4142 MERAMEC BOTTOM ROAD, ST. LOUIS, MO, 63129, UNITED STATES	Service Contract Dated 10/15/2011	\$0.00
73.	GTAT Corporation	EXOTIC ELECTRO-OPTICS INC., 36570 BRIGGS ROAD, MURIETTA, CA 92563, ATTN: GARY CLAUER, UNITED STATES	Supply Agreement Dated 4/1/2011	\$0.00
74.	GT Advanced Technologies Limited	EXPEDITORS HONG KONG LIMITED, 36F-/37/F, ENTERPRISE SQUARE 3, 39 WANG CHIU ROAD, KOWLOON BAY, KOWLOON, HONG KONG	Service Contract Dated 9/26/2014	\$0.00
75.	GT Advanced Technologies Limited	FUYUAN HOLDINGS, FLOOR 9 FUYUAN MANSION, 45 DISTRICT BAOAN, CHINA	Supply Agreement Dated 6/2/2011	\$0.00
76.	GT Advanced Technologies Limited	FUYUAN HOLDINGS, FLOOR 9 FUYUAN MANSION, 45 DISTRICT BAOAN, CHINA	Supply Agreement	\$0.00
77.	GTAT Corporation	FX ALLIANCE, LLC, JOHN W. COOLEY, CHIEF FINANCIAL OFFICER, 900 THIRD AVENUE, 3RD FLOOR, NEW YORK, NY, 10022, UNITED STATES	Service Contract Dated 5/25/2007	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
78.	GT Advanced Technologies Limited	GE BE PRIVATE LIMITED ("GEHC"), INDIA	Supply Agreement Dated 6/7/2011	\$0.00
79.	GT Advanced Technologies Limited	GIGASTORAGE, NO ADDRESS IN DOCUMENT, TAIWAN, PROVINCE OF CHINA	Supply Agreement Dated 7/7/2014	\$0.00
80.	GT Advanced Technologies Limited	GIGASTORAGE CO., LTD, NO. 3 KUNG YEH FIRST ROAD, HSINCHU INDUSTRIAL PARK, HSINCHU, TAIWAN, R.O.C., TAIWAN, PROVINCE OF CHINA	Supply Agreement Dated 3/27/2013	\$0.00
81.	GT Advanced Technologies Limited	GIGASTORAGE CO., LTD, NO. 3 KUNG YEH FIRST ROAD, HSINCHU INDUSTRIAL PARK, HSINCHU, TAIWAN, R.O.C., CONTACT: WINNIE CHANG, TAIWAN, PROVINCE OF CHINA	Supply Agreement Dated 6/22/2012	\$0.00
82.	GTAT Corporation	GLAVSOFT LLC, O. KOSHEVOGO 77-40, TOMSK, 634021, RUSSIAN FEDERATION	Software Licensing Agreement Dated 7/28/2014	\$0.00
83.	GTAT Corporation	GRANITE STATE MANUFACTURING, 124 JOLIETTE STREET, MANCHESTER, NH, 03102, UNITED STATES	Service Contract Dated 9/15/2012	\$0.00
84.	GTAT Corporation	GREATECH INTEGRATION (M) SDN BHD, LENGKOK KAMPUNG JAWA 1, PHASE 3 BAYAN LEPAS FREE INDUSTRIAL ZONE, 11900, PENANG, MALAYSIA	Service Contract Dated 7/25/2014	\$0.00
85.	GT Advanced Technologies Limited	GREEN ENERGY TECHNOLOGY (CUSTOMER), 22 CHUNGSHAN N. ROAD, THIRD SECTION, TAIPEI, TAIWAN R.O.C., ATTN: PRESIDENT, TAIWAN, PROVINCE OF CHINA	Supply Agreement Dated 3/15/2011	\$0.00
86.	GTAT Corporation	GTAT CORPORATION, 2559 ROUTE 130, CRANBURY, NJ 08512, UNITED STATES	Supply Agreement Dated 1/31/2012	\$0.00
87.	GT Advanced Technologies Limited	GUANGDONG SAIFEI SAPPHIRE TECHNOLOGIES, GUANGZHOU (MEIZHOU), INDUSTRIAL TRANSFER PARK, SHEJIANG TOWNSHIP, MEIZHOU CITY, GUANGDONG PROVINCE, CHINA	Vendor Agreement Dated 6/12/2014	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
88.	GT Advanced Technologies Limited	GUANGDONG SAPPHIRE TECHNOLOGY CO., LTD, GUANZHOU (MEIZHOU) INDUSTRIAL TRANSFER PARK, SHEIJIANG TOWN, MEI COUNTY, GUANGDONG, CHINA 514779, CHINA	Supply Agreement Dated 10/15/2013	\$0.00
89.	GT Advanced Technologies Limited	GUANGDONG SAPPHIRE TECHNOLOGY CO., LTD, GUANZHOU (MEIZHOU) INDUSTRIAL TRANSFER PARK, SHEIJIANG TOWN, MEI COUNTY, GUANGDONG, CHINA 514779, CHINA	Supply Agreement Dated 10/15/2013	\$0.00
90.	GT Advanced Technologies Limited	GUANGDONG SAPPHIRE TECHNOLOGY CO., LTD, GUANZHOU (MEIZHOU) INDUSTRIAL TRANSFER PARK, SHEIJIANG TOWN, MEI COUNTY, GUANGDONG, CHINA 514779, CHINA	Supply Agreement Dated 10/15/2013	\$0.00
91.	GT Advanced Technologies Limited	GUANGDONG SAPPHIRE TECHNOLOGY CO., LTD, GUANZHOU (MEIZHOU) INDUSTRIAL TRANSFER PARK, SHEIJIANG TOWN, MEI COUNTY, GUANGDONG, CHINA 514779, CHINA	Supply Agreement	\$0.00
92.	GT Advanced Technologies Limited	HAINAN YINGLI NEW ENERGY RESOURCES CO., LTD, SHIZILING NEW AND HIGH-TECH INDUSTRY DISTRICT, HAIKOU, HAINAN PROVINCE, 57000, CHINA	Supply Agreement Dated 10/17/2012	\$0.00
93.	GT Advanced Technologies Limited	HAINAN YINGLI NEW ENERGY RESOURCES COMPANY LIMITED, SHIZILING NEW AND HIGH-TECH INDUSTRY DISTRICT, HAIKOU, CHINA, ATTN: CUIHENG@YINGSOLAR.COM, CHINA	Supply Agreement Dated 3/18/2013	\$0.00
94.	GTAT Corporation	HALLMARK COPIER CO. INC., 114A PERIMETER ROAD, NASHUA, NH, 03063, UNITED STATES	Service Contract Dated 3/15/2012	\$0.00
95.	GTAT Corporation	HANTECH LTD., #190 YEOCHUN-DONG, ULSAN, NAM-GU, KOREA, REPUBLIC OF	Service Contract Dated 9/1/2011	\$0.00
96.	GTAT Corporation	HANWA CHEMICAL CORP, 1 JAGGYODONG JUNGGU, SEOUL, KOREA, KOREA, REPUBLIC OF	Supply Agreement Dated 6/6/2011	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
97.	GTAT Corporation	HANWA CHEMICAL CORP, 1 JAGGYODONG JUNGGU, SEOUL, KOREA, KOREA, REPUBLIC OF	Supply Agreement Dated 1/31/2012	\$0.00
98.	GTAT Corporation	HANWA CHEMICAL CORP, 1 JAGGYODONG JUNGGU, SEOUL, KOREA, KOREA, REPUBLIC OF	Supply Agreement Dated 7/5/2012	\$0.00
99.	GTAT Corporation	HANWA INTERNATIONAL LLC, 2559 ROUTE 130, CRANBURY, NJ 08512, UNITED STATES	Supply Agreement Dated 6/6/2011	\$0.00
100.	GTAT Corporation	HANWA INTERNATIONAL LLC, 2559 ROUTE 130, CRANBURY, NJ 08512, UNITED STATES	Supply Agreement Dated 7/5/2012	\$0.00
101.	GTAT Corporation	HAYS INSURANCE BROKERAGE OF NEW ENGLAND LLC, 20 TRAFALGAR SQUARE 2ND FLOOR, NASHUA, NH, 3063,	Insurance Policies Dated 10/7/2013	\$0.00
102.	GTAT Corporation	HOLLIS LINE MACHINE COMPANY, INC., 295 SOUTH MERRIMACK ROAD, HOLLIS, NH, 3049, UNITED STATES	Service Contract Dated 9/15/2012	\$0.00
103.	GT Advanced Technologies Inc.	HRPRO, 1423 E. 11 MILE ROAD, ROYAL OAK, MI, 48067, UNITED STATES	Employee Benefit Plans Dated 11/1/2014	\$0.00
104.	GT Advanced Technologies Limited	HSBC OFFICE INSURANCE, 18/F, TOWER 1, HSBC CENTRE, 1 SHAM M, HONG KONG	Third Party Provider (benefits, payroll, freight) Dated 10/1/2014	\$0.00
105.	GT Advanced Technologies Limited	HSBC PROVIDENT FUND TRUSTEE (HONG KONG) LIMITED, C/O HSBC LIFE (INTERNATIONAL) LIMITED, PO BOX 73770 KOWLOON CENTRAL POST OFFICE, HONG KONG	Third Party Provider (benefits, payroll, freight) Dated 6/14/2010	\$0.00
106.	GT Advanced Technologies Limited	HYUNDAI ENGINEERING CO., LTD, HYUNDAI 41 TOWER, 917-9 MOK-DONG, YANGOHEON-GU, SEOUL, KOREA, KOREA, REPUBLIC OF	Supply Agreement Dated 3/26/2013	\$0.00
107.	GT Advanced Technologies Limited	HYUNDAI ENGINEERING CO., LTD, HYUNDAI 41 TOWER, 917-9 MOK-DONG, YANGOHEON-GU, SEOUL, KOREA, KOREA, REPUBLIC OF	Supply Agreement Dated 3/28/2011	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
108.	GTAT Corporation	HYUNDAI ENGINEERING CO., LTD, HYUNDAI 41 TOWER, 917-9 MOK-DONG, YANGOHEON-GU, SEOUL, KOREA, KOREA, REPUBLIC OF	Supply Agreement Dated 3/26/2013	\$0.00
109.	GTAT Corporation	HYUNDAI ENGINEERING CO., LTD, HYUNDAI 41 TOWER, 917-9 MOK-DONG, YANGOHEON-GU, SEOUL, KOREA, KOREA, REPUBLIC OF	Supply Agreement Dated 3/28/2011	\$0.00
110.	GTAT Corporation	ILJIN DISPLAY CO., LTD., 610-84, OHRYU-RI, DAESO-MYCON, EUMSEONG-GUN, CHUNGCHEONGBUK-DO, 369-820, KOREA, REPUBLIC OF	Service Contract Dated 5/10/2013	\$0.00
111.	GTAT Corporation	ILSUNG CORPORATION, 917 WONSAN-LI ONSAN-GUH, ULJU- GUN, ULSUN, KOREA, REPUBLIC OF	Service Contract Dated 4/15/2011	\$0.00
112.	GT Advanced Technologies Limited	INNER MONGOLIA ZHONG HUAN SOLAR MATERIAL, CO., LTD, BAOLIR STREET INDUSTRIAL 2 ZONE, JINQIAO DEVELOPMENT ZONE, HUHHOT, INNER MONGOLIA, PRC 010000, CHINA	Supply Agreement Dated 1/18/2012	\$0.00
113.	GTAT Corporation	INSIGHT ENERGY SOLUTIONS, LLC, 509 N. 22ND, DR. PAUL GANNON, BOZEMAN, MT, 59718, UNITED STATES	Consulting Agreement Dated 5/1/2012	\$0.00
114.	GTAT Corporation	INTEGRATED TECHNOLOGIES, INC, 552 PEACHAM ROAD, DANVILLE, VT. 05828, UNITED STATES	Confidentiality Agreement Dated 7/1/2012	\$0.00
115.	GTAT Corporation	IRON MOUNTAIN, 21 TERRY AVENUE, BURLINGTON, MA, 01803, UNITED STATES	Service Contract Dated 8/7/2006	\$0.00
116.	GT Advanced Technologies Limited	JIANGSU JESHINE NEW MATERIALS CO., LTD ("JASHINE"), NEW MATERIALS INDUSTRIAL PARK, YOUFANG TOWNSHIP, YANGZHONG CITY, JIANGSU PROVINCE, PRC, CHINA	Supply Agreement Dated 1/1/2014	\$0.00
117.	GT Advanced Technologies Limited	JIANGSU JESHINE NEW MATERIALS CO., LTD ("JASHINE"), NEW MATERIALS INDUSTRIAL PARK, YOUFANG TOWNSHIP, YANGZHONG CITY, JIANGSU PROVINCE, PRC, CHINA	Supply Agreement Dated 9/30/2013	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
118.	GTAT Corporation	JIANGSU JESHINE NEW MATERIALS CO., LTD ("JASHINE"), NEW MATERIALS INDUSTRIAL PARK, YOUFANG TOWNSHIP, YANGZHONG CITY, JIANGSU PROVINCE, PRC, CHINA	Supply Agreement Dated 9/30/2013	\$0.00
119.	GT Advanced Technologies Limited	JIANGSU JESHINE NEW MATERIALS CO., LTD ("JASHINE"), NEW MATERIALS INDUSTRIAL PARK, YOUFANG TOWNSHIP, YANGZHONG CITY, JIANGSU PROVINCE, PRC, CHINA	Supply Agreement Dated 6/16/2014	\$0.00
120.	GT Advanced Technologies Limited	JIANGSU JESHINE NEW MATERIALS CO., LTD ("JASHINE"), NEW MATERIALS INDUSTRIAL PARK, YOUFANG TOWNSHIP, YANGZHONG CITY, JIANGSU PROVINCE, PRC, CHINA	Supply Agreement Dated 2/14/2014	\$0.00
121.	GTAT Corporation	JIANGSU JIXING NEW MATERIAL CO. LTD., HUANTAI INDUSTRIAL PARK, YOUFANG TOWN, YANGZHONG CITY, JIANGSU, 212216, CHINA	Service Contract Dated 6/1/2013	\$0.00
122.	GT Advanced Technologies Limited	JIANGSU JIXING NEW MATERIALS CO., LTD, HUANTAI INDUSTRIAL PARK, YOUFANG TOWN, YANGZHONG CITY, JIANGSU PROVINCE, PRC 212216, ATTN: MS. JIANYUN CHEN (SUSAN CHEN), CHINA	Supply Agreement Dated 12/1/2010	\$0.00
123.	GT Advanced Technologies Limited	JIANGSU JIXING NEW MATERIALS CO., LTD, HUANTAI INDUSTRIAL PARK, YOUFANG TOWN, YANGZHONG CITY, JIANGSU PROVINCE, PRC 212216, CHINA	Supply Agreement Dated 6/12/2011	\$0.00
124.	GT Advanced Technologies Limited	JIANGSU JIXING NEW MATERIALS CO., LTD, HUANTAI INDUSTRIAL PARK, YOUFANG TOWN, YANGZHONG CITY, JIANGSU PROVINCE, PRC 212216, CHINA	Supply Agreement Dated 4/22/2011	\$0.00
125.	GTAT Corporation	JIANGSU SHUANLIANG BOILER CO., LTD., LIGANG TOWN, JIANGYIN, JIANGSU, CHINA	Service Contract Dated 6/10/2011	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
126.	GT Advanced Technologies Limited	JIAXING HONGDA IMPORT/EXPORT CO., LTD., R.1007, HONGDA MANSION, NO.218 HAIZHOU ROAD, HAINING CITY, ZHEJIANG PROVINCE, CHINA	Supply Agreement Dated 8/15/2013	\$0.00
127.	GT Advanced Technologies Limited	JIAXING HONGDA IMPORT/EXPORT CO., LTD., R.1007, HONGDA MANSION, NO.218 HAIZHOU ROAD, HAINING CITY, ZHEJIANG PROVINCE, CHINA	Supply Agreement Dated 8/15/2013	\$0.00
128.	GT Advanced Technologies Limited	JINKO SOLAR CO., LTD ("JINKO"), NO. 1 JINKO AVENUE, SHANGRAO ECONOMIC AND DEVELOPMENT ZONE, JIANGXI PROVINCE, 334100 CHINA, CONTACT: WU YANGFEI, CHINA	Supply Agreement Dated 8/12/2014	\$0.00
129.	GT Advanced Technologies Limited	JINKO SOLAR CO., LTD ("JINKO"), NO. 1 JINKO AVENUE, SHANGRAO ECONOMIC AND DEVELOPMENT ZONE, JIANGXI PROVINCE, 334100 CHINA, CONTACT: WU YANGFEI, CHINA	Supply Agreement Dated 1/7/2014	\$0.00
130.	GT Advanced Technologies Limited	JINKO SOLAR CO., LTD ("JINKO"), NO. 1 JINKO AVENUE, SHANGRAO ECONOMIC AND DEVELOPMENT ZONE, JIANGXI PROVINCE, 334100 CHINA, CONTACT: WU YANGFEI, CHINA	Supply Agreement Dated 10/3/2013	\$0.00
131.	GT Advanced Technologies Limited	JINKO SOLAR CO., LTD ("JINKO"), NO. 1 JINKO AVENUE, SHANGRAO ECONOMIC AND DEVELOPMENT ZONE, JIANGXI PROVINCE, 334100 CHINA, CHINA	Supply Agreement Dated 1/20/2014	\$0.00
132.	GT Advanced Technologies Inc.	JINKO SOLAR CO., LTD ("JINKO"), NO. 1 JINKO AVENUE, SHANGRAO ECONOMIC AND DEVELOPMENT ZONE, JIANGXI PROVINCE, 334100 CHINA, CHINA	Supply Agreement Dated 10/8/2013	\$0.00
133.	GT Advanced Technologies Limited	JIUJIANG FUHE CONSTRUSTION INVESTMENT CO., LTD, NO.330 CHANGJIANG ROAD, JIUJIANG CITY, JIANGXI PROVINCE, CHINA, ATTN: MS. JI MEILIN, CHINA	Supply Agreement Dated 4/29/2011	\$0.00
134.	GT Advanced Technologies Limited	JIUJIANG FUHE CONSTRUSTION INVESTMENT CO., LTD, NO.330 CHANGJIANG ROAD, JIUJIANG CITY, JIANGXI PROVINCE, CHINA, ATTN: MS. JI MEILIN, CHINA	Supply Agreement Dated 4/29/2011	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
135.	GT Advanced Technologies Limited	JIUJIANG FUHE CONSTRUCTION INVESTMENT CO., LTD, NO.330 CHANGJIANG ROAD, JIUJIANG CITY, JIANGXI PROVINCE, CHINA, ATTN: MS. JI MEILIN, CHINA	Supply Agreement Dated 4/29/2011	\$0.00
136.	GT Advanced Technologies Limited	JIUJIANG FUHE CONSTRUCTION INVESTMENT CO., LTD, NO.330 CHANGJIANG ROAD, JIUJIANG CITY, JIANGXI PROVINCE, CHINA, ATTN: MS. JI MEILIN, CHINA	Supply Agreement Dated 4/29/2011	\$0.00
137.	GT Advanced Technologies Limited	JUIJIANG SAIFEI SAPPHIRE TECHNOLOGY CO., LTD AKA JUIJIANG SAPPHIRE TECH CO., LTD, NO.1 JINXIU ROAD, EXPORT PROCESSING ZONE, JIUJIANG CITY, JIANGXI PROVINCE, CHINA	Supply Agreement Dated 12/1/2010	\$0.00
138.	GT Advanced Technologies Limited	JUIJIANG SAIFEI SAPPHIRE ALIAS: JUIJIANG SAPPHIRE, CHINA	Supply Agreement Dated 4/19/2011	\$0.00
139.	GT Advanced Technologies Limited	JUIJIANG SAIFEI SAPPHIRE TECHNOLOGY CO., LTD, NO.1 JINXIU ROAD, EXPORT PROCESSING ZONE, JIUJIANG CITY, JIANGXI PROVINCE, CHINA,	Supply Agreement Dated 9/1/2012	\$0.00
140.	GT Advanced Technologies Limited	JUIJIANG SAIFEI SAPPHIRE TECHNOLOGY CO., LTD D/B/A: JUIJIANG SAPPHIRE TECH CO. LTD, NO.1 EAST WAIHUAN ROAD, OUT OF EXPORT PROCESSING ZONE, JIUJIANG CITY, JIANGXI PROVINCE, CHINA, CHINA	Supply Agreement Dated 4/19/2011	\$0.00
141.	GT Advanced Technologies Limited	KCC ENGINEERING & CONSTRUCTION CO., LTD, 27-8 JAMWON-DONG, SEOCHO-GU, SEOUL, KOREA, KOREA, REPUBLIC OF	Supply Agreement Dated 3/26/2013	\$0.00
142.	GT Advanced Technologies Limited	KCC ENGINEERING & CONSTRUCTION CO., LTD, 27-8 JAMWON-DONG, SEOCHO-GU, SEOUL, REPUBLIC OF KOREA, KOREA, REPUBLIC OF	Supply Agreement Dated 3/28/2011	\$0.00
143.	GTAT Corporation	KCC ENGINEERING & CONSTRUCTION CO., LTD, 27-8 JAMWON-DONG, SEOCHO-GU, SEOUL, KOREA, KOREA, REPUBLIC OF	Supply Agreement Dated 3/26/2013	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
144.	GTAT Corporation	KCC ENGINEERING & CONSTRUCTION CO., LTD, 27-8 JAMWON-DONG, SEOCHO-GU, SEOUL, REPUBLIC OF KOREA, KOREA, REPUBLIC OF	Supply Agreement Dated 3/28/2011	\$0.00
145.	GTAT Corporation	KECK, DAVID, ADDRESS ON FILE,	Employment Agreement Dated 12/28/2008	\$0.00
146.	GTAT Corporation	KIM, HOIL, ADDRESS ON FILE,	Employment Agreement Dated 1/27/2009	\$0.00
147.	GT Advanced Technologies Inc.	KIM, HOIL, ADDRESS ON FILE,	Indemnification Agreement	\$0.00
148.	GT Advanced Technologies Limited	LESHAN GREEN SILICON CO., LTD, ATTN: YE KAIMIN NO. 257 LUOHUI STREET, NO. 257 LUOHUI STREET, JINKOUHE DISTRICT, SICHUAN PROVINCE, LESHAN CITY, 614700, CHINA	Supply Agreement Dated 7/1/2013	\$0.00
149.	GTAT Corporation	LIGHTSWORKS OPTICAL SYSTEMS, 36570 BRIGGS ROAD, MURIETTA, CA 92563, CONTACT: MARILYN FRANK- MIDDLETON, UNITED STATES	Supply Agreement Dated 3/12/2014	\$0.00
150.	GTAT Corporation	LINKEDIN, 2029 STIERLIN CT., MOUNTAIN VIEW, CA, 94043, UNITED STATES	Purchase Contract / Purchase Order	\$0.00
151.	GT Advanced Technologies Limited	MEGAKING SOLAR, CO. LTD, NO. 150 XIHU ROAD, WUJIN HI-TECH INDUSTRIAL ZONE, CHANGZHOU CITY, JIANGXI PROVINCE, CHINA, CONTACT: JIANG XINGXIAN, CHINA	Supply Agreement Dated 10/15/2013	\$0.00
152.	GT Advanced Technologies Limited	MEGAKING SOLAR, CO. LTD, XIHU ROAD, WUJIN HI-TECH INDUSTRIAL ZONE, WUJIN, JIANGSU, CHINA 213177, CHINA	Supply Agreement Dated 4/18/2011	\$0.00
153.	GT Advanced Technologies Limited	MEMC, 501 PEARL DRIVE P.O. BOX 8, ST. PETERS, MO 63376-0008, UNITED STATES	Supply Agreement Dated 8/6/2010	\$0.00
154.	GT Advanced Technologies Limited	MERCER (HONG KONG) LIMITED, 26/F & 27/F, CENTRAL PLAZA, 18 HARBOUR ROAD, HONG KONG	Third Party Provider (benefits, payroll, freight) Dated 9/6/2014	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
155.	GTAT Corporation	MONTANA EMERGENT TECHNOLOGIES, INC., 160 W. GRANITE STREET, BUTTE, MT, 59701, UNITED STATES	Confidentiality Agreement Dated 1/15/2014	\$0.00
156.	GTAT Corporation	MONTANA STATE UNIVERSITY, 306 COBLEIGH HALL, BOZEMAN, MT, 59717, UNITED STATES	Service Agreement Dated 1/5/2012	\$0.00
157.	GTAT Corporation	MONTANA STATE UNVIERSITY, OFFICE OF SPONSORED PROGRAMS, P.O. BOX 172470, 309 MONTANA HALL, BOZEMAN, MT, 59717-2470, UNITED STATES	Service Agreement Dated 12/5/2012	\$0.00
158.	GTAT Corporation	NAMIKI PRECISION JEWEL CO., LTD. (FOR MELTSTOCK), 3-8-22, SHINDON, ADACHI-KU, TOKYO, 123-8511 JAPAN, ATTN: MICKEY TAKAHASHI, JAPAN	Supply Agreement Dated 9/21/2010	\$0.00
159.	GTAT Corporation	NAMIKI PRECISION JEWEL CO., LTD. (FOR PRODUCTS), AKITA YUZAWA FACTORY 4-6-56, ATAGO-CHOU, YUZAWA CITY, AKITA, 012-0855 JAPAN, ATTENTION: DAISUKE SATO, JAPAN	Supply Agreement Dated 9/21/2010	\$0.00
160.	GT Advanced Technologies Limited	NANGTONG ZONGYI NEW MATERIAL CO., LTD, NO.168 QINGDAO RD, TONGZHOU ECONOMIC DEVELOPMENT ZONE, NANGTONG, JIANGSU, CHINA 226300, CHINA	Supply Agreement Dated 12/31/2013	\$0.00
161.	GT Advanced Technologies Limited	NANGTONG ZONGYI NEW MATERIAL CO., LTD, NO.168 QINGDAO RD, TONGZHOU ECONOMIC DEVELOPMENT ZONE, NANGTONG, JIANGSU, CHINA 226300,	Supply Agreement Dated 7/20/2011	\$0.00
162.	GT Advanced Technologies Limited	NANGTONG ZONGYI NEW MATERIAL CO., LTD, NO.168 QINGDAO RD, TONGZHOU ECONOMIC DEVELOPMENT ZONE, NANGTONG, JIANGSU, CHINA 226300,	Supply Agreement Dated 1/20/2014	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
163.	GT Advanced Technologies Limited	NANJING BAOSE, NO. 15 JINGMING ROAD, JIANGNING BINJIANG ECONOMIC DEVELOPMENT ZONE, NANJING, JIANGSU PROVINCE, 211178, CHINA	Commission Agreement Dated 12/31/2011	\$0.00
164.	GT Advanced Technologies Limited	NANJING BAOSE CO., LTD, NO. 15 JINGMING ROAD, JIANGING BINJANG ECONOMIC DEVELOPMENT ZONE, JIANGSU PROVINCE, NANJING, 211178, CHINA	Vendor Agreement Dated 1/18/2012	\$0.00
165.	GTAT Corporation	NANJING BAOSE CO., LTD, NO. 15 JINGMING ROAD, JIANGING BINJANG ECONOMIC DEVELOPMENT ZONE, JIANGSU PROVINCE, NANJING, 211178, CHINA	Vendor Agreement Dated 1/18/2012	\$0.00
166.	GT Advanced Technologies Limited	NCS RENEWABLE ENERGIES LIMITED 405 & 406, MINAR APARTMENT, DECCAN TOWERS, BASHEERBAGH, HYDERABAD - 500 001, ATTN: N. NAGESHWARA, INDIA	Supply Agreement Dated 4/21/2011	\$0.00
167.	GTAT Corporation	NINGBO YONGXIN OPTICS CO., LTD, NO. 385 MINGZHU ROAD, HI-TECH INDUSTRIAL PARK, NINGBO, ZHEIJIAN, 315040, CHINA	Service Contract Dated 4/1/2013	\$0.00
168.	GT Advanced Technologies Limited	NINGJIN SONGGONG ELECTRONIC MATERIALS CO., LTD, NO. 279 JINGLONG STREET, WEST AREA NINGLIN COUNTY, HEBEI PROVINCE, 055550 CHINA, CONTACT: ZHANG KUN,	Supply Agreement Dated 6/10/2014	\$0.00
169.	GT Advanced Technologies Limited	NINGJIN SONGGONG ELECTRONIC MATERIALS CO., LTD, NO. 279 JINGLONG STREET, WEST AREA NINGLIN COUNTY, HEBEI PROVINCE, 055550 CHINA, CHINA	Supply Agreement Dated 11/21/2012	\$0.00
170.	GT Advanced Technologies Limited	OCI COMPANY LTD., OCI BUILDING, 50 SOGONG-DONG, JUNG-GU, SEOUL 100-718, KOREA 135- 889, KOREA, REPUBLIC OF	Supply Agreement Dated 1/14/2013	\$0.00
171.	GT Advanced Technologies Limited	OCI COMPANY LTD., OCI BUILDING, 50 SOGONG-DONG, JUNG-GU, SEOUL 100-718, KOREA 135-889, KOREA, REPUBLIC OF	Supply Agreement Dated 2/15/2012	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
172.	GT Advanced Technologies Limited	OCI COMPANY LTD., OCI BUILDING, 50 SOGONG-DONG, JUNG-GU, SEOUL 100-718, KOREA 135-889, KOREA, REPUBLIC OF	Supply Agreement Dated 1/17/2011	\$0.00
173.	GTAT Corporation	OCI COMPANY LTD., OCI BUILDING, 50 SOGONG-DONG, JUNG-GU, SEOUL 100-718, KOREA 135- 889, KOREA, REPUBLIC OF	Supply Agreement Dated 1/17/2011	\$0.00
174.	GT Advanced Technologies Inc.	OCI COMPANY LTD., OCI BUILDING, 50 SOGONG-DONG, JUNG-GU, SEOUL 100-718, KOREA 135- 889, KOREA, REPUBLIC OF	Supply Agreement Dated 8/4/2009	\$0.00
175.	GT Advanced Technologies Limited	OCI COMPANY LTD., OCI BUILDING, 50 SOGONG-DONG, JUNG-GU, SEOUL 100-718, KOREA 135-889, KOREA, REPUBLIC OF	Supply Agreement Dated 6/14/2013	\$0.00
176.	GT Advanced Technologies Limited	OCI COMPANY LTD., OCI BUILDING, 50 SOGONG-DONG, JUNG-GU, SEOUL 100-718, KOREA 135-889, KOREA, REPUBLIC OF	Supply Agreement Dated 12/27/2011	\$0.00
177.	GTAT Corporation	OMEGA THERMO PRODUCTS, P.O. BOX 141, 205 SUNSET AVE, STRATFORD, WI, 54484, UNITED STATES	Confidentiality and Service Agreement Dated 2/1/2014	\$0.00
178.	GTAT Corporation	OPF ENTERPRISES, LLC, 2025 MULLAN ROAD, APT. 207, MISSOULA, MT, 59808, UNITED STATES	Confidentiality and Service Agreement Dated 4/1/2012	\$0.00
179.	GTAT Corporation	PATAEC - WINDSTREAM, 600 WILLOWBROOK OFFICE PARK, FAIRPORT, NY, 14450, UNITED STATES	Service Contract Dated 4/23/2012	\$0.00
180.	GT Advanced Technologies Limited	PLANSEE SE, METAILWEK-STRASSE 71, 6600 REUTTE, AUSTRIA	IP Rights and Compensation Agreement Dated 11/1/2011	\$0.00
181.	GTAT Corporation	PLANSEE SE, METALLWERK-STRASSE 71, 6600 REUTTE, AUSTRIA	Confidentiality Agreement Dated 7/1/2011	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
182.	GT Advanced Technologies Limited	PLANSEE SE, ATTN: BERND KLERNPAß, HEAD OF MU THERMAL, METALLWERK-PLANSEE-STR. 71, 6600 REUTTE, AUSTRIA	Trademark License Agreement Dated 11/1/2011	\$0.00
183.	GTAT Corporation	PLANSEE SE, ATTN: BERND KLERNPAß, HEAD OF MU THERMAL, METALLWERK-PLANSEE-STR. 71, 6600 REUTTE, AUSTRIA	IP Rights and Compensation Agreement Dated 11/1/2011	\$0.00
184.	GT Advanced Technologies Limited	PLANSEE SE, METALLWERK-STRASSE 71, 6600 REUTTE, AUSTRIA	Distribution and Compensation Agreement Dated 9/16/2013	\$0.00
185.	GTAT Corporation	PLANSEE SE, METALLWERK-STRASSE 71, 6600 REUTTE, AUSTRIA	Distribution and Compensation Agreement Dated 9/16/2013	\$0.00
186.	GTAT Corporation	PLANSEE SE, ATTN: BERND KLERNPAß, HEAD OF MU THERMAL, METALLWERK-PLANSEE-STR. 71, 6600 REUTTE, AUSTRIA	Trademark License Agreement Dated 11/1/2011	\$0.00
187.	GT Advanced Technologies Limited	PLANSEE USA LLC, 115 CONSTITUTION BOULEVARD, FRANKLIN, MA, 02038, UNITED STATES	IP Rights and Compensation Agreement Dated 11/1/2011	\$0.00
188.	GTAT Corporation	PLANSEE USA LLC, 115 CONSTITUTION BOULEVARD, FRANKLIN, MA, 02038, UNITED STATES	Confidentiality Agreement Dated 7/1/2011	\$0.00
189.	GT Advanced Technologies Limited	PLANSEE USA LLC, 115 CONSTITUTION BOULEVARD, FRANKLIN, MA, 02038, UNITED STATES	Trademark License Agreement Dated 11/1/2011	\$0.00
190.	GTAT Corporation	PLANSEE USA LLC, 115 CONSTITUTION BOULEVARD, FRANKLIN, MA, 02038, UNITED STATES	IP Rights and Compensation Agreement Dated 11/1/2011	\$0.00
191.	GT Advanced Technologies Limited	PLANSEE USA LLC, 115 CONSTITUTION BOULEVARD, FRANKLIN, MA, 02038, UNITED STATES	Distribution and Compensation Agreement Dated 9/16/2013	\$0.00
192.	GTAT Corporation	PLANSEE USA LLC, 115 CONSTITUTION BOULEVARD, FRANKLIN, MA, 2038, UNITED STATES	Distribution and Compensation Agreement Dated 9/16/2013	\$0.00
193.	GTAT Corporation	PLANSEE USA LLC, 115 CONSTITUTION BOULEVARD, FRANKLIN, MA, 02038, UNITED STATES	Trademark License Agreement Dated 11/1/2011	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
194.	GTAT Corporation	PLASMA TECHNOLOGY INCORPORATED, 1754 CRENSHAW BLVD., TERRANCE, CA, 90501, UNITED STATES	Service Contract Dated 7/1/2014	\$0.00
195.	GT Advanced Technologies Limited	POLYSILICON TECHNOLOGY COMPANY, P.O. BOX 11359, JUBAIL INDUSTRIAL CITY 31961, KINGDOM OF SAUDI ARABIA, SAUDI ARABIA	Supply Agreement Dated 8/24/2011	\$0.00
196.	GTAT Corporation	POLYSILICON TECHNOLOGY COMPANY, P.O. BOX 11359, JUBAIL INDUSTRIAL CITY 31961, KINGDOM OF SAUDI ARABIA, SAUDI ARABIA	Supply Agreement Dated 8/24/2011	\$0.00
197.	GT Advanced Technologies Limited	POLYSILICON TECHNOLOGY COMPANY, P.O. BOX 11359, JUBAIL INDUSTRIAL CITY 31961, KINGDOM OF SAUDI ARABIA, SAUDI ARABIA	Supply Agreement Dated 12/1/2011	\$0.00
198.	GTAT Corporation	POLYSILICON TECHNOLOGY COMPANY, P.O. BOX 11359, JUBAIL INDUSTRIAL CITY 31961, KINGDOM OF SAUDI ARABIA, SAUDI ARABIA	Supply Agreement Dated 12/1/2011	\$0.00
199.	GT Advanced Technologies Limited	POWER DISTRIBUTION INC., 4200 OAKLEYS COURT, RICHMOND, VA, 23223, UNITED STATES	Purchase Order #5500007738 Dated 8/14/2014	\$0.00
200.	GTAT Corporation	POWERTEC ENERGY CORPORATION, 23F, NO.1 SONGZHI RD., TAIPEI 11047, TAIWAN. R.O.C., TAIWAN, PROVINCE OF CHINA	Supply Agreement Dated 1/18/2013	\$0.00
201.	GTAT Corporation	POWERTEC ENERGY CORPORATION, 24F, NO.1 SONGZHI RD., TAIPEI 11047, TAIWAN. R.O.C., ATTN: PRESIDENT AND CEO, SCOTT KUO, TAIWAN, PROVINCE OF CHINA	Supply Agreement Dated 1/18/2011	\$0.00
202.	GTAT Corporation	POWERTEC ENERGY CORPORATION, 24F, NO.1 SONGZHI RD., TAIPEI 11047, TAIWAN. R.O.C., ATTN: PRESIDENT AND CEO, SCOTT KUO, TAIWAN, PROVINCE OF CHINA	Supply Agreement Dated 1/31/2011	\$0.00
203.	GTAT Corporation	POWERTEC ENERGY CORPORATION, 23F, NO.1 SONGZHI RD., TAIPEI 11047, TAIWAN. R.O.C., TAIWAN, PROVINCE OF CHINA	Supply Agreement Dated 3/28/2013	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
204.	GTAT Corporation	POWERTEC ENERGY CORPORATION, 24F, NO.1 SONGZHI RD., TAIPEI 11047, TAIWAN. R.O.C., TAIWAN, PROVINCE OF CHINA	Supply Agreement Dated 10/24/2011	\$0.00
205.	GTAT Corporation	POWERTEC ENERGY CORPORATION, 24F, NO.1 SONGZHI RD., TAIPEI 11047, TAIWAN. R.O.C., TAIWAN, PROVINCE OF CHINA	Supply Agreement Dated 3/22/2012	\$0.00
206.	GTAT Corporation	POWERTEC ENERGY CORPORATION (ASSIGNOR), 23F, NO.1 SONGZHI RD., TAIPEI 11047, TAIWAN. R.O.C., TAIWAN, PROVINCE OF CHINA	Supply Agreement Dated 9/16/2011	\$0.00
207.	GTAT Corporation	PREMATECH ADVANCED CERAMICS, 160 GODDARD MEMORIAL DRIVE, WORCESTER, MA, 1603, UNITED STATES	Confidentiality & Services Agreement Dated 3/1/2013	\$0.00
208.	GTAT Corporation	PROCRYSTAL TECHNOLOGY CO., LTD., NO. 22, DINGPING ROAD, SU-AO TOWN, YILAN COUNTY, 27049, TAIWAN, PROVINCE OF CHINA	Service Contract Dated 4/1/2013	\$0.00
209.	GT Advanced Technologies Limited	QATAR SOLAR ENERGY W.W.L., BLOCK 1037 NEW INDUSTRIAL AREA, DOHA, QATAR,	Supply Agreement Dated 2/18/2014	\$0.00
210.	GT Advanced Technologies Limited	QINGDAO NEW ENERGY SOLUTIONS INC, PUDONG INDUSTRIAL PARK, JIMO QINGDAO CITY, SHANDONG PROVINCE, CHINA, ATTN: HU ZHIGANG, GENERAL MANAGER, CHINA	Supply Agreement Dated 12/20/2012	\$0.00
211.	GT Advanced Technologies Limited	QINGDAO NEW ENERGY SOLUTIONS INC, PUDONG INDUSTRIAL PARK, JIMO QINGDAO CITY, SHANDONG PROVINCE, CHINA,	Supply Agreement	\$0.00
212.	GT Advanced Technologies Limited	QINGDAO NEW ENERGY SOLUTIONS INC, PUDONG INDUSTRIAL PARK, JIMO QINGDAO CITY, SHANDONG PROVINCE, CHINA,	Supply Agreement Dated 1/15/2013	\$0.00
213.	GT Advanced Technologies Limited	RITZ INSTRUMENT TRANSFORMERS GMBH, MUEHLBERG 1, 97514 KIRCHAICH-OBERAURACH, HAMBURG, GERMANY	Service Contract Dated 7/1/2012	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
214.	GTAT Corporation	RITZ INSTRUMENT TRANSFORMERS GMBH, MUEHLBERG 1, 97514 KIRCHAICH-OBERAURACH, HAMBURG, GERMANY	Service Contract Dated 7/1/2012	\$0.00
215.	GTAT Corporation	RITZ INSTRUMENT TRANSFORMERS GMBH, WANDSBEKER ZOLLSTRASSE 92-98, HAMBURG, 22041, GERMANY	Purchase Contract / Purchase Order Dated 4/14/2011	\$0.00
216.	GT Advanced Technologies Limited	RITZ INSTRUMENT TRANSFORMERS GMBH, MUEHLBERG 1, 97514 KIRCHAICH-OBERAURACH, HAMBURG, GERMANY	Purchase Order #5500003329 Dated 8/28/2011	\$0.00
217.	GT Advanced Technologies Limited	ROHM AND HAAS KOREA CO., LTD., 14TH FL., UNION STEEL BLDG., 890 DAECHI-DONG, GANGNAM-GU, SEOUL, KOREA, REPUBLIC OF	Cooperation and Commission Agreement Dated 4/11/2012	\$0.00
218.	GTAT Corporation	SCHOTT SUISSE SA, GALILEE 2, CH1400, YVERDON-LES-BAINS, SWITZERLAND	Service Contract Dated 5/1/2013	\$0.00
219.	GTAT Corporation	SCHWAB RETIREMENT PLAN SERVICES, INC., 4150 KINROSS LAKES PARKWAY, RICHFIELD, OH, 44286, UNITED STATES	Employee Benefit Plans Dated 9/12/2014	\$0.00
220.	GT Advanced Technologies Limited	SEWON CELLONTECH CO., LTD., 72 SHINCHON-DONG, CHANG-WON, 641-370, KOREA, REPUBLIC OF	Purchase Order #5500002672 Dated 5/13/2011	\$0.00
221.	GT Advanced Technologies Limited	SGL CARBON, LLC, ATTN: TOM BURKETT, VP GMS, SGL CARBON, LLC, 10130 PERIMETER PARKWAY, SUITE 500, CHARLOTTE, NC, 28216, UNITED STATES	Royalty Agreement Dated 4/1/2012	\$0.00
222.	GTAT Corporation	SHAANIX THIANHONG SILICON INDUSTRIAL CORPORATION, HEDI EAST ROAD, ZHENG YANG COUNTRY, WEICHENG DISTRICT, XIANYANG CITY, CHINA	Supply Agreement Dated 10/19/2010	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
223.	GTAT Corporation	SHAANIX THIANHONG SILICON INDUSTRIAL CORPORATION, HEDI EAST ROAD, ZHENG YANG COUNTRY, WEICHENG DISTRICT, XIANYANG CITY, CHINA	Supply Agreement Dated 10/19/2010	\$0.00
224.	GTAT Corporation	SHAANIX THIANHONG SILICON INDUSTRIAL CORPORATION, HEDI EAST ROAD, ZHENG YANG COUNTRY, WEICHENG DISTRICT, XIANYANG CITY, CHINA	Supply Agreement Dated 9/10/2012	\$0.00
225.	GT Advanced Technologies Limited	SHAANXI NON-FERROUS PHOTOVOLTAIC TECHNOLOGY, HETI MIDDLE ROAD, ZHENG YANG TOWN, XIAN'YANG, CHINA	Supply Agreement Dated 9/30/2013	\$0.00
226.	Unknown	SHAANXI NON-FERROUS PHOTOVOLTAIC TECHNOLOGY,	Supply Agreement Dated 9/30/2013	\$0.00
227.	Unknown	SHAANXI NON-FERROUS PHOTOVOLTAIC TECHNOLOGY, 18TH FLOOR, TANGYAN INTERNATIONAL CENTRE, 3 TANGYAN AVENUE, XI'AN, CHINA	Supply Agreement Dated 9/27/2013	\$0.00
228.	GT Advanced Technologies Limited	SICHUAN, ATTN: HUJIA, NO. 198 GU LOU NAN STREET, CHENG DU, 610016, CHINA	Supply Agreement Dated 7/1/2013	\$0.00
229.	GTAT Corporation	SICHUAN INJET ELECTRIC CO., LTD., NO. 686 JINSJAIJIANG WEST ROAD, ECONOMIC & TECHNOLOGICAL DEVELOPMENT ZONE, DEYANG, SICHUAN, 618000, CHINA	Service Contract Dated 8/30/2011	\$0.00
230.	GTAT Corporation	SLICING TECH, 432 MT. BETHEL HIGHWAY, BANGOR, PA, 18013, UNITED STATES	Service Contract Dated 8/16/2013	\$0.00
231.	GT Advanced Technologies Limited	SMARTONE MOBILE COMMUNICATIONS LTD, 31/F. MILLENNIUM CITY 2, 378 KWUN TONG ROAD, KWUN TONG, KOWLOON, HONG KONG	Service Contract Dated 9/5/2014	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
232.	GT Advanced Technologies Limited	SMARTONE MOBILE COMMUNICATIONS LTD, 31/F. MILLENNIUM CITY 2, 378 KWUN TONG ROAD, KWUN TONG, KOWLOON, HONG KONG	Service Contract	\$0.00
233.	GT Advanced Technologies Limited	SMARTONE MOBILE COMMUNICATIONS LTD, 31/F. MILLENNIUM CITY 2, 378 KWUN TONG ROAD, KWUN TONG, KOWLOON, HONG KONG	Service Contract Dated 7/2/2014	\$0.00
234.	GTAT Corporation	SMP, LTD.,, #190-22 YEO CHUN-DONG, NAM-KU, ULSAN, KOREA, REPUBLIC OF	Supply Agreement Dated 5/5/2014	\$0.00
235.	GTAT Corporation	SMP, LTD.,, #190-22 YEO CHUN-DONG, NAM-KU, ULSAN, KOREA, REPUBLIC OF	Supply Agreement Dated 8/27/2012	\$0.00
236.	GTAT Corporation	SMP, LTD.,, #190-22 YEO CHUN-DONG, NAM-KU, ULSAN, KOREA, REPUBLIC OF	Supply Agreement Dated 12/14/2012	\$0.00
237.	GTAT Corporation	SOLDERMASK, INC., 17905 METZLER LANE, HUNTINGTON BEACH, CA, 92647, UNITED STATES	Service Contract Dated 2/19/2013	\$0.00
238.	GTAT Corporation	SONJU INDUSTRIAL COATINGS, INC., 245 SOUTH COMPLEX DRIVE, KALISPELL, MT, 59901, UNITED STATES	Service Agreement Dated 7/15/2011	\$0.00
239.	GTAT Corporation	SPANG POWER ELECTRONICS, SPANG & COMPANY, 9305 PROGRESS PARKWAY, ATTN: PRESIDENT, CC: GENERAL COUNSEL, MENTOR, OH, 44060, UNITED STATES	Purchase Agreement Dated 3/28/2008	\$0.00
240.	GTAT Corporation	SPANG POWER ELECTRONICS, 9305 PROGRESS PARKWAY, MENTOR, OH, 44060, UNITED STATES	Purchase Contract / Purchase Order Dated 4/25/2013	\$0.00
241.	GTAT Corporation	SPANG POWER ELECTRONICS, 9305 PROGRESS PARKWAY, ATTN: PRESIDENT, CC: GENERAL COUNSEL, MENTOR, OH, 44060, UNITED STATES	Purchase Contract / Purchase Order Dated 3/28/2008	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
242.	GTAT Corporation	SPARTON CORPORATION, SPARTON BECKWOOD, 27 HALE SPRING ROAD, PLAISTOW, NH, 03865, UNITED STATES	Service Contract Dated 4/28/2014	\$0.00
243.	GTAT Corporation	STEELCRAFT, INC.,, 487 LORNE AVE EAST, STRATFORD, ON, N51 6T1, CANADA	Confidentiality and Service Agreement Dated 12/1/2011	\$0.00
244.	GTAT Corporation	STERLING INFOSYSTEMS, INC., 1 STATE STREET PLAZA, 24TH FLOOR, NEW YORK, NY, 10004, UNITED STATES	Third Party Provider (benefits, payroll, freight) Dated 12/3/2013	\$0.00
245.	GT Advanced Technologies Limited	SUMEC INTERNATIONAL TECHNOLOGY CO., LTD., ATTN: FU WEI, SUMEC BUILDING, 9F, NO. 198 CHANG JIANG ROAD, NANJING, 210018, CHINA	Supply Agreement Dated 9/5/2012	\$0.00
246.	GT Advanced Technologies Limited	SUMEC INTERNATIONAL TECHNOLOGY CO., LTD., SUMEC BUILDING, 9F, NO. 198 CHANG JIANG ROAD, NANJING, 210018, CHINA	Supply Agreement Dated 12/29/2011	\$0.00
247.	GT Advanced Technologies Limited	SUMEC INTERNATIONAL TECHNOLOGY CO., LTD., SUMEC BUILDING, 9F, NO. 198 CHANG JIANG ROAD, NANJING, 210018, CHINA	Supply Agreement Dated 2/28/2014	\$0.00
248.	GT Advanced Technologies Limited	SUMEC INTERNATIONAL TECHNOLOGY CO., LTD., SUMEC MANSION, CHANGJIANG ROAD, NANJING, JIENGSU, 210018, CHINA	Supply Agreement Dated 1/4/2011	\$0.00
249.	GTAT Corporation	SYLHAN, LLC, 210 RODEO DRIVE, EDGEWOOD, NY, 11717, UNITED STATES	Service Agreement Dated 2/1/2014	\$0.00
250.	GTAT Corporation	TAIWAN POLYSILICON CORP., 6F, NO. 85, SEC 4, BLADE ROAD TAIPEI 105, TAIWAN, PROVINCE OF CHINA	Supply Agreement Dated 3/13/2012	\$0.00
251.	GTAT Corporation	TAIWAN POLYSILICON CORP. 6F, NO. 85, SEC 4, BLADE ROAD TAIPEI 105, TAIWAN, PROVINCE OF CHINA	Supply Agreement Dated 2/26/2014	\$0.00
252.	GTAT Corporation	TAIWAN POLYSILICON CORP., 6F, NO. 85, SEC 4, BLADE ROAD TAIPEI 105, TAIWAN, PROVINCE OF CHINA	Supply Agreement Dated 2/24/2014	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
253.	GT Advanced Technologies Limited	TANGSHAN HAITAI NEW ENERGY SCIENCE & TECHNOLOGY CO, LTD, INDUSTRY PARK, YUIOTAN COUNTY, TANGSHAN CITY, HEBEI PROVINCE 64100, PEOPLE'S REPUBLIC OF CHINA, ATTN: MR. WANG YONG,	Supply Agreement Dated 6/15/2010	\$0.00
254.	GT Advanced Technologies Limited	TATUNG CO.,, 22 CHUNGSHAN N. ROAD, 3RD SEC, TAIPEI, 104,	Supply Agreement Dated 10/12/2010	\$0.00
255.	GT Advanced Technologies Limited	TATUNG CO., 22 CHUNGSHAN N. ROAD, 3RD SEC, TAIPEI, 104,	Supply Agreement Dated 11/8/2010	\$0.00
256.	GT Advanced Technologies Limited	TATUNG CO., OF AMERICA, ATTN: JASON LIN, 2850 EL PRESIDIO STREET, LONG BEACH, CA, 90810, UNITED STATES	Supply Agreement Dated 10/12/2010	\$0.00
257.	GT Advanced Technologies Limited	TATUNG CO., OF AMERICA, ATTN: JASON LIN, 2850 EL PRESIDIO STREET, LONG BEACH, CA, 90810,	Supply Agreement Dated 11/8/2010	\$0.00
258.	GT Advanced Technologies Limited	TATUNG COMPANY OF AMERICA (CUSTOMER AGENT), 2850 EL PRESIDIO STREET, LONG BEACH, CA 90810, UNITED STATES, ATTN: JASON LIN, TAIWAN, PROVINCE OF CHINA	Supply Agreement Dated 3/15/2011	\$0.00
259.	GT Advanced Technologies Limited	TBEA SILICON CO., LTD, NO. 158 KUNMING ROAD, NO. 717 ROOM ON 7TH FLOOR OF WILDHORSE INTERNATIONAL COMMERCIAL BUILDING, XINJANG AUTONOMOUS REGION, 830011, CHINA	Supply Agreement Dated 12/5/2011	\$0.00
260.	GT Advanced Technologies Limited	TBEA SILICON CO., LTD, NO. 158 KUNMING ROAD, NO. 717 ROOM ON 7TH FLOOR OF WILDHORSE INTERNATIONAL COMMERCIAL BUILDING, XINJANG AUTONOMOUS REGION, 830011, CHINA	Supply Agreement Dated 2/22/2012	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
261.	GT Advanced Technologies Limited	TBEA SILICON CO., LTD, NO. 158 KUNMING ROAD, NO. 717 ROOM ON 7TH FLOOR OF WILDHORSE INTERNATIONAL COMMERCIAL BUILDING, XINJANG AUTONOMOUS REGION, 830011, CHINA	Supply Agreement Dated 11/15/2012	\$0.00
262.	GTAT Corporation	TECHNIC INC., 47 MOLTER STREET, CRANSTON, RI, 02910, UNITED STATES	Service Contract Dated 4/15/2012	\$0.00
263.	GTAT Corporation	THOMSON REUTERS, 3 TIMES SQUARE, NEW YORK, NY, 10036, UNITED STATES	Service Contract Dated 12/6/2013	\$0.00
264.	GT Advanced Technologies Limited	TIANJIN YINGLI NEW ENERGY RESOURCES COMPANY LIMITED, ATTN: LEO WANG, NO. 13888 JINHAN ROAD, BINHAI HIGH TECHNOLOGY ZONE, TIANJIN, 301500, CHINA	Supply Agreement Dated 3/15/2013	\$0.00
265.	GTAT Corporation	TOKOYUMA CORPORATION, KASUMIGASEKI, COMMON GATE WEST TOWER 2-1, KASUMIGASEKI 3-CHOME, CHIYODDA-KU, TOKYO, JAPAN	Consulting Agreement Dated 8/1/2012	\$0.00
266.	GTAT Corporation	TOKOYUMA MALAYSIA SDN. BHD., LOT 26, 6TH FLOOR, WISMA BUKIT MATA KUCHING, JALAN TUNKU ABDUL RAHMAN, 93100 KUCHING, SARAWAK, MALAYSIA	Consulting Agreement Dated 8/1/2012	\$0.00
267.	GTAT Corporation	TOKUYAMA CORPORATION, ATTN: YASUSHI OKUNO, 7-24, HARUMI-CHO, SHUNAN-SHI, YAMAGUCHI, JAPAN	Supply Agreement Dated 9/15/2011	\$0.00
268.	GTAT Corporation	TOKUYAMA CORPORATION, ATTN: MR. TAO INOUE, 7-24, HARUMI-CHO, SHUNAN-SHI, YAMAGUCHI, 745-8648, JAPAN	Supply Agreement Dated 7/9/2012	\$0.00
269.	GTAT Corporation	TOKUYAMA CORPORATION, ATTN: HIROSHI KANDA, 7-24, HARUMI-CHO, SHUNAN-SHI, YAMAGUCHI, 745-8648, JAPAN	Supply Agreement Dated 10/19/2011	\$0.00
270.	GTAT Corporation	TOKUYAMA CORPORATION, 7-24, HARUMI-CHO, SHUNAN-SHI, YAMAGUCHI, 745-8648, JAPAN	Supply Agreement Dated 4/24/2012	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
271.	GTAT Corporation	TOKUYAMA CORPORATION, KASUMIGASEKI COMMON GATE, WEST TOWER 2-1, KASUMIGASEKI 3-CHOME, CHIYODDA-KU, TOKYO, 100-8983, JAPAN	Supply Agreement Dated 2/29/2012	\$0.00
272.	GTAT Corporation	TOKUYAMA MALAYSIA SDN. BHD (TOKUYAMA CORPORATION), KASUMIGASEKI COMMON GATE, WEST TOWER 2-1, KASUMIGASEKI 3-CHOME, CHIYODDA-KU, TOKYO, 100-8983, JAPAN	Supply Agreement Dated 5/6/2014	\$0.00
273.	GTAT Corporation	TOKUYAMA MALAYSIA SDN. BHD (TOKUYAMA CORPORATION), SUITE E-13-10, BLOCK E, PLAZA MONT' KIARA, NO. 2, JALAN KIARA, MONT' KIARA, KUALA LUMPUR, 50480, MALAYSIA	Supply Agreement Dated 9/15/2011	\$0.00
274.	GTAT Corporation	TOKUYAMA MALAYSIA SDN. BHD (TOKUYAMA CORPORATION),	Supply Agreement Dated 8/29/2012	\$0.00
275.	GTAT Corporation	TOKUYAMA MALAYSIA SDN. BHD (TOKUYAMA CORPORATION),	Supply Agreement Dated 11/30/2012	\$0.00
276.	GTAT Corporation	TOKUYAMA MALAYSIA SDN. BHD (TOKUYAMA CORPORATION),	Supply Agreement Dated 11/30/2012	\$0.00
277.	GTAT Corporation	TOKUYAMA MALAYSIA SDN. BHD., LOT 26, 6TH FLOOR, WISMA BUKIT MATA KUCHING, JALAN TUNKU ABDUL RAHMAN, 93100 KUCHING, SARAWAK, 93100, MALAYSIA	Service Contract Dated 1/1/2014	\$0.00
278.	GTAT Corporation	TOKUYAMA MALAYSIA SDN. BLD., SUITE E-13-10, BLOCK E, PLAZA MONT' KIARA, NO.2, JALAN KIARA, MONT' KIARA, KUALA LUMPUR, 50480, MALAYSIA	Supply Agreement Dated 2/29/2012	\$0.00
279.	GTAT Corporation	TOKUYAMA MALAYSIA SDN. BLD. (TOKUYAMA CORPORATION), LOT 26, 6TH FLOOR, WISMA BUKIT MATA KUCHING, JALAN TUNKU ABDUL RAHMAN, 93100 KUCHING, SARAWAK, MALAYSIA	Supply Agreement Dated 2/27/2014	\$0.00
280.	GTAT Corporation	TOKUYAMA MALAYSIA SDN. BLD. (TOKUYAMA CORPORATION), 7-24, HARUMI-CHO, SHUNAN-SHI, YAMAGUCHI, 745-8648, JAPAN	Supply Agreement Dated 4/24/2012	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
281.	GTAT Corporation	TOKUYAMA MALAYSIA SDN. BLD. (TOKUYAMA CORPORATION), 7-24, HARUMI-CHO, SHUNAN-SHI, YAMAGUCHI, JAPAN	Supply Agreement Dated 9/15/2011	\$0.00
282.	GTAT Corporation	TOKUYAMA MALAYSIA SDN. BND (TOKUYAMA CORPORATION),	Supply Agreement Dated 8/30/2012	\$0.00
283.	GTAT Corporation	TOKUYAMA MALAYSIA SDN. BND (TOKUYAMA CORPORATION),	Supply Agreement Dated 7/15/2013	\$0.00
284.	GTAT Corporation	TOKUYAMA MALAYSIA SND. BHD ATTN: YASUSHI OKUNO, 7-24, HARUMI-CHO, SHUNAN-SHI, YAMAGUCHI, JAPAN	Supply Agreement Dated 9/15/2011	\$0.00
285.	GTAT Corporation	TOKUYAMA MALAYSIA SND. BHD., ATTN: MR. TAO INOUE, 7-24, HARUMI-CHO, SHUNAN-SHI, YAMAGUCHI, 745-8648, JAPAN	Supply Agreement Dated 7/9/2012	\$0.00
286.	GT Advanced Technologies Inc.	TRAVELERS CASUALTY AND SURETY COMPANY, ONE TOWER SQUARE, HARTFORD, CT, 06183, UNITED STATES	Employee Benefit Plans Dated 7/11/2014	\$0.00
287.	GTAT Corporation	TSM TECH CO., LTD, 261, IJIN-RI ONSAN-EUP UILU-GUN, ATTN: DAE-JU PARK, ULSAN CITY, KOREA, REPUBLIC OF	Commission Agreement Dated 6/22/2011	\$0.00
288.	GTAT Corporation	UNUM LIFE INSURANCE COMPANY OF AMERICA, 2211 CONGRESS STREET, PORTLAND, ME, 04122, UNITED STATES	Employee Benefit Plans Dated 8/24/2011	\$0.00
289.	GTAT Corporation	UNUM LIFE INSURANCE COMPANY OF AMERICA, 2211 CONGRESS STREET, PORTLAND, ME 04122, UNITED STATES	Employee Benefit Plans Dated 11/1/2010	\$0.00
290.	GTAT Corporation	UNUM LIFE INSURANCE COMPANY OF AMERICA, 2211 CONGRESS STREET, PORTLAND, ME, 04122, UNITED STATES	Employee Benefit Plans Dated 1/1/2009	\$0.00
291.	GT Advanced Technologies Limited	UTECH SOLAR CORPORATION, MR. JACK WU, NO.889, ZHONGHUA ROAD, MIAOLI CITY 360, TAIWAN, PROVINCE OF CHINA	Supply Agreement Dated 5/17/2012	\$0.00
292.	GT Advanced Technologies Limited	UTECH SOLAR CORPORATION, NO.889 ZHONGHUA ROAD, MIAOLI CITY 360, TAIWAN, PROVINCE OF CHINA	Supply Agreement Dated 3/12/2012	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
293.	GT Advanced Technologies Limited	UTECH SOLAR CORPORATION, MR. JACK WU, NO.889, ZHONGHUA ROAD, MIAOLI CITY 360, TAIWAN, PROVINCE OF CHINA	Supply Agreement Dated 9/27/2012	\$0.00
294.	GT Advanced Technologies Limited	UTECH SOLAR CORPORATION, MR. JACK WU, NO.889, ZHONGHUA ROAD, MIAOLI CITY 360, TAIWAN, PROVINCE OF CHINA	Supply Agreement Dated 5/17/2012	\$0.00
295.	GTAT Corporation	VALERII, MR. GASHENKO, SOVIETSKAYA STREET, 101, SHIROKOE VILLAGE, ZAPOROZHYE REGION, 70413, UKRAINE	Professional Service Contract (& Temps) Dated 9/1/2013	\$0.00
296.	GTAT Corporation	VERANTIS CORPORATION, 7251 ENGLE ROAD, SUITE 300, PLAZA ONE BUILDING, MIDDLEBURG HEIGHTS, OH, 44130, UNITED STATES	Commission Agreement Dated 11/30/2011	\$0.00
297.	GTAT Corporation	VISION ELECTRIC GMBH, BUSINESS PARK SCHWANENMUHLE, SCHWANENMUHLE, 66851, GERMANY	Vendor Agreement Dated 11/30/2011	\$0.00
298.	GTAT Corporation	VSP (GRANITE GROUP BENEFITS LLC), 100 ELM STREET, SUITE 301, MANCHESTER, NH, 03101, UNITED STATES	Employee Benefit Plans Dated 1/1/2014	\$0.00
299.	GTAT Corporation	WATTEREDGE, LLC, 567 MILLER ROAD, AVON LAKE, OH, 44012, UNITED STATES	Service Contract Dated 1/15/2014	\$0.00
300.	GTAT Corporation	WESTMORELAND MECHANICAL TESTING & RESEARCH, INC., 221 WESTMORELAND DRIVE, YOUNGSTOWN, PA, 15696, UNITED STATES	Service Contract Dated 4/15/2013	\$0.00
301.	GT Advanced Technologies Limited	WHARF T&T LIMITED, PO BOX 9988, GENERAL POST OFFICE CENTRAL, HONG KONG	Service Contract Dated 6/13/2014	\$0.00
302.	GT Advanced Technologies Limited	WHARF T&T LIMITED, PO BOX 9988, GENERAL POST OFFICE CENTRAL, HONG KONG	Service Contract Dated 2/23/2014	\$0.00
303.	GT Advanced Technologies Limited	XIAMEN HONGLU TUNGSTEN MOLYBDENUM INDUSTRY CO., LTD., ATTN: ZHIMIN HUANG, NO. 339, LIANSHENG ROAD, JIMEI NORTH INDUSTRIAL DISTRICT, XIAMEN, CHINA	Royalty Agreement Dated 11/1/2012	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
304.	GTAT Corporation	XINJIANG DAQO NEW ENERGY CO., LTD., CHEMICAL & NEW MATERIAL INDUSTRY PARK, SHIHEZI, XINJIANG UYGUR AUTONOMOUS REGION, PRC 832000, CHINA	Supply Agreement Dated 8/27/2014	\$0.00
305.	GT Advanced Technologies Limited	ZHEJIANG HANDU PHOTOELECTRIC TECHNOLOGY CO., LTD, ZHA JIANFANG, PURCHASING SPECIALIST, NO. 118, YUAN'XI ROAD, YUAN'HUA INDUSTRIAL PARK, HAINING CITY, ZHEJIANG PROVINCE, CHINA	Supply Agreement Dated 8/15/2013	\$0.00
306.	GT Advanced Technologies Limited	ZHEJIANG HANDU PHOTOELECTRIC TECHNOLOGY CO., LTD, ZHA JIANFANG, PURCHASING SPECIALIST, NO. 118 YUAN'XI ROAD, YUAN'HUA INDUSTRIAL PARK, HAINING CITY, ZHEJIANG PROVINCE, CHINA	Supply Agreement Dated 8/25/2013	\$0.00
307.	GT Advanced Technologies Limited	ZHEJIANG HANDU PHOTOELECTRIC TECHNOLOGY CO., LTD, NO. 118, YUAN'XI ROAD, YUANHUA INDUSTRIAL PARK, HAINING CITY, ZHEJIANG PROVINCE, CHINA	Supply Agreement Dated 8/15/2013	\$0.00
308.	GT Advanced Technologies Limited	ZHEJIANG SHANGCHENG SCIENCE AND TECHNOLOGY CO., LTD, YUNCAI WU, ECONOMIC DEVELOPMENT ZONE, HAINING, ZHEJIANG, 314400, CHINA	Supply Agreement Dated 3/14/2012	\$0.00
309.	GT Advanced Technologies Limited	ZHEJIANG SHANGCHENG SCIENCE AND TECHNOLOGY CO., LTD, YUNCAI WU, ECONOMIC DEVELOPMENT ZONE, HAINING, ZHEJIANG, 314400, CHINA	Supply Agreement Dated 9/5/2012	\$0.00
310.	GT Advanced Technologies Limited	ZHEJIANG SHANGCHENG SCIENCE AND TECHNOLOGY CO., LTD, YUNCAI WU, ECONOMIC DEVELOPMENT ZONE, HAINING, ZHEJIANG, 314400, CHINA	Supply Agreement Dated 12/29/2011	\$0.00
311.	GT Advanced Technologies Limited	ZHEJIANG SHANGCHENG SCIENCE AND TECHNOLOGY CO., LTD, YUNCAI WU, ECONOMIC DEVELOPMENT ZONE, HAINING, ZHEJIANG, 314400, CHINA	Supply Agreement Dated 2/28/2014	\$0.00

