

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-Q

- QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the quarterly period ended September 30, 2008.
- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission File Number 1-12273

**ROPER INDUSTRIES, INC.**  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**6901 Professional Pkwy. East, Suite 200**  
**Sarasota, Florida**  
(Address of principal executive offices)

**51-0263969**  
(I.R.S. Employer Identification No.)

**34240**  
(Zip Code)

**(941) 556-2601**  
(Registrant's telephone number, including area code)

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. X Yes O No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(do not check if smaller reporting company)

Indicate by check mark if the registrant is a shell company (as defined in Rule 12-b2 of the Act).  Yes  No

The number of shares outstanding of the Registrant's common stock as of October 17, 2008 was approximately 89,711,993.

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## ITEM 1. FINANCIAL STATEMENTS

**Roper Industries, Inc. and Subsidiaries**  
**Condensed Consolidated Statements of Earnings (unaudited)**  
**(in thousands, except per share data)**

	Three months ended September 30,		Nine months ended September 30,	
	2008	2007	2008	2007
Net sales	\$ 593,100	\$ 532,902	\$ 1,730,509	\$ 1,541,965
Cost of sales	284,340	261,123	840,029	769,643
Gross profit	308,760	271,779	890,480	772,322
Selling, general and administrative expenses	176,461	158,041	523,374	457,777
Income from operations	132,299	113,738	367,106	314,545
Interest expense	14,322	13,119	36,833	39,957
Other expense, net	2,836	404	1,695	1,884
Earnings before income taxes	115,141	100,215	328,578	272,704
Income taxes	39,942	35,075	114,124	94,901
Net earnings	<u>\$ 75,199</u>	<u>\$ 65,140</u>	<u>\$ 214,454</u>	<u>\$ 177,803</u>
Net earnings per share:				
Basic	\$ 0.84	\$ 0.74	\$ 2.40	\$ 2.01
Diluted	0.80	0.70	2.28	1.91
Weighted average common shares outstanding:				
Basic	89,629	88,575	89,381	88,286
Diluted	94,251	93,559	94,026	92,934
Dividends declared per common share	\$ 0.0725	\$ 0.0650	\$ 0.2175	\$ 0.1950

See accompanying notes to condensed consolidated financial statements.

**Roper Industries, Inc. and Subsidiaries**  
**Condensed Consolidated Balance Sheets (unaudited)**  
**(in thousands)**

	September 30, 2008	December 31, 2007
<b>ASSETS:</b>		
Cash and cash equivalents	\$ 156,272	\$ 308,768
Accounts receivable, net	396,815	359,808
Inventories	196,089	174,138
Deferred taxes	33,714	27,800
Unbilled receivable	69,251	60,218
Other current assets	29,462	20,405
Total current assets	881,603	951,137
Property, plant and equipment, net	115,762	107,513
Goodwill	2,164,632	1,706,083
Other intangible assets, net	827,649	613,505
Deferred taxes	33,762	23,854
Other noncurrent assets	50,023	51,092
Total other assets	3,076,066	2,394,534
<b>Total assets</b>	<b>\$ 4,073,431</b>	<b>\$ 3,453,184</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY:</b>		
Accounts payable	\$ 128,335	\$ 115,809
Accrued liabilities	260,862	194,055
Income taxes payable	32,297	24,121
Deferred taxes	—	2,442
Current portion of long-term debt	232,676	331,103
Total current liabilities	654,170	667,530
Long-term debt	1,113,674	727,489
Deferred taxes	252,814	221,411
Other liabilities	42,681	46,948
Total liabilities	2,063,339	1,663,378
Commitments and contingencies		
Common stock	919	910
Additional paid-in capital	790,668	757,318
Retained earnings	1,139,863	944,886
Accumulated other comprehensive earnings	100,431	108,732
Treasury stock	(21,789)	(22,040)
Total stockholders' equity	2,010,092	1,789,806
<b>Total liabilities and stockholders' equity</b>	<b>\$ 4,073,431</b>	<b>\$ 3,453,184</b>

See accompanying notes to condensed consolidated financial statements.

**Roper Industries, Inc. and Subsidiaries**  
**Condensed Consolidated Statements of Cash Flows (unaudited)**  
**(in thousands)**

	Nine months ended September 30,	
	2008	2007
Cash flows from operating activities:		
Net earnings	\$ 214,454	\$ 177,803
Depreciation	24,775	23,560
Amortization	50,588	46,643
Income taxes	4,459	22,634
Other, net	11,263	(43,669)
Cash provided by operating activities	305,539	226,971
Cash flows from investing activities:		
Business acquisitions, net of cash acquired	(701,935)	(106,287)
Capital expenditures	(20,787)	(19,591)
Other, net	(4,084)	(3,596)
Cash used in investing activities	(726,806)	(129,474)
Cash flows from financing activities:		
Proceeds from senior unsecured term loan	350,000	-
Proceeds from senior notes	500,000	-
Repayment of borrowings under prior secured credit facility	(908,620)	-
Principal payments on term notes under prior secured credit facility	(49,125)	(49,125)
Borrowings/(payments) under revolving line of credit, net	393,000	(1,000)
Debt issuance costs	(10,169)	-
Dividends paid	(19,393)	(17,182)
Excess windfall tax benefit	4,688	6,536
Proceeds from exercise of stock options	10,050	12,919
Other, net	918	810
Cash provided/(used) by financing activities	271,349	(47,042)
Effect of foreign currency exchange rate changes on cash	(2,578)	5,998
Net increase/(decrease) in cash and cash equivalents	(152,496)	56,453
Cash and cash equivalents, beginning of period	308,768	69,478
Cash and cash equivalents, end of period	\$ 156,272	\$ 125,931

See accompanying notes to condensed consolidated financial statements.

Roper Industries, Inc. and Subsidiaries  
Condensed Consolidated Statements of Changes in Stockholders' Equity (unaudited)  
(in thousands)

	Common stock	Additional paid-in capital	Retained earnings	Accumulated other comprehensive earnings	Treasury stock	Total
Balances at December 31, 2007	\$ 910	\$ 757,318	\$ 944,886	\$ 108,732	\$ (22,040)	\$ 1,789,806
Net earnings	—	—	214,454	—	—	214,454
Stock option exercises	4	10,047	—	—	—	10,051
Treasury stock transactions	—	1,228	—	—	251	1,479
Restricted stock grants	5	(5,512)	—	—	—	(5,507)
Stock based compensation	—	22,848	—	—	—	22,848
Stock option tax benefit	—	4,739	—	—	—	4,739
Currency translation adjustments, net of \$5,322 tax	—	—	—	(7,761)	—	(7,761)
Unrealized gain on derivative, shown net of \$291 tax	—	—	—	(540)	—	(540)
Dividends declared	—	—	(19,477)	—	—	(19,477)
Balances at September 30, 2008	\$ 919	\$ 790,668	\$ 1,139,863	\$ 100,431	\$ (21,789)	\$ 2,010,092

See accompanying notes to condensed consolidated financial statements.

**1. Basis of Presentation**

The accompanying condensed consolidated financial statements for the three month and nine month periods ended September 30, 2008 and 2007 are unaudited. In the opinion of management, the accompanying unaudited condensed consolidated financial statements reflect all adjustments, which include only normal recurring adjustments, necessary to state fairly the financial position, results of operations and cash flows of Roper Industries, Inc. and its subsidiaries ("Roper" or the "Company") for all periods presented.

Roper's management has made a number of estimates and assumptions relating to the reporting of assets and liabilities and the disclosure of contingent assets and liabilities to prepare these condensed consolidated financial statements in conformity with accounting principles generally accepted in the United States of America ("GAAP"). Actual results could differ from those estimates.

The results of operations for the three month and nine month periods ended September 30, 2008 are not necessarily indicative of the results to be expected for the full year. You should read these unaudited condensed consolidated financial statements in conjunction with Roper's consolidated financial statements and the notes thereto included in its 2007 Annual Report on Form 10-K filed on February 29, 2008 with the Securities and Exchange Commission ("SEC").

**2. Earnings Per Share**

Basic earnings per share were calculated using net earnings and the weighted average number of shares of common stock outstanding during the respective period. Diluted earnings per share were calculated using net earnings and the weighted average number of shares of common stock and potential common stock outstanding during the respective period. Potentially dilutive common stock consisted of stock options, restricted stock awards and the premium over the conversion price on the Company's senior subordinated convertible notes based upon the trading price of the Company's common stock. The effects of potential common stock were determined using the treasury stock method. Outstanding stock options that were not included in the determination of diluted earnings per share because doing so would have been antidilutive were 28,000 for both the three and nine month periods ended September 30, 2008. For the nine month period ended September 30, 2007, there were 28,500 outstanding stock options that were not included in the determination of diluted earnings per share because doing so would have been antidilutive, and none for the three month period ended September 30, 2007.

	Three months ended September 30,		Nine months ended September 30,	
	2008	2007	2008	2007
	(in thousands)			
Basic shares outstanding	89,629	88,575	89,381	88,286
Effect of potential common stock				
Common stock awards	1,216	1,463	1,262	1,462
Senior subordinated convertible notes	3,406	3,521	3,383	3,186
Diluted shares outstanding	<u>94,251</u>	<u>93,559</u>	<u>94,026</u>	<u>92,934</u>

**3. Business Acquisitions**

On February 20, 2008, we acquired the CBORD Group, Inc., ("CBORD"), a provider of card systems and integrated security solutions to higher education, healthcare and other markets. CBORD's results are reported in the RF Technology segment. The aggregate gross purchase price was \$376 million of cash, which includes amounts incurred for direct external transaction costs associated with the acquisition. The allocation of the purchase price resulted in \$158 million of identifiable intangible assets and \$258 million of goodwill.

During the second quarter of 2008, the Company completed the acquisition of an air shut-off valve provider in the United Kingdom (“UK”), expanding our global reach for protective technologies in our Energy Systems & Controls segment. During the third quarter of 2008, our acquisitions consisted of the assets, intellectual property and internet domain names of a business which adds new subscribers for our freight matching services, a leading provider of comprehensive software solutions and related services that complements CBORD’s higher education business to allow us to better serve the entire education spectrum, and a UK-based end-to-end solutions provider for network monitoring, pressure management, automatic meter reading and smart metering solutions which complements the RF component of our Neptune business. All of the third quarter acquisitions are reported in our RF Technology segment.

The aggregate gross purchase price for acquisitions made during the second and third quarters was \$331 million of cash, which includes amounts incurred for direct external transaction costs associated with the acquisition. The initial purchase price allocation resulted in \$110 million of identifiable intangible assets and \$212 million of goodwill.

#### 4. Stock Based Compensation

The Roper Industries, Inc. Amended and Restated 2006 Incentive Plan (“2006 Plan”) allows us to grant incentive stock options, nonqualified stock options, restricted stock, stock appreciation rights or equivalent instruments to the Company’s employees, officers, directors and consultants.

Roper’s stock purchase plan allows U.S. and Canada employees to designate up to 10% of eligible earnings to purchase Roper’s common stock at a 5% discount to the average closing price of its common stock at the beginning and end of a quarterly offering period. The common stock sold to the employees may be either treasury stock, stock purchased on the open market, or newly issued shares.

The Company recognized stock based compensation expense of \$8.1 million and \$5.4 million for the three months ended September 30, 2008 and 2007, respectively, and \$22.8 million and \$15.1 million for the nine months ended September 30, 2008 and 2007, respectively. The total tax effect recognized in net income related to stock based compensation was \$8.0 million and \$5.3 million for the nine months ended September 30, 2008 and 2007, respectively. The tax benefit from option exercises and restricted stock vesting under all plans totaled approximately \$4.7 million and \$5.4 million for the nine months ended September 30, 2008 and 2007, respectively.

Stock Options - In the nine months ended September 30, 2008, 1,050,500 options were granted with a weighted average fair value of \$12.83. During the same period in 2007, 542,000 options were granted with a weighted average fair value of \$13.72. All options were issued at grant date fair value.

The Company records compensation expense for employee stock options based on the estimated fair value of the options on the date of grant using the Black-Scholes option-pricing model with the assumptions included in the table below. The Company uses historical data among other factors to estimate the expected price volatility, the expected dividend yield, the expected option life and the expected forfeiture rate. The risk-free rate is based on the U.S. Treasury yield curve in effect at the time of grant for the estimated life of the option. The following weighted average assumptions were used to estimate the fair value of options granted during the nine month periods ended September 30, 2008 and 2007 using the Black-Scholes option-pricing model:

	<u>2008</u>	<u>2007</u>
Fair value per share (\$)	12.83	13.72
Risk-free interest rate (%)	2.87	4.72
Expected option life (years)	5.02	4.5
Expected volatility (%)	21.10	20.91
Expected dividend yield (%)	0.53	0.50

Cash received from option exercises for the nine months ended September 30, 2008 and 2007 was approximately \$10.1 million and \$13.0 million, respectively.



Restricted Stock Awards - During the nine months ended September 30, 2008, the Company granted 604,810 shares of restricted stock with a weighted average fair value of \$56.96. During the same period in 2007, 234,269 shares were granted with a weighted average fair value of \$52.40. All grants were issued at grant date fair value.

During the nine months ended September 30, 2008, 290,376 restricted shares vested with a weighted average grant date fair value of \$44.03, at a weighted average vest date fair value of \$57.77.

Employee Stock Purchase Plan - During the nine months ended September 30, 2008 and 2007, participants of the employee stock purchase plan purchased 25,279 and 26,468 shares, respectively, of Roper's common stock for total consideration of \$1.5 million and \$1.3 million, respectively. All of these shares were purchased from Roper's treasury shares.

#### **5. Comprehensive Earnings**

Comprehensive earnings include net earnings and all other non-owner sources of changes in net assets. Comprehensive earnings (in thousands) for the three months ended September 30, 2008 and 2007 were \$48,056 and \$86,490, respectively, and \$206,153 and \$215,125 for the nine months ended September 30, 2008 and 2007, respectively. The differences between net earnings and comprehensive earnings were currency translation adjustments and unrealized gains on interest rate swaps accounted for under hedge accounting, net of tax.

#### **6. Debt**

On July 7, 2008, the Company entered into a new \$1.1 billion unsecured credit facility (the "New Credit Facility") with JPMorgan Chase Bank, N.A., as administrative agent, and a syndicate of lenders, which replaces its \$1.355 billion amended and restated secured credit facility, dated as of December 13, 2004 (the "Secured Credit Facility"). The New Credit Facility is composed of a two year \$350.0 million term loan facility and a five year \$750.0 million revolving credit facility. The Company may also, subject to compliance with specified conditions, request additional term loans or revolving credit commitments in an aggregate amount not to exceed \$350.0 million.

The Company recorded a \$3.1 million non-cash debt extinguishment charge in the third quarter of 2008 related to the early termination of the Secured Credit Facility. This charge reflects the unamortized fees associated with the Secured Credit Facility and was reported as other expense.

On August 6, 2008, we issued \$500,000,000 aggregate principal amount of 6.625% senior notes due August 15, 2013 (the "Notes"). The Notes bear interest at a fixed rate of 6.625% per year, payable semi-annually in arrears on February 15 and August 15 of each year, beginning February 15, 2009. The interest payable on the Notes is subject to adjustment if either Moody's Investor Services or Standard & Poor's Ratings Services downgrades or upgrades the rating assigned to the Notes.

We may redeem some or all of the Notes at any time or from time to time, at 100% of their principal amount plus a make-whole premium based on a spread to U.S. Treasury securities as described in the indenture relating to the Notes, which is filed as an exhibit to this Quarterly Report.

The Notes are unsecured senior obligations of the Company and rank equally in right of payment with all of the Company's existing and future unsecured and unsubordinated indebtedness. The Notes are effectively subordinated to any of the Company's existing and future secured indebtedness to the extent of the value of the collateral securing such indebtedness. The Notes are not guaranteed by any of the Company's subsidiaries and are effectively subordinated to all existing and future indebtedness and other liabilities of the Company's subsidiaries.

Other debt includes \$230 million of senior subordinated convertible notes due 2034.

7. **Inventories**

	September 30, 2008	December 31, 2007
	(in thousands)	
Raw materials and supplies	\$ 122,137	\$ 113,327
Work in process	32,586	28,503
Finished products	73,702	60,698
Inventory reserves	(32,336)	(28,390)
	<u>\$ 196,089</u>	<u>\$ 174,138</u>

8. **Goodwill**

	Industrial Technology	Energy Systems & Controls	Scientific & Industrial Imaging	RF Technology	Total
	(in thousands)				
Balances at December 31, 2007	\$ 442,143	\$ 380,884	\$ 411,190	\$ 471,866	\$ 1,706,083
Additions	—	13,451	—	458,230	471,681
Other	—	(6,480)	131	1,330	(5,019)
Currency translation adjustments	(2,780)	(1,728)	(2,367)	(1,238)	(8,113)
Balances at September 30, 2008	<u>\$ 439,363</u>	<u>\$ 386,127</u>	<u>\$ 408,954</u>	<u>\$ 930,188</u>	<u>\$ 2,164,632</u>

Other primarily represents tax adjustments and acquisition purchase price allocation adjustments.

9. **Other intangible assets, net**

	Cost	Accumulated amortization	Net book value
	(in thousands)		
Assets subject to amortization:			
Customer related intangibles	\$ 504,850	\$ (99,079)	\$ 405,771
Unpatented technology	46,116	(13,714)	32,402
Software	58,152	(24,278)	33,874
Patents and other protective rights	33,480	(18,246)	15,234
Backlog	16,560	(13,196)	3,364
Trade secrets	6,930	(3,443)	3,487
Assets not subject to amortization:			
Trade names	119,373	—	119,373
Balances at December 31, 2007	<u>\$ 785,461</u>	<u>\$ (171,956)</u>	<u>\$ 613,505</u>
Assets subject to amortization:			
Customer related intangibles	\$ 702,264	\$ (130,462)	\$ 571,802
Unpatented technology	65,188	(18,755)	46,433
Software	59,100	(28,787)	30,313
Patents and other protective rights	40,817	(20,624)	20,193
Backlog	16,528	(15,826)	702
Trade secrets	4,665	(3,973)	692
Assets not subject to amortization:			
Trade names	157,514	—	157,514
Balances at September 30, 2008	<u>\$ 1,046,076</u>	<u>\$ (218,427)</u>	<u>\$ 827,649</u>

The increase in intangible assets during the nine months ended September 30, 2008 related to 2008 acquisitions offset by revised allocations of intangible assets of 2007 acquisitions. The revised allocations resulted in a \$9 million decrease in intangible assets, and a corresponding increase in goodwill. Amortization expense of other intangible assets was \$46,471 and \$43,968 during the nine months ended September 30, 2008 and 2007, respectively.

#### 10. Contingencies

Roper, in the ordinary course of business, is the subject of, or a party to, various pending or threatened legal actions, including those pertaining to product liability and employment practices. It is vigorously contesting all lawsuits that, in general, are based upon claims of the kind that have been customary over the past several years. After analyzing the Company's contingent liabilities on a gross basis and, based upon past experience with resolution of its product liability and employment practices claims and the limits of the primary, excess, and umbrella liability insurance coverages that are available with respect to pending claims, management believes that adequate provision has been made to cover any potential liability not covered by insurance, and that the ultimate liability, if any, arising from these actions should not have a material adverse effect on the consolidated financial position, results of operations or cash flows of Roper.

Over recent years there has been a significant increase in certain U.S. states in asbestos-related litigation claims against numerous industrial companies. Roper or its subsidiaries have been named defendants in some such cases. No significant resources have been required by Roper to respond to these cases and Roper believes it has valid defenses to such claims and, if required, intends to defend them vigorously. Given the state of these claims it is not possible to determine the potential liability, if any.

The Company's financial statements include accruals for potential product liability and warranty claims based on the Company's claims experience. Such costs are accrued at the time revenue is recognized. A summary of the Company's warranty accrual activity for the nine months ended September 30, 2008 is presented below (in thousands).

Balance at December 31, 2007	\$	8,486
Additions charged to costs and expenses		8,442
Deductions		(5,680)
Other		(223)
Balance at September 30, 2008	\$	<u>11,025</u>

#### 11. Industry Segments

Sales and operating profit by industry segment are set forth in the following table (dollars in thousands):

	Three months ended September 30,			Nine months ended September 30,		
	2008	2007	Change	2008	2007	Change
Net sales:						
Industrial Technology	\$ 169,065	\$ 161,828	4.5%	\$ 525,929	\$ 477,667	10.1%
Energy Systems & Controls	137,535	131,033	5.0	410,638	361,044	13.7
Scientific & Industrial Imaging	94,610	91,331	3.6	282,206	277,042	1.9
RF Technology	191,890	148,710	29.0	511,736	426,212	20.1
Total	<u>\$ 593,100</u>	<u>\$ 532,902</u>	11.3%	<u>\$ 1,730,509</u>	<u>\$ 1,541,965</u>	12.2%
Gross profit:						
Industrial Technology	\$ 82,215	\$ 78,394	4.9%	\$ 253,719	\$ 228,407	11.1%
Energy Systems & Controls	75,172	70,907	6.0	223,720	191,159	17.0
Scientific & Industrial Imaging	51,457	50,242	2.4	154,135	152,629	1.0
RF Technology	99,916	72,236	38.3%	258,906	200,127	29.4
Total	<u>\$ 308,760</u>	<u>\$ 271,779</u>	13.6%	<u>\$ 890,480</u>	<u>\$ 772,322</u>	15.3%

Operating profit*:										
Industrial Technology	\$	43,767	\$	42,065	4.0%	\$	136,627	\$	120,721	13.2%
Energy Systems & Controls		32,541		31,858	2.1		96,359		81,579	18.1
Scientific & Industrial Imaging		18,746		16,385	14.4		54,091		53,453	1.2
RF Technology		50,191		34,997	43.4		119,902		90,669	32.2
Total	\$	<u>145,245</u>	\$	<u>125,305</u>	15.9%	\$	<u>406,979</u>	\$	<u>346,422</u>	17.5%
Long-lived assets:										
Industrial Technology	\$	44,316	\$	44,200	0.3%					
Energy Systems & Controls		27,351		26,143	4.6					
Scientific & Industrial Imaging		26,557		27,878	(4.7)					
RF Technology		36,506		22,452	62.6					
Total	\$	<u>134,730</u>	\$	<u>120,673</u>	11.6%					

\*Segment operating profit is calculated as operating profit before unallocated corporate general and administrative expenses. These expenses were \$12,946 and \$11,567 for the three months ended September 30, 2008 and 2007, respectively, and \$39,873 and \$31,877 for the nine months ended September 30, 2008 and 2007, respectively.

## 12. Recently Released Accounting Pronouncements

In June 2008, the Financial Accounting Standards Board ("FASB") issued FASB Staff Position ("FSP") EITF 03-6-1, "Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities" ("FSP EITF 03-6-1"). FSP EITF 03-6-1 clarified that all outstanding unvested share-based payment awards that contain rights to nonforfeitable dividends participate in undistributed earnings with common shareholders. Awards of this nature are considered participating securities and the two-class method of computing basic and diluted earnings per share must be applied. FSP EITF 03-6-1 is effective for fiscal years beginning after December 15, 2008. The implementation of this standard will not have a material impact on our consolidated financial position and results of operations.

In May 2008, the FASB issued FSP APB 14-1, "Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)" ("FSP APB 14-1"). FSP APB 14-1 clarifies that convertible debt instruments that may be settled in cash upon either mandatory or optional conversion (including partial cash settlement) are not addressed by paragraph 12 of APB Opinion No. 14, "Accounting for Convertible Debt and Debt Issued with Stock Purchase Warrants." Additionally, FSP APB 14-1 specifies that issuers of such instruments should separately account for the liability and equity components in a manner that will reflect the entity's nonconvertible debt borrowing rate when interest cost is recognized in subsequent periods. FSP APB 14-1 is effective for financial statements issued for fiscal years beginning after December 15, 2008, and interim periods within those fiscal years. We will adopt FSP APB 14-1 beginning in the first quarter of 2009, and this standard must be applied on a retrospective basis. We are evaluating the impact the adoption of FSP APB 14-1 will have on our consolidated financial position and results of operations.

In May 2008, the FASB issued Statement of Financial Accounting Standards ("SFAS") No. 162, "The Hierarchy of Generally Accepted Accounting Principles" ("SFAS 162"). This standard is intended to improve financial reporting by identifying a consistent framework, or hierarchy, for selecting accounting principles to be used in preparing financial statements that are presented in conformity with generally accepted accounting principles in the United States for non-governmental entities. SFAS 162 is effective 60 days following approval by the SEC of the Public Company Accounting Oversight Board's amendments to AU Section 411, "The Meaning of Present Fairly in Conformity with Generally Accepted Accounting Principles." We do not expect SFAS 162 to have a material impact on the preparation of our consolidated financial statements.

In April 2008, the FASB issued FSP No. 142-3, "Determination of the Useful Life of Intangible Assets" ("FSP 142-3"). FSP 142-3 amends the factors an entity should consider in developing renewal or extension assumptions used in determining the useful life of recognized intangible assets under FASB Statement No. 142, "Goodwill and Other Intangible Assets". This new guidance applies prospectively to intangible assets that are acquired individually or with a group of other assets in business combinations and asset acquisitions. FSP 142-3 is

effective for financial statements issued for fiscal years and interim periods beginning after December 15, 2008. Early adoption is prohibited. We are currently evaluating the impact, if any, that FSP 142-3 will have on our consolidated financial statements.

In March 2008, the FASB issued SFAS No. 161, "Disclosures about Derivative Instruments and Hedging Activities—an amendment of FASB Statement No. 133," ("SFAS 161") which requires enhanced disclosures about an entity's derivative and hedging activities. SFAS 161 is effective for fiscal years and interim periods beginning after November 15, 2008. This Statement will not impact the Company's consolidated financial position as it is disclosure-only in nature.

In September 2006, the FASB issued SFAS No. 157, "Fair Value Measurements," ("SFAS 157") which clarifies the definition of fair value, establishes a framework for measuring fair value and expands the disclosures on fair value measurements. SFAS 157 is effective for fiscal years beginning after November 15, 2007. In February 2008, the FASB issued FSP 157-2 "Partial Deferral of the Effective Date of Statement 157" ("FSP 157-2"). FSP 157-2 delays the effective date of SFAS 157, for all nonfinancial assets and nonfinancial liabilities, except those that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually) to fiscal years beginning after November 15, 2008. The adoption of SFAS 157 did not have a material effect on the consolidated financial position for fair value measurements made during the first three quarters of 2008. While the Company does not expect the adoption of this Statement to have a material impact on its consolidated financial position in subsequent reporting periods, the Company continues to monitor any additional implementation guidance that is issued that addresses the fair value measurements for certain financial assets, nonfinancial assets and nonfinancial liabilities not disclosed at fair value in the financial statements on at least an annual basis.

In December 2007, the FASB issued SFAS No. 141 (revised 2007), "Business Combinations" ("SFAS 141(R)"). SFAS 141(R) establishes principles and requirements for how an acquirer in a business combination recognizes and measures the assets acquired, liabilities assumed, and any noncontrolling interest (previously referred to as minority interest) in the acquiree. The provisions of SFAS 141(R) are effective for business combinations occurring on or after January 1, 2009.

In December 2007, the FASB issued SFAS No. 160, "Noncontrolling Interests in Consolidated Financial Statements" ("SFAS 160"). SFAS 160 establishes requirements for ownership interests in subsidiaries held by parties other than the Company (sometimes called "minority interests") be clearly identified, presented, and disclosed in the consolidated statement of financial position within equity, but separate from the parent's equity. All changes in the parent's ownership interests are required to be accounted for consistently as equity transactions and any noncontrolling equity investments in deconsolidated subsidiaries must be measured initially at fair value. SFAS 160 is effective, on a prospective basis, for fiscal years beginning after December 15, 2008. However, presentation and disclosure requirements must be retrospectively applied to comparative financial statements. The Company is currently assessing the impact of SFAS 160 on its consolidated financial position and results of operations.

**ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF  
FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

You should read the following discussion in conjunction with Management's Discussion and Analysis of Financial Conditions and Results of Operations included in our Annual Report on Form 10-K for the year ended December 31, 2007 as filed on February 29, 2008 with the SEC and the notes to our Condensed Consolidated Financial Statements included elsewhere in this report.

**Overview**

Roper Industries, Inc. ("Roper", "we" or "us") is a diversified growth company that designs, manufactures and distributes energy systems and controls, scientific and industrial imaging products and software, industrial technology products and radio frequency ("RF") products and services. We market these products and services to selected segments of a broad range of markets, including RF applications, water, energy, research and medical, education, security and other niche markets.

We pursue consistent and sustainable growth in sales and earnings by emphasizing continuous improvement in the operating performance of our existing businesses and by acquiring other carefully selected businesses that offer high value-added, engineered products and solutions and are capable of achieving growth and maintaining high margins. Our acquisitions have represented both financial bolt-ons and new strategic platforms. We strive for high cash and earnings returns from our investments.

**Application of Critical Accounting Policies**

Our consolidated financial statements are prepared in conformity with accounting principles generally accepted in the United States ("GAAP"). A discussion of our significant accounting policies can be found in the notes to our consolidated financial statements for the year ended December 31, 2007 included in our Annual Report.

GAAP offers acceptable alternative methods for accounting for certain issues affecting our financial results, such as determining inventory cost, depreciating long-lived assets and recognizing revenues. We have not changed the application of acceptable accounting methods or the significant estimates affecting the application of these principles in the last three years in a manner that had a material effect on our financial statements.

The preparation of financial statements in accordance with GAAP requires the use of estimates, assumptions, judgments and interpretations that can affect the reported amounts of assets, liabilities, revenues and expenses, the disclosure of contingent assets and liabilities and other supplemental disclosures.

The development of accounting estimates is the responsibility of our management. Our management discusses those areas that require significant judgments with the audit committee of our board of directors. The audit committee discusses critical estimates with our external auditors and reviews all financial disclosures to be included in our filings with the SEC. Although we believe the positions we have taken with regard to uncertainties are reasonable, others might reach different conclusions and our positions can change over time as more information becomes available. If an accounting estimate changes, its effects are accounted for prospectively.