	Debtor	Contract Counterparty and Address	Contract Description	Cure Amount
312.	GT Advanced Technologies Limited	ZHEJIANG YUBANG FILTER TECHNOLOGY CO., LTD, ATTN: SUN ZHIQING, NO. 14 FENG SHI TANG BEI ROAD, YAN GUANG TOWN, HAI NING CITY, ZHEJIANG PROVINCE, CHINA	Supply Agreement Dated 1/4/2011	\$0.00
313.	GT Advanced Technologies Limited	ZHENJIANG HUANTAI SILICON TECHNOLOGY CO., LTD, NEW MATERIALS INDUSTRIAL PARK, YOUFANG TOWNSHIP, YANGZHONG CITY, JIANGSU PROVINCE, PRC, CHINA	Supply Agreement Dated 5/30/2014	\$0.00
314.	GT Advanced Technologies Limited	ZHENJIANG HUANTAI SILICON TECHNOLOGY CO., LTD, NEW MATERIALS INDUSTRIAL PARK, YOUFANG TOWNSHIP, YANGZHONG CITY, JIANGSU PROVINCE, PRC, CHINA	Supply Agreement Dated 5/30/2014	\$0.00
315.	GT Advanced Technologies Limited	ZHENJIANG HUANTAI SILICON TECHNOLOGY CO., LTD, NEW MATERIALS INDUSTRIAL PARK, YOUFANG TOWNSHIP, YANGZHONG CITY, JIANGSU PROVINCE, PRC, CHINA	Supply Agreement Dated 6/16/2014	\$0.00
316.	GT Advanced Technologies Limited	ZHENJIANG HUANTAI SILICON TECHNOLOGY CO., LTD, NEW MATERIALS INDUSTRIAL PARK, YOUFANG TOWNSHIP, YANGZHONG CITY, JIANGSU PROVINCE, PRC, CHINA	Supply Agreement Dated 6/16/2014	\$0.00

EXHIBIT 9

Certain Retained Causes of Action

Certain Retained Causes of Action¹

Section 8.13(a) of the Plan provides as follows:

(a) Retained Causes of Action

Unless any Causes of Action against any Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in this Plan, or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors, as successors-in-interest to the Debtors and their Estates, shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Retained Causes of Action (excluding the Non-Released D&O Causes of Action), whether arising before or after the Petition Date and the rights of the Reorganized Debtors to commence, prosecute, or settle such Retained Causes of Action, and all defenses and counterclaims to all Claims asserted against the Debtors and their Estates, including setoff, recoupment, and any rights under section 502(d) of the Bankruptcy Code, shall be fully preserved notwithstanding the occurrence of the Effective Date. The Reorganized Debtors may pursue such Retained Causes of Action, counterclaims, and defenses, as appropriate, in accordance with their best interests, as determined by the Reorganized Debtors.

The Reorganized Debtors expressly reserve all Retained Causes of Action for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Retained Causes of Action upon, after, or as a consequence of Confirmation or Consummation. The Reorganized Debtors are deemed the representative of the Debtors' Estates for the purpose of prosecuting the Retained Causes of Action.

No Person may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Retained Cause of Action against such Person as any indication that the Reorganized Debtors will not pursue any and all available Retained Causes of Action against such Person.

Notwithstanding and without limiting the generality of Section 8.13 of the Plan, the following non-exhaustive schedule identifies parties against whom Causes of Action are expressly preserved by the Debtors and the Reorganized Debtors, including claims related to contracts and leases, insurance claims, avoidance actions under Chapter 5 of the Bankruptcy Code, tort claims, accounts receivable collection, claims relating to liens, claims relating to accounts payable and accounts receivable, claims related to Intellectual Property, claims related to customer obligations, claims related to deposits, adequate assurance postings, and other collateral postings, and all other claims available at law or equity.

¹ Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the *Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, Dated February 1, 2016* [Docket No. 2998] (as amended, modified, and supplemented, including the Plan Supplement, the "Plan").

Except for those Causes of Action that are expressly released pursuant to the Plan, the Confirmation Order or any other order of the Bankruptcy Court, the failure to list or describe any Cause of Action on this Schedule is not a waiver, relinquishment or release of such Cause of Action by the Debtors or Reorganized Debtors. The Debtors reserve their right to modify or update this Schedule, but disclaim any obligation to do so.

In addition to the Persons expressly listed on this exhibit, the Debtors expressly retain claims and Causes of Action against any Person included on the Debtors' list of creditors filed on October 6, 2014 [D.I. 16], regardless of whether such Person is listed in this exhibit, to the extent such Persons owe or may in the future owe money to the Debtors or the Reorganized Debtors, except to the extent claims and Causes of Action against such Persons have been released through the Plan or during the course of the Chapter 11 Cases.