Our most significant accounting uncertainties are encountered in the areas of accounts receivable collectibility, inventory utilization, future warranty obligations, revenue recognition (percent of completion), income taxes and goodwill analysis. These issues, except for income taxes (which are not allocated to our business segments), affect each of our business segments. These issues are evaluated primarily using a combination of historical experience, current conditions and relatively short-term forecasting.

Accounts receivable collectibility is based on the economic circumstances of customers and credits given to customers after shipment of products, including in certain cases, credits for returned products. Accounts receivable are regularly reviewed to determine customers who have not paid within agreed upon terms, whether these amounts are consistent with past experiences, what historical experience has been with amounts deemed uncollectible and the impact that current and near-term forecast economic conditions might have on collection efforts in general and with specific customers. The returns and other sales credit allowance is an estimate of customer returns, exchanges, discounts or other forms of anticipated concessions and is treated as a reduction in revenue. The return and other sales credit histories are analyzed to determine likely future rates for such credits.

At September 30, 2008, our allowance for doubtful accounts receivable, sales returns and sales credits was \$12.9 million, or 3.1% of total gross accounts receivable and has decreased slightly from 3.2% at December 31, 2007.

We regularly compare inventory quantities on hand against anticipated future usage, which we determine as a function of historical usage or forecasts related to specific items in order to evaluate obsolescence and excessive quantities. When we use historical usage, this information is also qualitatively compared to business trends to evaluate the reasonableness of using historical information as an estimate of future usage. Business trends can change rapidly and these events can affect the evaluation of inventory balances. At September 30, 2008, inventory reserves for excess and obsolete inventory were \$32.3 million, or 14.2% of gross inventory cost, and increased slightly as a percentage of gross inventory cost from December 31, 2007.

Most of our sales are covered by warranty provisions that generally provide for the repair or replacement of qualifying defective items for a specified period after the time of sale, typically 12 months. Future warranty obligations are evaluated using, among other factors, historical cost experience, product evolution and customer feedback. At September 30, 2008, the accrual for future warranty obligations was \$11.0 million or 0.5% of annualized third quarter sales, as compared to 0.4% in prior year quarters. The increase is due to a special \$3.5 million warranty charge at Neptune in the second quarter related to a certain vendor-supplied component used in select water meters which were causing a malfunction.

Net sales recognized under the percentage-of-completion method of accounting are estimated and dependent on a comparison of total costs incurred to date to total estimated costs for a project. During the third quarter of 2008, we recognized \$32.7 million of net sales using this method. In addition, approximately \$223.2 million of net sales related to unfinished percentage-of-completion contracts had yet to be recognized at September 30, 2008. Net sales accounted for under this method are generally not significantly different in profitability compared with net sales for similar products and services accounted for under other methods.

Income taxes can be affected by estimates of whether, and within which jurisdictions, future earnings will occur and how and when cash is repatriated to the United States, combined with other aspects of an overall income tax strategy. Additionally, taxing jurisdictions could retroactively disagree with our tax treatment of certain items, and some historical transactions have income tax effects going forward. Accounting rules require these future effects to be evaluated using current laws, rules and regulations, each of which can change at any time and in an unpredictable manner. Our third quarter effective income tax rate was 34.7%, which is 31 basis points lower than the 35.0% rate experienced in the prior year third quarter.

The evaluation of the carrying value of goodwill and indefinite-lived intangibles is required to be performed annually. We perform this analysis during our fourth quarter.

## Results of Operations

### General

The following tables set forth selected information for the periods indicated. Dollar amounts are in thousands and percentages are the particular line item shown as a percentage of net sales. Percentages may not foot due to rounding.

	Three months ended September 30,		Nine months ended September 30,	
	2008	2007	2008	2007
Net sales				
Industrial Technology	\$ 169,065	\$ 161,828	\$ 525,929	\$ 477,667
Energy Systems & Controls	137,535	131,033	410,638	361,044
Scientific & Industrial Imaging	94,610	91,331	282,206	277,042
RF Technology	191,890	148,710	511,736	426,212
Total	<u>\$ 593,100</u>	<u>\$ 532,902</u>	<u>\$ 1,730,509</u>	<u>\$ 1,541,965</u>
Gross profit:				
Industrial Technology	48.6%	48.4%	48.2%	47.8%
Energy Systems & Controls	54.7	54.1	54.5	52.9
Scientific & Industrial Imaging	54.4	55.0	54.6	55.1
RF Technology	52.1	48.6	50.6	47.0
Total	<u>52.1</u>	<u>51.0</u>	<u>51.5</u>	<u>50.1</u>
Selling, general & administrative expenses:				
Industrial Technology	22.7%	22.4%	22.3%	22.5%
Energy Systems & Controls	31.0	29.8	31.0	30.4
Scientific & Industrial Imaging	34.6	37.1	35.5	35.8
RF Technology	25.9	25.0	27.2	25.7
Total	<u>27.6</u>	<u>27.5</u>	<u>27.9</u>	<u>27.6</u>
Segment operating profit:				
Industrial Technology	25.9%	26.0%	26.0%	25.3%
Energy Systems & Controls	23.7	24.3	23.5	22.6
Scientific & Industrial Imaging	19.8	17.9	19.2	19.3
RF Technology	26.2	23.5	23.4	21.3
Total	<u>24.5</u>	<u>23.5</u>	<u>23.5</u>	<u>22.5</u>
Corporate administrative expenses	<u>(2.2)</u>	<u>(2.2)</u>	<u>(2.3)</u>	<u>(2.1)</u>
Interest expense	22.3	21.3	21.2	20.4
Other expense	(2.4)	(2.5)	(2.1)	(2.6)
Earnings before income taxes	<u>(0.5)</u>	<u>(0.1)</u>	<u>(0.1)</u>	<u>(0.1)</u>
Income taxes	19.4	18.8	19.0	17.7
Net earnings	<u>(6.7)</u>	<u>(6.6)</u>	<u>(6.6)</u>	<u>(6.2)</u>
	<u>12.7%</u>	<u>12.2%</u>	<u>12.4%</u>	<u>11.5%</u>



### Three months ended September 30, 2008 compared to three months ended September 30, 2007

Net sales for the quarter ended September 30, 2008 were \$593.1 million as compared to \$532.9 million in the prior-year quarter, an increase of 11.3%. Approximately \$35 million of our sales increase was due to acquisitions, resulting in internal sales growth of 4.7%, which included a 1% positive foreign exchange impact.

In our Industrial Technology segment, net sales were up 4.5% to \$169.1 million in the third quarter of 2008 as compared to \$161.8 million in the third quarter of 2007 primarily due to sales in our material test instrumentation business. Gross margins were slightly higher at 48.6% for the third quarter of 2008 as compared to 48.4% in the third quarter of 2007. SG&A expenses as a percentage of net sales were 22.7%, slightly higher than 22.4% in the prior year quarter. The resulting operating profit margins were 25.9% in the third quarter of 2008 as compared to 26.0% in the third quarter of 2007.

Net sales in our Energy Systems & Controls segment increased by 5.0% to \$137.5 million during the third quarter of 2008 compared to \$131.0 million in the third quarter of 2007. Approximately \$2 million of the increase was due to acquisitions. Internal growth of 4% was driven by strength in our control and engine shut-off valve businesses. Gross margins were 54.7% in the third quarter of 2008 compared to 54.1% in the third quarter of 2007 due to operating leverage from higher sales. SG&A expenses as a percentage of net sales increased to 31.0% compared to the prior year quarter at 29.8%. Operating margins were 23.7% in the third quarter of 2008 as compared to 24.3% in the third quarter of 2007.

Net sales in our Scientific & Industrial Imaging segment increased by 3.6% to \$94.6 million during the third quarter of 2008 as compared to \$91.3 million in the third quarter of 2007. Internal sales increased by 5%, primarily due to strength in our medical business and camera sales into the security and teleconferencing application markets. Gross margins decreased slightly to 54.4% in the third quarter of 2008 from 55.0% in the third quarter of 2007. SG&A as a percentage of net sales decreased to 34.6% in the third quarter of 2008 as compared to 37.1% in the third quarter of 2007 due to operating leverage on increased sales and focus on economic performance. As a result, operating margins were 19.8% in the third quarter of 2008 as compared to 17.9% in the third quarter of 2007.

In our RF Technology segment, net sales were up 29.0% at \$191.9 million compared to \$148.7 million in the third quarter of 2007. Acquisitions accounted for \$35 million in increased sales for 2008. The prior year quarter included the initial phase of a large Middle East project, and internal growth in 2008 excluding this project would have been 11%. Gross margins were 52.1% as compared to 48.6% in the prior year quarter, due to the inclusion of the higher margin CBORD business in 2008, as well as the successful transition of the Company's tolling project in the Middle East from the installation phase to the operational phase. SG&A as a percentage of sales in the third quarter of 2008 was 25.9% up from 25.0% in the prior year due to the higher SG&A structure related to the CBORD business. Operating profit margins increased to 26.2% in 2008 as compared to 23.5% in 2007.

Corporate expenses were \$12.9 million in the third quarter of 2008 as compared to \$11.6 million in the third quarter of 2007, and unchanged as a percentage of sales at 2.2%. The primary reason for the increase was higher equity compensation costs related to retention programs and the additional costs to the Company due to the increase in Roper's stock price on the grant dates of stock awards.

Interest expense of \$14.3 million for the third quarter of 2008 was \$1.2 million higher as compared to \$13.1 million in the third quarter of 2007. This is due to higher average balances on our credit facility over the prior year quarter, partially offset by a decrease in interest rates on the variable rate portion of our outstanding debt and an increase in offsetting interest income related to higher cash balances.

Income taxes were 34.7% of pretax earnings in the current quarter as compared to 35.0% in the third quarter of 2007.

At September 30, 2008, the functional currencies of our European subsidiaries, with the exception of the British pound, were stronger against the dollar since September 30, 2007 and December 31, 2007. The British pound and the Canadian dollar were weaker against the dollar compared to September 30, 2007 and December 31, 2007. The currency changes resulted in a decrease of \$31.9 million in the foreign exchange component of comprehensive earnings for the quarter. Approximately \$19.8 million of the total adjustment is related to goodwill and is not expected to directly affect our expected future cash flows. Operating income in the third quarter of 2008 increased slightly due to the weakening of the US dollar as compared to a year ago, primarily against the euro. The difference between the operating income for these companies for the three months ended September 30, 2008, translated into U.S. dollars was approximately 1%.

Net orders were \$580.6 million for the quarter, 8.9% higher than the third quarter 2007 net order intake of \$532.9 million. Approximately \$27 million of the order increase was due to acquisitions resulting in internal growth of 3.8%. We experienced strong bookings in three of our four segments. Overall, our order backlog at September 30, 2008 was up 16.1% as compared to September 30, 2007. The increase in backlog is due to 1.7% internal growth as well as 14.4% or \$76.4 million from acquisitions.

	Net orders booked for the three months ended September 30,		Order backlog as of September 30,	
	2008	2007	2008	2007
Industrial Technology	\$ 163,442	\$ 153,236	\$ 81,169	\$ 99,114
Energy Systems & Controls	134,970	145,855	86,148	98,752
Scientific & Industrial Imaging	102,933	95,339	81,859	73,908
RF Technology	179,274	138,513	368,298	260,154
	<u>\$ 580,619</u>	<u>\$ 532,943</u>	<u>\$ 617,474</u>	<u>\$ 531,928</u>

#### Nine months ended September 30, 2008 compared to nine months ended September 30, 2007

Net sales for the nine months ended September 30, 2008 were \$1.7 billion as compared to \$1.5 billion in the prior year nine month period, an increase of 12.2%. Approximately \$83.2 million of our sales increase was due to acquisitions; however, all of our segments showed improvement over the prior year nine month period resulting in internal sales growth of 6.8%.

In our Industrial Technology segment, net sales were up 10.1% to \$525.9 million in the first nine months of 2008 as compared to \$477.7 million in the first nine months of 2007 due to strong sales throughout the segment, led by increased sales at Neptune represented by growth in both domestic and international markets as well as increased sales in our material test instrumentation business. Despite increased cost of raw materials and a \$3.5 million warranty charge at Neptune, gross margins were higher at 48.2% for the first nine months of 2008 as compared to 47.8% in the first nine months of 2007, due to operating leverage from higher sales volume and continuous operating improvements. SG&A expenses as a percentage of net sales were 22.3%, down from 22.5% in the prior year nine month period due to operating leverage from higher sales. The resulting operating profit margins were 26.0% in the first nine months of 2008 as compared to 25.3% in the first nine months of 2007.

Net sales in our Energy Systems & Controls segment increased by 13.7% to \$410.6 million during the first nine months of 2008 compared to \$361.0 million in the first nine months of 2007. Approximately \$16 million of the increase was due to acquisitions. Internal growth of 9% was driven by strong year over year sales in our sensor technology and control and engine shut-off valve businesses, and continued penetration of turbomachinery control systems for oil and gas projects in the Middle East and Africa. Gross margins were 54.5% in the first nine months of 2008 compared to 52.9% in the first nine months of 2007 due to operating leverage on higher sales volume. SG&A expenses as a percentage of net sales were up slightly to 31.0% compared to the prior year nine month period at 30.4%. Operating margins were 23.5% in the first nine months of 2008 as compared to 22.6% in first nine months of 2007.

In our Scientific & Industrial Imaging segment net sales increased 1.9% to \$282.2 million in the first nine months of 2008 as compared to \$277.0 million in the first nine months of 2007. Internal sales were up 3.3%, led by strong sales in the medical business and camera sales into the security and teleconferencing application markets. Gross margins decreased slightly to 54.6% in the first nine months of 2008 from 55.1% in the first nine months of 2007. SG&A as a percentage of net sales decreased slightly to 35.5% in the nine month period ended September 30, 2008 as compared to 35.8% in the prior year period. Operating margins were 19.2% in the first nine months of 2008 as compared to 19.3% in the first nine months of 2007.

In our RF Technology segment, net sales were up 20.1% at \$511.7 million compared to \$426.2 million in the first nine months of 2007. Acquisitions accounted for approximately 16.6% of the increase, with the remaining 3.5% of the increase resulting from internal growth, due primarily to continued wins in domestic tolling and traffic management projects. Gross margins were 50.6% as compared to 47.0% in the prior year nine month period due to the inclusion of the higher margin CBORD business in 2008, as well as the successful transition of the Company's tolling project in the Middle East from the installation phase to the operational phase in the current

year. SG&A as a percentage of sales in the first nine months of 2008 was 27.2% up from 25.7% in the prior year due to the higher SG&A structure related to the CBORD business. Operating profit margins were 23.4% in 2008 as compared to 21.3% in 2007.

Corporate expenses as a percentage of sales were 2.3%, or \$39.9 million, in the first nine months of 2008 as compared to 2.1%, or \$31.9 million, in the first nine months of 2007. The primary reason for the increase was higher equity compensation costs related to retention programs and the additional costs to the Company due to the increase in Roper's stock price on the grant dates of stock awards.

Interest expense of \$36.8 million for the first nine months of 2008 was \$3 million lower as compared to \$40.0 million in the first nine months of 2007. This is due to a decrease in interest rates on the variable rate portion of our outstanding debt and an increase in offsetting interest income related to higher cash balances, partially offset by higher average balances on our credit facility over the prior year period.

Income taxes were 34.7% of pretax earnings in the first nine months of 2008 as compared to 34.8% in the first nine months of 2007.

#### **Financial Condition, Liquidity and Capital Resources**

On July 7, 2008, the Company entered into a new \$1.1 billion unsecured credit facility (the "New Credit Facility") with JPMorgan Chase Bank, N.A., as administrative agent, and a syndicate of lenders, which replaces its \$1.355 billion amended and restated secured credit facility, dated as of December 13, 2004 (the "Secured Credit Facility"). The New Credit Facility is composed of a two year \$350.0 million term loan facility and a five year \$750.0 million revolving credit facility. The Company may also, subject to compliance with specified conditions, request additional term loans or revolving credit commitments in an aggregate amount not to exceed \$350.0 million.

The Company recorded a \$3.1 million non-cash debt extinguishment charge in the third quarter of 2008 related to the early termination of the Secured Credit Facility. This charge reflects the unamortized fees associated with the Secured Credit Facility and was reported as other expense.

On August 6, 2008, we issued \$500,000,000 aggregate principal amount of 6.625% senior notes due August 15, 2013 (the "Notes"). The Notes bear interest at a fixed rate of 6.625% per year, payable semi-annually in arrears on February 15 and August 15 of each year, beginning February 15, 2009. The interest payable on the Notes is subject to adjustment if either Moody's Investor Services or Standard & Poor's Ratings Services downgrades or upgrades the rating assigned to the Notes.

We may redeem some or all of the Notes at any time or from time to time, at 100% of their principal amount plus a make-whole premium based on a spread to U.S. Treasury securities as described in the indenture relating to the Notes, which is filed as an exhibit to this Quarterly Report.

The Notes are unsecured senior obligations of the Company and rank equally in right of payment with all of the Company's existing and future unsecured and unsubordinated indebtedness. The Notes are effectively subordinated to any of the Company's existing and future secured indebtedness to the extent of the value of the collateral securing such indebtedness. The Notes are not guaranteed by any of the Company's subsidiaries and are effectively subordinated to all existing and future indebtedness and other liabilities of the Company's subsidiaries.

Other debt includes \$230 million of senior subordinated convertible notes due 2034.

Net cash provided by operating activities was \$138.2 million in the third quarter of 2008 as compared to \$91.4 million in the third quarter of 2007, a 51.2% increase. This change is due to the higher income levels over the prior year quarter, and lower receivables at quarter end due to improved distribution of sales levels throughout the quarter and collections from sales made late in the second quarter of 2008. Cash used in investing activities during the current and prior year quarter was primarily business acquisitions and capital expenditures. Cash provided by financing activities in the three month period ending September 30, 2008 was primarily from receipts from the \$500 million Notes and the \$1.1 billion New Credit Facility, which consisted of the \$350 million term loan and revolver borrowings of \$259 million. Cash used in financing activities was primarily repayment of \$908.6 million in debt on the retired \$1.335 billion secured credit agreement and dividends. Cash used in financing

activities in the three month period ending September 30, 2007 was primarily principal payments on the Company's former \$955.0 million term loan of \$16.4 million, and revolver payments of \$57.9 million.

For the nine month period ended September 30, 2008, net cash provided by operating activities was \$305.5 million as compared to \$227.0 million in the nine month period ended September 30, 2007, a 35% increase. This increase is primarily due to the higher income levels over the prior year period and improved receivables collections. Cash used in investing activities during the current and prior nine month periods was primarily for business acquisitions. Cash provided by financing activities during the current and prior year nine month periods was primarily related to debt borrowings for acquisitions. Cash used in financing activities during the current and prior year nine month periods was for paydown on our revolving credit line, scheduled payments on our term debt and dividend payments.

Net working capital (total current assets, excluding cash, less total current liabilities, excluding debt) was \$303.8 million at September 30, 2008, a slight decrease from \$305.9 million at December 31, 2007. In addition, the Company measures its operating performance based on "asset velocity" (defined as net assets as a percentage of the current quarter's annualized revenue). The net assets included in this calculation are accounts receivable plus inventory minus accounts payable and accrued liabilities, as adjusted for any acquisitions during the current quarter. As of September 30, 2008, the Company's net assets were \$205.8 million or 8.8% of third quarter annualized revenue.

Total debt increased to \$1.35 billion at September 30, 2008 compared to \$1.06 billion at December 31, 2007 due to borrowings related to acquisitions. The leverage of the Company is shown in the following table (in thousands):

	<u>September 30,</u> <u>2008</u>	<u>December 31,</u> <u>2007</u>
Total Debt	\$ 1,346,350	\$ 1,058,592
Cash	<u>(156,272)</u>	<u>(308,768)</u>
Net Debt	1,190,078	749,824
Stockholders' Equity	<u>2,010,092</u>	<u>1,789,806</u>
Total Net Capital	<u>\$ 3,200,170</u>	<u>\$ 2,539,630</u>
Net Debt / Total Net Capital	37.2%	29.5%

The Company also had \$53.5 million of outstanding letters of credit at September 30, 2008. We expect that our available additional borrowing capacity combined with the cash flows expected to be generated from existing business will be sufficient to fund normal operating requirements and finance additional acquisitions. We also have several smaller facilities that allow for borrowings or the issuance of letters of credit in various foreign locations to support our non-U.S. businesses. In total, these smaller facilities do not represent a significant source of credit for us. The Company was in compliance with all debt covenants related to our credit facilities throughout the quarter ended September 30, 2008.

At September 30, 2008, we did not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

Capital expenditures of \$20.8 million and \$19.6 million were incurred during the nine month periods ended September 30, 2008 and 2007 respectively. We expect capital expenditures for the balance of the year to be comparable to prior years as a percentage of sales.

#### Recently Issued Accounting Standards

Information regarding new accounting pronouncements is included in Note 12 of the Notes to Condensed Consolidated Financial Statements.

## Outlook

Current geopolitical and economic uncertainties could adversely affect our business prospects. A significant terrorist attack or other global conflict could cause changes in world economies that would adversely affect us. It is impossible to isolate each of these factor's effects on current economic conditions. It is also impossible to predict with any reasonable degree of certainty what or when any additional events may occur that also will similarly disrupt the economy.

The global financial markets have been and continue to be in turmoil, with extreme volatility in the equity markets and with some financial and other institutions having difficulty accessing the credit markets, particularly in those industries more significantly affected by deteriorating broader economic conditions. During the three months ended September 30, 2008, we issued \$500 million of our 6.625% Senior Notes due 2013 and borrowed \$609 million under the New Credit Facility. As of September 30, 2008 we had approximately \$788 million remaining availability under the New Credit Facility (including additional term loans or additional revolving credit commitments we may request under this facility). In addition, neither our access to nor the value of our cash equivalents or short-term investments have been adversely affected by the recent liquidity problems of financial institutions. Although we have attempted to be prudent in our investment strategy and in pre-funding to meet our foreseeable liquidity needs, it is not possible to predict how the financial market turmoil and the deteriorating economic conditions may affect our financial position. Additional financial institution failures, or other events could reduce amounts available under our committed credit facility, could cause losses to the extent cash amounts or the value of securities exceed government deposit insurance limits and could restrict our access to the public equity and debt markets.

We maintain an active acquisition program; however, future acquisitions will be dependent on numerous factors and it is not feasible to reasonably estimate if or when any such acquisitions will occur and what the impact will be on our business, financial condition and results of operations. Such acquisitions may be financed by the use of existing credit lines, future cash flows from operations, the proceeds from the issuance of new debt or equity securities or some combination of these methods.

We anticipate that our recently acquired companies as well as our other companies will generate positive cash flows from operating activities, and that these cash flows will permit the reduction of currently outstanding debt at a pace consistent with that which has historically been experienced. However, the rate at which we can reduce our debt during 2008 (and reduce the associated interest expense) will be affected by, among other things, the financing and operating requirements of any new acquisitions and the financial performance of our existing businesses; and none of these factors can be predicted with certainty.

## Information About Forward Looking Statements

This report includes "forward-looking statements" within the meaning of the federal securities laws. In addition, we, or our executive officers on our behalf, may from time to time make forward-looking statements in reports and other documents we file with the SEC or in oral statements made to the press, potential investors or others. All statements that are not historical facts are "forward-looking statements." The words "estimate," "project," "intend," "expect," "should," "will," "plan," "believe," "anticipate," and similar expressions identify forward-looking statements. These forward-looking statements include statements regarding our expected financial position, business, financing plans, business strategy, business prospects, revenues, working capital, liquidity, capital needs, interest costs and income, in each case relating to our company as a whole, as well as statements regarding acquisitions, potential acquisitions and the benefits of acquisitions.

Forward-looking statements are estimates and projections reflecting our best judgment and involve a number of risks and uncertainties that could cause actual results to differ materially from those suggested by the forward-looking statements. These statements are based on our management's beliefs and assumptions, which in turn are based on currently available information. Examples of forward-looking statements in this report include but are not limited to our expectations regarding our ability to generate operating cash flows and reduce debt and associated interest expense and our expectations regarding growth through acquisitions. Important assumptions relating to the forward-looking statements include, among others, assumptions regarding demand for our products, the cost, timing and success of product upgrades and new product introductions, raw materials costs, expected pricing levels, the timing and cost of expected capital expenditures, expected outcomes of pending litigation, competitive conditions, general economic conditions and expected synergies relating to acquisitions, joint ventures and alliances. These assumptions could prove inaccurate. Although we believe that the estimates and projections reflected in the forward-looking statements are reasonable, our expectations may prove to be incorrect. Important factors that could cause actual results to differ materially from estimates or projections contained in the forward-looking statements include:

- difficulty making acquisitions and successfully integrating acquired businesses;
- any unforeseen liabilities associated with future acquisitions;
- limitations on our business imposed by our indebtedness;
- unfavorable changes in foreign exchange rates;
- difficulties associated with exports;
- risks and costs associated with our international sales and operations;
- increased directors and officers liability and other insurance costs;
- risk of rising interest rates;
- product liability and insurance risks;
- increased warranty exposure;
- future competition;
- the cyclical nature of some of our markets;
- reduction of business with large customers;
- risks associated with government contracts;
- changes in the supply of, or price for, parts and components;
- environmental compliance costs and liabilities;
- risks and costs associated with asbestos-related litigation;
- potential write-offs of our substantial intangible assets;
- our ability to successfully develop new products;
- failure to protect our intellectual property;
- economic disruption caused by terrorist attacks, health crises or other unforeseen events; and
- the factors discussed in other reports filed with the SEC.

We believe these forward-looking statements are reasonable; however, you should not place undue reliance on any forward-looking statements, which are based on current expectations. Further, forward-looking statements speak only as of the date they are made, and we undertake no obligation to publicly update any of these statements in light of new information or future events.

### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to interest rate risks on our outstanding borrowings, and we are exposed to foreign currency exchange risks on our transactions denominated in currencies other than the U.S. dollar. We are also exposed to equity market risks pertaining to the traded price of our common stock.

In the third quarter of 2008, we replaced the existing \$1.355 billion Secured Credit Facility with the \$1.1 billion New Credit Facility and issued \$500 million in senior notes on August 6, 2008. See Note 6 of the Notes to Condensed Consolidated Financial Statements for more detailed information.

At September 30, 2008 we had fixed rate borrowings of \$500 million related to our senior notes and \$230 million related to our senior subordinated convertible notes. The \$350 million 2-year term loan under our credit facility was variable at a spread over LIBOR. Borrowings under the \$750 million revolving credit facility have a fixed rate, but the terms of these individual borrowings are generally only one to three months. Outstanding revolver borrowings were \$259 million at September 30, 2008. At September 30, 2008, the prevailing market rates were 1.6% lower than the fixed rate on our Notes, and 1.3% higher than the fixed rate on our senior subordinated convertible notes.

At September 30, 2008, Roper's outstanding variable rate borrowings under the \$1.1 billion New Credit Facility were \$609 million. An increase in interest rates of 1% would increase our annualized pre-tax interest costs by approximately \$6.1 million.

Several Roper companies have transactions and balances denominated in currencies other than the U.S. dollar. Most of these transactions or balances are denominated in Euros, Canadian dollars, British pounds, or Danish krone. Sales by companies whose functional currency was not the U.S. dollar were 23.0% of our total third quarter sales and 71.4% of these sales were by companies with a European functional currency. The U.S. dollar

weakened against most European and Asian currencies during the third quarter of 2008 versus December 31, 2007 and strengthened against the British pound and Canadian dollar. The difference between the current quarter operating results for these companies translated into U.S. dollars at exchange rates experienced during third quarter 2008 versus exchange rates experienced during third quarter 2007 was not material and resulted in increased operating profits of 1%. If these currency exchange rates had been 10% different throughout the first quarter of 2008 compared to currency exchange rates actually experienced, the impact on our net earnings would have been approximately \$1.6 million.

The changes in these currency exchange rates relative to the U.S. dollar during the first nine months of 2008 compared to currency exchange rates at December 31, 2007 resulted in a decrease in net assets of \$13.1 million that was reported as a component of comprehensive earnings, \$8.1 million of which was attributed to goodwill. Goodwill changes from currency exchange rate changes do not directly affect our reported earnings or cash flows.

The trading price of Roper's common stock influences the valuation of stock option grants and the effects these grants have on net income. The stock price also influences the computation of the dilutive effect of outstanding stock options to determine diluted earnings per share. The stock price also affects our employees' perceptions of various programs that involve our common stock. We believe the quantification of the effects of these changing prices on our future earnings and cash flows is not readily determinable.

#### **ITEM 4. CONTROLS AND PROCEDURES**

As required by SEC rules, we have evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this quarterly report ("Evaluation Date"). This evaluation was carried out under the supervision and with the participation of our management, including our principal executive officer and principal financial officer. Based on this evaluation as of the Effective Date, these officers have concluded that the design and operation of our disclosure controls and procedures are effective.

Disclosure controls and procedures are our controls and other procedures designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that we file or submit under the Exchange Act are accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure.

There were no changes to our internal controls during the period covered by this quarterly report that materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

**Part II. OTHER INFORMATION**

**Item 1A. Risk Factors**

For information regarding factors that could affect the Company's results of operations, financial condition and liquidity, see the risk factors discussion in Item 1A of Roper's Annual Report on Form 10-K for the fiscal year ended December 31, 2007 as filed on February 29, 2008 with the SEC. See also, "Information about Forward-Looking Statements" included in Item 2 of this Quarterly Report on Form 10-Q.

**Item 6. Exhibits**

- <sup>(a)</sup>4.1 Credit Agreement, dated as of July 7, 2008, among Roper Industries, Inc., as parent borrower, its foreign subsidiary borrowers from time to time parties thereto, the several lenders from time to time parties thereto, Bank of Tokyo-Mitsubishi UFJ Trust Company and BNP Paribas, as documentation agents, Wachovia Capital Markets, LLC and Banc of America Securities, LLC, as syndication agents, and JPMorgan Chase Bank, N.A., as administrative agent.
- 4.2 Indenture dated as of August 4, 2008 between Roper Industries, Inc. and Wells Fargo Bank, National Association, as Trustee, filed herewith.
- 10.1 Roper Industries, Inc., Amended and Restated 2006 Incentive Plan, filed herewith.
- 31.1 Rule 13a-14(a)/15d-14(a), Certification of the Chief Executive Officer, filed herewith.
- 31.2 Rule 13a-14(a)/15d-14(a), Certification of the Chief Financial Officer, filed herewith.
- 32.1 Section 1350 Certification of the Chief Executive Officer, filed herewith.
- 32.2 Section 1350 Certification of the Chief Financial Officer, filed herewith.