	Name of Creditor	Address
1.	23 QUME INVESTMENTS LLC	501 APRICOT LANE MOUNTAIN VIEW, CA 94040 UNITED STATES
2.	5330 SKYLANE PARTNERSHIP	C/O SKAGIT STATE BANK P.O. BOX 36 ANACORTES, WA 98221 UNITED STATES
3.	8833010 CANADA INC.	MICHAEL BURLEIGH 15 STAFFORD ST. UNIT 303 TORONTO, ON M5V 3X6 CANADA
4.	A.S.A.P. FIRE & SAFETY CORP.	6 PROGRESS AVE UNIT #3, TYNGSBORO, MA 01879 UNITED STATES
5.	ACCESS DIAMOND SUPER ABRASIVE PRODU	6075 FRONT STREET GEORGETOWN, CA 95634 UNITED STATES
6.	ACCONTEMPS	12400 COLLECTIONS CENTER DR. CHICAGO, IL 60693 UNITED STATES
7.	ACCURATE INSTALLATIONS INC	5487 S WESTRIDGE DR NEW BERLIN, WI 53151 UNITED STATES
8.	ACME CONSTRUCTION SUPPLY COMPANY	232 S MULBERRY ST MESA, AZ 85201 UNITED STATES
9.	ADVANCED INDUSTRIAL CERAMICS	2449 ZANKER RD SAN JOSE, CA 95131 UNITED STATES
10.	ADVANCED INTEGRATION TECHNOLOGIES	481 N. DEAN AVE. CHANDLER, AZ 85226 UNITED STATES
11.	ADVANTAGE TECHNICAL RESOURCING INC.	TECHNICAL AID CORP DBA/ ADVANTAGE T 220 NORWOOD PARK SOUTH NORWOOD, MA 02062 UNITED STATES
12.	AEG POWER SUPPLY SYSTEMS GMBH	EMIL-SIEPMANN-STR 32 WARSTEIN-BELECKE 59581 GERMANY
13.	AEROTEK INC	3689 COLLECTION CENTER DR CHICAGO, IL 60693 UNITED STATES

	Name of Creditor	Address
14.	AGILENT TECHNOLOGIES INC.	PO BOX 70352 201 HANSEN CT WOOD DALE, IL 60191 UNITED STATES
15.	AGP TECHNOLOGIES, LLC.	8633 PHOENIX DR MANASSAS, VA 20110 UNITED STATES
16.	AIR SCIENCES USA LLC	120 6TH STREET FORT MEYERS, FL 33907 UNITED STATES
17.	AIRE FILTER PRODUCTS	KBAK, INC., 40 W HOOVER MESA, AZ 85210 UNITED STATES
18.	AIRGAS USA, LLC	PO BOX 802576 6055 RACKSIDE WOODS BLVD INDEPENDENCE, OH 44131 UNITED STATES
19.	ALLIED ELECTRONICS, INC.	114 PERIMETER RD SUITE C, NASHUA, NH 03063 UNITED STATES
20.	ALTALEX, INC.	336 MARTIN AVE SANTA CLARA, CA 95050 UNITED STATES
21.	ALVORD SYSTEMS, INC.	620 ST CLAIR AVE CLAIRTON, PA 15025 UNITED STATES
22.	AMEREN MISSOURI	6440 N. HANLEY BERKELEY OP. CTR. BERKELEY, MO 63134 UNITED STATES
23.	AMERICAL INC	100 FERNCROFT RD UNIT 205 DANVERS, MA 01923 UNITED STATES
24.	AMERICAN ARBITRATION ASSOCIATION	120 BROADWAY 21ST FLOOR NEW YORK, NY 10271 UNITED STATES
25.	AMERICAN BARCODE & RFID	3431 E ELWOOD ST PHOENIX, AZ 85040 UNITED STATES

	Name of Creditor	Address
26.	AMERICARB INC.	1025 FAULTLESS DR ASHLAND, OH 44805 UNITED STATES
27.	AMMONO S. A.	PRUSA 2 WARSAW, 00-493 POLAND
28.	AMOSKEAG AIRPORT SERVICE	630 SOUTH MAMMOTH RD MANCHESTER, NH 03109 UNITED STATES
29.	AN, TIAN, XHANG & PARTNERS	ROOM 1212, TOWER B FULLINK PLAZA CHAOYANG DISTRICT 100020 CHINA
30.	ARAMARK UNIFORM SERVICES	CONCORD LOCKBOX PO BOX 101512, 110 GLENN ST LAWRENCE, MA 01843 UNITED STATES
31.	ARENCO, INC.	31 OLD NASHUA RD UNIT 15 AMHERST, NH 03031 UNITED STATES
32.	ARIZONA CONTRACT SERVICES, INC.	10165 E HAMPTON AVE #107 MESA, AZ 85209 UNITED STATES
33.	ARIZONA DEPARTMENT OF REVENUE	PO BOX 29032 PHOENIX, AZ 85038 UNITED STATES
34.	ARIZONA STATE UNIVERSITY	781 E. TERRACE RD ISTB4 ROOM 795 TEMPE, AZ 85287 UNITED STATES
35.	ASI PLASTICS	1463 MUSTANG PLACE PORT COQUITLAM BC, V3C 6L2 CANADA
36.	ATLANTA TRUST LTD	615-623 ROMCES RD DARTFORD, DA2 6DY UNITED KINGDOM
37.	ATLAS BOX & CRATE	223 WORCESTER PROVIDENCE TURNPIKE SUTTON, MA 01590 UNITED STATES

	Name of Creditor	Address
38.	ATLAS PACKAGING(SUZHOU)CO.,LTD.	BLOCK A4-1,WEITING GONGYEFANG JIANGSU PROVINCE 215121 CHINA
39.	AXENICS, INC	4 TOWNSEND WEST UNIT # 5 NASHUA, NH 03063 UNITED STATES
40.	AXIOM GLOBAL, INC.	75 SPRING STREET 8TH FLOOR NEW YORK, NY 10012 UNITED STATES
41.	BAIKOWSKI INTERNATIONAL CORP.	6601 NORTH PARK BLVD. SUITE H CHARLOTTE, NC 28216 UNITED STATES
42.	BANNER INDUSTRIES, INC.	ONE INDUSTRIAL DR DANVERS, MA, 01923 UNITED STATES
43.	BAR CODE DIRECT, INC	41 N. MAIN STREET GRAFTON, MA 01536 UNITED STATES
44.	BARON MACHINE CO., INC.	40 PRIMROSE DR LACONIA, NH 03246 UNITED STATES
45.	BARRON, TRENT W	DBA RYAN'S CUSTOM CRATING P.O. BOX 275 FULTON, CA 95439 UNITED STATES
46.	BDO USA, LLC	770 KENMOOR SE SUITE 300 GRAND RAPIDS, MI 49546 UNITED STATES
47.	BEAUMAC COMPANY, INC.	382 SUNCOOK VALLEY HIGHWAY ROUTE 2 EPSOM, NH 03234 UNITED STATES
48.	BENCHMARK ELECTRONICS (M) SDN BHD	PLOT 17A & 17B, TECHNPLEX PHASE I MEDAN BAYAN LEPAS 11900 MALAYSIA
49.	BENCHMARK ELECTRONICS DE MEXICO, S.	BENCHMARK MALAYSIA CIRCUITO DE LA PRODUCTIVIDAD # 132 COLONIA LAS PINTAS 45690 MEXICO

	Name of Creditor	Address
50.	BETTER ENGINEERING MANUFACTURING	8361 TOWN CENTER COURT BALTIMORE, MD 21236-4964 UNITED STATES
51.	BLAIR-IR LLC	80 FOREST AVE NEW ROCHELLE, NY 10804 UNITED STATES
52.	BLUE RIDGE OPTICS LLC	118 CENTER ST BEDFORD, VA 24523 UNITED STATES
53.	BORDER STATES ELECTRIC SUPPLY	CAROL MOTSCHENBACHER PO BOX 4387, 101 SOUTH CAITLIN MISSOULA, MT 59801-1511 UNITED STATES
54.	BORMANN BROTHERS, INC.	30 LOMAR PARK DR PEPPERELL, MA 01463 UNITED STATES
55.	BOSTONBEAN COFFEE CO. INC.	23 DRAPER STREET WOBURN, MA 01801 UNITED STATES
56.	BRAZA, JOSEPH F.	4211 ALY DR DOYLESTOWN, PA 18902 UNITED STATES
57.	BROADRIDGE	PO BOX 416423 BOSTON, MA 02241-6423 UNITED STATES
58.	BROWN RUDNICK LLP	ONE FINANCIAL CENTER BOSTON, MA 2111 UNITED STATES
59.	BURKERT CONTROMATIC CORP.	2915 WHITEHALL PARK DR. CHARLOTTE, NC 28273 UNITED STATES
60.	BUSSCO INC.	25 FRANKLIN STREET MALDEN, MA 02148 UNITED STATES
61.	C+I INVESTMENT ASSOCIATES	C+I INVESTMENT ASSOCIATES C/O COUT, 23 SETTLERS COURT BEDFORD, NH 03110 UNITED STATES
62.	CALVARY DESIGN TEAM, INC.	DBA CALVARY AUTOMATION SYSTEMS 855 PUBLISHERS PARKWAY WEBSTER, NY14580 UNITED STATES

	Name of Creditor	Address
63.	CAMBRIDGE VALVE & FITTING, INC	126 HALL STREET CONCORD, NH 03301 UNITED STATES
64.	CARMAN PATRICE SERVICES, LLC	PO BOX 777, 19 POLLARD RD. PLAISTOW, NH 03865 UNITED STATES
65.	CCA/WESCO DISTRIBUTION	CONTROL CORP OF AMERICA 35 OTIS STREET PO BOX 5100 WESTBORO, MA 01581, UNITED STATES
66.	CENTERLINE MACHINE	60 PARK ST BEVERLY, MA 01915 UNITED STATES
67.	CENTURYLINK	1801 CALIFORNIA ST. 25TH FLOOR DENVER, CO 80202 UNITED STATES
68.	CH2M HILL ENGINEERS, INC.	22ND FLOOR TOWER B, CITY CENTER 100 ZUN YI RD. 200051 CHINA
69.	CI DESIGN, INC.	250 SUMMER STREET 2ND FLOOR BOSTON, MA 02210 UNITED STATES
70.	CLAY-KING.COM, INC.	125 BEN ABI RD SPARTANBURG, SC 29307 UNITED STATES
71.	COASTLINE OPTICS, INC.	906 VIA ALONDRA CAMARILLO, CA 93012 UNITED STATES
72.	COGNEX CORPORATION	ONE VISION DR NATICK, MA 01760 UNITED STATES
73.	COHERENT INC.	5100 PATRICK HENRY DR SANTA CLARA, CA 95054 UNITED STATES
74.	COLE-PARMER INSTRUMENT CO.	625 EAST BUNKER COURT VERNON HILLS, IL 60061 UNITED STATES

	Name of Creditor	Address
75.	COLUMBIA ELECTRICAL CONTRACTORS	D/B/A COLUMBIA TECH 17 BRIDEN STREET WORCESTER, MA 01605 UNITED STATES
76.	COMCAST CABLE COMMUNICATIONS MGMT.	55 CONCORD ST. NORTH READING, MA 01864 UNITED STATES
77.	COMMONWEALTH SCIENCES INC.	11 WALPOLE STREET NORWOOD, MA 02062 UNITED STATES
78.	COMPLETE STAFFING SOLUTIONS	33 BOSTON POST RD WEST, MARLBOROUGH, MA 01752 UNITED STATES
79.	COMSTOCK INDUSTRIES INC.	23 FOUNDRY DR MEREDITH, NH, 03253 UNITED STATES
80.	CONESTOGA-ROVERS & ASSOCIATES, INC.	4050 E. COTTON CENTER BLVD. PHOENIX, AZ 85040 UNITED STATES
81.	CONSOLIDATED ELECTRICAL DIST.	P.O. BOX 14004 ORANGE, CA 92863 UNITED STATES
82.	CONTROL CONCEPTS	18760 LAKE DR EAST CHANHASSEN, MN, 55317-9500 UNITED STATES
83.	CONWAY OFFICE PRODUCTS, LLC	10 CAPITAL STREET NASHUA, NH 03063 UNITED STATES
84.	CRANNEY COMPANIES	10 RAINBOW TERRACE DANVERS, MA 01923 UNITED STATES
85.	CREATIVE COMMUNICATIONS SALES & REN	3332 E. BROADWAY RD PHOENIX, AZ 85040 UNITED STATES
86.	CRYSTAL OPTICS RESEARCH	315 PAUMA PLACE ESCONDIDO, CA 92029 UNITED STATES
87.	CRYSTALWISE TECHNOLOGY INC	1F, NO.16, CREATION 1ST RD HSINCHU, 123 TAIWAN PROVINCE OF CHINA

	Name of Creditor	Address
88.	CSA INTERNATIONAL	PO BOX 66512 AMF O'HARE CHICAGO, IL 60666-0512 UNITED STATES
89.	CTA INC.	306 W RAILROAD AVE SUITE 104 MISSOULA, MT 59802 UNITED STATES
90.	CTS CORPORATION	34 LONDONDERRY RD LONDONDERRY, NH 03053 UNITED STATES
91.	CUBIC DESIGNS, INC.	16770 W VICTOR RD. NEW BERLIN, WI 53151 UNITED STATES
92.	CULLIGAN OF PHOENIX	SOUTHWEST WATER CONDITIONING 5410 S. 28TH STREET PHOENIX, AZ 85040 UNITED STATES
93.	D & D MACHINE INC.	103 LEDGE STREET UNIT 9, SEABROOK, NH 03874 UNITED STATES
94.	DANDONG NEW DONGFANG CRYSTAL INSTRU	A-050 ENVIRONMENTAL PROTECTION DANDONG CITY, 118000 CHINA
95.	DCM TECH, INC.	4455 THEURER BLVD WINONA, MN 55987 UNITED STATES
96.	DECCO INC	31 ROUTE 13 BROOKLINE, NH 03033 UNITED STATES
97.	DHL EXPRESS (USA), INC	16592 COLLECTIONS CENTER DR CHICAGO, IL 60693 UNITED STATES
98.	DHL EXPRESS (HONG KONG) LTD.	PO BOX NO. 8984 GENERAL POST OFFICE HONG KONG
99.	DIRECT ENERGY BUSINESS	HESS ENERGY MARKETING, LLC 12 GREENWAY PLAZA, SUITE. 250 HOUSTON, TX 77046 UNITED STATES
100.	DONAL MACHINE, INC.	591 NO. MCDOWELL BLVD PETALUMA, CA 94954 UNITED STATES

	Name of Creditor	Address
101.	DOUBLE APEX, INC	33 DUTCH VALLEY LANE SAN ANSELMO, CA 94960 UNITED STATES
102.	DRUMMOND WOODSUM & MACMAHON	100 INTERNATIONAL DR SUITE 340 PORTSMOUTH, NH 03801 UNITED STATES
103.	DYNAMIC MANUFACTURING SOLUTIONS, LL	600 CENTER RIDGE DR SUITE 100 AUSTIN, TX 78753 UNITED STATES
104.	DYNAMIC MOTION CONTROL, INC.	2222 N. ELSTON AVE SUITE 200 CHICAGO, IL 60614 UNITED STATES
105.	DYNATRONIX, INC.	462 GRIFFIN BLVD. AMERY, WI, 54001 UNITED STATES
106.	DYNAVAC	VACUUM TECHNOLOGY ASSOCIATES INC. 110 INDUSTRIAL PARK RD HINGHAM, MA 02043 UNITED STATES
107.	E&S TECHNOLOGIES	180 MIDDLESEX STREET CHELMSFORD, MA 01863 UNITED STATES
108.	EAST COAST FILTER, INC	686 SOUTH ST. WRENTHAM, MA 02093 UNITED STATES
109.	EASTECH SYSTEMS LTD.	ROOM 307, INTERNATIONAL PLAZA 20 S, KOWLOON BAY HONG KONG
110.	EASTERN INDUSTRIAL AUTOMATION	158 LEXINGTON ST. WALTHAM, MA 02452 UNITED STATES
111.	EASTERN METAL INDUSTRIES	910 R. BROADWAY RTE 1 SAUGUS, MA 01906 UNITED STATES
112.	EASY LIFT EQUIPMENT CO INC	EASY LIFT CO INC 2 MILL PARK COURT NEWARK, NJ 19713 UNITED STATES

	Name of Creditor	Address
113.	EATON CORPORATION	PO BOX 93531 CHICAGO, IL 60673-3531 UNITED STATES
114.	EBARA TECHNOLOGIES INC.	51 MAIN AVE SACRAMENTO, CA 95838 UNITED STATES
115.	EDISON CONSULTING GROUP	3659 GREEN RD BEACHWOOD, OH 44122 UNITED STATES
116.	EDWARDS VACUUM, INC	6400 INDUCON CORPORATE DR SANBORN, NY 14132 UNITED STATES
117.	EIS, INC	1524 W 14TH ST #106 TEMPE, AZ 85281 UNITED STATES
118.	ELECTRICAL SUPPLY / SANTA ROSA	P.O. BOX 5650 SANTA ROSA, CA 95402 UNITED STATES
119.	ELITE TECHNOLOGY SOLUTIONS, LLC	5900 SOM CENTER RD SUITE 12-276 WILLOUGHBY, OH 44094 UNITED STATES
120.	ELLISON MACHINERY COMPANY, LLC	1610 SO. PRIEST DR, SUITE 101, TEMPE, AZ, 85281, UNITED STATES
121.	ELMET TECHNOLOGIES, INC.	1560 LIBSON STREET LEWISTON, ME 04240 UNITED STATES
122.	EME TECHNOLOGIES, INC.	P.O. BOX 4097 SANTA CLARA, CA 95056-4097 UNITED STATES
123.	EMINESS TECHNOLOGIES, INC.	7272 E. INDIAN SCHOOL RD. SUITE 35 SCOTTSDALE, AZ 85251 UNITED STATES
124.	ENTEGRIS	300 OLD GREENWOOD RD DECATUR, TX 76234 UNITED STATES
125.	ENTERPRISE RENT-A-CAR	6 E PERIMETER RD LONDONDERRY, NH 03053 UNITED STATES

	Name of Creditor	Address
126.	ENVIRONMENTAL ENGINEERING & CONSULT	1262 E MCNAIR DR TEMPE, AZ 85283 UNITED STATES
127.	EPLUS TECHNOLOGY, INC.	1376 BORREGAS AVE SUNNYVALE, CA 94089 UNITED STATES
128.	ETQ MANAGEMENT CONSULTANTS INC.	399 CONKLIN STREET #208, FARMINGDALE, NY 11735 UNITED STATES
129.	EVANS ANALYTICAL GROUP LLC	810 KIFER RD SUNNYVALE, CA 94086 UNITED STATES
130.	EVAPCO	PO BOX 1300 WESTMINSTER, MD 21158 UNITED STATES
131.	EXACTITUDE, LLC	JOESPH J KOENIG 775 N COUNTRY CLUB DR SUITE 5, MESA, AZ 85201 UNITED STATES
132.	EXPEDITORS INTERNATIONAL/BOSTON	PO BOX 1107 3 TECHNOLOGY DR PEABODY, MA 01960 UNITED STATES
133.	EXPEDITORS INT'L / SEA	PO BOX 1127 KENT, WA 98035 UNITED STATES
134.	EXPOTRADE MIDDLE EAST FZ-LLC	LEVEL 10, 1002 THURAYA TOWER 2 DUBAI MEDIA CITY, 1234 UNITED ARAB EMIRATES
135.	EXPRESS PACKAGING & CRATING, INC.	4202 N 38TH DR PHOENIX, AZ 85019 UNITED STATES
136.	FACTORY MUTUAL INSURANCE COMPANY	270 CENTRAL AVENUE JOHNSTON, RI 02919 UNITED STATES
137.	FALCON PROCESS SYSTEMS, INC.	18 CELINA AVE UNIT 19, NASHUA, NH 03063 UNITED STATES
138.	FARO TECHNOLOGIES, INC.	525 TECHNOLOGY PARK SUITE 125 LAKE MARY, FL 32746 UNITED STATES

	Name of Creditor	Address
139.	FASTENAL COMPANY	PO BOX 1286 2001 THEURER BLVD WINONA, MN 55987 UNITED STATES
140.	FEDERAL EXPRESS CORP.	P.O. BOX 7221, PASADENA, CA 91109-7321 UNITED STATES
141.	FEDEX	PO BOX 371461 PITTSBURGH, PA 15250 UNITED STATES
142.	FEDEX OFFICE AND PRINT SERVICE	PO BOX 672085 DALLAS, TX 75267-2085 UNITED STATES
143.	FERRO-CERAMIC GRINDING, INC.	5 CORNELL PLACE WILMINGTON, MA 01887 UNITED STATES
144.	FILMSOURCE, LLC	SOUTHWEST PLASTIC BINDING COMPANY PO BOX 150 MARYLAND HEIGHTS, MO 63043 UNITED STATES
145.	FLUID EQUIPMENT SOLUTIONS OF NEW EN	PO BOX 87 AMESBURY, MA 01913 UNITED STATES
146.	FLUKE ELECTRONICS	1201 SHAFFER RD BLDG. 2 SANTA CRUZ, CA 95060-5731 UNITED STATES
147.	FREDERIC W. COOK & CO. INC.	90 PARK AVE 35 FLOOR NEW YORK, NY 10016 UNITED STATES
148.	FREDRICK, DANIELA	33 DUTCH VALLEY LANE SAN ANSELMO, CA 94960 UNITED STATES
149.	FREUDENBERG IT LP	430 DAVIS DR SUITE 180 MORRISVILLE, NC 27560 UNITED STATES
150.	FTI CONSULTING (HONG KONG) LIMITED	99 QUEEN'S RD CENTRAL CENTRAL HONG KONG

	Name of Creditor	Address
151.	FUTURESTEP	14295 MIDWAY RD SUITE 450 ADDISON, TX 75001 UNITED STATES
152.	G4S SECURE SOLUTIONS (USA), INC.	G4S SECURE SOLUTIONS (USA), INC. PHOENIX, AZ 85034 UNITED STATES
153.	GB ENGINEERING	5770 OBATA WAY A GILROY, CA 95020 UNITED STATES
154.	GCA SERVICES GROUP MOUNTAIN STATES	5016 S ASH AVE TEMPE, AZ 85282 UNITED STATES
155.	GENERALCARBIDE CORPORATION	1151 GARDEN STREET GREENSBURG, PA 15601 UNITED STATES
156.	GEOCORP, INC.	9010 RIVER RD HURON, OH 44839 UNITED STATES
157.	GEORGOULIS CONSTRUCTION	96 ARLINGTON AVE DRACUT, MA 01826 UNITED STATES
158.	GIBSON ENGINEERING, CO. INC	PO BOX 561, 90 BROADWAY NORWOOD, MA 02062 UNITED STATES
159.	GILCHRIST METAL FABRICATING	18 PARK AVE HUDSON, NH 03051 UNITED STATES
160.	GLOBAL EQUIPMENT, CO.	11 HARBOR PARK DR PORT WASHINGTON, NY 11050 UNITED STATES
161.	GLOBE EXPRESS SERVICES -BOSTON	58 CUMMINGS PARK WOBURN, MA 01801 UNITED STATES
162.	GLOBE EXPRESS SVCS OVERSEAS GROUP	8025 ARROWRIDGE BLVD CHARLOTTE, NC 28273 UNITED STATES
163.	GNB CORPORATION	3200 DWIGHT RD. SUITE 100 ELK GROVE, CA 95758-6461 UNITED STATES

	Name of Creditor	Address
164.	GRAFTECH FRANCE SNC	USINE DE NOTRE DAME DE BRIANCON LA LECHERE 73264 FRANCE
165.	GRAFTECH INTERNATIONAL HOLDINGS INC	12900 SNOW RD PARMA, OH 44130 UNITED STATES
166.	GRAINGER INDUSTRIAL SUPPLY	370 EAST INDUSTRIAL DR MANCHESTER, NH 03109 UNITED STATES
167.	GRANITE STATE PLUMBING & HEATING, L	10 N. RIVERDALE RD WEARE, NH 03281 UNITED STATES
168.	GREENPAGES	33 BADGERS ISLAND WEST KITTERY, ME 03904 UNITED STATES
169.	GTG INC.	3 BIRCH RD MIDDLETON, MA 01949 UNITED STATES
170.	GTSP, LLC	11500 NE 76TH STREET SUITE A3-4 VANCOUVER, WA 98662-3901 UNITED STATES
171.	H.C STARCK INC.	45 INDUSTRIAL PLACE NEWTON, MA 02461 UNITED STATES
172.	HANDLING SYSTEMS	2659 E MAGNOLIA ST PHOENIX, AZ 85034 UNITED STATES
173.	HANGZHOU DAHE THERMO-MAGNETICS CO	777 BINKANG RD BINJIANG DISTRICT, HANGZHOU ZHEJIANG PROVINCE 310053 CHINA
174.	HAWTHORN SUITES	BACM 2006-1 246 DANIEL WEBSTER HIGHWAY MERRIMACK, NH 3054 UNITED STATES
175.	HEAT TRANSFER RESEARCH , INC.	150 VENTURE DR COLLEGE STATION, TX 77845 UNITED STATES
176.	HEBEI HENGBO FINE CERAMICS MATERIAL	LUOZHUANG INDUSTRIAL HANDAN CITY 123456 CHINA

	Name of Creditor	Address
177.	HERAEUS NOBLELIGHT LLC	1520 BROADMOOR BLVD. SUITE C BUFORD, GA 30518 UNITED STATES
178.	HIGHLAND TOOL COMPANY, INC.	20 SIMON STREET NASHUA, NH 03060 UNITED STATES
179.	HIGHLIGHT TECH CORPORATION	NO.106,GUNG-MIN SOUTH RD II,AN-NA TAINAN CITY, 709 TAIWAN, PROVINCE OF CHINA
180.	HIREALLIANCE	ALLIED DEVELOPMENT GROUP, INC PO BOX 9627 MANCHESTER, NH 03108 UNITED STATES
181.	HOIST SYSTEMS INC.	2424 SOUTH 19TH STREET PHOENIX, AZ 85034-6713 UNITED STATES
182.	HONG KONG ULVAC CO.,LTD	FLAT L,9/F,SUMMIT BUILDING 30 MAN Y, HONG KONG HONG KONG
183.	HORIBA INSTRUMENTS INCORPORATED	9701 DESSAU RD #605 AUSTIN, TX 78754 UNITED STATES
184.	HORIZON MACHINE INCORPORATED	6592 SOUTH DATELAND DR TEMPE, AZ 85283 UNITED STATES
185.	HORIZON SOLUTIONS CORP.	1070 HOLT AVE, UNIT 10 MANCHESTER, NH 03109 UNITED STATES
186.	HPS DIV. OF MKS INSTR. INC.	5330 STERLING DR BOULDER, CO 80301 UNITED STATES
187.	HUNTER LIFT, LTD.	11233 SOUTH AVE NORTH LIMA, OH 44452 UNITED STATES
188.	HUTCHISON TELECOMMUNICATIONS (HK) L	PO BOX 1200 GENERAL POST OFFICE HONG KONG
189.	ISQ R POWER CABLE CO.	1953 SHERRICK RD. S.E. CANTON, OH 44707 UNITED STATES

	Name of Creditor	Address
190.	IBAG NORTH AMERICA DIV OF BUCHCO	80 REPUBLIC DR NORTH HAVEN, CT 06423 UNITED STATES
191.	IES TECHNICAL SALES, CORP.	250 NORTH STREET UNIT A-9 DANVERS, MA 01923 UNITED STATES
192.	IES TRANSWORLD	HEE-JIN, WON, #201 ILJIN BLDG. 648-15 NAEBALSAN, GANGSEO-KU 157-824 KOREA, REPUBLIC OF
193.	IGM CARBON	160 BARNOFF RD DU BOIS, PA 15801 UNITED STATES
194.	IMPRESS LABS	605 E. GRANT ST. SUITE 106 PHOENIX, AZ 85004 UNITED STATES
195.	IMS MANAGEMENT SERVICES, INC.	3301 NORTHLAND DR. SUITE 400, AUSTIN, TX 78731 UNITED STATES
196.	IMS WORLDWIDE INC	309 HENRIETTA ST WEBSTER, TX 77598 UNITED STATES
197.	INFICON INC.	TWO TECHNOLOGY PLACE EAST SYRACUSE, NY 13057 UNITED STATES
198.	INNOVENT TECHNOLOGIES, LLC.	JUDI MANUEL 6 CENTENNIAL DR PEABODY, MA 01960 UNITED STATES
199.	INTEGO GMBH	HENRI DUNANT STR. 8 ERLANGEN 91058 GERMANY
200.	INTEGRA COMPANIES, INC.	29 SARATOGA BLVD. DEVENS, MA 01434 UNITED STATES
201.	INTEGRATED SECURITY & COMMUNICAT	38 WESTECH DR TYNGSBORO, MA 01879 UNITED STATES
202.	INTELLIGENT SWITCHGEAR ORGANIZATION	4655 MARCONI DR ALPHARETTA, GA 30096 UNITED STATES

	Name of Creditor	Address
203.	INTERSTATE ELECTRICAL SERVICES	70 TREBLE COVE RD NORTH BILLERICA, MA 01862 UNITED STATES
204.	INTRINSIQ MATERIALS LTD	Y2S, CODY TECH. PARK, IVEY RD FARNBOROUGH, GU14 OLX UNITED KINGDOM
205.	IRYSOLAR S.A.S	395 RUE LOUIS LEPINE LE GILLENNOIRE MONTPELLIER, 34000 FRANCE
206.	IVS COMPANY	8 MADDISON LANE LYNNFIELD, MA 01940 UNITED STATES
207.	J H TECHNOLOGY, INC.	5107 LENA RD UNIT 111 BRADENTON, FL 32411 UNITED STATES
208.	JACK B. HENDERSON CONSTRUCTION CO	PO BOX 53176 ALBUQUERQUE, NM 87153 UNITED STATES
209.	JOHNSON CONTROLS, INC.	320 NORWOOD PARK SOUTH NORWOOD, MA 02062 UNITED STATES
210.	K&L GATES, LLP	210 SIXTH AVE. K & L GATES CTR. PITTSBURGH, PA 15222-2613 UNITED STATES
211.	KALOUTAS & CO. INC	11 RAILROAD AVE PEABODY, MA 01960 UNITED STATES
212.	KAUFMAN & ROBINSON INC	1330 BLUE SPRUCE DR FORT COLLINS, CO 80524 UNITED STATES
213.	KC PRECISION MACHINING INC.	23 OLD RIGHT RD IPSWICH, MA 01938 UNITED STATES
214.	KELLER INDUSTRIES INC.	234 INDUSTRIAL RD. SAN CARLOS, CA 94070 UNITED STATES
215.	KEYENCE CORP. OF AMERICA	50 TICE BOULEVARD WOODCLIFF LAKE, NJ, 07675 UNITED STATES

	Name of Creditor	Address
216.	KEYSTONE PARTNERS, LLC	2 FINANCIAL CENTER 7TH FLOOR, 60 SOUTH STREET BOSTON, MA 02111 UNITED STATES
217.	KIYOO SHIMADA	208 ICHIGAYA SADOHARA RESIDENCE 1-, ICHIGAYASADOHARA-CHO SHINJYUKU-KU 1620842 JAPAN
218.	KLA-TENCOR CORPORATION	ATTN: KELLEY HALCHUK 1 TECHNOLOGY DR MILPITAS, CA 95035 UNITED STATES
219.	KUTAK ROCK LLP	PO BOX 30057 OMAHA, NE 30057 UNITED STATES
220.	KYMA TECHNOLOGIES, INC	8829 MIDWAY RD RALEIGH, NC 27617 UNITED STATES
221.	KYOCERA INDUSTRIAL CERAMICS CORP.	5713 E FOURTH PLAIN BLVD. VANCOUVER, WA 98661 UNITED STATES
222.	LAPMASTER	501 WEST ALGONQUIN RD MOUNT PROSPECT, IL 60056 UNITED STATES
223.	LEVEL 3 COMMUNICATIONS, LLC	1025 ELDORADO BLVD. BROOMFIELD, CO 80021 UNITED STATES
224.	LINDE LLC	575 MOUNTAIN AVE MURRAY HILL, NJ 07974 UNITED STATES
225.	LP GLASSBLOWING	2322 CALLE DEL MUNDO SANTA CLARA, CA 95054 UNITED STATES
226.	LRN CORPORATION	1100 GLENDON AVE. SUITE 700 LOS ANGELES, CA 90024 UNITED STATES
227.	LUMASENSE TECHNOLOGIES, INC.	3301 LEONARD COURT SANTA CLARA, CA 95054 UNITED STATES
228.	M CULINARY CONCEPTS LLC	20645 N 28TH STREET PHOENIX, AZ 85050 UNITED STATES

	Name of Creditor	Address
229.	MACDIARMID MACHINE CORP	7 PERRY WAY NEWBURYPORT, MA 01950 UNITED STATES
230.	MAINE OXY/SPEC AIR	22 ALBISTON WAY AUBURN, ME 04210 UNITED STATES
231.	MANPOWER	21271 NETWORK PLACE CHICAGO, IL 60673-1212 UNITED STATES
232.	MARCUM LLP	555 LONG WHARF DR NEW HAVEN, CT 06511 UNITED STATES
233.	MARSICO JOSEPH SR.	12 BROOK DR OCEAN, NJ 07712 UNITED STATES
234.	MASS CRANE & HOIST SERVICES, INC.	72 PROGRESS AVE TYNGSBORO, MA 0879 UNITED STATES
235.	MCCARTHY BUILDING CO. INC.	1341 N. ROCK HILL RD ST. LOUIS, MO, 63124 UNITED STATES
236.	MCMASTER-CARR	600 NORTH COUNTY LINE RD ELMHURST, IL 60126 UNITED STATES
237.	MCMASTER-CARR SUPPLY CO.	473 RIDGE RD DAYTON, NJ 08810 UNITED STATES
238.	MCPHERSON CORPORATION	7A STUART RD CHELMSFORD, MA 01824 UNITED STATES
239.	MCROBERTS PROTECTIVE AGENCY, INC.	46 THROCKMORTON STREET FREEHOLD, NJ 07728 UNITED STATES
240.	MERRILL COMMUNICATIONS LLC	CM-9638 ST PAUL, MN 55170 UNITED STATES
241.	MERRIMAC INDUSTRIAL SALES	WARD HILL INDUSTRIAL PARK 111 NECK RD HAVERHILL, MA 01835 UNITED STATES

	Name of Creditor	Address
242.	MERSEN USA GREENVILLE - MI CORP	712 INDUSTRIAL PARK DR. PO BOX 637 GREENVILLE, MI 48838-9984 UNITED STATES
243.	MERSEN USA MIDLAND MI INC.	2927 E VENTURE DR MIDLAND, MI 48640 UNITED STATES
244.	METRICON CORPORATION	12 NORTH MAIN STREET PENNINGTON, NJ 08534 UNITED STATES
245.	MICRO PRECISION CALIBRATION INC.	MICRO PRECISION TEST EQUIPMENT 2450 W 12TH STREET SUITE #1 TEMPE, AZ 85281 UNITED STATES
246.	MICROTEST AG	SIHLEGGSTRASSE 23 WOLLERAU, 08832 SWITZERLAND
247.	MIDLAND PRECISION MACHINING, INC	4043 W. KITTY HAWK #1 CHANDLER, AZ 85226 UNITED STATES
248.	MILTON CAT	100 QUARRY DR MILFORD, MA 01757 UNITED STATES
249.	MIMECAST NORTH AMERICA, INC.	SUITE 303 203 CRESCENT STREET WALTHAM, MA 02453 UNITED STATES
250.	MISUMI USA, INC	1717 PENNY LANE SUITE# 200 SCHAUMBURG, IL 60172 UNITED STATES
251.	MKS INSTRUMENTS, INC.	6 SHATTUCK RD ANDOVER, MA 01810 UNITED STATES
252.	MORAN MASONRY	764 SALEM STREET GROVELAND, MA 01834 UNITED STATES
253.	MORGAN AM&T	251 FORRESTER DR GREENVILLE, SC 29607 UNITED STATES

	Name of Creditor	Address
254.	MORGAN TECHNICAL CERAMICS	2425 WHIPPLE RD. HAYWARD, CA 94544 UNITED STATES
255.	MSC INDUSTRIAL SUPPLY CO. INC.	1 PERIMETER RD MANCHESTER, NH 03103 UNITED STATES
256.	MT SYSTEMS INC	49040 MILMONT DR FREMONT, CA 94538 UNITED STATES
257.	MULLEN	40 24TH STREET PITTSBURGH, PA 15222 UNITED STATES
258.	MUNOZ, DAVID CALLEJO	VIA GIOVANNI AMADEO 14 MILANO, 20133 ITALY
259.	NALCO COMPANY	7272 E INDIAN SCHOOL RD PHOENIX, AZ 85251 UNITED STATES
260.	NANMAC CORPORATION	PO BOX 6640, 1657 WASHINGTON ST. BLDG. 3 HOLLISTON, MA 01746 UNITED STATES
261.	NAUMANN HOBBS MATERIAL HANDLING	PO BOX 21388, 4335 E. WOOD ST. PHOENIX, AZ, 85036-1388 UNITED STATES
262.	NAVIGANT CONSULTING, INC	4511 PAYSHERE CIRCLE CHICAGO, IL 60674 UNITED STATES
263.	NESCO SERVICE CO	PO BOX 901372 CLEVELAND, OH 44190-1372 UNITED STATES
264.	NEW ENGLAND DOCUMENT SYSTEM	750 EAST INDUSTRIAL PARK DR MANCHESTER, NH, 03109 UNITED STATES
265.	NEW ENGLAND SALES, INC.	55 CORPORATE PARK DR PEMBROKE, MA 02359 UNITED STATES
266.	NIBBLERS CATERING	M CULINARY CONCEPTS 225 N 32ND PLACE PHOENIX, AZ 85040 UNITED STATES

	Name of Creditor	Address
267.	NICK HUMENY & CO., INC	P.O. BOX 634 BELMONT, CA 94002-0634 UNITED STATES
268.	NOOK INDUSTRIES	4950 EAST 49 TH STREET CLEVELAND, OH 44125 UNITED STATES
269.	NOR-CAL METAL FABRICATORS	1121 THIRD STREET OAKLAND, CA 94607-2509 UNITED STATES
270.	NORCO MANAGEMENT CORPORATION	3035 DONEE DIEGO DR ESCONDIDO, CA 92025 UNITED STATES
271.	NORTHEAST EQUIPMENT DESIGN, INC	150 RECREATION PARK DR HINGHAM, MA 02043 UNITED STATES
272.	NORTHEAST MECHANICAL ASSOCIATES	20 HIGH STREET NAHANT, MA 01908 UNITED STATES
273.	NORTHEASTERN MECHANICAL INC	22 NIGHTINGALE AVE QUINCY, MA 02169 UNITED STATES
274.	NORTHERN ANALYTICAL LAB.	13 DELTA DR UNIT #4-5 LONDONDERRY, NH 03053 UNITED STATES
275.	NORTHLAND TRUCKING INC.	1515 S 22ND AVE PHOENIX, AZ 85009 UNITED STATES
276.	NSIGHT, INC.	1 VAN DE GRAAFF DR SUITE 202 BURLINGTON, MA 01803 UNITED STATES
277.	NU-CORE, INC.	2424 BEECH DALY RD INKSTER, MI 48141 UNITED STATES
278.	OERLIKON LEYBOLD VACUUM GMBH	BONNER STR.498 KOELN, 50968 GERMANY
279.	OERLIKON LEYBOLD VACUUM USA INC.	5700 MELLON RD EXPORT, PA 15632 UNITED STATES