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<sup>(a)</sup> Incorporated herein by reference to Exhibit 10.1 to the Roper Industries, Inc. Current Report on Form 8-K filed July 7, 2008.



**Signatures**

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

**Roper Industries, Inc.**

                  /s/ Brian D. Jellison

Brian D. Jellison

Chairman of the Board, President, and  
Chief Executive Officer  
(Principal Executive Officer)

November 7, 2008

                  /s/ John Humphrey

John Humphrey

Chief Financial Officer and Vice President  
(Principal Financial Officer)

November 7, 2008

                  /s/ Paul J. Soni

Paul J. Soni

Vice President and Controller  
(Principal Accounting Officer)

November 7, 2008

**EXHIBIT INDEX  
TO REPORT ON FORM 10-Q**

Number

Exhibit

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## ROPER INDUSTRIES, INC.

and

WELLS FARGO BANK, NATIONAL ASSOCIATION, Trustee

## INDENTURE

Dated as of August 4, 2008

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THIS INDENTURE, dated as of August 4, 2008 between ROPER INDUSTRIES, INC. (the "Issuer") and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association (the "Trustee"),

**W I T N E S S E T H:**

WHEREAS, for its lawful corporate purposes, the Issuer has duly authorized the execution and delivery of the Indenture to provide for the issuance of unsecured debt securities in one or more series (the "Securities") up to such principal amount or amounts as may from time to time be authorized in accordance with the terms of the Indenture and to provide, among other things, for the authentication, delivery and administration thereof;

WHEREAS, all things necessary to make the Indenture a valid indenture and agreement according to its terms have been done;

WHEREAS, the Indenture is subject to, and will be governed by, the provisions of the Trust Indenture Act of 1939 (the "Trust Indenture Act") that are required to be a part of and govern indentures qualified under the Trust Indenture Act; and

NOW, THEREFORE, in consideration of the premises and the purchases of the Securities by the holders thereof, the Issuer and the Trustee mutually covenant and agree for the equal and proportionate benefit of the respective holders from time to time of the Securities as follows:

**ARTICLE 1**  
**DEFINITIONS**

Section 1.01. *Certain Terms Defined; Rules of Construction.* The following terms (except as otherwise expressly provided or unless the context otherwise clearly requires) for all purposes of the Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section. All other terms used in the Indenture that are defined in the Trust Indenture Act, or the definitions of which are referred to in the Trust Indenture Act, including terms defined therein by reference to the Securities Act (except as herein otherwise expressly provided or unless the context otherwise clearly requires), shall have the meanings assigned to such terms in the Trust Indenture Act and in the Securities Act as in force at the date of the Indenture. All accounting terms used herein and not expressly defined shall have the meanings assigned to such terms in accordance with generally accepted accounting principles, and the term "generally accepted accounting principles" means such accounting principles as are generally accepted at the time of any computation. The words "herein", "hereof" and "hereunder" and other words of similar import refer to the Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular. Except as otherwise expressly provided or unless the context otherwise clearly requires, references to agreements or instruments, or to statutes or regulations, are to such

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agreements or instruments, or statutes or regulations, as amended from time to time (or to successor statutes and regulations).

“**Agent Member**” means a member of, or a participant in, the Depository.

“**Attributable Debt**” with regard to a Sale and Lease-Back Transaction with respect to any Principal Property means, at the time of determination, the present value of the total net amount of rent required to be paid under such lease during the remaining term thereof (including any period for which such lease has been extended), discounted at the rate of interest set forth or implicit in the terms of such lease (or, if not practicable to determine such rate, the weighted average interest rate per annum borne by the Securities then outstanding under this Indenture) compounded semi-annually. In the case of any lease which is terminable by the lessee upon the payment of a penalty, such net amount shall be the lesser of (x) the net amount determined assuming termination upon the first date such lease may be terminated (in which case the net amount shall also include the amount of the penalty, but shall not include any rent that would be required to be paid under such lease subsequent to the first date upon which it may be so terminated) or (y) the net amount determined assuming no such termination.

“**Authenticating Agent**” means an authenticating agent with respect to any of the series of Securities appointed with respect to all or any series of the Securities by the Trustee pursuant to Section 2.12.

“**Bankruptcy Law**” means Title 11 of the United States Code or any similar Federal or State law for the relief of debtors.

“**Board of Directors**” means either the Board of Directors of the Issuer or any committee of such Board duly authorized to act hereunder.

“**Business Day**” means, with respect to any Security, a day that in the Borough of Manhattan, City of New York is not a day on which banking institutions are authorized by law or regulation to close.

“**Capital Stock**” means:

(a) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock, including each class of Common Stock and Preferred Stock of such Person, and all options, warrants or other rights to purchase or acquire any of the foregoing; and

(b) with respect to any Person that is not a corporation, any and all partnership, membership or other equity interests of such Person, and all options, warrants or other rights to purchase or acquire any of the foregoing.

“**Commission**” means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or if at any time after the execution and delivery of the Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties on such date.

“**Common Stock**” of any Person means any and all shares, interests or other participations in, and other equivalents (however designated and whether voting or non-voting) of, such Person’s common stock, whether outstanding on the Issue Date or issued after the Issue Date, and includes, without limitation, all series and classes of such common stock.

“**Consolidated Net Tangible Assets**” means, as of any date on which the Issuer effects a transaction requiring such Consolidated Net Tangible Assets to be measured hereunder, the aggregate amount of assets (less applicable reserves) after deducting therefrom: (a) all current liabilities, except for current maturities of long-term debt and obligations under capital leases; and (b) intangible assets (including goodwill), to the extent included in said aggregate amount of assets, all as set forth on the Issuer’s most recent consolidated balance sheet and computed in accordance with generally accepted accounting principles in the United States of America applied on a consistent basis.

“**company**” means a corporation or a limited liability company.

“**Corporate Trust Office**” means the office of the Trustee (i) for bond transfer purposes and for purposes of presentment and surrender of the Securities for the final distributions thereon is Wells Fargo Bank, National Association, 7000 Central Parkway; Suite 550, Atlanta, Georgia 30328, Attention: Corporate Trust Department and (ii) for all other purposes is Wells Fargo Bank, National Association, 7000 Central Parkway; Suite 550, Atlanta, Georgia 30328, Attention: Corporate Trust Department.

“**Depository**” means, with respect to Securities of any series, for which the Issuer shall determine that such Securities will be issued as a Global Security, the Depository Trust Company, New York, New York, another clearing agency, or any successor registered as a clearing agency under the Exchange Act, or other applicable statute or regulation, which, in each case, shall be designated by the Issuer pursuant to either Section 2.01 or Section 2.13.

“**Event of Default**” has the meaning assigned to such term in Section 4.01.

“**Exchange Act**” means the Securities Exchange Act of 1934 and any successor thereto, in each case as amended from time to time.

“**Global Security**” means, with respect to any series of Securities, a Security executed by the Issuer and delivered by the Trustee to the Depository or pursuant to a

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safekeeping agreement with the Depository, all in accordance with the Indenture, which shall be registered in global form without interest coupons in the name of the Depository or its nominee.

“**Governmental Obligations**” means securities that are (i) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America that, in either 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 Governmental Obligation or a specific payment of principal or interest on any such Governmental Obligation held by such custodian for the account of the holder of such depository receipt; provided however, 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 Governmental Obligation or the specific payment of principal or interest on the Governmental Obligation evidenced by such depository receipt.

“**Hedging Obligations**” means:

(a) interest rate swap agreements (whether from fixed to floating or from floating to fixed), interest rate cap agreements and interest rate collar agreements;

(b) other agreements or arrangements designed to manage interest rates or interest rate risk;

(c) other agreements or arrangements designed to protect against fluctuations in currency exchange rates or commodity prices; and

(d) other agreements or arrangements designed to protect against fluctuations in equity prices.

“**Holder**” means the registered holder of any Security.

“**Holding Company Reorganization**” shall mean a merger of the Issuer with and into a newly formed wholly-owned, indirect Subsidiary (“**MergerCo**”) of the Issuer, all of the equity interest of which shall be held by a newly formed, wholly-owned, direct Subsidiary of the Issuer (“**New HoldCo**”). Such merger shall be effected pursuant to Section 251(g) of the General Corporation Law of the State of Delaware (or comparable provisions of the laws of the Issuer’s state of incorporation) and shall not require the vote of our stockholders. Each share of Common Stock of the Issuer shall be converted in such merger into a right to receive one share of the Common Stock of New HoldCo, with

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identical terms and rights as the Issuer’s Common Stock immediately prior to such conversion.

“**Indebtedness**” means with respect to any Person, without duplication:

(a) all obligations of such person for borrowed money; and

(b) all obligations of such person evidenced by bonds, debentures, notes or other similar instruments.

“**Indenture**” means this instrument as originally executed and delivered or, if amended or supplemented as herein provided, as so amended or supplemented or both, and shall include the forms and terms of particular series of Securities established as contemplated hereunder.

“**Interest Payment Date**”, when used with respect to any installment of interest on a Security of a particular series, means the date specified in such Security or in a Resolution of the Board of Directors or in an indenture supplemental hereto with respect to such series as the fixed date on which an installment of interest with respect to Securities of that series is due and payable.

“**Issue Date**” means the date of original issuance of Securities.

“**Issuer**” means, unless otherwise explicitly provided herein, the Person named as the “Issuer” in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “**Issuer**” shall mean such successor Person.

“**Issuer Order**” has the meaning assigned to such term in Section 2.04.

“**Lien**” means any lien, mortgage, deed of trust, hypothecation, pledge, security interest, charge or encumbrance of any kind.

“**Officer**” means the Chairman of the Board, the Chief Executive Officer, the Chief Financial Officer, the Chief Accounting Officer, the Chief Legal Officer, the Chief Administrative Officer, any President, any Vice President, the Controller, the Secretary or any Assistant Secretary, of the Issuer.

“**Officer’s Certificate**” means a certificate signed on behalf of the Issuer by an Officer of the Issuer.

“**Opinion of Counsel**” means an opinion in writing signed by legal counsel who may be an employee of or counsel to the Issuer.

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“**Original Issue Discount Security**” means any Security that provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the maturity thereof pursuant to Section 4.01.

“**Outstanding**”, when used with reference to Securities, shall, subject to the provisions of Section 6.04, mean, as of any particular time, all Securities authenticated and delivered by the Trustee under the Indenture, except:

- (a) Securities cancelled by the Trustee or accepted by the Trustee for cancellation;
- (b) Securities, or portions thereof, for the payment or redemption of which moneys in the necessary amount to pay all amounts then due shall have been deposited in trust with the Trustee or with any paying agent (other than the Issuer) or shall have been set aside, segregated and held in trust by the Issuer for the holders of such Securities (if the Issuer shall act as its own paying agent), provided that if such Securities, or portions thereof, are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as herein provided, or provision satisfactory to the Trustee shall have been made for giving such notice; and
- (c) Securities in substitution for which other Securities shall have been authenticated and delivered, or which shall have been paid, pursuant to the terms of Section 2.09 unless and until the Trustee and the Issuer receive proof satisfactory to them that the substituted Security is held by a *bona fide* purchaser.

In determining whether the holders of the requisite principal amount of Outstanding Securities of any or all series have given any request, demand, authorization, direction, notice, consent or waiver hereunder, the principal amount of an Original Issue Discount Security that shall be deemed to be Outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the maturity thereof pursuant to Section 4.01.

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

“**principal**” whenever used with reference to the Securities or any Security or any portion thereof, shall be deemed to include “and premium, if any”.

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“**Preferred Stock**” of any Person means any Capital Stock of such Person that has preferential rights to any other Capital Stock of such Person with respect to dividends or redemptions or upon liquidation.

“**Principal Property**” means the land, improvements, buildings, fixtures and equipment (including any leasehold interest therein) constituting the principal corporate office of the Issuer, any manufacturing plant, or any manufacturing, distribution or research facility (in each case, whether now owned or hereafter acquired) which is owned or leased by the Issuer, unless the Board of Directors of the Issuer has determined in good faith that such office, plant or facility is not of material importance to the total business conducted by the Issuer and the Subsidiaries of the Issuer taken as a whole. With respect to any Sale and Lease-Back Transaction or series of related Sale and Lease-Back Transactions, the determination of whether any property is a Principal Property shall be determined by reference to all properties affected by such transaction or series of transactions.

“**Register**” has the meaning assigned to it in Section 2.08.

“**Registrar**” means a Person engaged to maintain the Register.

“**Resolution of the Board of Directors**” means a copy of the resolution certified by the secretary or an assistant secretary of the Issuer to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification.

“**Responsible Officer**” when used with respect to the Trustee means any officer of the Trustee within the Corporate Trust Office of the Trustee with direct responsibility for the administration of the Indenture and also, with respect to a particular matter, any other officer of the Trustee to whom such matter is referred because of such officer’s knowledge and familiarity with the particular subject.

“**Sale and Lease-Back Transaction**” means any arrangement with any Person providing for the leasing by the Issuer of any Principal Property, whether now owned or hereafter acquired, which Principal Property has been or is to be sold or transferred by the Issuer to such Person.

“**Securities Act**” means the Securities Act of 1933 and any statute successor thereto, in each case as amended from time to time.

“**Security**” or “**Securities**” has the meaning stated in the first recital of the Indenture, or, as the case may be, Securities that have been authenticated and delivered under the Indenture.

“**Significant Subsidiary**,” with respect to any Person, means any Subsidiary of such Person that satisfies the criteria for a “significant subsidiary” as set forth in Rule 1-02(w) of Regulation S-X under the Exchange Act.

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“**Subsidiary**” means any corporation, limited liability company, limited partnership or other similar type of business entity in which the Issuer and/or one or more of its Subsidiaries together own 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 the Board of Directors or similar governing body of such corporation, limited liability company, limited partnership or other similar type of business entity, directly or indirectly.

“**Trustee**” means the Person identified as “Trustee” in the first paragraph hereof and any successor trustee under the Indenture pursuant to Article 5.

“**Trust Indenture Act**” means the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed; provided, however, that in the event the Trust Indenture Act of 1939 is amended after such date, “Trust Indenture Act” means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

“**vice president**” when used with respect to the Issuer, means any vice president, whether or not designated by a number or a word or words added before or after the title of “vice president”.

“**Yield to Maturity**” means the yield to maturity on a series of securities, calculated at the time of issuance of such series, or, if applicable, at the most recent redetermination of interest on such series, and calculated in accordance with accepted financial practice.

## ARTICLE 2 SECURITIES

Section 2.01. *Forms Generally.* The Securities of each series shall be substantially in such form (not inconsistent with the Indenture) as shall be established by or pursuant to a Resolution of the Board of Directors and set forth in an Officer’s Certificate, or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by the Indenture and may have imprinted or otherwise reproduced thereon such legends, notations or endorsements as may be required to comply with any law or with any rules or regulations pursuant thereto, or with any rules of any securities exchange or to conform to general usage, all as may be determined by the officer executing such Securities, as evidenced by such officer’s execution of the Securities.

The definitive Securities shall be printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the

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officer executing such Securities, as evidenced by such officer’s execution of such Securities.

Section 2.02. *Form of Trustee’s Certification of Authentication.* The Trustee’s certificate of authentication on all Securities shall be in substantially the following form:

This is one of the Securities of the series designated herein and referred to in the within-mentioned Indenture.

by:

\_\_\_\_\_  
Authorized Officer

Section 2.03. *Amount Unlimited; Issuable in Series.* Subject to compliance with the representations, warranties and covenants set forth herein, in the Officer's Certificate, in any indenture supplemental hereto and in any amendment hereto or thereto, the aggregate principal amount of Securities which may be authenticated and delivered under the Indenture is unlimited.

The Securities may be issued in one or more series. There shall be established in or pursuant to a Resolution of the Board of Directors and set forth in an Officer's Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series:

(a) the title of the Securities of the series (which shall distinguish the Securities of the series from all other Securities);

(b) any limit upon the aggregate principal amount of the Securities of the series that may be authenticated and delivered under the Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Section 2.08, 2.09, 2.11 or 11.03);

(c) the date or dates on which the principal of the Securities of the series is payable;

(d) the rate or rates at which the Securities of the series shall bear interest, if any, or the method by which such rate shall be determined, the date or dates from which such interest shall accrue, the Interest Payment Dates on which

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such interest shall be payable and the record dates for the determination of Holders to whom interest is payable on such Interest Payment Dates;

(e) the right, if any, to extend the interest payment periods and the duration of such extension;

(f) the place or places where the principal of and any interest on Securities of the series shall be payable (if other than as provided in Section 3.02);

(g) the price or prices at which, the period or periods within which and the terms and conditions upon which Securities of the series may be redeemed, in whole or in part, at the option of the Issuer, pursuant to any sinking fund or otherwise;

(h) the obligation, if any, of the Issuer to redeem, purchase or repay Securities of the series pursuant to any sinking fund or otherwise or at the option of a Holder thereof and the price or prices at which and the period or periods within which and the terms and conditions upon which Securities of the series shall be redeemed, purchased or repaid, in whole or in part, pursuant to such obligation;

(i) if other than denominations of \$2,000 and any multiple of \$1,000 in excess thereof, the denominations in which Securities of the series shall be issuable;

(j) the percentage of the principal amount at which the Securities will be issued, and, if other than the principal amount thereof, the portion of the principal amount of Securities of the series which shall be payable upon declaration of acceleration of the maturity thereof pursuant to Section 4.01 or provable in bankruptcy pursuant to Section 4.02;

(k) whether the Securities are issuable under Rule 144A or Regulation S and, in such case, any provisions unique to such form of issuance including any transfer restrictions or exchange and registration rights;

(l) any and all other terms of the series (which terms shall not be inconsistent with the provisions of the Indenture) including any terms which may be required by or advisable under U.S. law or regulations or advisable in connection with the marketing of Securities in that series;

(m) whether the Securities are issuable as a Global Security and, in such case, the identity for the Depository for such series;

(n) any deletion from, modification of or addition to the Events of Default or covenants provided for with respect to the Securities of the series;

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(o) any provisions granting special rights to holders when a specified event occurs;

(p) whether and under what circumstances the Issuer will pay additional amounts on the Securities of the series held by a person who is not a U.S. person in respect of any tax, assessment or governmental charge withheld or deducted and, if so, whether the Issuer will have the option to redeem the Securities of the series rather than pay such additional amounts;

(q) any special tax implications of the notes, including provisions for Original Issue Discount Securities;

(r) any trustees, authenticating or paying agents, transfer agents or registrars or any other agents with respect to the Securities of such series;

(s) any guarantor or co-issuer of the Securities of the series;

(t) any special interest premium or other premium;

(u) whether the Securities are convertible or exchangeable into common stock or other equity securities of the Issuer or a combination thereof and the terms and conditions upon which such conversion or exchange shall be effected; and

(v) the currency in which payments shall be made, if other than U.S. dollars.

All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to such Resolution of the Board of Directors and set forth in an Officer's Certificate, or in any indenture supplemental hereto. All Securities of any one series need not be issued at the same time, and unless otherwise provided, a series may be reopened for issuance of additional Securities of such series. Additional Securities of such series will be consolidated with, and form a single series with, Securities then Outstanding of such series.

Any additional Securities shall be established in or pursuant to a Resolution of the Board of Directors and set forth in an Officer's Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series the following information:

(i) the aggregate principal amount of such additional Securities to be authenticated and delivered pursuant to the Indenture

(ii) the issue price, issue date and CUSIP number, if any, of such additional Securities; and

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(iii) whether such additional Securities shall be transfer restricted Securities or have any registration or exchange rights.

Section 2.04. *Authentication and Delivery of Securities.* At any time and from time to time after the execution and delivery of the Indenture, the Issuer may deliver Securities of any series executed by the Issuer to the Trustee for authentication, together with a written order of the Issuer, signed in the name of the Issuer by its Chairman of the Board, its President, any Vice President, its Controller, its Secretary or any Assistant Secretary, and delivered to the Trustee (an "Issuer Order"). The Trustee, in accordance with such written order, shall authenticate and deliver such Securities.

In authenticating such Securities and accepting the additional responsibilities under the Indenture in relation to such Securities, the Trustee shall be entitled to receive and (subject to Section 5.01) shall be fully protected in relying upon:

(a) a certified copy of any resolution or resolutions of the Board of Directors authorizing the action taken pursuant to the resolution or resolutions delivered under clause 2.04(b) below;

(b) a copy of any resolution or resolutions of the Board of Directors relating to such series, in each case certified by the secretary or an assistant secretary of the Issuer;

(c) an executed supplemental indenture, if any;

10.05; (d) in lieu of a supplemental indenture, an Officer's Certificate setting forth the form and terms of the Securities as required pursuant to Section 2.01 and 2.03, respectively, and prepared in accordance with Section

(e) an Opinion of Counsel, prepared in accordance with Section 10.05, to the effect that

(i) the form or forms and terms of such Securities have been established by or pursuant to a Resolution of the Board of Directors and set forth in an Officer's Certificate, or by a supplemental indenture as permitted by Section 2.01 and 2.03 in conformity with the provisions of the Indenture; and

(ii) such Securities, when authenticated and delivered by the Trustee and issued by the Issuer in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Issuer entitled to the benefits of the Indenture, and enforceable against the Issuer in accordance with their terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar

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laws now or hereafter in effect relating to creditor's rights generally, and general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

The Trustee shall have the right to decline to authenticate and deliver any Securities under this section if the Trustee, being advised by counsel, determines that such action may not lawfully be taken by the Issuer or if the Trustee in good faith by its board of directors or board of trustees, executive committee, or a trust committee of directors or trustees or Responsible Officers shall determine that such action would expose the Trustee to personal liability.

**Section 2.05. Execution of Securities.** The Securities shall be signed in the name of the Issuer by any one of the following officers: the chairman of the Board of Directors, the chief executive officer, the chief financial officer, any president, any executive vice president, the treasurer or the secretary of the Issuer. Such signature may be the manual or facsimile signature of the present or any future such officer. Typographical and other minor errors or defects in any such signature shall not affect the validity or enforceability of any Security that has been duly authenticated and delivered by the Trustee.

In case any officer of the Issuer who shall have signed any of the Securities shall cease to be such officer before the Security so signed shall be authenticated and delivered by the Trustee or disposed of by the Issuer, such Security nevertheless may be authenticated and delivered or disposed of as though the person who signed such Security had not ceased to be such officer of the Issuer; and any Security may be signed on behalf of the Issuer by such person as, at the actual date of the execution of such Security, shall be the proper officer of the Issuer, although at the date of the execution and delivery of the Indenture any such person was not such an officer.

**Section 2.06. Certificate of Authentication.** Only such Securities as shall bear thereon a certificate of authentication substantially in the form recited herein, executed by the Trustee by the manual signature of one of its authorized officers, shall be entitled to the benefits of the Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee upon any Security executed by the Issuer shall be conclusive evidence that the Security so authenticated has been duly authenticated and delivered hereunder and that the holder is entitled to the benefits of the Indenture.

**Section 2.07. Denomination and Date of Securities; Payments of Interest.** The Securities shall be issuable as registered securities without coupons and in denominations as shall be specified as contemplated by Section 2.03. In the absence of any such specification with respect to the Securities of any series, the Securities of such series shall be issuable in denominations of \$2,000 and any multiple of \$1,000 in excess thereof. The Securities shall be numbered, lettered, or otherwise distinguished in such manner or in accordance with such plan as the officer of the Issuer executing the same may determine with the approval of the Trustee as evidenced by the execution and authentication thereof.

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The principal of and the interest on the Securities of any series, shall be payable in the coin or currency of the United States of America that at the time is legal tender for public and private debt, at the office or agency of the Issuer maintained for that purpose.

Each Security shall be dated the date of its authentication, shall bear interest, if any, from the date and shall be payable on the dates, in each case, established as contemplated by Section 2.03.

The person in whose name any Security of any series is registered at the close of business on any record date applicable to a particular series with respect to any interest payment date for such series shall be entitled to receive the interest, if any, payable on such interest payment date notwithstanding any transfer or exchange of such Security subsequent to the record date and prior to such interest payment date, except if and to the extent the Issuer shall default in the payment of the interest due on such interest payment date for such series, in which case such defaulted interest shall be paid to the persons in whose names Outstanding Securities for such series are registered at the close of business on a subsequent record date (which shall be not less than five Business Days prior to the date of payment of such defaulted interest) established by notice given by mail by or on behalf of the Issuer to the Holders not less than 15 days preceding such subsequent record date. The term "**record date**" as used with respect to any interest payment date (except a date for payment of defaulted interest) shall mean the date specified as such in the terms of the Securities of any particular series, or, if no such date is so specified, if such interest payment date is the first day of a calendar month, the fifteenth day of the next preceding calendar month or, if such interest payment date is the fifteenth day of a calendar month, the first day of such calendar month, whether or not such record date is a Business Day.

**Section 2.08. Registration, Transfer and Exchange.** The Issuer may appoint one or more Registrars. The Issuer initially appoints the Trustee as Registrar. The Issuer will keep or cause to be kept at each office or agency to be maintained for the purpose as provided in Section 3.02 a register or registers (the "**Register**") in which, subject to such reasonable regulations as it may prescribe, it will register, and will register the transfer of, Securities as in this Article provided. The Register shall be in written form in the English language or in any other form capable of being converted into such form within a reasonable time. At all reasonable times the Register shall be open for inspection by the Trustee.

Upon due presentation for registration of transfer of any Security of any series at any such office or agency to be maintained for the purpose as provided in Section 3.02, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Security or Securities of the same series in authorized denominations for a like aggregate principal amount.

Any Security or Securities of any series may be exchanged for a Security or Securities of the same series in other authorized denominations, in an equal aggregate

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principal amount. Securities of any series to be exchanged shall be surrendered at any office or agency to be maintained by the Issuer for the purpose as provided in Section 3.02, and the Issuer shall execute and the Trustee shall authenticate and deliver in exchange therefor the Security or Securities of the same series which the Holder making the exchange shall be entitled to receive, bearing numbers not contemporaneously Outstanding.

All Securities presented for registration of transfer, exchange, redemption or payment shall (if so required by the Issuer or the Trustee) be duly endorsed by, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Issuer and the Trustee duly executed by, the holder or his attorney duly authorized in writing, together with signature guarantees for such holder or attorney.

The Issuer or the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any exchange or registration of transfer of Securities. No service charge shall be made for any such transaction.

Neither the Issuer nor the Trustee shall be required to exchange or register a transfer of (a) any Securities of any series for a period of 15 days preceding the first mailing of notice of redemption of Securities of such series to be redeemed, or (b) any Securities selected, called or being called for redemption except, in the case of any Security where public notice has been given that such Security is to be redeemed in part, the portion thereof not so to be redeemed.

In addition to the transfer requirements provided in this Section 2.08, any Security or Securities will be subject to such further transfer restrictions as may be contained in an Officer's Certificate or indenture supplemental hereto applicable to such series of Securities.

All Securities issued upon any transfer or exchange of Securities shall be valid obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under the Indenture, as the Securities surrendered upon such transfer or exchange.

**Section 2.09. Mutilated, Defaced, Destroyed, Lost and Stolen Securities.** In case any temporary or definitive Security shall become mutilated, defaced or be destroyed, lost or stolen, the Issuer in its discretion may execute, and upon the receipt of an Issuer Order, the Trustee shall authenticate and deliver, a new Security of the same series, bearing a number not contemporaneously Outstanding, in exchange and substitution for the mutilated or defaced Security, or in lieu of and substitution for the Security so destroyed, lost or stolen. In every case the applicant for a substitute Security shall furnish to the Issuer and to the Trustee and any agent of the Issuer or the Trustee such security or indemnity as may be required by them to indemnify and defend and to save each of them

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harmless and, in every case of destruction, loss or theft, evidence to their satisfaction of the destruction, loss or theft of such Security and of the ownership thereof.

Upon the issuance of any substitute Security, the Issuer or the Trustee may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith. In case any Security which has matured or is about to mature or has been called for redemption in full shall become mutilated or defaced or be destroyed, lost or stolen, the Issuer may instead of issuing a substitute Security, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated or defaced Security), if the applicant for such payment shall furnish to the Issuer and to the Trustee and any agent of the Issuer or the Trustee such security or indemnity as any of them may require to save each of them harmless, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Issuer and the Trustee and any agent of the Issuer or the Trustee evidence to their satisfaction of the destruction, loss or theft of such Security and of the ownership thereof. In case the mutilated, deleted, destroyed, or lost or stolen Security has become or is about to become due and payable, the Issuer in its discretion may pay the Security instead of issuing a substitute Security.



Every substitute Security of any series issued pursuant to the provisions of this section by virtue of the fact that any such Security is destroyed, lost or stolen shall constitute an additional contractual obligation of the Issuer, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone and shall be entitled to all the benefits of (but shall be subject to all the limitations of rights set forth in) the Indenture equally and proportionately with any and all other Securities of such series duly authenticated and delivered hereunder. All Securities shall be held and owned upon the express condition that, to the extent permitted by law, the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, defaced or destroyed, lost or stolen Securities 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 replacement or payment of negotiable instruments or other securities without their surrender.

**Section 2.10. Cancellation of Securities; Destruction Thereof.** All Securities surrendered for payment, redemption, registration of transfer or exchange, or for credit against any payment in respect of a sinking or analogous fund, if surrendered to the Issuer or any agent of the Issuer or the Trustee, shall be delivered to the Trustee for cancellation or, if surrendered to the Trustee, shall be cancelled by it; and no Securities shall be issued in lieu thereof except as expressly permitted by any of the provisions of the Indenture. On written request of the Issuer at the time of such surrender, the Trustee shall deliver to the Issuer the Securities cancelled by the Trustee. In the absence of such request, the Trustee shall destroy cancelled Securities held by it and deliver a certificate of destruction to the Issuer. If the Issuer shall acquire any of the Securities, such acquisition

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shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless and until the same are delivered to the Trustee for cancellation.