	Name of Creditor	Address
280.	OHLHEISER CORPORATION	831 NORTH MOUNTAIN RD NEWINGTON, CT 06111 UNITED STATES
281.	OMEGA MORGAN	MORGAN INDUSTRIAL INC. 23810 NW HUFFMAN STREET HILLSBORO, OR 97124 UNITED STATES
282.	OWENS DESIGN, INC	47427 FREEMONT BLVD FREEMONT, CA 94538 UNITED STATES
283.	OXFORD INSTRUMENTS AUSTIN INC.	D/B/A AUSTIN SCIENTIFIC COMPANY PO BOX 120202 DEPT. 890202, 1340 AIRPORT COMMERCE DR #175 AUSTIN , TX 78741 UNITED STATES
284.	P G & E	BOX 997300 SACRAMENTO, CA 95899-7300 UNITED STATES
285.	PARAGON INTERNATIONAL, INC.	36520 TREASURY CENTER CHICAGO, IL 60694-6500 UNITED STATES
286.	PARTICULATE SOLID RESEARCH, INC.	4201 W. 36TH STREET SUITE 200 CHICAGO, IL 60632 UNITED STATES
287.	PFEIFFER VACUUM, INC.	24 TRAFALGAR SQUARE NASHUA, MA 03063 UNITED STATES
288.	PHD COMMUNICATIONS, INC.	570 WILLOW STREET MANCHESTER, NH 03103 UNITED STATES
289.	PHILIP'S PLASTICS, LTD	3801 E. ROESER RD. SUITE. 18 PHOENIX, AZ, 85040 UNITED STATES
290.	PHOENIX ANALYSIS AND DESIGN TECHNOL	7755 S. RESEARCH DR. SUITE 110 TEMPE, AZ 85284 UNITED STATES
291.	PLANSEE SE	METALLWERK-PLANSEE-STR. 71 6600 REUTTE AUSTRIA

	Name of Creditor	Address
292.	PLANSEE USA	115 CONSTITUTION BOULEVARD FRANKLIN, MA 02038 UNITED STATES
293.	PLANSEE USA LLC	115 CONSTITUTION BOULEVARD FRANKLIN, MA 02038 UNITED STATES
294.	PRAXAIR	175 EAST PARK DR TOWANDA, NY 14150 UNITED STATES
295.	PRAXAIR DISTRIBUTION INC.	DEPT. LA 21511 PASADENA, CA 91185-1511 UNITED STATES
296.	PRECISION MICRO-OPTICS	18 COMMERCE WAY WOBURN, MA 01801 UNITED STATES
297.	PRESCOTT METAL	PO BOX 519, PO BOX 519 BIDDEFORD, ME 4005 UNITED STATES
298.	PRO AXIS MACHINING, LLC	25 FRONT STREET NASHUA, NH 03064 UNITED STATES
299.	PRO SOURCE, INC	2050 MAIN STREET SUITE 260, IRVINE, CA 92614 UNITED STATES
300.	PV SOLAR CONSULTANTS	32 HENRY J DR TEWKSBURY, MA 01876 UNITED STATES
301.	PYRAMID TECHNICAL CONSULTANTS	1050 WALTHAM ST LEXINGTON, MA 02421 UNITED STATES
302.	QUANTUM DESIGN (BEIJING) CO,	1/F HUARUN BUILDING NO. 8 PUDONG DEVELOPMENT BANK BEIJING CHINA
303.	QUESTAWEB, INC	60 WALNUT AVE #300 CLARK, NJ 07066 UNITED STATES
304.	QUICK MANUFACTURING	THOMAS P. MANOLAKOS DANVERS INDUSTRIAL PARK DANVERS, MA 01923 UNITED STATES

	Name of Creditor	Address
305.	R&D TECHNICAL SERVICES, INC.	2005 DE LA CRUZ BLVD SUITE 225 SANTA CLARA, CA 95050 UNITED STATES
306.	RENAISSANCE PERSONNEL GROUP, INC	8390 E VIA DE VENTURA F200 SCOTTSDALE, AZ 85258 UNITED STATES
307.	REXEL	2067 WESTPORT CENTER DR ST. LOUIS, MO 63146 UNITED STATES
308.	ROBERTS, FRANK	2 PARK STREET EAST N. READING, MA 01864 UNITED STATES
309.	ROCHETTE'S OIL SERVICE, INC	PO BOX 550, 658 DANIEL WEBSTER HWY MERRIMACK, NH 03054 UNITED STATES
310.	ROHATGI, AJEET	1275 STONECROFT WAY MARIETTA, GA 30062-4772 UNITED STATES
311.	RONCO MACHINE CORP	370 ANDOVER ST DANVERS, MA 01923 UNITED STATES
312.	ROSENDIN ELECTRIC INC	PO BOX 49070, 880 MABURY RD SAN JOSE, CA 95133 UNITED STATES
313.	RYDER TRANSPORTATION SERVICES	PO BOX 96723 CHICAGO, IL, 60693 UNITED STATES
314.	SAFETY-KLEEN SYSTEMS, INC.	90 RABBIT RD SALISBURY, MA 01952 UNITED STATES
315.	SALEM RENEWAL LLC	141 WASHINGTON ST SALEM, MA 01970 UNITED STATES
316.	SALUS ENGINEERING INTERNATIONAL	3004 SCOTT BLVD SANTA CLARA, CA 95054 UNITED STATES
317.	SANMINA CORPORATION	312, QING YANG SOUTH RD KUNSHAN, SUZHOU 215300 CHINA

	Name of Creditor	Address
318.	SANMINA CORPORATION	6 LINLEW DR DERRY, NH 03038 UNITED STATES
319.	SANMINA-SCI SYSTEMS (KUNSHAN) CO.,	NO 312 QING YING RD (SOUTH) KUN SHAN, 215300 CHINA
320.	SAS CO., LTD.	666-153, BONGAM-DONG GYEONGNAM, 630-803 KOREA, REPUBLIC OF
321.	SAS INSTITUTE INC.	SAS CAMPUS DR CARY, NC 27513 UNITED STATES
322.	SASOL NORTH AMERICA,INC	7800 SOUTH KOLB RD TUCSON, AZ 85756 UNITED STATES
323.	SCHURTER, INC	447 AVIATION SANTA ROSA, CA 95403 UNITED STATES
324.	SECURITY INDUSTRY SPECIALISTS, INC.	6071 BRISTOL PARKWAY CULVER CITY, CA 90230 UNITED STATES
325.	SEMCO CARBON CORPORATION	3000 LEAVITT RD BUILDING 1 LORAIN, OH 44052 UNITED STATES
326.	SEMICONSOFT INC	83 PINE HILL RD SOUTHBOROUGH, MA 01772 UNITED STATES
327.	SEMIQUARZ USA LLC	29710 AVENIDA DE LAS BANDERAS RANCHO SANTA MARGARITA, CA, 92688 UNITED STATES
328.	SGL CARBON FAR EAST LTD SHANGHAI	151# EAST HUANCHENG RD FENGXIN D, SHANGHAI 200041 CHINA
329.	SGL CARBON, LLC	900 THERESIA STREET SAINT MARYS, PA 15857 UNITED STATES
330.	SGL CARBON, LLC	900 THERESIA STREET SAINT MARYS, PA 15857 UNITED STATES

	Name of Creditor	Address
331.	SILKROAD TECHNOLOGY, INC.	102 W. THIRD STREET SUITE 250 WINSTON-SALEM, NC 27101 UNITED STATES
332.	SOITEC PHOENIX LABS, INC	7700 S. RIVER PARKWAY TEMPE, AZ 85284 UNITED STATES
333.	SOITEC SA	CHEMIN DE FRANQUES BERNIN, 38190 FRANCE
334.	SOJITZ CORPORATION OF AMERICA	2000 WEST LOOP SOUTH SUITE 1100 HOUSTON, TX 77027 UNITED STATES
335.	SOLARWINDS, INC.	3711 S. MOPAC EXPRESSWAY AUSTIN, TX 78746 UNITED STATES
336.	SOUTHLAND INDUSTRIES	3740 SIGNAL BUTTE RD MESA, AZ 85212 UNITED STATES
337.	SPROUT FILMS	1026 S 3RD ST. W, SUITE 1 MISSOULA, MT 59801 UNITED STATES
338.	STANDARD & POOR'S/CAPITAL IQ	2542 COLLECTION CENTER DR CHICAGO, IL 60693 UNITED STATES
339.	STANLEY SUPPLY & SERVICES	335 WILLOW STREET NORTH ANDOVER, MA 01845 UNITED STATES
340.	STAPLES, INC.	PO BOX 9256, 500 STAPLES DR FRAMINGHAM, MA 01701 UNITED STATES
341.	STEEL CRAFT CORP	105 STEEL CRAFT DR HARTFORD, WI 53027 UNITED STATES
342.	STEEL-PRO INCORPORATED	PO BOX 449, 660 REAR MAIN STREET ROCKLAND, ME, 04841 UNITED STATES
343.	STIVERS STAFFING SERVICES	200 WEST MONROE ST CHICAGO, IL 60606-5015 UNITED STATES

	Name of Creditor	Address
344.	STREETS OF NEW YORK PIZZA	1959 S SIGNAL BUTTE RD. #105 MESA, AZ 85209 UNITED STATES
345.	SULLIVAN SEARCH GROUP, INC.	5 KEITH LANE BRADFORD, MA 01835 UNITED STATES
346.	SUMITOMO (SHI) CRYOGENICS OF AMERICA, INC.,	1833 VULTEE STREET ALLENTOWN, PA 18103 UNITED STATES
347.	SUMITOMO ELECTRIC USA INC.	21241 S. WESTERN AVE. SUITE #120 TORRANCE, CA 90501 UNITED STATES
348.	SWAGELOK NORTHERN CALIFORNIA	3393 WEST WARREN AVE FREMONT, CA 94539 UNITED STATES
349.	SYLVESTER SHEET METAL CORP.	451 PEPSI RD MANCHESTER, NH 03109 UNITED STATES
350.	SYSTEMA USA CORPORATION	265 NW FRANKLIN AVE. SUITE 201, BEND, OR 97701 UNITED STATES
351.	T&D MATERIALS MANUFACTURING LLC	1101 SUSSEX BLVD SUITE 2 BROOMALL, PA 19008 UNITED STATES
352.	T+M CONCRETE INC.	32 GREER RD GOFFSTOWN, NH 03045 UNITED STATES
353.	TAIPAN MANAGEMENT CO.	FLAT/RM 803, 8/F EASTERN COMMERCIA WANCHAI, 852 HONG KONG
354.	TARGET COMMERICAL INTERIORS, INC.	81 SOUTH 9TH STREET SUITE 350 MINNEAPOLIS, MN 55402 UNITED STATES
355.	TECHNICAL NEEDS NORTH, INC	18 PELHAM RD SALEM, NH 03079 UNITED STATES

	Name of Creditor	Address
356.	TERA XTAL CORPORATION	ATTN: CHIEF FINANCIAL OFFICER HSINCHU SCIENCE PARK NO. 9-1, PARK AVENUE 2 HSINCHU 30075 TAIWAN PROVINCE OF CHINA
357.	TERRA UNIVERSAL, INC	800 S RAYMOND AVE FULLERTON, CA 92831 UNITED STATES
358.	THE GEMCITY ENGINEERING CO.	401 LEE STREET DAYTON, OH 45404 UNITED STATES
359.	THOMPSON METAL FAB INC	PO BOX 5276 3000 SE HIDDEN WAY VANCOUVER, WA 98661 UNITED STATES
360.	TITAN ELECTRIC	PO BOX 5901 MANCHESTER, NH 03108-5901 UNITED STATES
361.	TNK ASSOCIATES, LLC.	20 TRAFALGAR SQUARE SUITE 602 NASHUA, NH 03063 UNITED STATES
362.	TOHO TECHNOLOGY INC.	5205 N. CHRISTIANA AVE CHICAGO, IL 60625 UNITED STATES
363.	TOTAL QUALITY SYSTEMS, INC	1783 W UNIVERSITY DR. SUITE 135 TEMPE, AZ 85281 UNITED STATES
364.	TOUPIN RIGGING CO. INC.	PO BOX 28 955 BROADWAY RD DRACUT, MA 01826 UNITED STATES
365.	TOYO TANSO USA, INC.	PO BOX 280, 2575 N.W. GRAHAM CIRCLE TROUTDALE, OR 97060 UNITED STATES
366.	TRIPLE A SPECIALTIES, INC.	13071 W. MINE TRAIL PEORIA, AZ 85383 UNITED STATES
367.	TRI-STATE IRON WORKS	24 INDUSTRIAL PARK DR, CONCORD, NH 03301 UNITED STATES

	Name of Creditor	Address
368.	TRIVAK, INC.	280 HOWARD STREET LOWELL, MA 01852 UNITED STATES
369.	TSM TECH CO., LTD	22-3, BUGOK-DONG NAM-GU, ULSAN-CITY 680-110 REPUBLIC OF KOREA
370.	TUTHILL CHINA GROUP	NO.88 JIA XIU RD NANXIANG TOWN JIADING DIST, 201802 CHINA
371.	ULINE	2200 S. LAKESIDE DR WAUKEGAN, IL 60085 UNITED STATES
372.	ULTRA CLEAN MICRO-ELECTRONICS EQUIP	(SHANGHAI) CO., LTD BLDG. 56,369 CHUANG YE RD KANGQIAO, SHANGHAI, 201315 CHINA
373.	ULTRA CLEAN TECHNOLOGY	500 CENTER RIDGE DR BLDG. 3.3, AUSTIN, TX 78753 UNITED STATES
374.	ULVAC TECHNOLOGIES, INC.	HONG KONG ULVAC CO.,LTD, 401 GRIFFIN BROOK DR METHUEN, MA 01844 UNITED STATES
375.	UNITED AUTOMATION, INC.	210 WEST RD SUITE 5 PORTSMOUTH, NH 03801 UNITED STATES
376.	UNITED PARCEL SERVICE	PO BOX 7247-0244 PHILADELPHIA, PA 19170 UNITED STATES
377.	UNIVERSITY WAFER INC.	850 SUMMER STREET BOSTON, MA 02127 UNITED STATES
378.	UPS / UPS SCS DALLAS	P.O. BOX 1216 RICHMOND, VA 23218 UNITED STATES
379.	VALTECH CORPORATION	2113 SARATOGA STATION RD POTTSTOWN, PA 19464 UNITED STATES
380.	VAN WIELE, THERESE	517C BAKER STREET PETALUMA, CA 94952 UNITED STATES

	Name of Creditor	Address
381.	VAT INC.	500 WEST CUMMINGS PARK WOBURN, MA 01801 UNITED STATES
382.	VERIZON WIRELESS	1 VERIZON WAY BASKING RIDGE NJ, 07920-1097 UNITED STATES
383.	VESUVIUS U.S.A.	PO BOX 1656 DILLON, SC 29536-1656 UNITED STATES
384.	VIDEOJET TECHNOLOGIES, INC	1500 MITTEL BOULEVARD WOOD DALE, IL 60191 UNITED STATES
385.	VISION SERVICE PLAN INSURANCE CO.	KATIE JONES PO BOX 742788 LOS ANGELES, CA 90074-2788 UNITED STATES
386.	VOLT MANAGEMENT CORP	ACCOUNTS RECEIVABLE FILE #53102 LOS ANGELES, CA 90074-3102 UNITED STATES
387.	WALKER INDUSTRIAL PRODUCTS	117 MT. PLEASANT RD NEWTOWN, CT 06470 UNITED STATES
388.	WARNER GRAHAM LLLP	THE WARNER GRAHAM COMPANY PO BOX 249, 160 CHURCH LANE COCKEYSVILLE, MD 21030 UNITED STATES
389.	WASHINGTON MILLS	20 N. MAIN STREET NORTH GRAFTON, MA 01536 UNITED STATES
390.	WASTE MANAGEMENT	4 LIBERTY LANE WEST HAMPTON, NH 03842 UNITED STATES
391.	WELLS FARGO FINANCIAL LEASING	PO BOX 7777 SAN FRANCISCO, CA 94120-7777 UNITED STATES
392.	WESTCORE DELTA LLC	4435 EASTGATE MALL #300 SAN DIEGO, CA 92121-1979 UNITED STATES
393.	WESTNER, AUGUST O.	26 DUNSTER LANE WINCHESTER, MA 01890 UNITED STATES

	Name of Creditor	Address
394.	WILL-MOR MANUFACTURING, INC.	153 BATCHELDER RD SEABROOK, NH 03874 UNITED STATES
395.	WOLFE ENGINEERING	JASON WOLFE 3040 N. 1ST. STREET SAN JOSE, CA 95134 UNITED STATES
396.	WORKIVA LLC	2900 UNIVERSITY BLVD AMES, IA 50010 UNITED STATES
397.	WORX MACHINERY LLC	2880 MCEVER RD SUITE E-F, BUFORD, GA 30518 UNITED STATES
398.	WRISLEY ABRASIVES LLC	PO BOX 631,6 WILCOX STREET - SUITE C SIMSBURY, CT 06070 UNITED STATES
399.	WUNDERLICH-MALEC SYSTEMS, INC	1580 N FIESTA BLVD #102 GILBERT, AZ 85233 UNITED STATES
400.	X&Y TECHNOLOGY TRADING CO. LTD	RM 815, NO.225, XIN JINQIAO RD PUDONG NEW DISTRICT SHANGHAI, CHINA
401.	YIXING XINHONGJIAN SPORTING	GOODS CO LTD. 502 XINTIANDI, YIXING 214200 CHINA
402.	YRC (RDWY)	PO BOX 471 AKRON, OH 44309-0471 UNITED STATES
403.	ZEMARC CORPORATION	6431 FLOTILLA STREET LOS ANGELES, CA 90040 UNITED STATES
404.	ZENSAR TECHNOLOGIES IM, INC.	4 TECHNOLOGY DR WESTBOROUGH, MA 01581 UNITED STATES

EXHIBIT 10

Second Amended and Restated Certificate of Incorporation of Reorganized GT Inc.

**SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
GT ADVANCED TECHNOLOGIES INC.
A DELAWARE CORPORATION**

GT Advanced Technologies Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name of the corporation is GT Advanced Technologies Inc.
2. The original certificate of incorporation of the corporation was filed with the Secretary of State of the State of Delaware on September 27, 2006.
3. An amended and restated certificate of incorporation of the corporation was filed with the Secretary of State of the State of Delaware on July 23, 2008.
4. This Second Amended and Restated Certificate of Incorporation was duly adopted by the Board of Directors and the stockholders of the corporation in accordance with the provisions of Sections 242, 245, 141(f) and 228 of the General Corporation Law of the State of Delaware.
5. This Second Amended and Restated Certificate of Incorporation, as set forth in full on the Attached Exhibit A, amends and, as so amended, integrates and restates in its entirety the certificate of incorporation of the corporation, and this Second Amended and Restated Certificate of Incorporation shall become effective upon filing in the office of the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be executed this __ day of _____, 2016.

GT ADVANCED TECHNOLOGIES INC.,
a Delaware corporation

By: _____
Name:
Title:

**SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
GT ADVANCED TECHNOLOGIES INC.**

FIRST: The name of the Corporation is: GT Advanced Technologies Inc.

SECOND: The address of the Corporation's registered office in the State of Delaware is 160 Greentree Drive, Suite 101, in the City of Dover, County of Kent, 19904. The name of its registered agent at such address is National Registered Agents, Inc.

THIRD: The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is [_____] shares, consisting of (i) [_____] shares of Common Stock, \$.01 par value per share ("Common Stock"), and (ii) [_____] shares of Preferred Stock, \$.01 par value per share ("Preferred Stock").

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

1. COMMON STOCK.

A. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors upon any issuance of the Preferred Stock of any series.

B. Voting. The holders of the Common Stock shall have voting rights at all meetings of stockholders, each such holder being entitled to one vote for each share thereof held by such holder; provided, however, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation (which, as used herein, shall mean the certificate of incorporation of the Corporation, as amended from time to time, including the terms of any certificate of designations of any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation. There shall be no cumulative voting.

The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware.

C. Dividends. Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend or other rights of any then outstanding Preferred Stock.

D. Liquidation. Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to or except as set forth with respect to any preferential or other rights of any then outstanding Preferred Stock.

2. PREFERRED STOCK.

Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated or expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors of the Corporation as hereinafter provided. Any shares of Preferred Stock which may be redeemed, purchased or acquired by the Corporation may be reissued except as otherwise provided by law.

Authority is hereby expressly granted to the Board of Directors from time to time to issue the Preferred Stock in one or more series, and in connection with the creation of any such series, by adopting a resolution or resolutions providing for the issuance of the shares thereof and by filing a certificate of designations relating thereto in accordance with the General Corporation Law of the State of Delaware, to determine and fix the number of shares of such series and such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including without limitation thereof, dividend rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the full extent now or hereafter permitted by the General Corporation Law of the State of Delaware. Without limiting the generality of the foregoing, the resolutions providing for issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to any other series of Preferred Stock to the extent permitted by law.

The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares then outstanding) by the affirmative vote of the holders of a majority of the voting power of the capital stock of the Corporation entitled to vote thereon, voting as a single class, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware.

FIFTH: The Corporation is to have perpetual existence.

SIXTH: In furtherance of and not in limitation of powers conferred by statute, it is further provided:

1. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

2. Election of directors need not be by written ballot.

3. The Board of Directors is expressly authorized to adopt, amend, alter or repeal the By-Laws of the Corporation.

SEVENTH: Except to the extent that the General Corporation Law of the State of Delaware prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal. If the General Corporation Law of the State of Delaware is amended to permit further elimination or limitation of the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of the State of Delaware as so amended.

EIGHTH: The Corporation shall provide indemnification as follows:

1. Actions, Suits and Proceedings Other than by or in the Right of the Corporation. The Corporation shall indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was, or has agreed to become, a director or officer of the Corporation, or is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) (all such persons being referred to hereafter as an "Indemnitee"), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with such action, suit or proceeding and any appeal therefrom, if Indemnitee acted in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

2. Actions or Suits by or in the Right of the Corporation. The Corporation shall indemnify any Indemnitee who was or is a party to or threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that Indemnitee is or was, or has agreed to become, a director or officer of the Corporation, or is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan), or by reason of any action alleged to have been taken or omitted in such

capacity, against all expenses (including attorneys' fees) and, to the extent permitted by law, amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with such action, suit or proceeding and any appeal therefrom, if Indemnitee acted in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made under this Section 2 in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged to be liable to the Corporation, unless, and only to the extent, that the Court of Chancery of Delaware shall determine upon application that, despite the adjudication of such liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses (including attorneys' fees) which the Court of Chancery of Delaware shall deem proper.

3. Indemnification for Expenses of Successful Party. Notwithstanding any other provisions of this Article EIGHTH, to the extent that an Indemnitee has been successful, on the merits or otherwise, in defense of any action, suit or proceeding referred to in Sections 1 and 2 of this Article EIGHTH, or in defense of any claim, issue or matter therein, or on appeal from any such action, suit or proceeding, Indemnitee shall be indemnified against all expenses (including attorneys' fees) actually and reasonably incurred by or on behalf of Indemnitee in connection therewith.

4. Notification and Defense of Claim. As a condition precedent to an Indemnitee's right to be indemnified, such Indemnitee must notify the Corporation in writing as soon as practicable of any action, suit, proceeding or investigation involving such Indemnitee for which indemnity will or could be sought. With respect to any action, suit, proceeding or investigation of which the Corporation is so notified, the Corporation will be entitled to participate therein at its own expense and/or to assume the defense thereof at its own expense, with legal counsel reasonably acceptable to Indemnitee. After notice from the Corporation to Indemnitee of its election so to assume such defense, the Corporation shall not be liable to Indemnitee for any legal or other expenses subsequently incurred by Indemnitee in connection with such action, suit, proceeding or investigation, other than as provided below in this Section 4. Indemnitee shall have the right to employ his or her own counsel in connection with such action, suit, proceeding or investigation, but the fees and expenses of such counsel incurred after notice from the Corporation of its assumption of the defense thereof shall be at the expense of Indemnitee unless (i) the employment of counsel by Indemnitee has been authorized by the Corporation, (ii) counsel to Indemnitee shall have reasonably concluded that there may be a conflict of interest or position on any significant issue between the Corporation and Indemnitee in the conduct of the defense of such action, suit, proceeding or investigation or (iii) the Corporation shall not in fact have employed counsel to assume the defense of such action, suit, proceeding or investigation, in each of which cases the fees and expenses of counsel for Indemnitee shall be at the expense of the Corporation, except as otherwise expressly provided by this Article EIGHTH. The Corporation shall not be entitled, without the consent of Indemnitee, to assume the defense of any claim brought by or in the right of the Corporation or as to which counsel for Indemnitee shall have reasonably made the conclusion provided for in clause (ii) above. The Corporation shall not be required to indemnify Indemnitee under this Article EIGHTH for any amounts paid in settlement of any action, suit, proceeding or investigation effected without its written consent. The Corporation shall not settle any action, suit, proceeding or investigation in any manner which would impose any penalty or limitation on Indemnitee without Indemnitee's written

consent. Neither the Corporation nor Indemnitee will unreasonably withhold or delay its consent to any proposed settlement.

5. Advance of Expenses. Subject to the provisions of Section 6 of this Article EIGHTH, in the event of any action, suit, proceeding or investigation of which the Corporation receives notice under this Article EIGHTH, any expenses (including attorneys' fees) incurred by or on behalf of an Indemnitee in defending an action, suit, proceeding or investigation or any appeal therefrom shall be paid by the Corporation in advance of the final disposition of such matter; provided, however, that the payment of such expenses incurred by or on behalf of Indemnitee in advance of the final disposition of such matter shall be made only upon receipt of an undertaking by or on behalf of Indemnitee to repay all amounts so advanced in the event that it shall ultimately be determined that Indemnitee is not entitled to be indemnified by the Corporation as authorized in this Article EIGHTH; and further provided that no such advancement of expenses shall be made under this Article EIGHTH if it is determined (in the manner described in Section 6) that (i) Indemnitee did not act in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, or (ii) with respect to any criminal action or proceeding, Indemnitee had reasonable cause to believe his or her conduct was unlawful. Such undertaking shall be accepted without reference to the financial ability of Indemnitee to make such repayment.

6. Procedure for Indemnification. In order to obtain indemnification or advancement of expenses pursuant to Section 1, 2, 3 or 5 of this Article EIGHTH, an Indemnitee shall submit to the Corporation a written request. Any such advancement of expenses shall be made promptly, and in any event within 60 days after receipt by the Corporation of the written request of Indemnitee, unless (i) the Corporation has assumed the defense pursuant to Section 4 of this Article EIGHTH (and none of the circumstances described in Section 4 of this Article EIGHTH that would nonetheless entitle the Indemnitee to indemnification for the fees and expenses of separate counsel have occurred) or (ii) the Corporation determines within such 60-day period that Indemnitee did not meet the applicable standard of conduct set forth in Section 1, 2 or 5 of this Article EIGHTH, as the case may be. Any such indemnification, unless ordered by a court, shall be made with respect to requests under Section 1 or 2 only as authorized in the specific case upon a determination by the Corporation that the indemnification of Indemnitee is proper because Indemnitee has met the applicable standard of conduct set forth in Section 1 or 2, as the case may be. Such determination shall be made in each instance (a) by a majority vote of the directors of the Corporation consisting of persons who are not at that time parties to the action, suit or proceeding in question ("disinterested directors"), whether or not a quorum, (b) by a committee of disinterested directors designated by majority vote of disinterested directors, whether or not a quorum, (c) if there are no disinterested directors, or if the disinterested directors so direct, by independent legal counsel (who may, to the extent permitted by law, be regular legal counsel to the Corporation) in a written opinion, or (d) by the stockholders of the Corporation.

7. Remedies. The right to indemnification or advancement of expenses as granted by this Article EIGHTH shall be enforceable by Indemnitee in any court of competent jurisdiction. Neither the failure of the Corporation to have made a determination prior to the commencement of such action that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the

Corporation pursuant to Section 6 of this Article EIGHTH that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct. Indemnitee's expenses (including attorneys' fees) reasonably incurred in connection with successfully establishing Indemnitee's right to indemnification, in whole or in part, in any such proceeding shall also be indemnified by the Corporation.

8. Limitations. Notwithstanding anything to the contrary in this Article EIGHTH, except as set forth in Section 7 of this Article EIGHTH, the Corporation shall not indemnify an Indemnitee pursuant to this Article EIGHTH in connection with a proceeding (or part thereof) initiated by such Indemnitee unless the initiation thereof was approved by the Board of Directors of the Corporation. Notwithstanding anything to the contrary in this Article EIGHTH, the Corporation shall not indemnify an Indemnitee to the extent such Indemnitee is reimbursed from the proceeds of insurance, and in the event the Corporation makes any indemnification payments to an Indemnitee and such Indemnitee is subsequently reimbursed from the proceeds of insurance, Indemnitee shall promptly refund such indemnification payments to the Corporation to the extent of such insurance reimbursement.

9. Subsequent Amendment. No amendment, termination or repeal of this Article EIGHTH or of the relevant provisions of the General Corporation Law of Delaware or any other applicable laws shall affect or diminish in any way the rights of any Indemnitee to indemnification under the provisions hereof with respect to any action, suit, proceeding or investigation arising out of or relating to any actions, transactions or facts occurring prior to the final adoption of such amendment, termination or repeal.

10. Other Rights. The indemnification and advancement of expenses provided by this Article EIGHTH shall not be deemed exclusive of any other rights to which an Indemnitee seeking indemnification or advancement of expenses may be entitled under any law (common or statutory), agreement or vote of stockholders or disinterested directors or otherwise, both as to action in Indemnitee's official capacity and as to action in any other capacity while holding office for the Corporation, and shall continue as to an Indemnitee who has ceased to be a director or officer, and shall inure to the benefit of the estate, heirs, executors and administrators of Indemnitee. Nothing contained in this Article EIGHTH shall be deemed to prohibit, and the Corporation is specifically authorized to enter into, agreements with officers and directors providing indemnification rights and procedures different from those set forth in this Article EIGHTH. In addition, the Corporation may, to the extent authorized from time to time by its Board of Directors, grant indemnification rights to other employees or agents of the Corporation or other persons serving the Corporation and such rights may be equivalent to, or greater or less than, those set forth in this Article EIGHTH.

11. Partial Indemnification. If an Indemnitee is entitled under any provision of this Article EIGHTH to indemnification by the Corporation for some or a portion of the expenses (including attorneys' fees), judgments, fines or amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with any action, suit, proceeding or investigation and any appeal therefrom but not, however, for the total amount thereof, the Corporation shall nevertheless indemnify Indemnitee for the portion of such

expenses (including attorneys' fees), judgments, fines or amounts paid in settlement to which Indemnitee is entitled.

12. Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise (including any employee benefit plan) against any expense, liability or loss incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the General Corporation Law of Delaware.

13. Other Indemnification. The Corporation's obligation, if any, to indemnify any person who was or is serving at its request as a director, officer or employee of another corporation, partnership, limited liability company, joint venture, trust, organization or other enterprise shall be reduced by an amount that such person may collect as indemnification from such other corporation, partnership, limited liability company, joint venture, trust, organization or other enterprise.

14. Savings Clause. If this Article EIGHTH or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each Indemnitee as to any expenses (including attorneys' fees), judgments, fines and amounts paid in settlement in connection with any action, suit, proceeding or investigation, whether civil, criminal or administrative, including an action by or in the right of the Corporation, to the fullest extent permitted by any applicable portion of this Article EIGHTH that shall not have been invalidated and to the fullest extent permitted by applicable law.

15. Definitions. Terms used herein and defined in Section 145(h) and Section 145(i) of the General Corporation Law of Delaware shall have the respective meanings assigned to such terms in such Section 145(h) and Section 145(i).

NINTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute and this Certificate of Incorporation, and all rights conferred upon stockholders herein are granted subject to this reservation.

TENTH: No stockholder may transfer shares of capital stock of the Corporation without the approval of the Board of Directors of the Corporation if the Transfer would subject the Company to the registration or reporting requirements of the Investment Company Act of 1940 or impose any reporting obligation (including pursuant to the Securities Exchange Act of 1934) on the Corporation or any stockholder (other than the transferor or the transferee) in any jurisdiction, whether domestic or foreign, other than any jurisdiction in which the Corporation or such stockholder is then subject to such reporting obligation, and any purported transfer in violation of the foregoing shall be void ab initio, provided further that the Corporation shall promptly supply any stockholder with such information as may reasonably be requested in order to determine compliance with this paragraph.

ELEVENTH: The Corporation shall not issue any non-voting equity securities to the extent prohibited by Section 1123(a)(6) of Title 11 of the United States Code (the "Bankruptcy

Code”) as the same is in effect on the date of the filing of this Certificate of Incorporation with the Secretary of State of the State of Delaware; provided, however, that this paragraph (i) will have no further force and effect beyond that required under Section 1126(a)(6) of the Bankruptcy Code, (ii) will have effect, if any, only for so long as Section 1126(a)(6) of the Bankruptcy Code is in effect and applicable to the Corporation, and (iii) in all events may be amended or eliminated in accordance with such applicable law as may, from time to time, be in effect.

EXHIBIT 11

Second Amended and Restated Bylaws of Reorganized GT Inc.

SECOND AMENDED AND RESTATED BYLAWS

OF

GT ADVANCED TECHNOLOGIES INC.

a Delaware corporation

(Amended as of [_____, 2016])

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ARTICLE I

STOCKHOLDERS

1.1 Place of Meetings. All meetings of stockholders shall be held at such place as may be designated from time to time by the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President or, if not so designated, at the principal office of the corporation. The Board of Directors may, in its sole discretion, determine that a meeting shall not be held at any place, but may instead be held solely by means of remote communication in a manner consistent with the General Corporation Law of the State of Delaware.

1.2 Annual Meeting. The annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly be brought before the meeting shall be held on a date and at a time designated by the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President (which date shall not be a legal holiday in the place where the meeting is to be held).

1.3 Special Meetings. Special meetings of stockholders for any purpose or purposes may be called at any time by only the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President, and may not be called by any other person or persons. The Board of Directors may postpone or reschedule any previously scheduled special meeting of stockholders. Business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

1.4 Notice of Meetings. Except as otherwise provided by law, notice of each meeting of stockholders, whether annual or special, shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. Without limiting the manner by which notice otherwise may be given to stockholders, any notice shall be effective if given by a form of electronic transmission consented to (in a manner consistent with the General Corporation Law of the State of Delaware) by the stockholder to whom the notice is given. The notices of all meetings shall state the place, if any, date and time of the meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting. The notice of a special meeting shall state, in addition, the purpose or purposes for which the meeting is called. If notice is given by mail, such notice shall be deemed given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. If notice is given by electronic transmission, such notice shall be deemed given at the time specified in Section 232 of the General Corporation Law of the State of Delaware.

1.5 Voting List. The Secretary shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least 10 days prior to the meeting: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the corporation. If the meeting is to

be held at a physical location (and not solely by means of remote communication), then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. The list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

1.6 Quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the holders of a majority in voting power of the shares of the capital stock of the corporation issued and outstanding and entitled to vote at the meeting, present in person, present by means of remote communication in a manner, if any, authorized by the Board of Directors in its sole discretion, or represented by proxy, shall constitute a quorum for the transaction of business; provided, however, that where a separate vote by a class or classes or series of capital stock is required by law or the Certificate of Incorporation, the holders of a majority in voting power of the shares of such class or classes or series of the capital stock of the corporation issued and outstanding and entitled to vote on such matter, present in person, present by means of remote communication in a manner, if any, authorized by the Board of Directors in its sole discretion, or represented by proxy, shall constitute a quorum entitled to take action with respect to the vote on such matter. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

1.7 Adjournments. Any meeting of stockholders may be adjourned from time to time to any other time and to any other place at which a meeting of stockholders may be held under these Bylaws by the chairman of the meeting or by the stockholders present or represented at the meeting and entitled to vote, although less than a quorum. It shall not be necessary to notify any stockholder of any adjournment of less than 30 days if the time and place, if any, of the adjourned meeting, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting, are announced at the meeting at which adjournment is taken, unless after the adjournment a new record date is fixed for the adjourned meeting. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting.

1.8 Voting and Proxies. Each stockholder shall have one vote for each share of stock entitled to vote held of record by such stockholder and a proportionate vote for each fractional share so held, unless otherwise provided by law or the Certificate of Incorporation. Each stockholder of record entitled to vote at a meeting of stockholders, or to express consent or dissent to corporate action without a meeting, may vote or express such consent or dissent in person (including by means of remote communications, if any, by which stockholders may be deemed to be present in person and vote at such meeting) or may authorize another person or persons to vote or act for such stockholder by a proxy executed or transmitted in a manner permitted by the General Corporation Law of the State of Delaware by the stockholder or such stockholder's authorized agent and delivered (including by electronic transmission) to the Secretary of the corporation. No such proxy shall be voted or acted upon after three years from the date of its execution, unless the proxy expressly provides for a longer period.