**Section 2.11. Temporary Securities.** Pending the preparation of definitive Securities for any series, the Issuer may execute and the Trustee shall, upon receipt of an Issuer Order, authenticate and deliver temporary Securities for such series (printed, lithographed, typewritten or otherwise reproduced, in each case in form satisfactory to the Trustee). Temporary Securities of any series shall be issuable as registered Securities without coupons, of any authorized denomination, and substantially in the form of the definitive Securities of such series but with such omissions, insertions and variations as may be appropriate for temporary Securities, all as may be determined by the Issuer with the concurrence of the Trustee. Temporary Securities may contain such reference to any provisions of the Indenture as may be appropriate. Every temporary Security shall be executed by the Issuer and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Securities. Without unreasonable delay the Issuer shall execute and shall furnish definitive Securities of such series and thereupon temporary Securities of such series may be surrendered in exchange therefor without charge at each office or agency to be maintained by the Issuer for that purpose pursuant to Section 3.02, and the Trustee shall, upon receipt of an Issuer Order, authenticate and deliver in exchange for such temporary Securities of such series a like aggregate principal amount of definitive Securities of the same series of authorized denominations. Until so exchanged, the temporary Securities of any series shall be entitled to the same benefits under the Indenture as definitive Securities of such series.

**Section 2.12. Authenticating Agent.** So long as any of the Securities of any series remain Outstanding there may be an Authenticating Agent for any or all such series of Securities which the Trustee shall have the right to appoint. Said Authenticating Agent shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon exchange, transfer or partial redemption thereof, and Securities so authenticated shall be entitled to the benefits of the Indenture and shall be valid and binding for all purposes as if authenticated by the Trustee hereunder. All references in the Indenture to the authentication of Securities by the Trustee shall be deemed to include authentication by an Authenticating Agent for such series. Each Authenticating Agent shall be acceptable to the Issuer and shall be a corporation that has a combined capital and surplus, as most recently reported or determined by it, sufficient under the laws of any jurisdiction under which it is organized or in which it is doing business to conduct a trust business, and that is otherwise authorized under such laws to conduct such business and is subject to supervision or examination by Federal or State authorities. If at any time any Authenticating Agent shall cease to be eligible in accordance with these provisions, it shall resign immediately. Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee and to the Issuer. The Trustee may at any time (and upon written request by the Issuer shall) terminate the agency of any Authenticating Agent by giving written notice of termination to such Authenticating Agent and to the Issuer. Upon resignation, termination or cessation of

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eligibility of any Authenticating Agent, the Trustee may appoint an eligible successor Authenticating Agent acceptable to the Issuer. Any successor Authenticating Agent, upon acceptance of its appointment hereunder, shall become vested with all the rights, powers and duties of its predecessor hereunder as if originally named as an Authenticating Agent pursuant hereto.

**Section 2.13. Global Securities.** If the Issuer shall establish pursuant to Section 2.01 that the Securities of a particular series are to be issued as a Global Security, then the Issuer shall execute and the Trustee shall, in accordance with Section 2.04, authenticate and deliver, a Global Security that shall (i) represent, and be issued in a denomination or aggregate denominations equal to the aggregate principal amount of all the Securities to be represented by a Global Security, (ii) be registered in the name of the Depository or its nominee, (iii) be delivered by the Trustee to the Depository or pursuant to the Depository's instruction and (iv) bear a legend substantially to the following effect: "Except as otherwise provided in Section 2.13 of the Indenture, this Security may be transferred, in whole but not in part, only to another nominee of the Depository or to a successor Depository or to a nominee of such successor Depository."

Notwithstanding the provisions of Section 2.08, the Global Security of a series may be transferred, in whole but not in part and in the manner provided in Section 2.08, only to another nominee of the Depository for such series, or to a successor Depository for such series selected or approved by the Issuer or to a nominee of such successor Depository.

Ownership of beneficial interests in a registered global security will be limited to Agent Members that have accounts with the Depository or persons that may hold interests through Agent Members. Upon the issuance of a registered Global Security, the Depository will credit, on its book-entry registration and transfer system, the Agent Members accounts with the respective principal or face amounts of the securities beneficially owned by the participants. Any dealers, underwriters or agents participating in the distribution of the Securities will designate the accounts to be credited. Ownership of beneficial interests in a Global Security will be shown on, and the transfer of ownership interests will be effected only through, records maintained by the Depository, with respect to interests of Agent Members, and on the records of Agent Members, with respect to interests of persons holding through Agent Members.

So long as the Depository, or its nominee, is the registered owner of a registered Global Security, that Depository or its nominee, as the case may be, will be considered the sole owner or Holder of the Securities represented by the Global Security for all purposes under the Indenture. Except as described in this Section 2.13, Agent Members will not be entitled to have the Securities represented by the Global Security registered in their names, will not receive or be entitled to receive physical delivery of the Securities in definitive form and will not be considered the owners or Holders of the Securities under the Indenture. Accordingly, each Agent Member owning a beneficial interest in a

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registered Global Security must rely on the procedures of the Depository for that registered Global Security and, if that person is not an Agent Member, on the procedures of the Agent Member through which the person owns its interest, to exercise any rights of a Holder under the Indenture. Notwithstanding the foregoing, the Depository or its nominee may grant proxies and otherwise authorize any Person (including any Agent Member and any Person that holds a beneficial interest in a Global Security through an Agent Member) to take any action which a Holder is entitled to take under the Indenture or the Securities, and nothing herein will 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.

Principal, premium, if any, and interest payments on Securities represented by a Global Security registered in the name of the Depository or its nominee will be made to the Depository or its nominee, as the case may be, as the registered owner of the registered Global Security. None of the Issuer, the Trustee or any other agent of the Issuer, or any agent of the Trustee will have any responsibility or liability for any aspect of the records relating to payments made on account of beneficial ownership interests in the registered Global Security or for maintaining, supervising or reviewing any records relating to those beneficial ownership interests.

If at any time the Depository for a series of the Securities notifies the Issuer that it is unwilling or unable to continue as Depository for such series or if at any time the Depository for such series shall no longer be registered or in good standing under the Exchange Act, or other applicable statute or regulation, and a successor Depository for such series is not appointed by the Issuer within 90 days after the Issuer receives such notice or becomes aware of such condition, as the case may be, this Section 2.13 shall no longer be applicable to the Securities of such series and the Issuer will execute, and subject to Section 2.08, the Trustee will authenticate and deliver the Securities of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Security of such series in exchange for such Global Security. In addition, the Issuer may at any time determine that the Securities of any series shall no longer be represented by a Global Security and that the provisions of this Section 2.13 shall no longer apply to the Securities of such series. In such event the Issuer will execute and subject to Section 2.08, the Trustee, upon receipt of an Officer's Certificate evidencing such determination by the Issuer, will authenticate and deliver the Securities of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Security of such series in exchange for such Global Security. Upon the exchange of the Global Security for such Securities in definitive registered form without coupons, in authorized denominations, the Global Security shall be cancelled by the Trustee. Such Securities in definitive registered form issued in exchange for the Global Security pursuant to this Section 2.13 shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct

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the Trustee in writing. The Issuer and the Trustee shall be entitled to conclusively rely on such instructions from the Depository. The Trustee shall deliver such Securities to the Depository for delivery to the Persons in whose names such Securities are so registered.

**Section 2.14. CUSIP Numbers.** The Issuer in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; provided 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 of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Issuer will promptly notify the Trustee in writing of any change in the "CUSIP" numbers.

### ARTICLE 3 COVENANTS OF THE ISSUER

**Section 3.01. Payment of Principal and Interest.** (a) The Issuer covenants and agrees for the benefit of each series of Securities that it will duly and punctually pay or cause to be paid the principal of, and interest on, each of the Securities of such series at the place or places, at the respective times and in the manner provided in such Securities. The Issuer shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal on each series of Securities at the rate specified in the terms of such series of Securities to the extent lawful; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period) at the same rate to the extent lawful. Unless otherwise provided in the Securities of any series, not later than 10:00 A.M. (New York City time) on the due date of any principal or interest on any Securities, the Issuer will deposit with the Trustee (or paying agent) money in immediately available funds sufficient to pay such amounts, provided that if the Issuer or any affiliate of the Issuer is acting as paying agent, it will, on or before each due date, segregate and hold in a separate trust fund for the benefit of the Holders a sum of money sufficient to pay such amounts until paid to such Holders or otherwise disposed of as provided in the Indenture. In each case the Issuer will promptly notify the Trustee of its compliance with this paragraph.

(b) An installment of principal or interest will be considered paid on the date due if the Trustee (or paying agent, other than the Issuer or any affiliate of the Issuer) holds on that date money designated for and sufficient to pay the installment. If the Issuer or any affiliate of the Issuer acts as paying agent, an installment of principal or interest will be considered paid on the due date only if paid to the Holders.

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(c) Payments in respect of the Securities represented by the Global Security are to be made by wire transfer of immediately available funds to the accounts specified by the Holder of the Global Security. With respect to certificated Securities, the Issuer will make all payments by wire transfer of immediately available funds to the accounts specified by the Holders thereof or, if no such account is specified, by mailing a check to each Holder's registered address.

Section 3.02. *Offices for Payments, etc.* So long as any of the Securities remain Outstanding, the Issuer will maintain in New York City, the following for each series: an office or agency (a) where the Securities may be presented for payment, (b) where the Securities may be presented for registration of transfer and for exchange as in the Indenture provided and (c) where notices and demands to or upon the Issuer in respect of the Securities or of the Indenture may be given or served. The Issuer will give to the Trustee written notice of the location of any such office or agency and of any change of location thereof. Unless otherwise specified in accordance with Section 2.03, the Issuer hereby initially designates the Corporate Trust Office of Wells Fargo Bank, National Association at 7000 Central Parkway; Suite 550, Atlanta, Georgia 30328, Attention: Corporate Trust Services, as the office to be maintained by it for each such purpose. In case the Issuer shall fail to so designate or maintain any such office or agency or shall fail to give such notice of the location or of any change in the location thereof, presentations and demands may be made and notices may be served at the applicable Corporate Trust Office of the Trustee and the Issuer hereby appoints the Trustee as its agent to receive all such presentations, notices and demands.

Section 3.03. *Paying Agents.* Whenever the Issuer shall appoint a paying agent other than the Trustee with respect to the Securities of any series, it will cause such paying agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section,

(a) that it will hold all sums received by it as such agent for the payment of the principal of or interest on the Securities of such series (whether such sums have been paid to it by the Issuer or by any other obligor on the Securities of such series) in trust for the benefit of the holders of the Securities of such series or of the Trustee,

(b) that it will give the Trustee notice of any failure by the Issuer (or by any other obligor on the Securities of such series) to make any payment of the principal of or interest on the Securities of such series when the same shall be due and payable,

(c) pay any such sums so held in trust by it to the Trustee upon the Trustee's written request at any time during the continuance of the failure referred to in clause 3.03(b) above, and

(d) that it will perform all other duties of paying agent as set forth in the Indenture.

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The Issuer shall, on or prior to each due date of the principal of or interest on the Securities of such series, deposit with the paying agent a sum sufficient to pay such principal or interest so becoming due, and (unless such paying agent is the Trustee) the Issuer shall promptly notify the Trustee of any failure to take such action.

If an Issuer shall act as its own paying agent with respect to the Securities of any series, it will, on or before each due date of the principal of or interest on the Securities of such series, set aside, segregate and hold in trust for the benefit of the holders of the Securities of such series a sum sufficient to pay such principal or interest so becoming due. The Issuer will promptly notify the Trustee of any failure to take such action.

Anything in this section to the contrary notwithstanding, the Issuer may at any time, for the purpose of obtaining a satisfaction and discharge with respect to one or more or all series of Securities hereunder, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust for any such series by the Issuer or any paying agent hereunder, as required by this Section, such sums to be held by the Trustee upon the trusts herein contained.

Anything in this section to the contrary notwithstanding, the agreement to hold sums in trust as provided in this section is subject to the provisions of Section 9.05 and 9.06.

Section 3.04. *Certificate of the Issuer.* The Issuer will furnish to the Trustee on or before 120 days after the end of each fiscal year (beginning with the fiscal year ended December 31, 2008) a brief certificate (which need not comply with Section 10.05) from the principal executive, financial or accounting officer or the Treasurer of the Issuer as to his or her knowledge of the Issuer's compliance with all conditions and covenants under the Indenture (such compliance to be determined without regard to any period of grace or requirement of notice provided under the Indenture), or if there has been a default, specifying the default and its nature and status.

Section 3.05. *Reports by the Issuer.* The Issuer will furnish to the Trustee any document or report the Issuer is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act within 15 days after such document or report is filed with the Commission.

Section 3.06. *Limitation on Liens.* With respect to each series of Securities, the Issuer shall not issue, incur, create, assume or guarantee any Indebtedness secured by a Lien upon any Principal Property or upon any of the Capital Stock or Indebtedness of any of its Significant Subsidiaries (whether such Principal Property, or Capital Stock or Indebtedness is then existing or owed or is thereafter created or acquired) without in any such case effectively providing, concurrently with the issuance, incurrence, creation, assumption or guaranty of any such secured Indebtedness, or the grant of such Lien, that the Securities of such series (together, if the Issuer shall so determine, with any other

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Indebtedness of or guarantee by the Issuer ranking equally with the Securities) shall be secured equally and ratably with (or, at the option of the Issuer, prior to) such secured Indebtedness, except:

(a) Liens existing on the Issue Date;

(b) Liens on assets or property of a Person at the time it becomes a Subsidiary, securing Indebtedness of such Person, provided such Indebtedness was not incurred in connection with such Person or entity becoming a Subsidiary and such Liens do not extend to any assets other than those of the person becoming a Subsidiary;

(c) Liens on property or assets of a Person existing at the time such person is merged into or consolidated with the Issuer or any of its Subsidiaries, or at the time of a sale, lease or other disposition of all or substantially all of the properties or assets of a person to the Issuer or any of its Subsidiaries, provided that such Lien was not incurred in anticipation of the merger, consolidation, or sale, lease, other disposition or other such transaction by which such Person was merged into or consolidated with the Issuer or any of its Subsidiaries;

(d) Liens existing on assets created at the time of, or within the 12 months following, the acquisition, purchase, lease, improvement or development of such assets to secure all or a portion of the purchase price or lease for, or the costs of improvement or development of (in each case including related costs and expenses), such assets;

(e) Liens to secure any extension, renewal, refinancing or refunding (or successive extensions, renewals, refinancings or refundings), in whole or in part, of any Indebtedness secured by Liens referred to in this Section 3.06, so long as such Lien is limited to all or part of substantially the same property which secured the Lien extended, renewed or replaced, and the amount of Indebtedness secured is not increased (other than by the amount equal to any costs and expenses (including any premiums, fees or penalties) incurred in connection with any extension, renewal, refinancing or refunding);

(f) Liens for taxes not yet due or that are being contested in good faith by appropriate proceedings, provided that adequate reserves with respect thereto are maintained on our books in conformity with generally accepted accounting principles;

(g) Liens imposed by law, such as carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business that are not overdue for a period of more than 30 days or that are being contested in good faith by appropriate proceedings;

(h) Liens to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

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(i) Liens in favor of only the Issuer or one or more of its Subsidiaries;

(j) Liens in favor of the Trustee securing Indebtedness owed under the Indenture to the Trustee and granted in accordance with the Indenture; and

(k) Liens to secure Hedging Obligations.