1.9 Action at Meeting. When a quorum is present at any meeting, any matter other than the election of directors to be voted upon by the stockholders at such meeting shall be decided by the vote of the holders of shares of stock having a majority in voting power of the votes cast by the holders of all of the shares of stock present or represented at the meeting and voting affirmatively or negatively on such matter (or if there are two or more classes or series of stock entitled to vote as separate classes, then in the case of each such class or series, the holders of a majority in voting power of the shares of stock of that class or series present or represented at the meeting and voting affirmatively or negatively on such matter), except when a different vote is required by law, the Certificate of Incorporation or these Bylaws. When a quorum is present at any meeting, any election by stockholders of directors shall be determined by a plurality of the votes cast by the stockholders entitled to vote on the election.

1.10 Conduct of Meetings.

(a) Chairman of Meeting. Meetings of stockholders shall be presided over by the Chairman of the Board, if any, or in the Chairman's absence by the Vice Chairman of the Board, if any, or in the Vice Chairman's absence by the Chief Executive Officer, or in the Chief Executive Officer's absence, by the President, or in the President's absence by a Vice President, or in the absence of all of the foregoing persons by a chairman designated by the Board of Directors, or in the absence of such designation by a chairman chosen by vote of the stockholders at the meeting. The Secretary shall act as secretary of the meeting, but in the Secretary's absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

(b) Rules, Regulations and Procedures. The Board of Directors may adopt by resolution such rules, regulations and procedures for the conduct of any meeting of stockholders of the corporation as it shall deem appropriate including, without limitation, such guidelines and procedures as it may deem appropriate regarding the participation by means of remote communication of stockholders and proxyholders not physically present at a meeting. Except to the extent inconsistent with such rules, regulations and procedures as adopted by the Board of Directors, the chairman of any meeting of stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the corporation, their duly authorized and constituted proxies or such other persons as shall be determined; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

1.11 Action without Meeting.

(a) Taking of Action by Consent. Any action required or permitted to be taken at any annual or special meeting of stockholders of the corporation may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote on such action were present and voted. Except as otherwise provided by the Certificate of Incorporation, stockholders may act by written consent to elect directors; provided, however, that, if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action.

(b) Electronic Transmission of Consents. A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, or by a person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this section, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the corporation can determine (i) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder or proxyholder and (ii) the date on which such stockholder or proxyholder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission may be otherwise delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded if, to the extent and in the manner provided by resolution of the Board of Directors. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

(c) Notice of Taking of Corporate Action. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the corporation.

ARTICLE II

DIRECTORS

2.1 General Powers. The business and affairs of the corporation shall be managed by or under the direction of a Board of Directors, who may exercise all of the powers of the corporation except as otherwise provided by law or the Certificate of Incorporation.

2.2 Number, Election and Qualification. Subject to the rights of holders of any series of Preferred Stock to elect directors, the number of directors of the corporation shall be established from time to time by the stockholders or the Board of Directors. The directors shall be elected at the annual meeting of stockholders by such stockholders as have the right to vote on such election. Election of directors need not be by written ballot. Directors need not be stockholders of the corporation.

2.3 Chairman of the Board; Vice Chairman of the Board. The Board of Directors may appoint from its members a Chairman of the Board and a Vice Chairman of the Board, neither of whom need be an employee or officer of the corporation. If the Board of Directors appoints a Chairman of the Board, such Chairman shall perform such duties and possess such powers as are assigned by the Board of Directors and, if the Chairman of the Board is also designated as the corporation's Chief Executive Officer, shall have the powers and duties of the Chief Executive Officer prescribed in Section 3.7 of these Bylaws. If the Board of Directors appoints a Vice Chairman of the Board, such Vice Chairman shall perform such duties and possess such powers as are assigned by the Board of Directors. Unless otherwise provided by the Board of Directors, the Chairman of the Board or, in the Chairman's absence, the Vice Chairman of the Board, if any, shall preside at all meetings of the Board of Directors.

2.4 Tenure. Each director shall hold office until the next annual meeting of stockholders and until a successor is elected and qualified, or until such director's earlier death, resignation or removal.

2.5 Quorum. The greater of (a) a majority of the directors at any time in office and (b) one-third of the number of directors fixed pursuant to Section 2.2 of these Bylaws shall constitute a quorum of the Board of Directors. If at any meeting of the Board of Directors there shall be less than such a quorum, a majority of the directors present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until a quorum shall be present.

2.6 Action at Meeting. Every act or decision done or made by a majority of the directors present at a meeting of the Board of Directors duly held at which a quorum is present shall be regarded as the act of the Board of Directors, unless a greater number is required by law or by the Certificate of Incorporation.

2.7 Removal. Except as otherwise provided by the General Corporation Law of the State of Delaware, any one or more or all of the directors of the corporation may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except that the directors elected by the holders of a particular class or series

of stock may be removed without cause only by vote of the holders of a majority of the outstanding shares of such class or series.

2.8 Vacancies. Subject to the rights of holders of any series of Preferred Stock to elect directors, unless and until filled by the stockholders, any vacancy or newly-created directorship on the Board of Directors, however occurring, may be filled by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director. A director elected to fill a vacancy shall be elected for the unexpired term of such director's predecessor in office, and a director chosen to fill a position resulting from a newly-created directorship shall hold office until the next annual meeting of stockholders and until a successor is elected and qualified, or until such director's earlier death, resignation or removal.

2.9 Resignation. Any director may resign by delivering a resignation in writing or by electronic transmission to the corporation at its principal office or to the Chairman of the Board, the Chief Executive Officer, the President or the Secretary. Such resignation shall be effective upon delivery unless it is specified to be effective at some later time or upon the happening of some later event.

2.10 Regular Meetings. Regular meetings of the Board of Directors may be held without notice at such time and place as shall be determined from time to time by the Board of Directors; provided that any director who is absent when such a determination is made shall be given notice of the determination. A regular meeting of the Board of Directors may be held without notice immediately after and at the same place as the annual meeting of stockholders.

2.11 Special Meetings. Special meetings of the Board of Directors may be held at any time and place designated in a call by the Chairman of the Board, the Chief Executive Officer, the President, two or more directors, or by one director in the event that there is only a single director in office.

2.12 Notice of Special Meetings. Notice of the date, place, if any, and time of any special meeting of directors shall be given to each director by the Secretary or by the officer or one of the directors calling the meeting. Notice shall be duly given to each director (a) in person or by telephone at least 24 hours in advance of the meeting, (b) by sending written notice by reputable overnight courier, telecopy, facsimile or electronic transmission, or delivering written notice by hand, to such director's last known business, home or electronic transmission address at least 48 hours in advance of the meeting, or (c) by sending written notice by first-class mail to such director's last known business or home address at least 72 hours in advance of the meeting. A notice or waiver of notice of a meeting of the Board of Directors need not specify the purposes of the meeting.

2.13 Meetings by Conference Communications Equipment. Directors may participate in meetings of the Board of Directors or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation by such means shall constitute presence in person at such meeting.

2.14 Action by Consent. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent to the action in writing or by electronic transmission, and the written consents or electronic transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

2.15 Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the corporation with such lawfully delegable powers and duties as the Board of Directors thereby confers, to serve at the pleasure of the Board of Directors. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members of the committee present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors and subject to the provisions of law, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation and may authorize the seal of the corporation to be affixed to all papers which may require it. Each such committee shall keep minutes and make such reports as the Board of Directors may from time to time request. Except as the Board of Directors may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by the directors or in such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these Bylaws for the Board of Directors. Except as otherwise provided in the Certificate of Incorporation, these Bylaws, or the resolution of the Board of Directors designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

2.16 Compensation of Directors. Directors may be paid such compensation for their services and such reimbursement for expenses of attendance at meetings as the Board of Directors may from time to time determine. No such payment shall preclude any director from serving the corporation or any of its parent or subsidiary entities in any other capacity and receiving compensation for such service.

ARTICLE III

OFFICERS

3.1 Titles. The corporation shall have such officers with such titles and duties as shall be stated in these bylaws or in a resolution of the board of directors which is not inconsistent with these bylaws and as may be necessary to enable it to sign instruments and stock certificates which comply with §§ 103(a)(2) and 158 of the General Corporation Law of the State of Delaware. One of the officers shall have the duty to record the proceedings of the meetings of the stockholders and directors in a book to be kept for that purpose.

3.2 Qualification. No officer need be a stockholder. Any two or more offices may be held by the same person.

3.3 Tenure. Except as otherwise provided by law, by the Certificate of Incorporation or by these Bylaws, each officer shall hold office until such officer's successor is elected and qualified, unless a different term is specified in the resolution electing or appointing such officer, or until such officer's earlier death, resignation or removal.

3.4 Resignation and Removal. Any officer may resign by delivering a written resignation to the corporation at its principal office or to the Chief Executive Officer, the President or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some later time or upon the happening of some later event. Any officer may be removed at any time, with or without cause, by vote of a majority of the directors then in office. Except as the Board of Directors may otherwise determine, no officer who resigns or is removed shall have any right to any compensation as an officer for any period following such officer's resignation or removal, or any right to damages on account of such removal, whether such officer's compensation be by the month or by the year or otherwise, unless such compensation is expressly provided for in a duly authorized written agreement with the corporation.

3.5 Vacancies. The Board of Directors may fill any vacancy occurring in any office for any reason and may, in its discretion, leave unfilled for such period as it may determine any offices other than those required by law. Each such successor shall hold office for the unexpired term of such officer's predecessor and until a successor is elected and qualified, or until such officer's earlier death, resignation or removal.

3.6 President; Chief Executive Officer. Unless the Board of Directors has designated another person as the corporation's Chief Executive Officer, the President shall be the Chief Executive Officer of the corporation. The Chief Executive Officer shall have general charge and supervision of the business of the corporation subject to the direction of the Board of Directors, and shall perform all duties and have all powers that are commonly incident to the office of chief executive or that are delegated to such officer by the Board of Directors. The President shall perform such other duties and shall have such other powers as the Board of Directors or the Chief Executive Officer (if the President is not the Chief Executive Officer) may from time to time prescribe. In the event of the absence, inability or refusal to act of the Chief Executive Officer or the President (if the President is not the Chief Executive Officer), the Vice President (or if there shall be more than one, the Vice Presidents in the order determined by the Board of Directors) shall perform the duties of the Chief Executive Officer and when so performing such duties shall have all the powers of and be subject to all the restrictions upon the Chief Executive Officer.

3.7 Vice Presidents. Each Vice President shall perform such duties and possess such powers as the Board of Directors or the Chief Executive Officer may from time to time prescribe. The Board of Directors may assign to any Vice President the title of Executive Vice President, Senior Vice President or any other title selected by the Board of Directors.

3.8 Secretary and Assistant Secretaries. The Secretary shall perform such duties and shall have such powers as the Board of Directors or the Chief Executive Officer may from time

to time prescribe. In addition, the Secretary shall perform such duties and have such powers as are incident to the office of the secretary, including without limitation the duty and power to give notices of all meetings of stockholders and special meetings of the Board of Directors, to attend all meetings of stockholders and the Board of Directors and keep a record of the proceedings, to maintain a stock ledger and prepare lists of stockholders and their addresses as required, to be custodian of corporate records and the corporate seal and to affix and attest to the same on documents.

Any Assistant Secretary shall perform such duties and possess such powers as the Board of Directors, the Chief Executive Officer or the Secretary may from time to time prescribe. In the event of the absence, inability or refusal to act of the Secretary, the Assistant Secretary (or if there shall be more than one, the Assistant Secretaries in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Secretary.

In the absence of the Secretary or any Assistant Secretary at any meeting of stockholders or directors, the chairman of the meeting shall designate a temporary secretary to keep a record of the meeting.

3.9 Treasurer and Assistant Treasurers. The Treasurer shall perform such duties and shall have such powers as may from time to time be assigned by the Board of Directors or the Chief Executive Officer. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of treasurer, including without limitation the duty and power to keep and be responsible for all funds and securities of the corporation, to deposit funds of the corporation in depositories selected in accordance with these Bylaws, to disburse such funds as ordered by the Board of Directors, to make proper accounts of such funds, and to render as required by the Board of Directors statements of all such transactions and of the financial condition of the corporation.

The Assistant Treasurers shall perform such duties and possess such powers as the Board of Directors, the Chief Executive Officer or the Treasurer may from time to time prescribe. In the event of the absence, inability or refusal to act of the Treasurer, the Assistant Treasurer (or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Treasurer.

3.10 Salaries. Officers of the corporation shall be entitled to such salaries, compensation or reimbursement as shall be fixed or allowed from time to time by the Board of Directors.

3.11 Delegation of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

ARTICLE IV

CAPITAL STOCK

4.1 Issuance of Stock. Subject to the provisions of the Certificate of Incorporation, the whole or any part of any unissued balance of the authorized capital stock of the corporation

or the whole or any part of any shares of the authorized capital stock of the corporation held in the corporation's treasury may be issued, sold, transferred or otherwise disposed of by vote of the Board of Directors in such manner, for such lawful consideration and on such terms as the Board of Directors may determine.

4.2 Stock Certificates; Uncertificated Shares. The shares of the corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the corporation's stock shall be uncertificated shares. Every holder of stock of the corporation represented by certificates shall be entitled to have a certificate, in such form as may be prescribed by law and by the Board of Directors, representing the number of shares held by such holder registered in certificate form. Each such certificate shall be signed in a manner that complies with Section 158 of the General Corporation Law of the State of Delaware.

Each certificate for shares of stock which are subject to any restriction on transfer pursuant to the Certificate of Incorporation, these Bylaws, applicable securities laws or any agreement among any number of stockholders or among such holders and the corporation shall have conspicuously noted on the face or back of the certificate either the full text of the restriction or a statement of the existence of such restriction.

If the corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of each certificate representing shares of such class or series of stock, provided that in lieu of the foregoing requirements there may be set forth on the face or back of each certificate representing shares of such class or series of stock a statement that the corporation will furnish without charge to each stockholder who so requests a copy of the full text of the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to Sections 151, 202(a) or 218(a) of the General Corporation Law of the State of Delaware or, with respect to Section 151 of the General Corporation Law of the State of Delaware, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

4.3 Transfers. Shares of stock of the corporation shall be transferable in the manner prescribed by law and in these Bylaws. Transfers of shares of stock of the corporation shall be made only on the books of the corporation or by transfer agents designated to transfer shares of stock of the corporation. Subject to applicable law, shares of stock represented by certificates shall be transferred only on the books of the corporation by the surrender to the corporation or its transfer agent of the certificate representing such shares properly endorsed or accompanied by a

written assignment or power of attorney properly executed, and with such proof of authority or the authenticity of signature as the corporation or its transfer agent may reasonably require. Except as may be otherwise required by law, by the Certificate of Incorporation or by these Bylaws, the corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect to such stock, regardless of any transfer, pledge or other disposition of such stock until the shares have been transferred on the books of the corporation in accordance with the requirements of these Bylaws.

4.4 Lost, Stolen or Destroyed Certificates. The corporation may issue a new certificate of stock in place of any previously issued certificate alleged to have been lost, stolen or destroyed, upon such terms and conditions as the Board of Directors may prescribe, including the presentation of reasonable evidence of such loss, theft or destruction and the giving of such indemnity and posting of such bond as the Board of Directors may require for the protection of the corporation or any transfer agent or registrar.

4.5 Record Date. The Board of Directors may fix in advance a date as a record date for the determination of the stockholders entitled to notice of or to vote at any meeting of stockholders or to express consent (or dissent) to corporate action without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action. Such record date shall not precede the date on which the resolution fixing the record date is adopted, and such record date shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 10 days after the date of adoption of a record date for a consent without a meeting, nor more than 60 days prior to any other action to which such record date relates.

If no record date is fixed, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. If no record date is fixed, the record date for determining stockholders entitled to express consent to corporate action without a meeting, when no prior action by the Board of Directors is necessary, shall be the day on which the first consent is properly delivered to the corporation. If no record date is fixed, the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating to such purpose.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

4.6 Regulations. The issue, transfer, conversion and registration of shares of stock of the corporation shall be governed by such other regulations as the Board of Directors may establish.

ARTICLE V

GENERAL PROVISIONS

5.1 Fiscal Year. Except as from time to time otherwise designated by the Board of Directors, the fiscal year of the corporation shall begin on the first day of January of each year and end on the last day of December in each year.

5.2 Corporate Seal. The corporate seal shall be in such form as shall be approved by the Board of Directors.

5.3 Waiver of Notice. Whenever notice is required to be given by law, by the Certificate of Incorporation or by these Bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before, at or after the time of the event for which notice is to be given, shall be deemed equivalent to notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in any such waiver. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

5.4 Voting of Securities. Except as the Board of Directors may otherwise designate, the Chief Executive Officer, the President or the Treasurer may waive notice of, vote, or appoint any person or persons to vote, on behalf of the corporation at, and act as, or appoint any person or persons to act as, proxy or attorney-in-fact for this corporation (with or without power of substitution) at, any meeting of stockholders or securityholders of any other entity, the securities of which may be held by this corporation (which shall not include treasury stock of this Corporation).

5.5 Evidence of Authority. A certificate by the Secretary, or an Assistant Secretary, or a temporary Secretary, as to any action taken by the stockholders, directors, a committee or any officer or representative of the corporation shall as to all persons who rely on the certificate in good faith be conclusive evidence of such action.

5.6 Certificate of Incorporation. All references in these Bylaws to the Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the corporation, as amended and in effect from time to time.

5.7 Severability. Any determination that any provision of these Bylaws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these Bylaws.

5.8 Pronouns. All pronouns used in these Bylaws shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

ARTICLE VI

AMENDMENTS

6.1 By the Board of Directors. These Bylaws may be altered, amended or repealed, in whole or in part, or new bylaws may be adopted by the Board of Directors.

6.2 By the Stockholders. These Bylaws may be altered, amended or repealed, in whole or in part, or new bylaws may be adopted by the affirmative vote of the holders of a majority of the shares of the capital stock of the corporation issued and outstanding and entitled to vote at any annual meeting of stockholders, or at any special meeting of stockholders, provided notice of such alteration, amendment, repeal or adoption of new bylaws shall have been stated in the notice of such special meeting.

February 16, 2016

**GT ADVANCED TECHNOLOGIES INC.
MANAGEMENT INCENTIVE PLAN**

The plan described below constitutes the “Management Incentive Plan” referenced in the Debtors’ Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, dated February 1, 2016 (as amended, the “Plan”). Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Plan. Promptly following the Effective Date (but no later than 10 days after the Effective Date), the New Board shall adopt this Management Incentive Plan, in a manner consistent with the terms of the Plan, the terms set forth below and otherwise applicable law. The terms of this Management Incentive Plan may be amended, supplemented or modified to the extent provided in the Plan.

Equity Incentive Plan

The New Board will approve the creation of a standard equity incentive plan (the “*Equity Incentive Plan*”) typical of plans for privately-held companies, such plan to permit the issuance of that number of shares of Reorganized Common Stock as is determined by the New Board of Reorganized GT Inc. (the “**Company**”) to be the equivalent of 10% of the Fully Diluted Shares (the “*Initial Pool*”). The final terms and conditions of the Equity Incentive Plan will be determined and approved by the New Board. The New Board will determine, among other things, the form of award and number of shares applicable to such awards for members of the Company management and others whom the New Board determines should participate in the Equity Incentive Plan. The initial awards, constituting such portion of the Initial Pool as the New Board determines to grant, will be in the form of stock options with an exercise price equal to the initial value of the common stock (“*Initial Value*”) (unless and until such Initial Value ceases to be fair market value for purposes of Internal Revenue Code Section 409A) as to which 50% will vest quarterly over three years based on continued service and 50% will vest based on either exit or performance-based criteria (together, if provided by the New Board, with time vesting for that portion); provided, however, that such awards will be subject to 100% accelerated vesting upon a termination without “Cause” of the covered individual’s employment at or within 12 months following a change in control of the Company (at the 50% ownership change level or such additional alternative definitions as the New Board may determine). The award agreements will specify the definition of Cause (provided that definitions in individual employment agreements will override the award agreements). Resignation for “Good Reason” will be treated in the same manner as termination without Cause for individuals who have employment agreements in effect that provide a definition of “Good Reason.”

Kicker Option Pool

The Equity Incentive Plan will also provide for an increase in the number of shares covered by the Equity Incentive Plan, constituting up to an additional 10% of the Fully Diluted Shares (the “*Kicker Option Pool*”) as determined by the New Board, to provide additional incentives for members of the Company management and others whom the New Board determines should

participate in the Equity Incentive Plan. The New Board will also determine the dates of grants, numbers of shares, exercise prices, and vesting conditions for such awards.

Emergence Bonus

The New Board will adopt a cash incentive plan providing for a cash pool of no more than \$500,000 in the aggregate to be paid to certain employees who are employed by the Company as of the Effective Date of the Plan, of which the payments to the three senior executives will be \$133,796 for David Keck, \$78,533 for Hoil Kim, and \$65,444 for Raja Bal (as provided in their employment agreements). The emergence bonus will be payable if Closing Cash (as defined in the Plan) is at least \$35 million.¹

¹ The terms set forth in this Management Incentive Plan are the terms proposed by the Financing Support Parties (as defined in the Plan). The Debtors have not determined whether these terms comply with the Plan Term Sheet (as defined in the Plan). Moreover, management has not agreed to these terms.

EXHIBIT 13

Summary of Economic Terms for Senior Executives

February 16, 2016

GT Advanced Technologies Inc.
Summary of Economic Terms for Senior Executives

Executive	Base Salary	Target Bonus under Annual Incentive Program	Special Bonus	Emergence Bonus	Equity Awards from the 10% equity pool and an approved kicker pool	Severance Eligibility on Termination without Cause or resignation for certain Good Reasons	Post Employment Consulting/ Noncompetition Payment
David Keck President and Chief Executive Officer	\$575,000	100% of Base Salary – Payment related to target to be contingent upon meeting metrics to be decided by post-Effective Date Board of Directors	\$96,208 for monies not paid due to bankruptcy	\$133,796	To be determined by post-Effective Date Board of Directors	One year's Base Salary, plus continued participation in certain medical and dental plans	\$2,500,000
Hoil Kim (Executive) Vice President, General Counsel and Secretary	\$450,000	75% of Base Salary – Same as above re metrics		\$78,533	Same as above	Same as above	Not applicable
Raja Bal Chief Financial Officer	\$375,000	75% of Base Salary – Same as above re metrics	\$50,000 for monies not paid due to bankruptcy	\$65,444	Same as above	Same as above	Not applicable

EXHIBIT 14

Litigation Trust Agreement

LITIGATION TRUST AGREEMENT AND DECLARATION OF TRUST

This litigation trust agreement and declaration of trust (the “Agreement”), dated as of [March] _____, 2016, is made by and among GT Advanced Technologies Inc., GTAT Corporation, GT Advanced Equipment Holding LLC, GT Equipment Holdings, Inc., Lindbergh Acquisition Corp., GT Sapphire Systems Holding LLC, GT Advanced Cz LLC, GT Sapphire Systems Group LLC, and GT Advanced Technologies Limited (collectively, “Debtors”), Debtors and Debtors in possession, and _____ (“Trustee,” and together with the Debtors, “Parties”).

RECITALS

A On October 6, 2014, each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Hampshire (the “Bankruptcy Court”), and their Chapter 11 Cases are being jointly administered as *In re GT Advanced Technologies, Inc., et al.*, Case No. 14-11916-HJB.

B On October 14, 2014, the Office of the United States Trustee appointed (Docket No. 127) the Official Committee of Unsecured Creditors of the Debtors (“Creditors’ Committee”), and amended the appointment of the Creditors’ Committee on October 31, 2014 (Docket No. 420) and again on January 12, 2015 (Docket No. 1001), May 13, 2015 (Docket No. 1815) and January 4, 2016 (Docket No. 2829).

C The Debtors filed the Debtors’ Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, Dated February 1, 2016 (Docket No. 2998) on February 1, 2016 (as amended, modified, and supplemented, the “Plan”).

D On _____, 2016, the Bankruptcy Court entered an order (“Confirmation Order”) (Docket No. ____) confirming the Plan, which became effective on _____, 2016 (“Effective Date”) (Docket No. ____).

E The Plan provides for the establishment of the Litigation Trust (“Trust”) effective on the Effective Date of the Plan.

F The Confirmation Order provides for the appointment of the Trustee as Litigation Trustee of the Trust, and the Plan and this Agreement provide for the appointment as necessary of any successor Litigation Trustee of the Trust.

G The Plan and Confirmation Order provide for the Debtors to transfer to the Trust the Litigation Trust Assets, consisting of (i) the Litigation Trust Funding Amount, (ii) any Excess Proceeds (iii) any GUC Preference Proceeds, and (iv) the Non-Released D&O Causes of Action.

H The Trust is established for the benefit of the Litigation Trust Beneficiaries (collectively, “Beneficiaries”), who are the holders of Allowed GT Inc. Notes Claims classified and treated in Class 4A of the Plan, Allowed Corp. Debtors General Unsecured Claims classified and treated in Class 4C of the Plan, and Allowed GT Hong Kong General Unsecured Claims classified and treated in Class 4D of the Plan.

I The Trust is established for the purpose of collecting, holding, administering, distributing, and (to the extent not already liquidated) liquidating the Trust Assets (defined below) for the benefit of the Beneficiaries in accordance with the terms and conditions of this Agreement and the Plan and with no objective to continue or engage in the conduct of a trade or

business, except to the extent reasonably necessary to effectuate, and consistent with, the Plan and liquidating purpose of the Trust.

J Pursuant to the Plan, the Debtors, Trust, Trustee, and Beneficiaries are required to treat, for all federal income tax purposes, the transfer of the Litigation Trust Assets to the Trust as a transfer of the Liquidating Trust Assets by the Debtors to the Beneficiaries in satisfaction of their Allowed Claims, followed by a transfer of such Litigation Trust Assets by the Beneficiaries to the Trust in exchange for the beneficial interest herein, and to treat the Beneficiaries as the grantors and owners of the Trust for federal income tax purposes.

K Pursuant to the Plan, the Trust is intended for federal income tax purposes (i) to be treated as a grantor trust within the meaning of sections 671-677 of the Internal Revenue Code of 1986, as amended (“IRC”), and also (ii) to qualify as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to effectuate, and consistent with, the Plan and liquidating purpose of the Trust.

L In accordance with the Plan, the Trust is further intended to be exempt from the requirements of (i) pursuant to section 1145 of the Bankruptcy Code, the Securities Exchange Act of 1933, as amended, and any applicable state and local laws requiring registration of securities, and (ii) the Investment Company Act of 1940, as amended, pursuant to sections 7(a) and 7(b) of that Act and section 1145 of the Bankruptcy Code.

NOW, THEREFORE, in accordance with the Plan and the Confirmation Order, and in consideration of the premises, and the mutual covenants and agreements of the Parties contained in the Plan and herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, the Parties agree and declare as follows:

DECLARATION OF TRUST

The Debtors and the Trustee enter into this Agreement to effectuate the Distribution of the Litigation Trust Assets to the Beneficiaries pursuant to and subject to the terms of the Plan and the Confirmation Order;

Pursuant to section 8.16 of the Plan, paragraphs _____ of the Confirmation Order, and section 2.3 of this Agreement, all right, title, and interest in, under, and to the Litigation Trust Assets shall be absolutely and irrevocably assigned to the Trust and to its successors in trust and its successors and assigns, for distribution to the Beneficiaries after payment of reasonable expenses of the Trust and Trustee and the establishment of reasonable reserves, in accordance with and subject to the terms of the Plan and this Agreement;

TO HAVE AND TO HOLD unto the Trustee and its successors in trust; and

IT IS HEREBY FURTHER COVENANTED AND DECLARED, that the Litigation Trust Assets and all other property held from time to time by the Trust under this Agreement and any proceeds thereof and earnings thereon (collectively, "Trust Assets") are to be held by the Trust and applied on behalf of the Trust by the Trustee on the terms and conditions set forth herein, solely for the benefit of the Beneficiaries and for no other party.

ARTICLE I

RECITALS, PLAN DEFINITIONS, OTHER DEFINITIONS, INTERPRETATION, AND CONSTRUCTION

1.1 Recitals. The Recitals are incorporated into and made terms of this Agreement.

1.2 Use of Plan Definitions. All terms which are used in this Agreement and not defined herein shall have the same meaning set forth in the Plan; provided, however, a reference

to the “Debtors” in this Agreement shall mean the Debtors before the Effective Date and the Reorganized Debtors after the Effective Date.

1.3 Definitions. For purposes of this Agreement:

1.3.1 “Disputed Claim” means any Claim, or any portion thereof, that is neither an Allowed Claim nor a Disallowed Claim.

1.3.2 “Beneficiaries” means the Litigation Trust Beneficiaries.

1.3.3 “Rights of Action” means the Non-Released D&O Causes of Action.

1.4 Interpretation; Headings. All references herein to specific provisions of the Plan or Confirmation Order are without exclusion or limitation of other applicable provisions of the Plan or Confirmation Order. Words denoting the singular number shall include the plural number and vice versa, and words denoting one gender shall include the other gender. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning or interpretation of this Agreement or any term or provision of this Agreement.

1.5 Construction of Agreement. This Agreement shall not be construed to impair or limit in any way the rights of the Trust and Trustee under the Plan. This Agreement is intended to supplement and expand on those rights.

1.6 Conflict Among Plan Documents. To the extent that any provision of this Agreement other than Article 4 of this Agreement conflicts with or is in any way inconsistent with any provision of the Plan, the Plan will govern and control. To the extent that any provision of the Plan conflicts with or is in any way inconsistent with Article 4 of this Agreement, Article 4 of this Agreement will govern and control. To the extent that any

provision of the Plan or this Agreement conflicts with or is in any way inconsistent with any provision of the Confirmation Order, the Confirmation Order will govern and control.

ARTICLE II

ESTABLISHMENT OF TRUST

2.1 Effectiveness of Agreement; Name of Trust. This Agreement shall become effective on the Effective Date. The Trust shall be officially known as the “GTAT Litigation Trust.”

2.2 Purpose of Trust. The Debtors and the Trustee, pursuant to the Plan and in accordance with Bankruptcy Code, hereby create the Trust for the primary purpose of collecting, holding, administering, distributing and (to the extent not already liquidated) liquidating the Trust Assets for the benefit of the Beneficiaries in accordance with the terms and conditions of this Agreement and the Plan, and with no objective to continue or engage in the conduct of a trade or business, except to the extent necessary to effectuate, and consistent with, the Plan and the liquidating purpose of the Trust.

2.3 Transfer of Trust Assets.

2.3.1 Conveyance of Litigation Trust Assets. The Debtors hereby grant, release, assign, transfer, convey and deliver, on behalf of the Beneficiaries, the Litigation Trust Assets to the Trust as of the Effective Date in trust for the benefit of the Beneficiaries to be administered and applied as specified in this Agreement and the Plan; provided, however, the Debtors shall periodically transfer GUC Preference Proceeds, if any, that have been realized and received by the Debtors to the Trust as set forth in section 8.16(d) of the Plan. The Debtors shall, from time to time, as and when reasonably requested by the Trustee, execute and deliver or cause to be executed and delivered such documents (in recordable form where necessary or

appropriate) and the Debtors shall take or cause to be taken such further action as the Trustee may reasonably deem necessary or appropriate, to vest or perfect in the Trust or confirm to the Trustee title to and possession of the Trust Assets. The Trustee shall have no duty to arrange for any of the transfers contemplated under this Agreement or by the Plan or to ensure their compliance with the terms of the Plan and the Confirmation Order, and shall be conclusively entitled to rely on the legality and validity of such transfers.

2.3.2 Title to Trust Assets. Pursuant to the Plan, and subject to the terms of this Agreement, all of the Debtors' right, title and interest in and to the Litigation Trust Assets, including all such assets held or controlled by third parties, are automatically vested in the Trust on the Effective Date, free and clear of all liens, claims, encumbrances and other interests, and such transfer is on behalf of the Beneficiaries to establish the Trust. The Trust shall be authorized to obtain possession or control of, liquidate (to the extent not already liquidated), and collect all of the Trust Assets in the possession or control of third parties and pursue all of the Rights of Action, including all setoffs and defenses of the Debtors to any counterclaims that may be asserted by any and all Litigation Trust Defendants. On the Effective Date, the Trust shall stand in the shoes of the Debtors for all purposes with respect to the Litigation Trust Assets. To the extent any law or regulation prohibits the transfer of ownership of any of the Litigation Trust Assets from the Debtors to the Trust and such law is not superseded by the Bankruptcy Code, the Trust's interest shall be a lien upon and security interest in such Trust Assets, in trust, nevertheless, for the sole use and purposes set forth in section 2.2, and this Agreement shall be deemed a security agreement granting such interest thereon without need to file financing statements or mortgages. By executing this Agreement, the Trustee on behalf of

the Trust hereby accepts all of such property as Trust Assets, to be held in trust for the Beneficiaries, subject to the terms of this Agreement and the Plan.

2.4 Capacity of Trust. Notwithstanding any state or federal law to the contrary or anything herein, the Trust shall itself have the capacity, in its own right and name, to act or refrain from acting, including the capacity to sue and be sued and to enter into contracts. The Trust may alone be the named movant, respondent, party plaintiff or defendant, or the like in all adversary proceedings, contested matters, and other state or federal proceedings brought by or against it, and may settle and compromise all such matters in its own name.

2.5 Cooperation of Debtors. The Debtors and their Professionals shall reasonably cooperate with the Trust and Trustee and their Professionals in effecting the transition from the Debtors to the Trust of administration of the Trust Assets. Such cooperation shall include, subject to section 8.16(q) of the Plan, as reasonably requested by the Trustee, making reasonable efforts to identify and facilitate access to (i) any information the Trustee reasonably requests in connection with the Trust's prosecution or other pursuit of the Rights of Action and (ii) former employees or Professionals of the Debtors with knowledge regarding the Rights of Action. Within thirty (30) days after the Effective Date, the Debtors shall arrange for the Trustee to receive (i) an updated claims register for the General Unsecured Claims that has been reconciled against the Bankruptcy Court docket for the Chapter 11 Cases and (ii) a written report of the status of any previously filed objections to General Unsecured Claims and the status of any reconciliations of General Unsecured Claims, showing which General Unsecured Claims are Allowed Claims, which are Disputed Claims, and which are still being evaluated for possible objection. In accordance with and subject to the terms of section 8.16(f) of the Plan, the Debtors shall, as reasonably requested by the Trustee, periodically update the Trustee

concerning the status of the Preference Causes of Action. In accordance with and subject to the terms of section 9.6(d) of the Plan, the Debtors shall cooperate with the Trustee regarding resolution of General Unsecured Claims and, as reasonably requested by the Trustee, periodically update the Liquidating Trustee about the status of any reconciliations of General Unsecured Claims, including which General Unsecured Claims are Allowed Claims, which are Disputed Claims, and which are still being evaluated for possible objection, and any other information reasonable necessary for the Liquidating Trustee to arrange for the Liquidating Trust to make Distributions to its Beneficiaries, including establishing and maintaining adequate LT Reserves for General Unsecured Claims held by Beneficiaries.

2.6 No Retention of Excess Cash. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the Trust or Trustee retain cash or cash equivalents in excess of a reasonable amount to establish sufficient reserves out of all Trust Assets under section 4.1 of this Agreement for expenses of the Trust and Trustee, including reserves sufficient to meet all claims, expenses, and contingent liabilities (including Disputed Claims of Beneficiaries) and to maintain the value of the Trust Assets during liquidation, and shall distribute all amounts not required to be retained for such purposes to the Beneficiaries as promptly as reasonably practicable in accordance with the Plan and this Agreement.

2.7 Acceptance by Trustee. The Trustee accepts its appointment as Liquidating Trustee of the Trust.

ARTICLE III

ADMINISTRATION OF TRUST

3.1 Rights, Powers, and Privileges of Trustee Generally. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, as of the date that the Trust

Assets are transferred to the Trust, the Trustee on behalf of the Trust may control and exercise authority over the Trust Assets, over the acquisition, management and disposition thereof, and over the management and conduct of the affairs of the Trust. In administering the Trust Assets, the Trustee shall endeavor not to unduly prolong the Trust's duration, with due regard that undue haste in the administration of the Trust Assets may fail to maximize value for the benefit of the Beneficiaries and otherwise be imprudent and not in the best interests of the Beneficiaries.

3.1.1 Power to Contract. In furtherance of the purpose of the Trust, and except as otherwise specifically restricted in the Plan, Confirmation Order, or this Agreement, the Trustee shall have the right and power on behalf of the Trust, and also may cause the Trust, to enter into any covenants or agreements binding the Trust, and to execute, acknowledge and deliver any and all instruments that are necessary or deemed by the Trustee to be consistent with and advisable in furthering the purpose of the Trust.

3.1.2 Ultimate Right to Act Based on Advice of Counsel or Other Professionals. Nothing in this Agreement shall be deemed to limit the Trustee's protections and benefits under section 8.16(h) of the Plan or to prevent the Trustee from taking or refraining to take any action on behalf of the Trust that, based upon the advice of counsel or other professionals, the Trustee determines it is obligated to take or to refrain from taking in the performance of any duty that the Trustee may owe the Beneficiaries or any other Person under the Plan, Confirmation Order, or this Agreement.

3.2 Powers of Trustee. Without limiting the generality of the above section 3.1, in addition to the powers granted in the Plan, the Trustee shall have the power to take the following actions on behalf of the Trust and any powers reasonably incidental thereto that the

Trustee, in its reasonable discretion, deems necessary or appropriate to fulfill the purpose of the Trust, unless otherwise specifically limited or restricted by the Plan or this Agreement:

3.2.1 hold legal title to the Trust Assets and to any and all rights of the Debtors and the Beneficiaries in or arising from the Trust Assets;

3.2.2 receive, manage, invest, supervise, protect, and where appropriate, cause the Trust to abandon the Trust Assets, including causing the Trust to invest any moneys held as Trust Assets in accordance with the terms of section 3.8 hereof;

3.2.3 open and maintain bank accounts on behalf of or in the name of the Trust;

3.2.4 cause the Trust to enter into any agreement or execute any document or instrument required by or consistent with the Plan, the Confirmation Order or this Agreement, and to perform all obligations thereunder;

3.2.5 collect and (to the extent not already liquidated) liquidate all Trust Assets for distribution to the Beneficiaries after paying reasonable expenses of the Trust and Trustee and establishing reasonable reserves, in accordance with and subject to the terms of the Plan and this Agreement;

3.2.6 protect and enforce the rights to the Trust Assets (including any Rights of Action) vested in the Trust and Trustee by this Agreement by any method deemed appropriate, including, without limitation, by judicial proceedings or otherwise;

3.2.7 investigate any potential Rights of Action and cause the Trust to seek the examination of any Person pursuant to Federal Rule of Bankruptcy Procedure 2004 in connection with any such investigation;

3.2.8 cause the Trust to employ and pay professionals, claims agents, disbursing agents, and other agents and third parties pursuant to this Agreement;

3.2.9 cause the Trust to pay all of its lawful expenses, debts, charges, taxes and other liabilities, and make all other payments relating to the Trust Assets;

3.2.10 cause the Trust to pursue, commence, prosecute, compromise, settle, dismiss, release, waive, withdraw, abandon, or resolve all Rights of Action;

3.2.11 calculate and make all Distributions on behalf of the Trust to the Beneficiaries provided for in, or contemplated by, the Plan and this Agreement;

3.2.12 establish, adjust, and maintain reserves for Disputed Claims, required to be administered by the Trust;

3.2.13 cause the Trust to withhold from the amount distributable to any Person the maximum amount needed to pay any tax or other charge that the Trustee has determined, based upon the advice of its agents and/or professionals, may be required to be withheld from such Distribution under the income tax or other laws of the United States or of any state or political subdivision thereof;

3.2.14 in reliance upon the Debtors' schedules and the official Claims Register maintained in the Chapter 11 Cases, maintain a register evidencing the beneficial interest herein held by each Beneficiary and, in accordance with section 3.9 of this Agreement, such register may be the official Claims Register maintained in the Chapter 11 Cases for the GT Inc. Notes Claims, Corp. Debtors General Unsecured Claims, and GT Hong Kong General Unsecured Claims;

3.2.15 cause the Trust to make all tax withholdings, prepare and file tax information returns, file and prosecute tax refund claims, make tax elections by and on behalf of the Trust, and file tax returns for the Trust as a grantor trust under IRC section 671 and Treasury Income Tax Regulation section 1.671-4 pursuant to and in accordance with the Plan and Article VII hereof, and pay taxes, if any, payable for and on behalf of the Trust; provided, however, that notwithstanding any other provision of this Agreement, the Trustee shall have no personal responsibility for the signing or accuracy of the Debtors' income tax returns that are due to be filed after the Effective Date or for any tax liability related thereto;

3.2.16 subject to section 3.5 of this Agreement with respect to non-cash Trust Assets, cause the Trust to abandon or donate to a charitable organization any Trust Assets that the Trustee determines to be too impractical to distribute to Beneficiaries or of inconsequential value to the Trust and Beneficiaries;

3.2.17 cause the Trust to send annually to Beneficiaries, in accordance with the tax laws, a separate statement stating a Beneficiary's interest in the Trust and its share of the Trust's income, gain, loss, deduction or credit, and to instruct all such Beneficiaries to report such items on their federal tax returns;

3.2.18 cause the Trust to seek a determination of tax liability or refund under section 505 of the Bankruptcy Code;

3.2.19 subject to section 8.16(m) of the Plan, cause the Trust to establish out of all Trust Assets such reserves for taxes, assessments and other expenses of administration of the Trust as may be necessary and appropriate for the proper operation of matters incident to the Trust;

3.2.20 cause the Trust to purchase and carry all insurance policies that the Trustee deems reasonably necessary or advisable and to pay all associated insurance premiums and costs;

3.2.21 if any of the Trust Assets are situated or deemed to be situated in any state or other jurisdiction in which the Trustee is not qualified to act as trustee, nominate and appoint a Person duly qualified to act as trustee in such state or jurisdiction in accordance with the terms of this Agreement;

3.2.22 establish and maintain a website, to the extent the Trustee deems necessary, to provide notice of the Trust's activities to Beneficiaries, provided that the Trustee determines establishing such website does not implicate any securities law;

3.2.23 undertake all administrative functions of the Trust, including overseeing the winding down and termination of the Trust;

3.2.24 exercise, implement, enforce, and discharge all of the terms, conditions, powers, duties, and other provisions of the Plan, the Confirmation Order, and this Agreement;
and

3.2.25 take all other actions consistent with the provisions of the Plan that the Trustee deems reasonably necessary or desirable to administer the Trust.

Notwithstanding anything to the contrary herein, the Trustee shall not take any actions inconsistent with the orderly liquidation of the Trust Assets in accordance with and subject to the terms of the Plan and this Trust Agreement, as are required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement.

3.3 Exclusive Authority to Pursue Rights of Action. The Trust shall have the exclusive right, power, and interest to pursue, settle, waive, release, abandon, or dismiss the Rights of Action. The Trust shall be the sole representative of the Estates under section 1123(b)(3) of the Bankruptcy Code with respect to the Rights of Action. The Trust shall be vested with and entitled to assert all setoffs and defenses of the Debtors or the Trust to any counterclaims that may be asserted by any Litigation Trust Defendant. The Trust shall also be vested with and entitled to assert all of the Estates' rights with respect to any such counterclaims, under section 558 of the Bankruptcy Code.

3.4 [Intentionally omitted.]

3.5 Abandonment. If, in the Trustee's reasonable judgment, any non-cash Trust Assets cannot be sold in a commercially reasonable manner or the Trustee believes in good faith that such property has inconsequential value to the Trust or its Beneficiaries, the Trustee shall have the right to cause the Trust to abandon or otherwise dispose of such property, including by donation of such property to a charity.

3.6 Responsibility for Administration of Certain General Unsecured Claims. As of the Effective Date, the Trust shall become responsible for administering and paying Distributions of Trust Assets to the Beneficiaries holding Allowed GT Inc. Notes Claims classified and treated in Class 4A of the Plan, Allowed Corp. Debtors General Unsecured Claims classified and treated in Class 4C of the Plan, and Allowed GT Hong Kong General Unsecured Claims classified and treated in Class 4D of the Plan. Subject to the terms of the Plan, the Debtors, however, shall have the exclusive right to object to the allowance of Claims and seek estimation of Claims under and subject to section 502(c) of the Bankruptcy Code.

3.7 Agents and Professionals. The Trustee may, but shall not be required to, consult with and retain attorneys, financial advisors, accountants, appraisers, and other professionals the Trustee believes have qualifications necessary to assist in the administration of the Trust, including professionals previously retained by the Debtors or the Creditors' Committee. For the avoidance of doubt, and without limitation of applicable law, nothing in this Agreement shall limit the Trustee from engaging counsel or other professionals, including the Trustee itself or the Trustee's firm or their affiliates, to do work for the Trust. The Trustee may pay the reasonable salaries, fees and expenses of such Persons out of the Trust Assets in the ordinary course of business.

3.8 Safekeeping and Investment of Trust Assets. All moneys and other assets received by the Trustee shall, until distributed or paid over as provided herein and in the Plan, be held in trust for the benefit of the Beneficiaries, in accordance with and subject to the terms of the Plan, but need not be segregated in separate accounts from other Trust Assets, unless and to the extent required by law or the Plan. The Trustee shall not be under any obligation to invest Trust Assets. Neither the Trust nor the Trustee shall have any liability for interest or producing income on any moneys received by them and held for Distribution or payment to the Beneficiaries, except as such interest or income shall actually be received by the Trust or Trustee, which shall be distributed as provided in the Plan. Except as otherwise provided by the Plan, the powers of the Trustee to invest any moneys held by the Trust, other than those powers reasonably necessary to maintain the value of the assets and to further the Trust's liquidating purpose, shall be limited to powers to invest in demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary liquid investments, such as treasury bills; provided, however, that the scope of permissible

investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treas. Reg. § 301.7701-4(d), may be permitted to hold pursuant to the Treasury Regulations, or any modification of the IRS guidelines, whether set forth in IRS rulings, IRS pronouncements, or otherwise. For the avoidance of doubt, the provisions of section 11-2.3 of the Estates, Power, and Trusts Law of New York shall not apply to this Agreement.

Notwithstanding the foregoing, the Trustee shall not be prohibited from engaging in any trade or business on its own account, provided that such activity does not interfere or conflict with the Trustee's administration of the Trust.

3.9 Maintenance and Disposition of Trust and Debtor Records. The Trustee shall maintain accurate records of the administration of Trust Assets, including receipts and disbursements and other activity of the Trust. The Trust may engage a claims agent to continue to maintain and update the Claims register maintained in the Chapter 11 Cases throughout the administration of the Trust, and such Claims register may serve as the Trustee's register of beneficial interests held by Beneficiaries. The books and records maintained by the Trustee and any records of the Debtors transferred to the Trust may be disposed of by the Trustee at the later of (i) such time as the Trustee determines that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Trust or its Beneficiaries or (ii) upon the termination and completion of the winding down of the Trust.

3.10 Reporting Requirements. The Trustee shall provide the U.S Trustee and the Bankruptcy Court the information and reports they may reasonably request concerning Trust administration. The Trustee shall provide any Beneficiary the information they may reasonably request concerning Trust administration. Notwithstanding anything to the contrary herein, the Trustee shall endeavor in good faith not to provide or disclose any information it reasonably

believes is privileged or otherwise protected from disclosure without first ensuring disclosure of that information will not waive any such privilege or protection.

3.11 Conflicts of Interest. The Trustee will appoint a disinterested Person to handle any matter where the Trustee has identified it has a conflict of interest or the Bankruptcy Court, on motion of the U.S. Trustee or any other party in interest, determines one exists. In the event the Trustee is unwilling or unable to appoint a disinterested Person to handle any such matter, the Bankruptcy Court, on notice and hearing, may do so.

3.12 Trustee's Bond; Procurement of Insurance. The Trustee shall obtain a trustee's bond to protect the Beneficiaries with respect to the Trustee's obligations as trustee under this Agreement and applicable law. The bond amount shall be based on the amount of Cash held by the Trust from time to time and shall not be required to provide protection for more than that amount. The Trustee may adjust the bond amount from time to time in accordance with the amount of Cash held by the Trust. The Trustee shall pay the premiums for the bond out of Trust Assets as an expense of the Trust. The Trustee is hereby authorized, but not required to obtain all reasonable insurance coverage for itself, its agents, administrators, overseers, representatives, employees or independent contractors, including, without limitation, coverage with respect to the liabilities, duties and obligations of the Trustee and its agents, representatives, employees or independent contractors under this Agreement. The cost of any such insurance coverage shall be an expense of the Trust and paid out of Trust Assets.

ARTICLE IV
DISTRIBUTIONS

4.1 Distribution and Reserve of Trust Assets. Following the transfer of Trust Assets to the Trust, the Trustee shall make continuing efforts on behalf of the Trust to collect, liquidate (if not already liquidated), and distribute all Trust Assets after payment of reasonable expenses of the Trust and Trustee and the establishment of reasonable reserves in accordance with the terms of the Plan and this Agreement.

4.1.1 Distributions. The Trustee shall cause the Trust to distribute, at least annually, the Trust's net Cash income and net Cash proceeds from the liquidation of the Trust Assets to the Beneficiaries, in accordance with and subject to the terms of the Plan and this Agreement, except, subject to section 8.16(m) of the Plan, the Trust may retain out of all Trust Assets an amount of net income and other Trust Assets reasonably necessary to maintain the value of the Trust Assets or to meet expenses, claims and contingent liabilities (including Disputed Claims of Beneficiaries) of the Trust and Trustee, and retention of such amount may preclude Distributions to Beneficiaries.

4.1.2 Reserves; Pooling of Reserved Funds. Before any Distribution can be made, the Trustee shall, subject to section 8.16(m) of the Plan, in its reasonable discretion, establish, supplement, and maintain out of all Trust Assets reserves in an amount sufficient to meet any and all reasonable expenses and liabilities of the Trust, including reasonable attorneys' fees and expenses, the reasonable fees and expenses of other professionals, and fees owed the United States Trustee. In accordance with sections 1.136 and 8.16(k) of the Plan, the Trust shall also maintain as necessary a reserve for Disputed Claims of Beneficiaries that if Allowed would be entitled to a Distribution from the Trust. For the avoidance of doubt, the Trustee may

withhold any Distribution pending the Debtors' determination of whether to object to a General Unsecured Claim that if Allowed would be entitled to a Distribution from the Trust. Any such withheld Distribution shall become part of the Trust's reserve for Disputed Claims of Beneficiaries and shall be distributed to the appropriate Beneficiary no later than on the first Distribution Date after the Debtors inform the Trustee, in writing, they have decided not to object to the pertinent General Unsecured Claim or the General Unsecured Claim has become Allowed. If a General Unsecured Claim is Disallowed, any withheld Distribution for that General Unsecured Claim (less any amount reserved for remaining Disputed Claims and subject to sections 4.1.1 and 4.8 of this Agreement) shall be distributed to the remaining Beneficiaries on the first Distribution Date after the Debtors inform the Trustee, in writing, the General Unsecured Claim has been Disallowed. The Trustee need not maintain the Trust's reserves in segregated bank accounts and may pool funds in the reserves with each other and other funds of the Trust; provided, however, that the Trust shall treat all such reserved funds as being held in a segregated manner in its books and records.

4.1.3 Distributions Net of Reserves and Costs. Distributions shall be made net of reserves in accordance with the Plan, and also, subject to Section 8.16(m) of the Plan, net of the actual and reasonable costs of making the Distributions.

4.1.4 Right to Rely on Professionals. Without limitation of the generality of section 6.6 of this Agreement, in determining the amount of any Distribution or reserves, the Trustee may rely and shall be fully protected in relying on the advice and opinion of the Trust's financial advisors, accountants, or other professionals.

4.2 Method and Timing of Distributions. Distributions to Beneficiaries will be made from the Trust in accordance with the terms of the Plan (including Article IX) and this

Agreement. The Trust may engage disbursing agents and other Persons to help make Distributions.

4.3 Withholding from Distributions. The Trustee, in its reasonable discretion, may cause the Trust to withhold from amounts distributable from the Trust to any Beneficiary any and all amounts as may be sufficient to pay the maximum amount of any tax or other charge that has been or could reasonably be expected to be assessed or imposed on the Trust, or required to be withheld by any law, regulation, rule, ruling, directive, or other governmental requirement with respect to the amount to be distributed to such Beneficiary. The Trustee shall determine such maximum amount to be withheld by the Trust in its sole, reasonable discretion and shall cause the Trust to distribute to the Beneficiary any excess amount withheld. Any amount withheld will be paid to the appropriate taxing or other governmental authority in accordance with the requirements of and to the extent required by applicable law.

4.4 Tax Identification Numbers. Consistent with section 16.2 of the Plan, the Trustee may require any Beneficiary to furnish its taxpayer identification number as assigned by the Internal Revenue Service on a completed IRS Form W-9 or, if applicable W-8, or otherwise certify its foreign status on a completed IRS Form W-8, and may condition any Distribution to any Beneficiary upon receipt of such completed IRS Form W-9 or W-8. On receipt of a completed IRS Form W-9 or, if applicable, W-8 of a Beneficiary, the Trustee shall make any pending Distributions to the Beneficiary without interest on the amount of the Distributions. If a Beneficiary does not timely provide the Trustee with its taxpayer identification number or certify its foreign status in the manner and by the deadline established by the Trustee, then the Distribution to such Beneficiary shall be administered as an unclaimed Distribution in accordance with section 4.5 of this Agreement. The deadline established by the Trustee shall not

be earlier than the date that is the later of (i) [120] days after the Effective Date and (ii) 60 days after the date the Trustee mails or transmits a notice to a Beneficiary that it must provide the Trustee with its completed IRS Form W-9 or, if applicable, W-8.

4.5 Unclaimed and Undeliverable Distributions. If any Distribution by the Trustee to a Beneficiary is returned to the Trustee as undeliverable or is otherwise unclaimed, no further Distributions to such Beneficiary shall be made unless and until the Beneficiary claims the Distributions by timely notifying the Trustee in writing of any information necessary to make the Distribution to the Beneficiary in accordance with this Agreement, the Plan, and applicable law, including such Beneficiary's then-current address or taxpayer identification number. The Trustee shall hold in reserve for 120 days after the date of the undeliverable or otherwise unclaimed Distributions all funds for those Distributions. If a Beneficiary timely provides the Trustee the necessary information within the 120 day reserve period, all missed Distributions shall be made to the Beneficiary as soon as is practicable, without interest. If the Beneficiary does not timely provide the Trustee the necessary information within the 120 day reserve period, the fund held in reserve for the undeliverable or unclaimed Distributions shall, in the discretion of the Trustee, become unrestricted Trust Assets available for redistribution to other Beneficiaries in accordance with this Agreement and the Plan.

4.5.1 No Responsibility to Attempt to Locate Beneficiaries. The Trustee may, in its sole discretion, attempt to determine a Beneficiary's current address or otherwise locate a Beneficiary, but nothing in this Agreement or the Plan shall require the Trustee to do so.

4.5.2 Disallowance of Claims; Cancellation of Corresponding Beneficial Interests. All Claims in respect of undeliverable or unclaimed Distributions that have become unrestricted Trust Assets under this section 4.5 of the Agreement shall be deemed Disallowed

and expunged, and the corresponding beneficial interests in the Trust of the Beneficiary holding such Disallowed Claims shall be deemed canceled. The Holder of any such Disallowed Claim shall no longer have any right, claim, or interest in or to any Distributions in respect of such Disallowed Claims. The Holder of any such Disallowed Claim is forever barred, estopped, and enjoined from receiving any Distributions under the Trust Agreement and from asserting such Disallowed Claim against the Trust or Trustee.

4.5.3 Inapplicability of Unclaimed Property or Escheat Laws. Unclaimed property held by the Trust shall not be subject to the unclaimed property or escheat laws of the United States, any state, or any local governmental unit.

4.6 Voided Checks; Request for Reissuance. In accordance with section 9.10 of the Plan, Distribution checks issued to Beneficiaries shall be null and void if not negotiated within ninety (90) days after the date of issuance thereof. Notwithstanding that section, Distributions in respect of voided checks shall be treated as unclaimed Distributions as of the date of the check and administered under section 4.5 of this Agreement. Requests for reissuance of any check shall be made in writing directly to the Trustee by the Beneficiary that was originally issued such check. All such requests shall be made promptly and in time for the check to be reissued and cashed before the funds for the checks become unrestricted Trust Assets under section 4.5 of this Agreement. The Beneficiary shall bear all the risk that, and shall indemnify and hold the Trust and Trustee harmless against any loss that may arise if, the Trustee does not reissue a check promptly after receiving a request for its reissuance and the 120 day reserve period of section 4.5 of this Agreement passes without the check being reissued or cashed.

4.7 Conflicting Claims. If any conflicting claims or demands are made or asserted with respect to the beneficial interest of a Beneficiary under this Agreement, or if there is any

disagreement between the assignees, transferees, heirs, representatives or legatees succeeding to all or a part of such an interest resulting in adverse claims or demands being made in connection with such interest, then, in any of such events, the Trustee shall be entitled, in its sole discretion, to refuse to comply with any such conflicting claims or demands.

4.7.1 The Trustee may elect to cause the Trust to make no payment or Distribution with respect to the beneficial interest subject to the conflicting claims or demand, or any part thereof, and to refer such conflicting claims or demands to the Bankruptcy Court, which shall have exclusive jurisdiction over resolution of such conflicting claims or demands. Neither the Trust nor the Trustee shall be or become liable to any of such parties for their refusal to comply with any such conflicting claims or demands, nor shall the Trust or Trustee be liable for interest on any funds which may be so withheld.

4.7.2 The Trustee shall be entitled to refuse to act until either (i) the rights of the adverse claimants have been adjudicated by a Final Order of the Bankruptcy Court or (ii) all differences have been resolved by a valid written agreement among all such parties to the satisfaction of the Trustee, which agreement shall include a complete release of the Trust and Trustee. Until the Trustee receives written notice that one of the conditions of the preceding sentence is met, the Trustee may deem and treat as the absolute owner under this Agreement of the beneficial interest in the Trust the Beneficiary identified as the owner of that interest in the books and records maintained by the Trustee. The Trustee may deem and treat such Beneficiary as the absolute owner for purposes of receiving Distributions and any payments on account thereof for federal and state income tax purposes, and for all other purposes whatsoever.

4.7.3 In acting or refraining from acting under and in accordance with this section 4.7 of the Agreement, the Trustee shall be fully protected and incur no liability to any purported claimant or any other Person pursuant to Article VI of this Agreement.

4.8 Priority of Expenses of Trust. Subject to section 8.16(m) of the Plan, the Trust must pay, or make reasonable provision for the payment of, all of its reasonable expenses before making Distributions.

ARTICLE V

BENEFICIARIES

5.1 Interest Beneficial Only. The ownership of a beneficial interest in the Trust shall not entitle any Beneficiary or the Debtors to any title in or to the Trust Assets or to any right to call for a partition or division of such assets or to require an accounting.

5.2 Ownership of Beneficial Interests Hereunder. Each Beneficiary shall own a beneficial interest herein which shall, subject to section 4.1 of this Agreement and the Plan, be entitled to a Distribution in the amounts, and in accordance with the terms, set forth in the Plan and this Agreement.

5.3 Evidence of Beneficial Interest. Ownership of a beneficial interest in the Trust Assets shall not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the Trust by the Trustee.

5.4 No Right to Accounting. Neither the Beneficiaries nor their successors, assigns, creditors, or any other Person shall have any right to an accounting by the Trustee, and the Trustee shall not be obligated to provide any accounting to any Person. Nothing in this Agreement is intended to require the Trustee at any time or for any purpose to file any

accounting or seek approval of any court with respect to the administration of the Trust or as a condition for making any advance, payment, or Distribution out of proceeds of Trust Assets.

5.5 No Standing. Except as expressly provided in this Agreement, a Beneficiary shall not have standing to direct or to seek to direct the Trust or Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any Person upon or with respect to the Trust Assets.

5.6 Requirement of Undertaking. The Trustee may request the Bankruptcy Court to require, in any suit for the enforcement of any right or remedy under this Agreement, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, including reasonable attorneys' fees, against any party litigant in such suit; provided, however, that the provisions of this section 5.6 shall not apply to any suit by the Trustee.

5.7 Limitation on Transferability. It is understood and agreed that the beneficial interests herein shall be non-transferable and non-assignable during the term of this Agreement except by operation of law. An assignment by operation of law shall not be effective until appropriate notification and proof thereof is submitted to the Trustee, and the Trustee may continue to cause the Trust to pay all amounts to or for the benefit of the assigning Beneficiaries until receipt to the satisfaction of the Trustee of proper notification and proof of assignment by operation of law. The Trustee may rely upon such proof without the requirement of any further investigation.

5.8 Exemption from Registration. The rights of the Beneficiaries arising under this Trust Agreement may be deemed "securities" under applicable law. However, such rights have not been defined as "securities" under the Plan because (i) the parties hereto intend that such

rights shall not be securities and (ii) if the rights arising under the Trust Agreement in favor of the Beneficiaries are deemed to be “securities,” the exemption from registration under section 1145 of the Bankruptcy Code is intended to be applicable to such securities. No party to this Trust Agreement shall make a contrary or different contention.

5.9 Delivery of Distributions. Subject to the terms of this Agreement, the Trustee shall cause the Trust to make Distributions to Beneficiaries in the manner provided in the Plan.

5.10 Tax Treatment of Distributions from Trust. In accordance with sections 8.16(b) and 8.16(n) of the Plan, the Beneficiaries shall report as the grantors and owners of the Trust all of their Distributions from the Trust and LT Tax Items on their federal income tax returns and pay any resulting tax liability. The Beneficiaries shall report their taxes in a manner consistent with the terms of those sections of the Plan and Article VII and the applicable recitals of this Agreement.

ARTICLE VI

THIRD PARTY RIGHTS AND LIMITATION OF LIABILITY

6.1 Parties Dealing With the Trustee. In the absence of actual knowledge to the contrary, any Person dealing with the Trust or the Trustee shall be entitled to rely on the authority of the Trustee or any of the Trustee’s agents to act in connection with the Trust Assets. There is no obligation of any Person dealing with the Trustee to inquire into the validity or expediency or propriety of any transaction by the Trustee or any agent of the Trustee.

6.2 Limitation of Trustee’s Liability. In exercising the rights granted herein, the Trustee shall exercise the Trustee’s best judgment, to the end that the affairs of the Trust shall be properly managed and the interests of all of the Beneficiaries safeguarded. But, notwithstanding anything herein to the contrary and without limitation of section 8.16(h) of the

Plan, neither the Trustee nor its firms, companies, affiliates, partners, officers, directors, members, employees, professionals, advisors, attorneys, financial advisors, investment bankers, disbursing agents, or agents, and any of such Person's successors and assigns shall incur any responsibility or liability by reason of any error of law or fact or of any matter or thing done or suffered or omitted to be done under or in connection with this Agreement, whether sounding in tort, contract, or otherwise, except for fraud, gross negligence, or willful misconduct that is found by a final judgment (not subject to further appeal or review) of a court of competent jurisdiction to be the direct and primary cause of loss, liability, damage, or expense suffered by the Trust. In no event shall the Trustee be liable for indirect, punitive, special, incidental or consequential damage or loss (including but not limited to lost profits) whatsoever, even if the Trustee has been informed of the likelihood of such loss or damages and regardless of the form of action. Without limiting the foregoing, the Trustee shall be entitled to the benefits of the limitation of liability and exculpation provisions set forth in the Plan and Confirmation Order, including, but not limited to section 8.16(h) and Articles XIII and XIV of the Plan.

6.3 No Liability for Acts of Other Persons. None of the Persons identified in the immediately preceding section 6.2 of this Agreement shall be liable for the act or omission of any other Person identified in that section.

6.4 No Liability for Acts of Predecessors. No successor Trustee shall be in any way responsible for the acts or omissions of any Trustee in office prior to the date on which such successor becomes the Trustee, unless a successor Trustee expressly assumes such responsibility.

6.5 No Liability for Good Faith Error of Judgment. The Trustee shall not be liable for any error of judgment made in good faith, unless it shall be finally determined by a final

judgment of a court of competent jurisdiction (not subject to further appeal or review) that the Trustee was grossly negligent in ascertaining the pertinent facts.

6.6 Reliance by Trustee on Documents and Advice of Counsel or Other Persons.

Except as otherwise provided herein, the Trustee may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee also may engage and consult with its legal counsel and other agents and advisors, and shall not be liable for any action taken, omitted, or suffered by them in reliance upon the advice of such counsel, agents, or advisors.

6.7 No Liability For Acts Approved by Bankruptcy Court. The Trustee shall have the right at any time to seek instructions from the Bankruptcy Court concerning the administration or disposition of the Trust Assets and the Trust. The Trustee shall not be liable for any act or omission that has been approved by the Bankruptcy Court, and all such actions or omissions shall conclusively be deemed not to constitute fraud, gross negligence, or willful misconduct.

6.8 No Personal Obligation for Trust Liabilities. Persons dealing with the Trustee shall have recourse only to the Trust Assets to satisfy any liability incurred by the Trustee to any such Person in carrying out the terms of this Agreement, and the Trustee shall have no personal, individual obligation to satisfy any such liability.

6.9 Indemnification. Without limitation of section 8.16(i) of the Plan, the Trustee and its firms, companies, affiliates, partners, officers, directors, members, employees, professionals, advisors, attorneys, financial advisors, investment bankers, disbursing agents, or agents and any of such parties' successors and assigns (collectively, the "Indemnified Parties" and each, an "Indemnified Party") shall, to the fullest extent permitted by applicable law, be defended, held

harmless, and indemnified by the Trust from time to time and receive reimbursement from and against any and all loss, liability, expense (including reasonable counsel fees), or damage of any kind, type or nature, whether sounding in tort, contract, or otherwise, that the Indemnified Parties may incur or sustain in connection with the exercise or performance of any of the Trust's or Trustee's powers and duties under this Agreement or in rendering services by the Indemnified Party to the Trust or Trustee (the "Indemnified Conduct"), including, without limitation, the reasonable costs of counsel or others in investigating, preparing, defending, or settling any action or claim (whether or not litigation has been initiated against the Indemnified Party) or in enforcing this Agreement (including its indemnification provisions), except if such loss, liability, expense, or damage is finally determined by a final judgment (not subject to further appeal or review) of a court of competent jurisdiction to result directly and primarily from the fraud, gross negligence, or willful misconduct of the Indemnified Party asserting this provision.

6.9.1 Expense of Trust; Limitation on Source of Payment of Indemnification.

All indemnification liabilities of the Trust under this section 6.9 shall be an expense of the Trust. The amounts necessary for such indemnification and reimbursement shall, subject to section 8.16(m) of the Plan, be paid by the Trust out of the available Trust Assets after reserving for all actual and anticipated expenses and liabilities of the Trust. The Trustee shall not be personally liable for the payment of any Trust expense or claim or other liability of the Trust, and no Person shall look to the Trustee or other Indemnified Parties personally for the payment of any such expense or liability.

6.9.2 Procedure for Current Payment of Indemnified Expenses; Undertaking to Repay.

The Trust shall reasonably promptly pay an Indemnified Party all amounts subject to

indemnification under this section 6.9 on submission of invoices for such amounts by the Indemnified Party. The Trustee shall approve the indemnification of any Indemnified Party and thereafter shall approve any monthly bills of such Indemnified Party for indemnification. All invoices for indemnification shall be subject to the approval of the Trustee. By accepting any indemnification payment, the Indemnified Party undertakes to repay such amount promptly if it is determined that the Indemnified Party is not entitled to be indemnified under this Agreement. The Bankruptcy Court shall hear and finally determine any dispute arising out of this section 6.9.

6.9.3 No Implied Obligations. The Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be read into this Agreement against the Trustee.

6.10 Confirmation of Survival of Provisions. Without limitation in any way of any provision of this Agreement, the provisions of this Article VI shall survive the death, dissolution, liquidation, resignation, replacement, or removal, as may be applicable, of the Trustee, or the termination of the Trust or this Agreement, and shall inure to the benefit of the Trustee's and the Indemnified Parties' heirs and assigns.

ARTICLE VII

TAX MATTERS

7.1 Tax Treatment of Trust and Beneficiaries. Pursuant to and in accordance with the Plan, for all federal income tax purposes, the Debtors, the Beneficiaries, the Trustee, the Trust, and all other Persons shall treat the Trust as a liquidating trust within the meaning of Treasury Income Tax Regulation Section 301.7701-4(d) and IRS Revenue Procedure 94-45, 1994-2 C.B. 124 and transfer of the Trust Assets to the Trust shall be treated as a transfer of the Trust Assets

by the Debtors to the Beneficiaries in satisfaction of their Allowed Claims, followed by a transfer of the Trust Assets by the Beneficiaries to the Trust in exchange for their pro rata beneficial interests in the Trust. The Beneficiaries shall be treated as the grantors and owners of the Trust for federal income tax purposes.

7.2 Annual Reporting and Filing Requirements. Pursuant to and in accordance with the terms of the Plan and this Agreement, the Trustee shall file tax returns for the Trust as a grantor trust, with the Beneficiaries treated as the grantors and owners of the Trust for federal income tax purpose, pursuant to Treasury Income Tax Regulation Section 1.671-4(a). The Trustee also will annually send to each Beneficiary a separate statement setting forth such holder's share of items of income, gain, loss, deduction or credit (including the receipts and expenditures of the Trust) as relevant for U.S. federal income tax purposes for such Beneficiaries to use in preparing their U.S. federal income tax returns or to forward to such Beneficiary's underlying beneficial holders for their use in preparing their U.S. federal income tax returns.

7.3 Tax Treatment of Reserves for Disputed Claims. In accordance with section 8.16(n) of the Plan, the Trustee shall file a tax election to treat any and all reserves for Disputed Claims (including the LT Reserves) as a Disputed Ownership Fund (“DOF”) within the meaning of Treasury Income Tax Regulation Section 1.468B-9 for federal income tax purposes rather than to tax such reserve as a part of the Trust. The Trust and the Trustee shall comply with all federal and state tax reporting and tax compliance requirements of the DOF, including but not limited to the filing of a separate federal tax return for the DOF and the payment of federal and/or state income tax due.

7.4 Valuation of Trust Assets. After the Effective Date, but in no event later than March 15, 2017, the Trustee shall (a) determine the fair market value of the Trust Assets as of the Effective Date, based on the Trustee's good faith determination, (b) advise any Beneficiary who inquires of such valuation, and (c) otherwise establish appropriate means to apprise the Beneficiaries of such valuation. The valuation shall be used consistently by all parties (including, without limitation, the Debtors, the Trust, the Trustee, and the Beneficiaries) for all federal income tax purposes.

ARTICLE VIII

[INTENTIONALLY OMITTED]

8.1 [Intentionally omitted.]

ARTICLE IX

SELECTION, REMOVAL, REPLACEMENT AND COMPENSATION OF TRUSTEE

9.1 Initial Trustee. The Trustee is appointed effective as of the Effective Date. The initial trustee shall be the Trustee.

9.2 Term of Service. The Trustee shall serve until (a) the completion of the administration of the Trust Assets and the Trust, including the winding up of the Trust, in accordance with this Agreement and the Plan; (b) termination of the Trust in accordance with the terms of this Agreement and the Plan; or (c) the Trustee's resignation, death, incapacity or removal. In the event the Trustee's appointment terminates by reason of death, dissolution, liquidation, resignation or removal, the Trustee shall be immediately compensated for all reasonable fees and expenses accrued through the effective date of termination, whether or not

previously invoiced. The provisions of Article VI of this Agreement shall survive the resignation or removal of any Trustee.

9.3 Removal of Trustee. Any Person serving as Trustee may be removed at any time for cause. Any party in interest, on notice and hearing before the Bankruptcy Court, may seek removal of the Trustee for cause.

9.4 Resignation of Trustee. The Trustee may resign at any time on written notice to the U.S. Trustee and Bankruptcy Court. The resignation shall be effective on the later of (i) the date specified in the notice of resignation and (ii) the date that is thirty (30) days after the date such notice is filed with the Bankruptcy Court and served on the U.S. Trustee. In the event of a resignation, the resigning Trustee shall render to the U.S. Trustee a full and complete accounting of monies and assets received, disbursed, and held during the term of office of that Trustee.

9.5 Appointment of Successor Trustee. Upon the resignation, death, incapacity, or removal of a Trustee, a successor Trustee shall be appointed as set forth in section 8.16(o) of the Plan. In the event no party in interest seeks the appointment of a successor Trustee, the Bankruptcy Court may do so on its own motion. Any successor Trustee so appointed shall consent to and accept its appointment as successor Trustee, which may be done by e-mail or through acquiescence in not objecting to a motion for approval of its appointment as successor Trustee. A successor Trustee may be appointed to serve only on an interim basis.

9.6 Powers and Duties of Successor Trustee. A successor Trustee shall have all the rights, privileges, powers, and duties of its predecessor under this Agreement, the Plan, and Confirmation Order. To the extent any bond or surety agreement terminates on the resignation, death, incapacitation, dissolution, liquidation, or removal of the Trustee, the successor Trustee

shall promptly provide a replacement bond or surety agreement that is consistent with the requirements of section 3.12 of this Agreement.

9.7 Trust Continuance. The resignation, death, incapacitation, dissolution, liquidation, or removal of the Trustee shall not terminate the Trust or revoke any existing agency created pursuant to this Agreement or invalidate any action theretofore taken by the Trustee.

9.8 Compensation of Trustee and Costs of Administration. The Trustee shall receive fair and reasonable compensation for its services in accordance with the terms and conditions of the Plan, which, subject to section 8.16(m) of the Plan, shall be a charge against and paid out of the Trust Assets. All costs, expenses, and obligations incurred by the Trustee (or professionals who may be employed by the Trustee in administering the Trust, in carrying out their other responsibilities under this Agreement, or in any manner connected, incidental, or related thereto) shall, subject to section 8.16(m) of the Plan, be paid by the Trust from the Trust Assets prior to any Distribution to the Beneficiaries. The terms of the compensation of the Trustee are set forth on Exhibit A hereto.

ARTICLE X

DURATION OF TRUST

10.1 Duration. Once the Trust becomes effective upon the Effective Date of the Plan, the Trust and this Agreement shall remain and continue in full force and effect until the Trust is terminated.

10.2 Termination on Payment of Trust Expenses and Distribution of Trust Assets. Upon the payment of all costs, expenses, and obligations incurred in connection with administering the Trust, and the Distribution of all Trust Assets in accordance with the

provisions of the Plan, the Confirmation Order, and this Agreement, the Trust shall terminate and the Trustee shall have no further responsibility in connection therewith except as may be required to effectuate such termination under relevant law.

10.3 Termination after Five Years. In accordance with section 8.16(p) of the Plan, if the Trust has not been previously terminated pursuant to Article 10.2 hereof, on the fifth (5th) anniversary of the Effective Date, and unless the Trust term has been extended in accordance with section 8.16(p) of the Plan (such extension to be approved by the Bankruptcy Court within six months of the beginning of the extended term), the Trustee shall distribute all of the Trust Assets to the Beneficiaries in accordance with the Plan, and immediately thereafter the Trust shall terminate and the Trustee shall have no further responsibility in connection therewith except to the limited extent set forth in section 10.5 of this Agreement.

10.4 No Termination by Beneficiaries. The Trust may not be terminated at any time by the Beneficiaries.

10.5 Continuance of Trust for Winding Up; Discharge and Release of Trustee. After the termination of the Trust and solely for the purpose of liquidating and winding up the affairs of the Trust, the Trustee shall continue to act as such until its responsibilities have been fully performed. Except as otherwise specifically provided herein, upon the Distribution of the Trust Assets including all excess reserves, the Trustee shall be deemed discharged and have no further duties or obligations hereunder. Upon a motion by the Trustee, the Bankruptcy Court may enter an order relieving the Trustee, its employees, professionals, and agents of any further duties, discharging and releasing the Trustee, its employees, professionals, and agents from all liability related to the Trust, and releasing the Trustee's bond, if any.

ARTICLE XI

MISCELLANEOUS

11.1 Cumulative Rights and Remedies. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies under law or in equity.

11.2 Notices. All notices to be given to Beneficiaries may be given by ordinary mail, or may be delivered personally, to the Holders at the addresses appearing on the books kept by the Trustee. Any notice or other communication which may be or is required to be given, served, or sent to the Trustee shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, or transmitted by hand delivery or facsimile (if receipt is confirmed) addressed as follows:

If to the Trust:

with a copy to –

[_____]

or to such other address as may from time to time be provided in written notice by the Trustee.

11.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to rules governing the conflict of laws.

11.4 Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns.

11.5 Particular Words. Reference in this Agreement to any Section or Article is, unless otherwise specified, to that such Section or Article under this Agreement. The words

“hereof,” “herein,” and similar terms shall refer to this Agreement and not to any particular Section or Article of this Agreement.

11.6 Execution. All funds in the Trust shall be deemed in custodia legis until such times as the funds have actually been paid to or for the benefit of a Beneficiary, and no Beneficiary or any other Person can execute upon, garnish or attach the Trust Assets or the Trustee in any manner or compel payment from the Trust except by Final Order of the Bankruptcy Court. Payments will be solely governed by the Plan and this Agreement.

11.7 Amendment. This Agreement may be amended by written agreement of the Trustee and the Debtors or by order of the Bankruptcy Court; provided, however, any amendment materially inconsistent with the terms of the Plan or Confirmation Order require the approval of the Bankruptcy Court.

11.8 No Waiver. No failure or delay of any party to exercise any right or remedy pursuant to this Agreement shall affect such right or remedy or constitute a waiver thereof.

11.9 No Relationship Created. Nothing contained herein shall be construed to constitute any relationship created by this Agreement as an association, partnership or joint venture of any kind.

11.10 Severability. If any term, provision covenant or restriction contained in this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

11.11 Further Assurances. Without limitation of the generality of section 2.4 of this Agreement, the Parties agree to execute and deliver all such documents and notices and to take all such further actions as may reasonably be required from time to time to carry out the intent and purposes and provide for the full implementation of this Agreement and the pertinent provisions of the Plan, and to consummate the transactions contemplated hereby.

11.12 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A facsimile or electronic mail signature shall have the same binding legal effect as an original signature.

11.13 Jurisdiction. The Bankruptcy Court shall have jurisdiction of the Debtors, Trust, Trustee, and Trust Assets, including, without limitation, the determination of all disputes arising out of or related to administration of the Trust. The Bankruptcy Court shall have exclusive jurisdiction and venue to hear and finally determine all disputes and related matters among the Parties arising out of or related to this Agreement or the administration of the Trust. The Parties consent to the Bankruptcy Court hearing and finally determining all such disputes and matters.

IN WITNESS WHEREOF, the Parties have or are deemed to have executed this Agreement as of the day and year written above.

GT Advanced Technologies Inc.

By: _____

Name: _____

Title: _____

GTAT Corporation

By: _____

Name: _____

Title: _____

GT Advanced Equipment Holding LLC

By: _____

Name: _____

Title: _____

GT Equipment Holdings, Inc.

By: _____

Name: _____

Title: _____

Lindbergh Acquisition Corp.

By: _____

Name: _____

Title: _____

GT Sapphire Systems Holding LLC

By: _____

Name: _____

Title: _____

GT Advanced Cz LLC

By: _____

Name: _____

Title: _____

GT Sapphire Systems Group LLC

By: _____

Name: _____

Title: _____

GT Advanced Technologies Limited

By: _____

Name: _____

Title: _____

[NAME OF LITIGATION TRUSTEE]

By: _____

Name: _____

Title: _____

Exhibit A

Terms of Compensation of Trustee

TBD

EXHIBIT 15

Identity of Litigation Trustee

Litigation Trustee

Name of Liquidating Trustee: Eugene Davis

EXHIBIT 16

Stockholders' Agreement

STOCKHOLDERS' AGREEMENT

This Stockholders' Agreement (the "Agreement"), dated as of [•], 2016, by and among Reorganized GT Advanced Technologies Inc., a Delaware corporation (the "Company"), those stockholders of the Company receiving Common Stock or Preferred Stock (each as defined below) pursuant to the Debtors' Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, dated [____], 2016 (the "Plan"), including without limitation those stockholders of the Company listed on the signature pages hereto, and the holders of warrants to purchase Common Stock issued as of the date hereof (collectively, the "Stockholders" and each individually, a "Stockholder"), and any other Person who after the Effective Date becomes a Stockholder of the Company as provided herein. The Company and the Stockholders are each a "party" and collectively are "parties" to this Agreement.

INTRODUCTION

WHEREAS, pursuant to the Company's Plan, which Plan was confirmed by the United States Bankruptcy Court for the District of New Hampshire (the "Bankruptcy Court") in the jointly administered proceeding entitled *In re GT Advanced Technologies Inc., et al.*, Case No. 14-11916, pursuant to an order dated [], 2016 [Docket No.], the Company has agreed as of the Effective Date (defined below) to, among other things, issue shares of (a) Reorganized Common Stock (as defined in the Plan) (as used herein, the "Common Stock") and (b) Preferred Stock (as defined in the Plan) to certain providers of financing and certain creditors of the Company; and

WHEREAS, pursuant to the Plan, the Company is authorized to enter into this Agreement to set forth certain terms and conditions of ownership of the Common Stock and Preferred Stock and the rights of holders thereof.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements contained herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 **Definitions.** As used in this Agreement:

"Accreted Value" shall have the meaning ascribed thereto in Section 2 of the Series A Certificate.

"Affiliate" of a Person shall mean any Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such other Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting

securities or by contract or otherwise. For purposes of this definition, a Person shall be deemed to be “controlled by” a Person if such latter Person possesses, directly or indirectly, power to vote 50% or more of the total number of votes of the securities having ordinary voting power for the election of directors of such former Person. Also for purposes of this definition, an “Affiliate” of a Stockholder shall include any investment fund, alternative investment vehicle, special purpose vehicle or holding company that (i) is directly or indirectly managed, advised or controlled by such Stockholder or any Affiliate of such Stockholder or (ii) is advised or managed by the same investment adviser as, or an Affiliate of the investment adviser of, such Stockholder; provided, however, that an Affiliate shall not include any portfolio company of any Person (including any Stockholder).

“Agreement” shall have the meaning set forth in the Preamble.

“Bankruptcy Court” shall have the meaning set forth in the Recitals.

“Beneficial Ownership” means, with respect to a specified Person, the ownership of Stock as determined in accordance with Rule 13d-3 of the Securities Exchange Act of 1934, as amended, as such Rule is in effect from time to time. “Beneficially Own” and “Beneficial Owner” shall each also have the correlative meaning.

“Board” shall mean the Board of Directors of the Company.

“Business Day” shall mean any day that is not a Saturday, a Sunday or a day on which banks are required or permitted to be closed in New York, New York.

“Certificate of Incorporation” means the Second Amended and Restated Certificate of Incorporation, in the form approved by the Bankruptcy Court and filed in the office of the Secretary of State of the State of Delaware on [•], 2016 (as the same may be amended, restated or otherwise modified from time to time).

“Change of Control” shall mean (a) any sale, lease or transfer or series of sales, leases or transfers of all or substantially all of the consolidated assets of the Corporation and its Subsidiaries; (b) any sale, transfer or issuance (or series of sales, transfers or issuances) of capital stock by the Corporation or the holders of Common Stock (or other voting stock of the Corporation) that results in the inability of the holders of Common Stock (or other voting stock of the Corporation) immediately prior to such sale, transfer or issuance to designate or elect a majority of the Board; or (c) any merger, consolidation, recapitalization or reorganization of the Corporation with or into another Person (whether or not the Corporation is the surviving corporation) that results in the inability of the holders of Common Stock (or other voting stock of the Corporation) immediately prior to such merger, consolidation, recapitalization or reorganization to designate or elect a majority of the board of directors (or its equivalent) of the resulting entity or its parent company.

“Chosen Courts” shall have the meaning set forth in Section 10.06.

“Commission” shall mean the Securities and Exchange Commission or any other federal agency then administering the Securities Act and other federal securities laws.

“Common Stock” shall mean the shares of common stock, \$0.01 par value per share, of the Company, as adjusted to reflect any merger, consolidation, recapitalization, reclassification, split-up, stock dividend, rights offering or reverse stock split made, declared or effected with respect to the Common Stock.

“Company” shall have the meaning set forth in the Preamble.

“Deemed Liquidation Event” shall have the meaning ascribed to such term in the Company’s Certificate of Incorporation.

“Drag Along Notice” shall have the meaning set forth in Section 6.02.

“Drag Along Sale” shall have the meaning set forth in Section 6.01.

“Drag Along Seller” shall have the meaning set forth in Section 6.01.

“Drag Along Shares” shall have the meaning set forth in Section 6.01.

“Drag Along Stockholder” shall have the meaning set forth in Section 6.01.

“Drag Along Transferee” shall have the meaning set forth in Section 6.01.

“Effective Date” shall mean the effective date of the Plan.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended, or any successor federal statute thereto, and the rules and regulations of the Commission thereunder, all as the same shall be in effect from time to time.

“Exempt Issuances” shall mean: (a) the issuance of Stock and Stock Equivalents to employees, officers or directors of the Company or its subsidiaries under compensation plans and agreements approved in good faith by the Board representing, in the aggregate, up to [_____] shares of Stock outstanding as of the Effective Date (subject to adjustment for stock dividends, stock splits, combinations or other similar recapitalizations); provided that, in the case of Stock Equivalents to purchase Common Stock, the exercise price per share of Common Stock shall not be less than the Fair Market Value per share of Common Stock on the date of issuance of such Stock Equivalents; (b) the issuance of Stock upon the conversion or exercise of Stock Equivalents as to which the Company complied with the provisions of ARTICLE III; (c) shares of Common Stock or Stock Equivalents for Common Stock issued or issuable to banks, equipment lessors or other financial institutions pursuant to a debt financing or commercial leasing transaction, provided that all of the foregoing shall have been approved in good faith by the Board; (d) shares of Common Stock or Stock Equivalents for Common Stock issued or issuable to strategic partners of the Company approved in good faith by the Board, provided that in the case of Stock Equivalents for Common Stock, the exercise price per share of Common Stock shall not be less than the Fair Market Value per share of Common Stock on the date of issuance of such Stock; (e) the issuance of Common Stock upon the conversion of any of the Preferred Stock; (f) the issuance of any Stock or Stock Equivalents in connection with an arms-

length acquisition by the Company (either directly or indirectly through a subsidiary thereof) of another entity or assets constituting a business approved in good faith by the Board; or (g) issuances of Stock as otherwise expressly provided for in the Plan.

“Fair Market Value” shall mean (for purposes of the definition of Exempt Issuances in this Agreement only) the value of a single share of Common Stock as determined in good faith by the Board.

“GAAP” shall mean generally accepted accounting principles in the United States as in effect from time to time.

“Included Stockholder” shall have the meaning set forth in Section 5.02.

“Independent Financial Advisor” shall have the meaning set forth in the Certificate of Incorporation.

“Initial Preferred Stockholders” shall mean the Stockholders listed on Exhibit A hereto, and any of their successors and permitted assigns who execute an Adoption Agreement substantially in the form attached hereto as Exhibit A.

“New Securities” means, collectively, equity securities of the Company, whether or not currently authorized, as well as rights, options, or warrants to purchase such equity securities, or securities of any type whatsoever that are, or may become, convertible or exchangeable into or exercisable for such equity securities.

“Offer” shall have the meaning set forth in Section 3.01.

“Offered Securities” shall have the meaning set forth in Section 3.01.

“Permitted Transfer” shall mean any of the following:

(a) any Transfer of Stock by any Stockholder made (i) pursuant to a statutory merger or statutory consolidation of the Company with or into another corporation or corporations or other form of entity, (ii) pursuant to a conversion, recapitalization, or the like involving the Company, (iii) pursuant to a Transfer expressly permitted by the terms of this Agreement, (iv) pursuant to the winding up and dissolution of the Company, or (v) at, and pursuant to, a Qualified IPO;

(b) any Transfer of Stock or Stock Equivalents by any Stockholder to another Stockholder;

(c) any Transfer of Stock or Stock Equivalents by any Stockholder if such Stockholder is a corporation, partnership, limited liability company or other entity and such Transfer is effected without direct or indirect consideration to (i) a stockholder of such corporation, a partner of such partnership, a member of such limited liability company or owner of such other entity, (ii) an Affiliate of such corporation, partnership, limited liability company or other entity, (iii) a retired partner of such partnership or retired member of such limited

liability company who retires after the date of this Agreement or (iv) the estate of any such partner, member, stockholder or owner;

(d) with respect to any Stockholder that is a natural person, any Transfer of Stock or Stock Equivalents by such Stockholder to one or more of such Stockholder's spouse, child, grandchild, father, mother, brother, sister, stepparent, stepchild, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law (collectively, "family members"), or a trust of which the Stockholder and/or one or more of such Stockholder's family members are the sole beneficiaries;

(e) any sale to one or more accredited investors, as that term is defined in Regulation D promulgated under the Securities Act; or

(f) any bona fide pledge of Stock by any Stockholder to any financial institution and/or the acquisition of such Stock by any such pledgee financial institution pursuant to such pledge;

provided, that, (1) any Transfer under clauses (a) through (f) above shall be void *ab initio* and of no legal force or effect whatsoever unless the transferee (x) represents in writing that it is not a competitor of the Company and (y) agrees in writing to be subject to the provisions of this Agreement by becoming a party hereto, (2) Stock transferred pursuant to clauses (a) – (f) may not be further Transferred under such clauses except to a Person that would have qualified as a Permitted Transferee of the Stockholder who effectuated the first Permitted Transfer of any such Stock, (3) any Transfer shall comply with all applicable federal, state or foreign laws, including securities laws; and (4) the Transfer will not subject the Company to the registration or reporting requirements of the Investment Company Act of 1940; (5) the Transfer shall not impose any reporting obligation (including pursuant to the Exchange Act) on the Company or any Stockholder (other than the Transferor or the Transferee) in any jurisdiction, whether domestic or foreign, other than any jurisdiction in which the Company or such Stockholder is then subject to such reporting obligation, provided further that the Company shall promptly supply any Stockholder with such information as may reasonably be requested in order to determine compliance with clause (5) above.

"Permitted Transferee" shall mean the transferee in the event of a Permitted Transfer.

"Person" shall mean any natural person, corporation, limited liability company, partnership, trust, joint venture, governmental entity or other entity.

"Plan" shall have the meaning set forth in the Recitals.

"Preferred Stock" shall mean the shares of preferred stock, \$0.01 par value per share, of the Company, as adjusted to reflect any merger, consolidation, recapitalization, reclassification, split-up, stock dividend, rights offering or reverse stock split made, declared or effected with respect to the Preferred Stock.

"Preferred Stockholders" shall mean the Initial Preferred Stockholders and any Affiliates to which an Initial Preferred Stockholder has Transferred its shares of Stock in a Permitted

Transfer, in each case, as holders of shares of Preferred Stock and/or Common Stock into which such Preferred Stock is converted.

“Proportionate Percentage” shall mean, with respect to each Stockholder, a fraction of which (a) the numerator is the number of then outstanding shares of Common Stock held by such Stockholder (assuming the exercise or conversion, as applicable, to Common Stock of Preferred Stock and Stock Equivalents Beneficially Owned by such Stockholder) and (b) the denominator is the total number of then outstanding shares of Stock (in each case, assuming the exercise or conversion, as applicable, to Common Stock of Preferred Stock and Stock Equivalents Beneficially Owned by all Stockholders).

“Public Offering” shall mean any public offering and sale of equity securities of the Company or its successors for cash pursuant to an effective registration statement (other than on Form S-4, S-8 or a comparable form) under the Securities Act.

“Qualified IPO” shall mean the sale, in a firm commitment underwritten public offering led by a nationally recognized underwriting firm pursuant to an effective registration statement under the Securities Act, of Common Stock of the Corporation having an aggregate offering value (net of underwriters’ discounts and selling commissions) of at least \$[50 million] [and a price per share of Common Stock of at least \$[_____]] (appropriately adjusted for stock splits, stock dividends, combinations, recapitalizations and the like)], following which at least [__]% of the total Common Stock of the Corporation on a fully diluted, as-converted basis shall have been sold to the public and shall be listed on any national securities exchange registered with the Securities and Exchange Commission under Section 6(a) of the Securities Exchange Act of 1934, as amended.

“Securities Act” shall mean the Securities Act of 1933, as amended, or any successor federal statute thereto, and the rules and regulations of the Commission thereunder, all as the same shall be in effect from time to time.

“Series A Certificate” shall mean the Company’s Certificate of Designations of Series A Preferred Stock.

“Stock” shall mean all issued and outstanding shares of Common Stock and Preferred Stock, together with all other shares of capital stock of the Company of any class or series which may after the Effective Date be issued.

“Stock Equivalents” shall mean any security convertible into or exchangeable into Stock, or any right, warrant or option to acquire any Stock or such convertible or exchangeable security.

“Stockholder” and “Stockholders” have the meanings set forth in the Preamble.

“Tag Notice” shall have the meaning set forth in Section 5.01.

“Tag Transferors” shall have the meaning set forth in Section 5.01.

“Third Party Disposition” shall have the meaning set forth in Section 5.01.

“Third Party Transferee” shall have the meaning set forth in Section 5.01.

“Transfer” shall mean any sale, assignment, encumbrance, hypothecation, pledge, conveyance of any voting right or economic interest in trust, gift, transfer by bequest, devise or descent, or other transfer or disposition of any kind, including transfers to receivers, levying creditors, trustees or receivers in bankruptcy proceedings or general assignees for the benefit of creditors, whether voluntary or by operation of law, directly or indirectly.

“Transferred Shares” shall have the meaning set forth in Section 6.01.

“Voluntary Redemption” shall have the meaning set forth in Section 7.1(b) of the Series A Certificate.

ARTICLE II

BOARD OF DIRECTORS

Section 2.01 Board Size. Each Stockholder agrees to vote, or cause to be voted, all Stock owned by such Stockholder, or over which such Stockholder has voting control, from time to time and at all times, in whatever manner as shall be necessary to ensure that the number of directors constituting the entire Board shall be seven (7) directors.

Section 2.02 Board Composition. Each Stockholder agrees to vote, or cause to be voted, all Stock owned by such Stockholder, or over which such Stockholder has voting control, from time to time and at all times, in whatever manner as shall be necessary to ensure that at each annual or special meeting of stockholders at which an election of directors is held or pursuant to any written consent of the stockholders, the following persons shall be elected to the Board:

(a) The Company’s Chief Executive Officer, who shall initially be David Keck (the “CEO Director”), provided that if for any reason the CEO Director shall cease to serve as the Chief Executive Officer of the Company, each of the Stockholders shall promptly vote their respective shares of Stock (i) to remove the former Chief Executive Officer from the Board if such person has not resigned as a member of the Board; and (ii) to elect such person’s replacement as Chief Executive Officer of the Company as the new CEO Director; and

(b) Up to six individuals approved by the holders of at least [56]% of the Stock then held by the Initial Preferred Stockholders, in consultation with the CEO Director (each, a “Series A Director”).

To the extent that any of clauses (a) or (b) above shall not be applicable, any member of the Board who would otherwise have been designated in accordance with the terms thereof shall instead be voted upon by all the stockholders of the Company entitled to vote thereon in accordance with, and pursuant to, the Company’s Certificate of Incorporation.

Section 2.03 Failure to Designate a Board Member. In the absence of any designation from the Persons or groups with the right to designate a director as specified above, the director previously designated by them and then serving shall be reelected if still eligible to serve as provided herein.

Section 2.04 Removal of Board Members. Each Stockholder also agrees to vote, or cause to be voted, all Stock owned by such Stockholder, or over which such Stockholder has voting control, from time to time and at all times, in whatever manner as shall be necessary to ensure that:

(i) no director elected pursuant to this Agreement may be removed from office unless (i) such removal is directed or approved by the affirmative vote of the holders of at least the same percentage of the Stock entitled under Section 2.02 to designate that director; or (ii) the Person(s) originally entitled to designate or approve such director pursuant to Subsection 2.02 are no longer so entitled to designate or approve such director;

(ii) any vacancies created by the resignation, removal, incapacity, or death of a director elected pursuant to this section shall be filled pursuant to the provisions of this Section 2; and

(iii) upon the request of any party entitled to designate a director as provided in Subsection 2.02 to remove such director, such director shall be removed.

All Stockholders agree to execute any written consents required to perform the obligations of this Agreement, and the Company agrees at the request of any party entitled to designate directors to call a special meeting of stockholders for the purpose of electing directors.

Section 2.05 No Liability for Election of Recommended Directors. No Stockholder, nor any Affiliate of any Stockholder, shall have any liability as a result of designating a person for election as a director for any act or omission by such designated person in his or her capacity as a director of the Company, nor shall any Stockholder have any liability as a result of voting for any such designee in accordance with the provisions of this Agreement.

Section 2.06 No “Bad Actor” Designees. Each Person with the right to designate or participate in the designation of a director as specified above hereby represents and warrants to the Company that, to such Person’s knowledge, none of the “bad actor” disqualifying events described in Rule 506(d)(1)(i)-(viii) promulgated under the Securities Act (each, a “Disqualification Event”), is applicable to such Person’s initial designee named above except, if applicable, for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable. Any director designee to whom any Disqualification Event is applicable, except for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable, is hereinafter referred to as a “Disqualified Designee.” Each Person with the right to designate or participate in the designation of a director as specified above hereby covenants and agrees (A) not to designate or participate in the designation of any director designee who, to such Person’s knowledge, is a Disqualified Designee and (B) that in the event such Person becomes aware that any individual previously designated by any such Person is or has become a Disqualified

Designee, such Person shall as promptly as practicable take such actions as are necessary to remove such Disqualified Designee from the Board and designate a replacement designee who is not a Disqualified Designee.

ARTICLE III

PREEMPTIVE RIGHTS

Section 3.01 **Notice of Issuance.** The Company will give each Preferred Stockholder at least fifteen (15) Business Days prior written notice of any proposed sale or issuance by the Company of any New Securities (the “Offered Securities”), except for Exempt Issuances or other than in connection with a Qualified IPO. Such notice will identify the New Securities to be issued, the approximate date of issuance, and the price and other terms and conditions of the issuance. Such notice will also include an offer (the “Offer”) to transfer to each such Preferred Stockholder its Proportionate Percentage of the Offered Securities at the price and on the other terms as are proposed for such sale or issuance, which Offer by its terms shall remain open for a period of ten (10) Business Days from the date of receipt of such notice and which Offer may be accepted by any such Preferred Stockholder in such Preferred Stockholder’s sole discretion. The Offer will also specify each such Preferred Stockholder’s Proportionate Percentage, and the manner in which it was determined. The date of such notice shall be the record date for Preferred Stockholders entitled to receive such notice unless otherwise determined by the Board.

Section 3.02 **Acceptance.** Each Preferred Stockholder shall give notice to the Company of such Preferred Stockholder’s intention to accept an Offer prior to the end of the ten (10)-Business Day period of such Offer, (a) confirming the Preferred Stockholder’s acceptance, in full, of such Offer and (b) specifying the maximum number of additional Offered Securities such Preferred Stockholder is willing to purchase if any other Preferred Stockholder declines to purchase such other Preferred Stockholder’s Offered Securities. If any Preferred Stockholder fails to subscribe for all of such Preferred Stockholder’s Offered Securities, the other subscribing Preferred Stockholders shall be entitled to purchase all of such Offered Securities, up to the number of additional Offered Securities specified in their notice in the same relative proportion in which they were initially entitled to purchase New Securities in the Offer. The Company shall notify each Preferred Stockholder in writing within three (3) Business Days following the expiration of the 10-Business Day period described above of the additional amount of Offered Securities which each Preferred Stockholder may purchase pursuant to the foregoing sentence and each Preferred Stockholder shall then have three (3) Business Days from the receipt of such notice to indicate such additional amount, if any, that such Preferred Stockholder wishes to purchase.

Section 3.03 **Sale to Stockholders.** Upon the closing of any sale or issuance as to which the Company has given notice under Section 3.01, the Preferred Stockholders shall purchase from the Company, and the Company shall sell to the Preferred Stockholders, the Offered Securities subscribed for by the Preferred Stockholders at the price and on the terms specified in the Offer, which shall be the same price and terms at which all other Persons acquire such Offered Securities in connection with such sale or issuance.

Section 3.04 **Sale to Third Parties.** The Company shall have 90 days from the end of the foregoing 15-Business Day period to sell all or any part of the Offered Securities as to which Preferred Stockholders have not accepted an Offer to any other Persons, at a price and on terms and conditions which are no more favorable to such other Persons or less favorable to the Company than those set forth in the Offer. Any Offered Securities not purchased by the Preferred Stockholders or other Persons in accordance with Section 3.03 and this Section 3.04 may not be sold or otherwise disposed of until they are again offered to the Stockholders under the procedures specified in this ARTICLE III.

ARTICLE IV

TRANSFER RESTRICTIONS

Section 4.01 **No Transfer.** No Stockholder may Transfer any Stock Beneficially Owned by such Stockholder to any other Person, except (a) in compliance with the provisions of ARTICLES V and VI or (b) in a Permitted Transfer. No Transfer made in compliance with this Agreement shall be effective unless and until the transferee has agreed in writing to be a party to this Agreement and bound by all of its terms and provisions.

Section 4.02 **Legends.** All certificates or instruments representing Stock issued to any party to this Agreement shall bear substantially the following legend, and any other legends required by the Certificate of Incorporation:

THE SECURITIES (THE "SECURITIES") REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS OF A STOCKHOLDERS' AGREEMENT, DATED AS OF [•], 2016 (AS MAY BE AMENDED FROM TIME TO TIME) AND MAY NOT BE VOTED, SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF EXCEPT IN ACCORDANCE WITH SUCH AGREEMENT, A COPY OF WHICH IS AVAILABLE FROM THE COMPANY UPON WRITTEN REQUEST MADE BY THE HOLDER OF RECORD OF THIS CERTIFICATE [OR INSTRUMENT].

All certificates or instruments representing shares of Stock issued to any party to this Agreement (other than shares of Common Stock issued pursuant to the Plan) shall also bear substantially the following legend:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER STATE SECURITIES LAWS. THESE SECURITIES MAY NOT BE OFFERED, RESOLD, ASSIGNED, TRANSFERRED, PLEDGED, OR HYPOTHECATED UNLESS REGISTERED OR EXEMPT FROM REGISTRATION UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS.

All certificates or instruments representing Common Stock issued pursuant to the Plan to any party to this Agreement shall also bear substantially the following legend:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED IN RELIANCE UPON AN EXEMPTION FROM THE REGISTRATION REQUIREMENT OF SECTION 5 OF THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), PROVIDED BY SECTION 1145 OF THE BANKRUPTCY CODE, 11 U.S.C. § 1145. THE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE ACT OR ANY STATE SECURITIES LAW, AND TO THE EXTENT THE HOLDER OF THE SECURITIES IS AN "UNDERWRITER," AS DEFINED IN SECTION 1145(B)(1) OF THE BANKRUPTCY CODE, THE SECURITIES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN EXEMPTION FROM REGISTRATION THEREUNDER.

If any shares of Stock cease to be subject to the restrictions on Transfer set forth in this Agreement, the Company shall, upon the request of the holder thereof, issue to such holder a new certificate representing such shares without the first paragraph of the legend required by this Section 4.02. To the extent permitted under the Certificate of Incorporation, if any shares of Stock shall become freely tradable under relevant securities laws, the Company shall, upon the written request of the holder thereof, issue to such holder a new certificate representing such shares without the applicable restrictive legend required by this Section 4.02. In each case, the requesting holder shall deliver to the Company or its transfer agent such certificates and opinions of counsel as may reasonably be required by the Company or its transfer agent, as applicable.

Section 4.03 Transfers in Contravention of Agreement. Any purported Transfer of Stock or any rights or obligations hereunder by any Stockholder in contravention of this Agreement shall be null and void, and the Company agrees not to effectuate any such Transfer of Stock.

ARTICLE V

TAG ALONG RIGHTS

Section 5.01 Tag Along Rights. No Stockholders (the "Tag Transferors") shall engage in a Transfer or series of related Transfers to any Person or any Affiliate of such Person (a "Third Party Transferee") that would be sufficient to trigger the provisions of ARTICLE VI, unless the terms and conditions of such Transfer (the "Third Party Disposition") to such Third Party Transferee shall contain an offer to each other Stockholder to include in such Third Party Disposition such number of shares of Common Stock and Preferred Stock as is determined in accordance with Section 5.02. At least fifteen (15) Business Days prior to effecting any Third Party Disposition, the Tag Transferors shall promptly cause the terms and conditions of the Third

Party Disposition to be reduced to a reasonably detailed notice (which notice shall identify the Third Party Transferee and shall include an offer by the Third Party Transferee (or the Tag Transferors, as the case may be), to the other Stockholders to purchase or otherwise acquire their shares of Stock, as the case may be, according to the terms and subject to the conditions of this ARTICLE V), and shall deliver, or cause the Third Party Transferee to deliver, such written notice (the “Tag Notice”) of the terms of such Third Party Disposition to each Stockholder. The Tag Notice shall be accompanied by a true and correct copy of the agreement, if any, embodying the terms and conditions of the proposed Third Party Disposition or such written summary thereof if there is no written agreement.

Section 5.02 Tag Along Participation. At any time after receipt of the Tag Notice (but in no event later than ten (10) Business Days after receipt), each Stockholder may accept the offer included in the Tag Notice for up to such number of its shares of Common Stock and Preferred Stock as the case may be as determined in accordance with the provisions of this Section 5.02, by furnishing written notice of such acceptance to the Tag Transferors and to the Third Party Transferee. In the event that any Stockholder elects to accept the offer included in the Tag Notice, such Stockholder (the “Included Stockholder”) shall have the right to Transfer such number of its shares of Common Stock and Preferred Stock pursuant to, and upon consummation of, the Third Party Disposition, which is equal to the product of (x) the total number of shares of Common Stock owned by the Included Stockholder (assuming the conversion to Common Stock of all shares of Preferred Stock) and (y) a fraction, the numerator of which shall equal the total number of shares of Stock to be Transferred to the Third Party Transferee (assuming the conversion to Common Stock of all shares of Preferred Stock), and the denominator of which shall equal the total number of shares of Common Stock Beneficially Owned by all Stockholders (assuming the conversion of all shares of Preferred Stock).

If the Third Party Transferee is not willing to purchase such additional shares, then as a condition to closing such Third Party Disposition (a) the number of shares to be Transferred by the Tag Transferors and the Included Stockholders shall be proportionately reduced based on the total number of shares to be purchased by the Third Party Transferee or (b) the Tag Transferors shall purchase such shares from the Included Stockholders at the price set forth in the Tag Notice. The purchase of Stock pursuant to this ARTICLE V shall be made on the same terms (including the per share consideration and method of payment, and the date of Transfer), and subject to the same conditions, if any, as are provided to the Tag Transferors and stated in the Tag Notice. The Included Stockholder shall only be required to give representations and warranties as to its due authority, ownership of the Stock Beneficially Owned by it and its ability to convey title to the shares of Stock Transferred by it pursuant to this ARTICLE V free and clear of all liens and encumbrances and shall only be required to indemnify for breach of its own representations and warranties.

Section 5.03 Allocation of Consideration. Subject to Section 5.04, the aggregate consideration payable to the Included Stockholders and the Tag Transferors shall be allocated based on the number of shares of Stock sold to the Third Party Transferee by each Included Stockholder and the Tag Transferors, provided that the terms of the purchase and sale agreement shall provide that the aggregate consideration from such transfer shall be allocated to the Included Stockholders and the Tag Transferors in accordance with the Certificate of Incorporation as if (A) such transfer were a Deemed Liquidation Event, and (B) the Stock sold in

accordance with the purchase and sale agreement were the only Stock outstanding. In the event that a portion of the aggregate consideration payable to the Included Stockholders and Tag Transferors is placed into escrow, the purchase and sale agreement shall provide that (x) the portion of such consideration that is not placed in escrow (the “**Initial Consideration**”) shall be allocated in accordance with the Certificate of Incorporation as if the Initial Consideration were the only consideration payable in connection with such transfer, and (y) any additional consideration which becomes payable to the Included Stockholders and Tag Transferors upon release from escrow shall be allocated in accordance with the Certificate of Incorporation after taking into account the previous payment of the Initial Consideration as part of the same transfer.

Section 5.04 Closing of Tag Along Sale. Upon the consummation of the Transfer of Stock to the Third Party Transferee pursuant to a Third Party Disposition, the Tag Transferors shall (a) cause the Third Party Transferee to remit directly to each Included Stockholder the sales price of its Stock Transferred pursuant thereto and (b) furnish such other evidence of the completion and time of completion of such Transfer and the terms thereof as may reasonably be requested by such Included Stockholder.

Section 5.05 Waiver of Participation. If a Stockholder has not delivered to the Tag Transferors and to the Third Party Transferee written notice of its acceptance of the offer contained in the Tag Notice within ten (10) Business Days after the receipt of such Tag Notice, it shall be deemed to have waived any and all rights pursuant to this ARTICLE V with respect to the disposition of its Stock described in the Tag Notice, and the Tag Transferors shall have forty-five (45) days (calculated from the first day next succeeding the expiration of the 10 Business Day acceptance period described above), in which to dispose of the aggregate amount of Stock described in the Tag Notice to the Third Party Transferee identified in the Tag Notice, on terms not more favorable to the Tag Transferors than those which were set forth in the Tag Notice. If on or before lapse of the 45-day period specified in the preceding sentence, the Tag Transferors and the Third Party Transferee shall not have completed the Transfer of Stock to be Transferred in connection therewith in accordance with the terms of the Third Party Disposition, all the restrictions on the Transfer of Stock contained in this ARTICLE V shall again be in force and effect.

ARTICLE VI

DRAG ALONG RIGHT

Section 6.01 Drag Along Right. In the event that one or more Stockholders holding at least 56% of the then-issued and outstanding shares of Stock (the “Drag Along Sellers”) determine to cause and/or approve a bona fide sale of (x) all of the then-issued and outstanding Stock then held by the Drag Along Sellers (the “Transferred Shares”) or (y) all or a substantial portion of the consolidated assets of the Company and its subsidiaries, taken as a whole, to any single Third Party Transferee (or group of related transferees) (a “Drag Along Transferee”), in the case of both (x) and (y), whether directly or indirectly or by way of merger, statutory share exchange, recapitalization, reclassification, consolidation, or other business combination transaction or purchase of Beneficial Ownership (either (x) or (y), a “Drag Along Sale”) who shall not include, for the avoidance of doubt, any Affiliates of any Drag Along Sellers, each other Stockholder (each, a “Drag Along Stockholder”) shall be required to take the following

actions: (A) Transfer to such Drag Along Transferee (a “Drag Along Sale”) all (but not less than all) of their Stock (the “Drag Along Shares”) in such Drag Along Sale, and (B) if such transaction requires stockholder approval, with respect to all shares of Stock that such Stockholder owns or over which such Stockholder otherwise exercises voting power, to vote (in person, by proxy or by action by written consent, as applicable) all such shares in favor of, and adopt, such Drag-Along Sale (together with any related amendment to the certificate of incorporation of the Company required in order to implement such Drag-Along Sale) and to vote in opposition to any and all other proposals that could delay or impair the ability of the Company to consummate such Drag-Along Sale.

Section 6.02 Drag Along Notice. The Drag Along Sellers shall deliver to each Drag Along Stockholder written notice (the “Drag Along Notice”) of any Transfer to be made pursuant to Section 6.01, which notice shall set forth the name of the proposed Drag Along Transferee, consideration to be paid by the Drag Along Transferee for each Transferred Share, the number of Transferred Shares to be Transferred by the Drag Along Seller, the number of shares to be Transferred by each Drag Along Stockholder, and the other terms and conditions, if any, of such transaction. Pending consummation of the Drag Along Sale, the Drag Along Seller shall promptly notify each Drag Along Stockholder of any changes in the proposed timing for the Drag Along Sale and any other material developments in connection therewith. The Drag Along Sale shall be on the same terms and conditions as the Transfer of the Transferred Shares by the Drag Along Seller. The Drag Along Stockholder shall only be required to give representations and warranties as to its due authority, ownership of the Stock Beneficially Owned by it and its ability to convey title to the shares of Stock Transferred by it pursuant to this ARTICLE VI free and clear of all liens and encumbrances. In addition,

- (a) the Drag Along Stockholder shall not be liable for the inaccuracy of any representation or warranty made by any other Person in connection with the Drag Along Sale, other than the Company (except to the extent that funds may be paid out of an escrow established to cover breach of representations, warranties and covenants of the Company as well as breach by any stockholder of any of identical representations, warranties and covenants provided by all stockholders);
- (b) the liability for indemnification, if any, of such Stockholder in the Drag Along Sale and for the inaccuracy of any representations and warranties made by the Company or its Stockholders in connection with such Proposed Sale, is several and not joint with any other Person (except to the extent that funds may be paid out of an escrow established to cover breach of representations, warranties and covenants of the Company as well as breach by any stockholder of any of identical representations, warranties and covenants provided by all stockholders), and subject to the provisions of the certificate of incorporation related to the allocation of the escrow, is pro rata in proportion to, and does not exceed, the amount of consideration paid to such Stockholder in connection with such Drag Along Sale;
- (c) liability shall be limited to such Stockholder's applicable share (determined based on the respective proceeds payable to each Stockholder in connection with such Drag Along Sale in accordance with the provisions of the certificate of

incorporation) of a negotiated aggregate indemnification amount that applies equally to all Stockholders but that in no event exceeds the amount of consideration otherwise payable to such Stockholder in connection with such Drag Along Sale, except with respect to claims related to fraud by such Stockholder, the liability for which need not be limited as to such Stockholder;

- (d) upon the consummation of the Drag Along Sale (i) each holder of each class or series of the Company's stock will receive the same form of consideration for their shares of such class or series as is received by other holders in respect of their shares of such same class or series of stock, (ii) each holder of a series of Preferred Stock will receive the same amount of consideration per share of such series of Preferred Stock as is received by other holders in respect of their shares of such same series, (iii) each holder of Common Stock will receive the same amount of consideration per share of Common Stock as is received by other holders in respect of their shares of Common Stock, and (iv) unless the holders of at least 56% of the Series A Preferred Stock elect to receive a lesser amount by written notice given to the Company at least 10 days prior to the effective date of any such Drag Along Sale, the aggregate consideration receivable by all holders of the Preferred Stock and Common Stock shall be allocated among the holders of Preferred Stock and Common Stock on the basis of the relative liquidation preferences to which the holders of each respective series of Preferred Stock and the holders of Common Stock are entitled in a Deemed Liquidation Event in accordance with the Company's certificate of incorporation in effect immediately prior to the Drag Along Sale; provided, however, that, notwithstanding the foregoing, if the consideration to be paid in exchange for the shares held by any Stockholder pursuant to the Drag Along Sale includes any securities and due receipt thereof by any Stockholder would require under applicable law (x) the registration or qualification of such securities or of any person as a broker or dealer or agent with respect to such securities; or (y) the provision to such Stockholder of any information other than such information as a prudent issuer would generally furnish in an offering made solely to "accredited investors" as defined in Regulation D promulgated under the Securities Act, the Company may cause to be paid to such Stockholder in lieu thereof, against surrender of the shares which would have otherwise been sold by such Stockholder, an amount in cash equal to the fair value (as determined in good faith by the Company) of the securities which such Stockholder would otherwise receive as of the date of the issuance of such securities in exchange for the shares of Stock held by such Stockholder; and
- (e) subject to clause (d) above, requiring the same form of consideration to be available to the holders of any single class or series of capital stock, if any holders of any capital stock of the Company are given an option as to the form and amount of consideration to be received as a result of the Drag Along Sale, all holders of such capital stock will be given the same option; provided, however, that nothing in this clause (e) shall entitle any holder to receive any form of consideration that such holder would be ineligible to receive as a result of such

holder's failure to satisfy any condition, requirement or limitation that is generally applicable to the Company's stockholders.

Section 6.03 Termination of Drag Along Sale. The Drag Along Seller will notify the other Stockholders at least fifteen (15) Business Days in advance of the closing of the Drag Along Sale. If, within ninety (90) days after the Drag Along Seller provides the Drag Along Notice, no Transfer of the Transferred Shares Beneficially Owned by the Drag Along Seller or the Drag Along Shares in accordance with the provisions of this ARTICLE VI shall have been completed, the Drag Along Sale shall be terminated for purposes hereof and the Drag Along Seller must deliver another Drag Along Notice in order to exercise its rights under this ARTICLE VI with respect to such Transfer or any other Transfer.

Section 6.04 Closing of Drag Along Sale; Further Assurances. Promptly following the consummation of the Transfer of the Transferred Shares pursuant to this ARTICLE VI, the Drag Along Seller shall cause the Drag Along Transferee to remit directly to the Drag Along Stockholder the consideration with respect to the Drag Along Shares (to the extent the same is payable at such consummation) and shall furnish such other evidence of the completion and time of completion of such Transfer and terms and conditions, if any, thereof as may reasonably be requested by each Drag Along Stockholder. Each Drag Along Stockholder further agrees to (A) take all actions (including executing documents) in connection with the consummation of the proposed Sale Transaction as may reasonably be requested of it by the Drag Along Sellers, (B) appoint the Drag Along Sellers, or any designee thereof, as its attorney-in-fact to do the same on its behalf, and (C) waive any applicable dissenters' rights, appraisal rights or similar rights in connection therewith. If the consideration to be paid in exchange for the shares of Stock pursuant to the Drag Along Sale includes any securities and due receipt thereof by any Stockholder would require under applicable law (x) the registration or qualification of such securities or of any person as a broker or dealer or agent with respect to such securities; or (y) the provision to any Stockholder of any information other than such information as a prudent issuer would generally furnish in an offering made solely to "accredited investors" as defined in Regulation D promulgated under the Securities Act, the Company may cause to be paid to any such Stockholder in lieu thereof, against surrender of the shares of Stock which would have otherwise been sold by such Stockholder, an amount in cash equal to the fair value (as determined in good faith by the Company) of the securities which such Stockholder would otherwise receive as of the date of the issuance of such securities in exchange for the Shares. In the event that the Drag-Along Sellers, in connection with such Drag Along Sale, appoint a stockholder representative (the "**Stockholder Representative**") with respect to matters affecting the Stockholders under the applicable definitive transaction agreements following consummation of such Drag Along Sale, each Drag Along Stockholder agrees, (x) to consent to (i) the appointment of such Stockholder Representative, (ii) the establishment of any applicable escrow, expense or similar fund in connection with any indemnification or similar obligations, and (iii) the payment of such Stockholder's pro rata portion (from the applicable escrow or expense fund or otherwise) of any and all reasonable fees and expenses to such Stockholder Representative in connection with such Stockholder Representative's services and duties in connection with such Drag Along Sale and its related service as the representative of the Stockholders, and (y) not to assert any claim or commence any suit against the Stockholder Representative or any other Stockholder with respect to any action or inaction taken or failed to be taken by the Stockholder Representative in connection with its service as the Stockholder Representative, absent fraud or

willful misconduct. For the avoidance of doubt, the provisions of this ARTICLE VI shall remain in effect for any subsequent proposed Transfer.

Section 6.05 Restrictions on Sales of Control of the Company. No Stockholder shall be a party to any Drag Along Sale unless all holders of Preferred Stock are allowed to participate in such transaction and the consideration received pursuant to such transaction is allocated among the parties thereto in the manner specified in the Company's certificate of incorporation in effect immediately prior to the Drag Along Sale (as if such transaction were a Deemed Liquidation Event), unless the holders of at least 56% of the Series A Preferred Stock elect otherwise by written notice given to the Company at least 10 days prior to the effective date of any such transaction or series of related transactions.

ARTICLE VII

INFORMATION RIGHTS

Section 7.01 Information Rights.

(a) The Company will deliver, or cause to be delivered, the following to each Preferred Stockholder:

(i) as soon as available, but in any event within 120 days after the end of each fiscal year of the Company, beginning with the fiscal year ending December 31, 2016, a consolidated balance sheet of the Company and its subsidiaries as of the end of such fiscal year, and the related consolidated statements of income, cash flows and stockholders' equity for such fiscal year, setting forth in each case (commencing with the fiscal year ending December 31, 2017) in comparative form the figures for the previous fiscal year, all prepared in accordance with GAAP, with such consolidated financial statements to be audited by the Company's independent certified public accounting firm of recognized national standing;

(ii) as soon as available, but in any event within 60 days after the end of each of the first three fiscal quarters of each fiscal year of the Company, beginning with the fiscal quarter ending June 30, 2016, a consolidated balance sheet of the Company and its subsidiaries as of the end of such fiscal quarter, and the related consolidated statements of income, cash flows and stockholders' equity for such fiscal quarter and (in respect of the second and third fiscal quarters of such fiscal year) for the then-elapsed portion of the Company's fiscal year, setting forth in each case (commencing with the fiscal quarter ending June 30, 2017) in comparative form the figures for the comparable period or periods in the previous fiscal year, all prepared in accordance with GAAP and certified by the Company's Chief Financial Officer, principal accounting officer, Treasurer, Assistant Treasurer or Controller as to his or her knowledge, fairly presenting, in all material respects, the consolidated financial condition, results of operations and cash flows of the Company and its subsidiaries as of the dates and for the periods specified in accordance with GAAP consistently applied, and on a basis consistent with the audited consolidated financial statements referred to under Section 7.01(a)(i), subject

to normal year-end audit adjustments, the absence of footnotes, and changes in GAAP that have come into effect since the delivery of audited consolidated financial statements referred to under Section 7.01(a)(i);

(iii) as soon as available, but in any event within 45 days after the end of the first two months of each fiscal quarter of each fiscal year of the Company, beginning with the month ending July 31, 2016, a consolidated statement of cash flows for such month and for the period from the beginning of the fiscal year (or in the case of the fiscal year ending December 31, 2016, from June 30, 2016) to the end of such month, in substantially the form provided to the holders of the Company's Senior Secured PIK Toggle Notes due 2021 and PIK Securities (as such terms are defined in that certain indenture, dated [•], between the Company, the guarantors party thereto from time to time, and [•], as Trustee) prior to the date hereof, such consolidated statement of cash flows to be certified by the Company's Chief Financial Officer, principal accounting officer, Treasurer, Assistant Treasurer or Controller, as to his or her knowledge, fairly presenting, in all material respects, the consolidated cash flows of the Company and its subsidiaries as of the dates and for the periods presented therein;

(iv) as soon as available, but in any event 30 days before the end of each fiscal year of the Company, a budget and business plan for the next fiscal year, approved by the Board of Directors, including balance sheets, statements of income, and statements of cash flow; and

(v) such other information and data with respect to the Company and each of its subsidiaries as from time to time may be reasonably requested in writing by such Stockholder.

(b) The Company will deliver, or cause to be delivered, the information set forth in clauses (i) and (ii) of Section 7.01(a) above to each Stockholder that is not a Preferred Stockholder.

Section 7.02 Books and Records; Inspection Rights. The Company will, and will cause each of its subsidiaries to, keep proper books of record and account in which full, true and correct entries are made of all material dealings and transactions in relation to its business and activities. The Company will, and will cause each of its subsidiaries to, permit any representatives of a Preferred Stockholder, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

Section 7.03 Confidentiality. Each Stockholder agrees to hold all information received pursuant to Section 7.01 or 7.02 in confidence, and not to use or disclose any of such information to any Person (other than another Stockholder or the Company), except to the extent such information (a) is known or becomes known to the public in general (other than as a result of a breach of this Section 7.03 by such Stockholder or any of its Affiliates), (b) is or has been independently developed or conceived by such Stockholder without use of the Company's confidential information, or (c) is or has been made known or disclosed to such Stockholder by a

third party without a breach of any obligation of confidentiality such third party may have to the Company; provided, however, that such a Stockholder may disclose confidential information (i) to its attorneys, accountants, consultants, and other professionals to the extent necessary to obtain their services in connection with monitoring its investment in the Company; (ii) to any prospective transferee of any Stock from such Stockholder, if such prospective transferee agrees in writing to be bound by the provisions of this Section 7.03 pursuant to an agreement which lists the Company as a third party beneficiary; (iii) to any Affiliate, partner, member, stockholder, or wholly-owned subsidiary of such Stockholder in the ordinary course of business, if each such Person agrees in writing to be bound by the provisions of this Section 7.03 pursuant to an agreement which lists the Company as a third party beneficiary; or (iv) as may otherwise be required by applicable law or regulation, provided that, to the extent reasonably practicable, such Stockholder promptly notifies the Company of such disclosure and takes reasonable steps to minimize the extent of any such required disclosure.

ARTICLE VIII

COVENANTS

Section 8.01 **Insurance.** The Company shall use its commercially reasonable efforts to obtain, within ninety (90) days of the date hereof, from financially sound and reputable insurers Directors and Officers liability insurance in an amount and on terms and conditions satisfactory to the Board of Directors, and will use commercially reasonable efforts to cause such insurance policies to be maintained until such time as the Board of Directors determines that such insurance should be discontinued. The policy shall not be cancelable by the Company without prior approval by the Board of Directors.

Section 8.02 **Matters Requiring Investor Director Approval.** So long as the Initial Preferred Stockholders are entitled to designate representatives to serve on the Board, the Company hereby covenants and agrees with each of the Initial Preferred Stockholders that it shall not, without approval of a majority of the members of the Board so designated by the Initial Preferred Stockholders:

(a) make, or permit any subsidiary to make, any loan or advance to, or own any stock or other securities of, any subsidiary or other corporation, partnership, or other entity unless it is wholly owned by the Company;

(b) make, or permit any subsidiary to make, any loan or advance to any Person, including, without limitation, any employee or director of the Company or any subsidiary, except advances and similar expenditures in the ordinary course of business or under the terms of an employee stock or option plan approved by the Board of Directors;

(c) guarantee, directly or indirectly, or permit any subsidiary to guarantee, directly or indirectly, any indebtedness except for trade accounts of the Company or any subsidiary arising in the ordinary course of business;

(d) make any investment inconsistent with any investment policy approved by the Board of Directors;

(e) incur any aggregate indebtedness in excess of \$[250,000] that is not already included in a budget approved by the Board of Directors, other than trade credit incurred in the ordinary course of business;

(f) otherwise enter into or be a party to any transaction with any director, officer, or employee of the Company or any “associate” (as defined in Rule 12b-2 promulgated under the Exchange Act) of any such Person, including without limitation any “management bonus” or similar plan providing payments to employees in connection with a Deemed Liquidation Event, except for transactions contemplated by this Agreement;

(g) hire, terminate, or change the compensation of the executive officers, including approving any option grants or stock awards to executive officers;

(h) change the principal business of the Company, enter new lines of business, or exit the current line of business;

(i) sell, assign, license, pledge, or encumber material technology or intellectual property, other than licenses granted in the ordinary course of business; or

(j) enter into any corporate strategic relationship involving the payment, contribution, or assignment by the Company or to the Company of money or assets greater than \$[250,000].

Section 8.03 Board Matters. Unless otherwise determined by the vote of a majority of the directors then in office, the Board of Directors shall meet at least quarterly in accordance with an agreed-upon schedule. The Company shall reimburse the nonemployee directors for all reasonable out-of-pocket travel expenses incurred (consistent with the Company’s travel policy) in connection with attending meetings of the Board of Directors. The Company shall cause to be established, as soon as practicable after such request, and will maintain, an audit and compensation committee, each of which shall consist solely of non-management directors. Each non-employee director shall be entitled in such person’s discretion to be a member of any Board committee.

Section 8.04 Successor Indemnification. If the Company or any of its successors or assignees consolidates with or merges into any other Person and is not the continuing or surviving corporation or entity of such consolidation or merger, then to the extent necessary, proper provision shall be made so that the successors and assignees of the Company assume the obligations of the Company with respect to indemnification of members of the Board of Directors as in effect immediately before such transaction, whether such obligations are contained in the Company’s Bylaws, its Certificate of Incorporation, or elsewhere, as the case may be.

Section 8.05 Expenses of Counsel. In the event of a transaction which is a Change of Control of the Company, the reasonable fees and disbursements of one counsel for the Initial Preferred Stockholders and the reasonable fees and disbursements, in an amount not to exceed \$25,000, of one counsel for the Initial Common Stockholders (“Investor Counsel”), in their capacities as stockholders, shall be borne and paid by the Company. At the outset of considering a transaction which, if consummated would constitute a Change of Control, the Company shall

obtain the ability to share with the Investor Counsel (and such counsels' respective clients) and shall share the confidential information (including, without limitation, the initial and all subsequent drafts of memoranda of understanding, letters of intent and other transaction documents and related noncompete, employment, consulting and other compensation agreements and plans) pertaining to and memorializing any of the transactions which, individually or when aggregated with others would constitute the Change of Control. The Company shall be obligated to share (and cause the Company's counsel and investment bankers to share) such materials when distributed to the Company's executives and/or any one or more of the other parties to such transaction(s). In the event that either Investor Counsel deems it appropriate, in its reasonable discretion, to enter into a joint defense agreement or other arrangement to enhance the ability of the parties to protect their communications and other reviewed materials under the attorney client privilege, the Company shall, and shall direct its counsel to, execute and deliver to Investor Counsel and their respective clients such an agreement in form and substance reasonably acceptable to Investor Counsel. In the event that one or more of the other party or parties to such transactions require the respective clients of Investor Counsel to enter into a confidentiality agreement and/or joint defense agreement in order to receive such information, then the Company shall share whatever information can be shared without entry into such agreement and shall, at the same time, in good faith work expeditiously to enable Investor Counsel and their respective clients to negotiate and enter into the appropriate agreement(s) without undue burden to the clients of Investor Counsel.

Section 8.06 Indemnification Matters. The Company hereby acknowledges that one (1) or more of the directors nominated to serve on the Board of Directors by the Initial Preferred Stockholders (each a "Fund Director") may have certain rights to indemnification, advancement of expenses and/or insurance provided by one or more of the Initial Preferred Stockholders and certain of their affiliates (collectively, the "Fund Indemnitors"). The Company hereby agrees (a) that it is the indemnitor of first resort (*i.e.*, its obligations to any such Fund Director are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such Fund Director are secondary), (b) that it shall be required to advance the full amount of expenses incurred by such Fund Director and shall be liable for the full amount of all expenses, judgments, penalties, fines and amounts paid in settlement by or on behalf of any such Fund Director to the extent legally permitted and as required by the Company's Certificate of Incorporation or Bylaws of the Company (or any agreement between the Company and such Fund Director), without regard to any rights such Fund Director may have against the Fund Indemnitors, and, (c) that it irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Fund Indemnitors on behalf of any such Fund Director with respect to any claim for which such Fund Director has sought indemnification from the Company shall affect the foregoing and the Fund Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of such Fund Director against the Company. Promptly following the date of this Agreement, the Company shall enter into an indemnification agreement with, and reasonably acceptable to, each of the Fund Directors, providing for indemnification consistent with the provisions of this Section 8.06.

Section 8.07 Right to Conduct Activities. The Company hereby agrees and acknowledges that each of the Initial Preferred Stockholders (together with its Affiliates) and certain of the Initial Common Stockholders (together with their respective Affiliates) are professional investment funds, and as such invest in numerous portfolio companies, some of which may be deemed competitive with the Company's business (as currently conducted or as currently propose to be conducted). The Company hereby agrees that, to the extent permitted under applicable law, no Initial Preferred Stockholder and no Initial Common Stockholder that is a professional investment fund or any of their respective Affiliates shall be liable to the Company for any claim arising out of, or based upon, (i) the investment by such Initial Preferred Stockholder or Initial Common Stockholder in any entity competitive with the Company, or (ii) actions taken by any partner, officer or other representative of such Stockholder to assist any such competitive company, whether or not such action was taken as a member of the board of directors of such competitive company or otherwise, and whether or not such action has a detrimental effect on the Company; provided, however, that the foregoing shall not relieve (x) any Stockholder from liability associated with the unauthorized disclosure of the Company's confidential information obtained pursuant to this Agreement, or (y) any director or officer of the Company from any liability associated with his or her fiduciary duties to the Company.

Section 8.08 FCPA. The Company represents that it shall not (and shall not permit any of its subsidiaries or affiliates or any of its or their respective directors, officers, managers, employees, independent contractors, representatives or agents to) promise, authorize or make any payment to, or otherwise contribute any item of value to, directly or indirectly, to any third party, including any Non-U.S. Official (as such term is defined in the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "FCPA")), in each case, in violation of the FCPA, the U.K. Bribery Act, or any other applicable anti-bribery or anti-corruption law. The Company further represents that it shall (and shall cause each of its subsidiaries and affiliates to) cease all of its or their respective activities, as well as remediate any actions taken by the Company, its subsidiaries or affiliates, or any of their respective directors, officers, managers, employees, independent contractors, representatives or agents in violation of the FCPA, the U.K. Bribery Act, or any other applicable anti-bribery or anti-corruption law. The Company further represents that it shall (and shall cause each of its subsidiaries and affiliates to) maintain systems of internal controls (including, but not limited to, accounting systems, purchasing systems and billing systems) to ensure compliance with the FCPA, the U.K. Bribery Act, or any other applicable anti-bribery or anti-corruption law. Upon request, the Company agrees to provide responsive information and/or certifications concerning its compliance with applicable anti-corruption laws. The Company shall promptly notify each Investor if the Company becomes aware of any Enforcement Action (as defined in the Purchase Agreement). The Company shall, and shall cause any direct or indirect subsidiary or entity controlled by it, whether now in existence or formed in the future, to comply with the FCPA. The Company shall use its best efforts to cause any direct or indirect subsidiary, whether now in existence or formed in the future, to comply in all material respects with all applicable laws.

Section 8.09 Subsidiaries. The Company shall cause the boards of directors of the direct and indirect subsidiaries of the Company to be selected by the Board and shall cause any other person serving on any such board to tender his or her resignation effective on the Effective Date.

Section 8.10 **Use of Proceeds.** The Company shall use, and will cause its subsidiaries to use, the net proceeds from the sale of the Preferred Stock for working capital and other general corporate purposes. No part of such proceeds will be used, directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board of Governors of the Federal Reserve System of the United States of America, including Regulations T, U and X.

Section 8.11 **Termination of Covenants.** The covenants set forth in this ARTICLE VIII, except for Sections 8.04 and 8.05, shall terminate and be of no further force or effect (i) immediately before the consummation of the Qualified IPO, or (ii) upon a Deemed Liquidation Event, whichever event occurs first.

ARTICLE IX

TERMINATION

Section 9.01 **Termination.** This Agreement shall terminate upon the occurrence of any of the following events, other than with respect to obligations accruing as a result of such events as to which this Agreement shall remain in full force and effect until such obligations are fully and duly performed in accordance with their terms:

- (a) the dissolution of the Company;
- (b) the written agreement of the holders of two-thirds of the then-outstanding shares of Preferred Stock held by persons who are parties to this Agreement and a majority of the then-outstanding shares of Common Stock then held by Initial Common Stockholders who are parties to this Agreement;
- (c) the consummation of a Qualified IPO; or
- (d) a Change of Control.

ARTICLE X

MISCELLANEOUS

Section 10.01 **Notices.** Any notice, approval, consent, request or other communication hereunder shall be given only by, and shall be deemed to have been received upon, (a) delivery by a nationally recognized overnight courier, one (1) Business Day after deposit with such courier, (b) facsimile during regular business hours of the recipient, upon electronic confirmation of receipt or (c) email transmission, during regular business hours of the recipient, upon further electronic communication from the recipient acknowledging receipt (whether automatic or manual from recipient), in each case, at the address reflected below or at such other address as such party shall request in a written notice:

- (i) If to the Company:

GT Advanced Technologies Inc.

[243 Daniel Webster Highway
Merrimack, New Hampshire 03054]
Attention:
Telephone:
Facsimile:
Email:

With a copy to:

[_____]]
[_____]]

Attention:
Telephone:
Facsimile:
Email:

(ii) If to any Stockholder: As set forth on its signature page hereto.

Section 10.02 **Complete Agreement; Amendment.** This Agreement constitutes the complete understanding of the parties with respect to its subject matter and supersedes any other agreement or understanding relating thereto. This Agreement may be amended from time to time by an instrument in writing signed by the Company and the holders of a 56% of the then-outstanding shares of Preferred Stock and, with respect to any amendment that materially adversely affects the Common Stock or the rights or obligations of Common Stockholders in any way, the holders of a majority of the then-outstanding shares of Common Stock then held by the Initial Common Stockholders.

Section 10.03 **Waiver.** No failure or delay on the part of the Stockholders or the Company or any of them in exercising any right, power or privilege hereunder, and no course of dealing between the Stockholders or Company, shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege hereunder preclude the simultaneous or later exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights and remedies which the Stockholders or Company would otherwise have.

Section 10.04 **Rights and Obligations.** Any Stockholder who disposes of its, his or her Stock in accordance with the provisions of this Agreement shall cease to be a party to this Agreement and shall have no further rights or obligations hereunder.

Section 10.05 **Assignment; Successors.** The rights and obligations of the Stockholders pursuant to this Agreement are assignable and transferable only in connection with a Transfer, to the extent permitted by this Agreement, of the shares of Stock to which such rights and obligations relate. Every covenant, term and provision of this Agreement will be binding upon and inure to the benefit of the parties and their respective heirs, legatees, legal representatives and permitted successors, transferees and assigns.

Section 10.06 **Governing Law; Submission to Jurisdiction; Selection of Forum; WAIVER OF TRIAL BY JURY.** This Agreement, and all claims or causes of action (whether

in contract or tort) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution, termination, performance or nonperformance of this Agreement, shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and performed in such State, without regard to any conflict of laws principles thereof. Subject to Section 10.08, each party agrees that it shall bring any action or proceeding in respect of any claim based upon, arising out of, or related to this Agreement, any provision hereof or any of the transactions contemplated hereby, in the federal or state courts of competent jurisdiction in the Borough of Manhattan in The City of New York (the “Chosen Courts”), and solely in connection with claims arising under this Agreement or the transactions that are the subject of this Agreement (a) irrevocably submits to the exclusive jurisdiction of the Chosen Courts, (b) waives any objection to laying venue in any such action or proceeding in the Chosen Courts and (c) waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any party. Each party agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. EACH PARTY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, MATTER OR PROCEEDING BASED UPON, ARISING OUT OF, OR RELATED TO THIS AGREEMENT, ANY PROVISION HEREOF OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY. Service of process on the parties in any action arising out of or relating to this Agreement shall be effective if delivered to the parties in accordance with Section 10.01.

Section 10.07 **Further Assurances**. Each party hereby covenants and agrees, without the necessity of any further consideration, to execute and deliver any and all such further documents and take any and all such other actions as may be reasonably necessary or appropriate to carry out the intent and purposes of this Agreement and to consummate the transactions contemplated hereby.

Section 10.08 **Equitable Relief**. It is hereby acknowledged that irreparable harm would occur in the event that any of the provisions of this Agreement were not performed fully by the parties in accordance with the terms specified herein, and that monetary damages may not be an adequate remedy for breach of this Agreement. Accordingly, each party hereby agrees that each other party shall be entitled to an injunction or injunctions to restrain, enjoin and prevent breaches of the undertakings and provisions hereof and to enforce specifically the undertakings and provisions hereof in any court of the United States or any state having jurisdiction over the matter (without posting any bond or other security); it being understood that such remedies shall be in addition to, and not in lieu of, any other rights and remedies available at law or in equity.

Section 10.09 **Severability**. If any provision of this Agreement, as applied to any part or to any circumstance, is held invalid, illegal or unenforceable under applicable law, (a) such provision, as applied to such party or such circumstance, is hereby deemed modified to give effect to the original written intent of the parties to the greatest extent consistent with being valid and enforceable under applicable law, (b) the application of such provision to any other party or to any other circumstance will not be affected or impaired thereby and (c) the validity, legality and enforceability of the remaining provisions of this Agreement will remain in full force and effect.

Section 10.10 **Rules of Construction**.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply: (i) when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded and, if the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day; (ii) any reference in this Agreement to “\$” shall mean U.S. dollars; (iii) all Exhibits annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein and any capitalized terms used in any Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement; (iv) words imparting the singular number only shall include the plural and vice versa; (v) the words such as “herein,” “hereinafter,” “hereof,” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires; (vi) the word “including” or any variation thereof means “including, without limitation” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it; (vii) the division of this Agreement into Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement; and (viii) all references in this Agreement to any “Article” or “Section” are to the corresponding Article or Section of this Agreement unless otherwise specified.

(b) The parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

Section 10.11 **Third Parties.** Nothing in this Agreement, express or implied, is intended to confer upon any Person, other than the parties and their permitted successors and transferees, any rights or remedies under or by reason of this Agreement.

Section 10.12 **Counterparts.** This Agreement may be executed and delivered by facsimile, PDF or other electronic transmission in one or more counterparts, each of which will be deemed to be an original, but all of which will be one and the same document.

Section 10.13 **Additional Parties.** In the event that after the date of this Agreement, the Company enters into an agreement with any Person to issue shares of Stock to such Person, then, the Company shall cause such Person, as a condition precedent to entering into such agreement, to become a party to this Agreement by executing an Adoption Agreement in the form attached hereto as Exhibit A, agreeing to be bound by and subject to the terms of this Agreement as a Stockholder and thereafter such person shall be deemed a Stockholder for all purposes under this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

COMPANY

**GT ADVANCED TECHNOLOGIES
INC.**

By: _____

Name:

Title:

STOCKHOLDERS:

EXHIBIT A

ADOPTION AGREEMENT

This Adoption Agreement (“**Adoption Agreement**”) is executed on _____, 20__ by the undersigned (the “**Holder**”) pursuant to the terms of that certain Stockholders’ Agreement dated as of _____, 2016 (the “**Agreement**”), by and among the Company and certain of its Stockholders, as such Agreement may be amended or amended and restated hereafter. Capitalized terms used but not defined in this Adoption Agreement shall have the respective meanings ascribed to such terms in the Agreement. By the execution of this Adoption Agreement, the Holder agrees as follows.

Acknowledgement. Holder acknowledges that Holder is acquiring certain shares of the capital stock of the Company (the “**Stock**”) or options, warrants, or other rights to purchase such Stock (the “**Options**”), for one of the following reasons (Check the correct box):

- As a transferee of Stock from a party in such party’s capacity as an “Preferred Stockholder” bound by the Agreement, and after such transfer, Holder shall be considered a “Preferred Stockholder” for all purposes of the Agreement.
- As a transferee of Shares from a party in such party’s capacity as a “Common Stockholder” bound by the Agreement, and after such transfer, Holder shall be considered a “Common Stockholder” for all purposes of the Agreement.
- As a new stockholder, in which case Holder will be a “Common Stockholder” or a “Stockholder”, but not a “Preferred Stockholder” for all purposes of the Agreement.

1.2 Agreement. Holder hereby (a) agrees that the Stock [Options/Warrants], and any other shares of capital stock or securities required by the Agreement to be bound thereby, shall be bound by and subject to the terms of the Agreement and (b) adopts the Agreement with the same force and effect as if Holder were originally a party thereto.

1.3 Notice. Any notice required or permitted by the Agreement shall be given to Holder at the address or facsimile number listed below Holder’s signature hereto.

HOLDER: _____

ACCEPTED AND AGREED:

By: _____
Name and Title of Signatory

GT ADVANCED TECHNOLOGIES INC.

Address: _____

By: _____

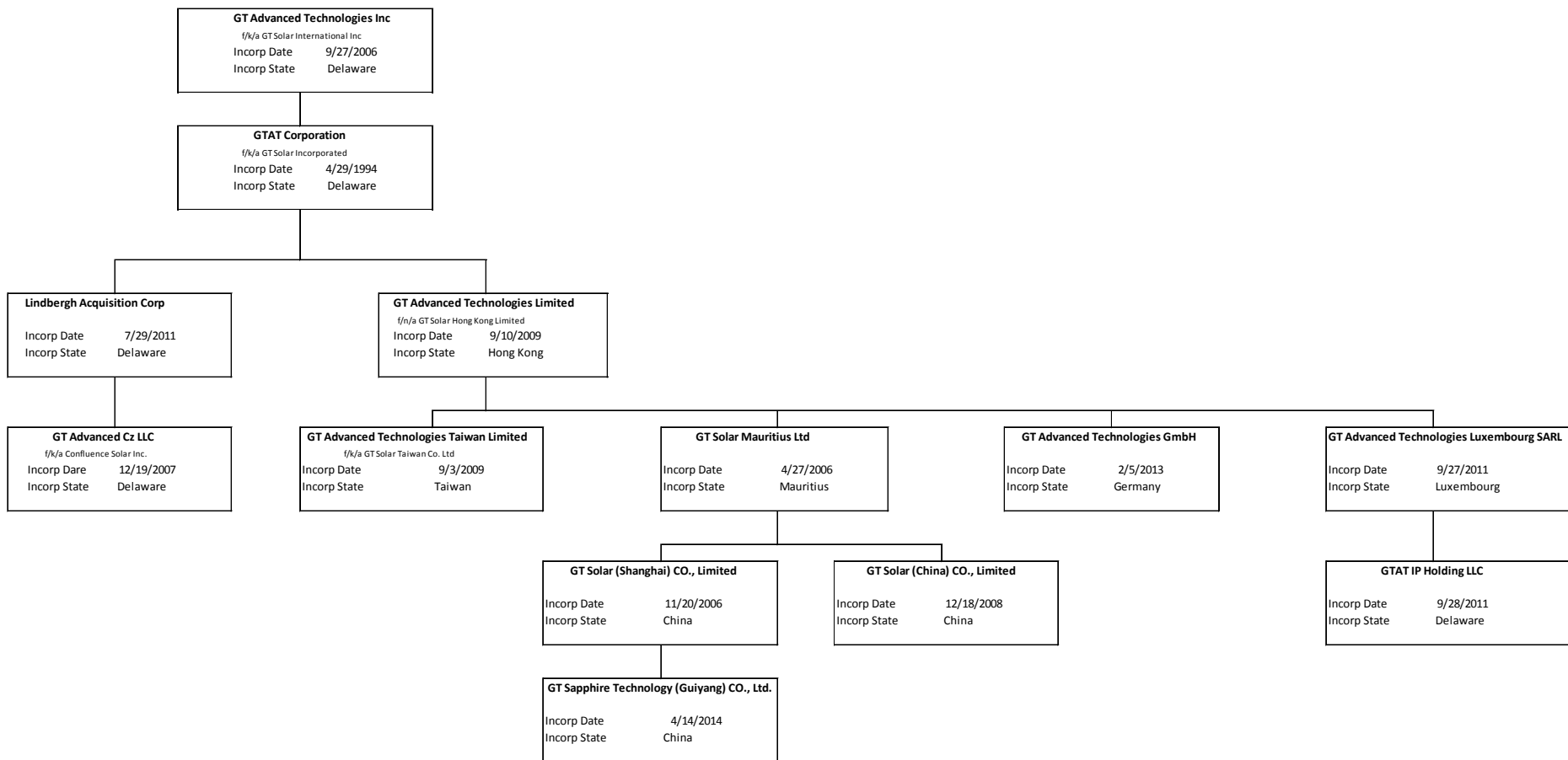
Title: _____

Facsimile Number: _____

EXHIBIT 17

Legal Entity Organizational Chart (as of Effective Date)

**GT Advanced Technologies Inc.
Legal Entity Organizational Chart
As of Effective Date**



Corporate Restructuring

- (1) Merge GT Advanced Equipment Holding LLC into GTAT Corporation
- (2) Merge GT Equipment Holdings, Inc into GTAT Corporation
- (3) Merge GT Sapphire Systems Group LLC into GT Sapphire Sytems Holding LLC
- (4) Merge GT Sapphire Systems Holding LLC into GTAT Corporation

Notes:

GTAT Corporation has an inactive branch in Greece
GT Advanced Technologies Limited has an inactive branch in Korea