Notwithstanding the restrictions in this Section 3.06, the Issuer will be permitted to incur Indebtedness, secured by Liens otherwise prohibited by this Section 3.06, which, together with the value of Attributable Debt outstanding pursuant to Sale and Lease-Back Transactions permitted pursuant to Section 3.07(c) hereof, do not exceed 15% of Consolidated Net Tangible Assets measured at the date of incurrence of the Lien.

Section 3.07. *Limitation on Sale and Leaseback Transactions.* With respect to each series of notes, The Issuer shall not enter into any Sale and Lease-Back Transaction with respect to any Principal Property, other than any such Sale and Lease-Back Transaction involving a lease for a term of not more than three years or any such Sale and Lease-Back Transaction between the Issuer and one of its Subsidiaries or between its Subsidiaries, unless:

(a) the Issuer or such Subsidiary, as applicable, could have incurred Indebtedness secured by a Lien on the Principal Property involved in such Sale and Lease-Back Transaction in an amount at least equal to the Attributable Debt with respect to such Sale and Lease-Back Transaction, without equally and ratably securing the Securities, pursuant to Section 3.06 hereto; or

(b) the proceeds of such Sale and Lease-Back Transaction are at least equal to the fair market value of the affected Principal Property (as determined in good faith by the Board of Directors of the Issuer) and the Issuer applies an amount equal to the net proceeds of such Sale and Lease-Back Transaction within 365 days of such Sale and Lease-Back Transaction to any of (or a combination of):

(i) the prepayment or retirement of the Securities;

(ii) the prepayment or retirement (other than any mandatory retirement or mandatory prepayment or by payment at maturity) of other Indebtedness of the Issuer or of one of its Subsidiaries (other than Indebtedness that is subordinated to the Securities or Indebtedness owed to the Issuer or one of its Subsidiaries) that matures more than 12 months after its creation; or

(iii) the purchase, construction, development, expansion or improvement of other comparable property.

(c) Notwithstanding the restrictions in subsection (a) above, the Issuer will be permitted to enter into Sale and Lease-Back Transactions otherwise prohibited by Section

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3.07(a) hereof, which, together with all of the Indebtedness outstanding pursuant to the second paragraph of Section 3.06, do not exceed 15% of Consolidated Net Tangible Assets measured at the closing date of the Sale and Lease-Back Transaction.

Section 3.08. *Existence*. Except as permitted under Article 8, the Issuer covenants to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights and franchises; provided, however, that the Issuer shall not be required to preserve any right or franchise if it determines that its preservation is no longer desirable in the conduct of business.

#### ARTICLE 4

##### REMEDIES OF THE TRUSTEE AND HOLDERS ON EVENT OF DEFAULT

Section 4.01. *Event of Default; Acceleration of Maturity; Waiver of Default*. An “**Event of Default**” with respect to Securities of any series means the occurrence of one or more of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be 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):

(a) the failure to pay interest on any Security of such series when the same becomes due and payable and the default continues for a period of 30 days or more;

(b) the failure to pay the principal or premium, if any, of any Security of such series, when the same becomes due and payable, at maturity, upon acceleration, upon redemption or otherwise;

(c) a default in the performance, or breach, of the obligations of the Issuer under Section 8.01 of this Indenture;

(d) a default in the observance or performance of any other covenant or agreement contained in this Indenture which default continues for a period of 60 days after the Issuer receives written notice specifying the default (and demanding that such default be remedied) from the Trustee or the Holders of at least 25% of the Outstanding aggregate principal amount of each series of Securities affected, voting together as a single class;

(e) (i) a failure by the Issuer to make any payment, at the stated maturity, on any Indebtedness of the Issuer (other than Indebtedness owing to any of its Subsidiaries) in an amount in excess of \$50.0 million or its foreign currency equivalent at the time outstanding under or evidenced by any single indenture or instrument, whether such Indebtedness now exists or shall hereafter be created, and such failure shall have continued after any applicable grace period or (ii) a default on any Indebtedness of the

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Issuer (other than Indebtedness owing to any of its Subsidiaries), whether such Indebtedness now exists or shall hereafter be created, which default results in such Indebtedness being accelerated or otherwise declared due and payable prior to the stated maturity thereof in an amount in excess of \$50.0 million or its foreign currency equivalent at the time, in the case of each of clauses (i) and (ii) above, without such Indebtedness having been discharged or the acceleration having been cured, waived, rescinded or annulled; provided, however, that if any failure, default or acceleration referred to in clauses (i) or (ii) ceases or is cured, waived, rescinded or annulled, then the Event of Default shall be deemed cured;

(f) the Issuer or any Significant Subsidiary of the Issuer:

(i) commences a voluntary case under any Bankruptcy Law;

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

(iii) consents to the appointment of a custodian or receiver of it or for all or substantially all of its property;

(iv) makes a general assignment for the benefit of its creditors; or

(v) admits in writing its inability to pay its debts as they become due;

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

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

(ii) appoints a custodian or receiver of the Issuer or any Significant Subsidiary or for all or substantially all of the property of any of the foregoing;

(iii) orders the liquidation of the Issuer or any of its Significant Subsidiaries; or

(iv) and the order or decree remains unstayed and in effect for 60 consecutive days; or

(h) any other Event of Default provided in the Officer's Certificate, supplemental indenture or Resolution of the Board of Directors under which such series of Securities is issued or in the form of Security for such series.

If an Event of Default described in clauses 4.01(a), (b), (c), (d), (e), or (h) above (if the Event of Default under clause (d) above is with respect to less than all series of

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Securities then Outstanding) occurs and is continuing, then, and in each and every such case, unless the principal of all of the Securities of such series shall have already become due and payable, the Trustee may, and at the direction of the holders of not less than 25% in aggregate principal amount of the Securities of each such series affected that is then Outstanding hereunder (voting together as a single class) by notice in writing to the Issuer (and to the Trustee if given by Holders), shall declare the entire principal (or, if the Securities of such series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of such series) of all Outstanding Securities of each such series, together with all accrued and unpaid interest and premium, if any, to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable.

If an Event of Default described in clauses Section 4.01(f) or Section 4.01(g) above occurs and is continuing, then the entire principal amount of the Outstanding Securities will automatically become due immediately and payable without any declaration or other act on the part of the Trustee or any Holder.

Notwithstanding the foregoing, the Holders of a majority in principal amount of the Outstanding Securities of one or more series (voting together as a single class) by written notice to the Issuer and to the Trustee may on behalf of the Holders of all Securities of each such series affected waive all past defaults and rescind and annul a declaration of acceleration and its consequences if:

(i) the rescission would not conflict with any judgment or decree;

(ii) all existing Events of Default have been cured or waived except nonpayment of principal or interest that has become due solely because of the acceleration;

(iii) to the extent the payment of such interest is lawful, if interest on overdue installments of interest and overdue principal (and premium, if any), which has become due otherwise than by such declaration of acceleration, has been paid;

(iv) the Issuer has paid the Trustee its reasonable compensation and reimbursed the Trustee for its expenses, disbursements and advances; and

(v) in the event of the cure or waiver of an Event of Default of the type described in Sections 4.01(f) or 4.01(g), the Trustee shall have received an Officer's Certificate and an Opinion of Counsel that such Event of Default has been cured or waived.

For all purposes under the Indenture, if a portion of the principal of any Original Issue Discount Securities shall have been accelerated and declared due and payable pursuant to the provisions hereof, then, from and after such declaration, unless such declaration has been rescinded and annulled, the principal amount of such Original Issue Discount Securities shall be deemed, for all purposes hereunder, to be such portion of the principal thereof as shall be due and payable as a result of such acceleration, and payment of such portion of the principal thereof as shall be due and payable as a result of such acceleration, together with interest, if any, thereon and all other amounts owing thereunder, shall constitute payment in full of such Original Issue Discount Securities.

**Section 4.02. Collection of Indebtedness by Trustee; Trustee May Prove Debt.** The Issuer covenants that (a) in case default shall be made in the payment of any installment of interest on any of the Securities of any series when such interest shall have become due and payable, and such default shall have continued for a period of 30 days or (b) in case default shall be made in the payment of all or any part of the principal of any of the Securities of any series when the same shall have become due and payable, whether upon maturity of the Securities of such series or upon any redemption or by declaration or otherwise—then upon demand of the Trustee, the Issuer will pay to the Trustee for the benefit of the Holders of the Securities of such series the whole amount that then shall have become due and payable on all Securities of such series for principal or interest, as the case may be (with interest to the date of such payment upon the overdue principal and, to the extent that payment of such interest is enforceable under applicable law, on overdue installments of interest at the same rate as the rate of interest or Yield to Maturity (in the case of Original Issue Discount Securities) specified in the Securities of such series); and in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to the Trustee and each predecessor Trustee, their respective agents, attorneys and counsel, and any expenses and liabilities incurred by the Trustee and each predecessor Trustee except as a result of its negligence or bad faith.

Until such demand is made by the Trustee, the Issuer may pay the principal of and interest on the Securities of any series to the registered holders, whether or not the principal of and interest on the Securities of such series be overdue.

In case the Issuer shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Issuer or other obligor upon such Securities and collect in the manner provided by law out of the property of the Issuer or other obligor upon such Securities, wherever situated, the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings relative to the Issuer or any other obligor upon the Securities under Bankruptcy Law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequester or similar official shall have been appointed for or taken possession of the Issuer or its property or such other obligor, or in case of any other comparable judicial proceedings relative to the Issuer or other obligor upon the Securities of any series, or to the creditors or property of the Issuer or such other obligor, the Trustee, irrespective of whether the principal of any Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section, shall be entitled and empowered, by intervention in such proceedings or otherwise:

(a) to file and prove a claim or claims for the whole amount of principal and interest (or, if the Securities of any series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of such series) owing and unpaid in respect of the Securities of any series, and to file such 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 to the Trustee and each predecessor Trustee, and their respective agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of negligence or bad faith) and of the Holders allowed in any judicial proceedings relative to the Issuer or other obligor upon the Securities of any series, or to the creditors or property of the Issuer or such other obligor,

(b) unless prohibited by applicable law and regulations, to vote on behalf of the holders of the Securities of any series in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation or other bankruptcy or insolvency proceedings or person performing similar functions in comparable proceedings, and

(c) to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the Holders and of the Trustee on their behalf; and any trustee, receiver, or liquidator, custodian or other similar official is hereby authorized by each of the Holders to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the Holders, to pay to the Trustee such amounts as shall be sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee and their respective agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee except as a result of negligence or bad faith and all other amounts due to the Trustee or any predecessor Trustee pursuant to Section 5.07.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of any Holder any plan or reorganization, arrangement, adjustment or composition affecting the Securities of any series or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar person.

All rights of action and of asserting claims under the Indenture, or under any of the Securities, may be enforced by the Trustee without the possession of any of the Securities or the production thereof on any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment, subject to the payment of the reasonable expenses, disbursements and compensation of the Trustee, each predecessor Trustee and their respective agents and attorneys, shall be for the ratable benefit of the holders of the Securities in respect of which such action was taken.

In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of the Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Securities in respect to which such action was taken, and it shall not be necessary to make any holders of such Securities parties to any such proceedings.

**Section 4.03. Application of Proceeds.** Any moneys collected by the Trustee pursuant to this Article in respect of any series shall be applied in the following order at the date or dates fixed by the Trustee and, in case of the distribution of such moneys on account of principal or interest, upon presentation of the several Securities in respect of which moneys have been collected and stamping (or otherwise noting) thereon the payment, or issuing Securities of such series in reduced principal amounts in exchange for the presented Securities of like series if only partially paid, or upon surrender thereof if fully paid:

FIRST: To the payment of costs and expenses applicable to such series in respect of which moneys have been collected, including reasonable compensation to the Trustee and each predecessor Trustee and their respective agents and attorneys and of all expenses and liabilities incurred by the Trustee and each predecessor Trustee except as a result of negligence or bad faith, and all other amounts due to the Trustee or any predecessor Trustee pursuant to Section 5.07;

SECOND: In case the principal of the Securities of such series in respect of which moneys have been collected shall not have become and be then due and payable, to the payment of interest on the Securities of such series in default in the order of the maturity of the installments of such interest, with interest (to the extent that such interest has been collected by the Trustee) upon the overdue installments of interest at the same rate as the rate of interest or Yield to Maturity

(in the case of Original Issue Discount Securities) specified in such Securities, such payments to be made ratably to the persons entitled thereto, without discrimination or preference;

THIRD: In case the principal of the Securities of such series in respect of which moneys have been collected shall have become and shall be then due and payable, to the payment of the whole amount then owing and unpaid upon all the Securities of such series for principal and interest, with interest upon the overdue principal, and (to the extent that such interest has been collected by the Trustee) upon overdue installments of interest at the same rate as the rate of interest or Yield to Maturity (in the case of Original Issue Discount Securities) specified in the Securities of such series; and in case such moneys shall be insufficient to pay in full the whole amount so due and unpaid upon the Securities of such series, then to the payment of such principal and interest or yield to maturity, without preference or priority of principal over interest or yield to maturity, or of interest or yield to maturity over principal, or of any installment of interest over any other installment of interest, or of any Security of such series over any other Security of such series, ratably to the aggregate of such principal and accrued and unpaid interest or yield to maturity; and

FOURTH: To the payment of the remainder, if any, to the Issuer or any other person lawfully entitled thereto.

**Section 4.04. Suits for Enforcement.** In case an Event of Default has occurred, has not been waived and is continuing, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by the Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either at law or in equity or in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in the Indenture or in aid of the exercise of any power granted in the Indenture or to enforce any other legal or equitable right vested in the Trustee by the Indenture or by law.

**Section 4.05. Restoration of Rights on Abandonment of Proceedings.** In case the Trustee shall have proceeded to enforce any right under the Indenture and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case the Issuer and the Trustee shall be restored respectively to their former positions and rights hereunder, and all rights, remedies and powers of the Issuer, the Trustee and the Holders shall continue as though no such proceedings had been taken.

**Section 4.06. Limitations on Suits by Holder.** No Holder of any Security of any series shall have any right by virtue or by availing of any provision of the Indenture to institute any action or proceeding at law or in equity or in bankruptcy or otherwise upon or under or with respect to the Indenture, or for the appointment of a trustee, receiver,

liquidator, custodian or other similar official or for any other remedy hereunder, unless (i) such holder previously shall have given to the Trustee written notice of default and of the continuance thereof, as hereinbefore provided; (ii) the Holders of not less than 25% in aggregate principal amount of the Securities of each such series affected that is then Outstanding (voting together as a single class) shall have made written request upon the Trustee to institute such action or proceedings in its own name as trustee hereunder; (iii) such Holder or Holders shall have offered to the Trustee such indemnity as it may reasonably require against the costs, expenses and liabilities to be incurred in compliance with such request; (iv) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such action or proceeding; and (v) no direction inconsistent with such written request shall have been given to the Trustee during such 60-day period by the Holders of a majority in aggregate principal amount of the Securities of each series affected then Outstanding. It is understood and intended, and expressly covenanted by the taker and Holder of every Security with every other taker and Holder and the Trustee, that no one or more Holders of any series shall have any right in any manner whatever by virtue or by availing of any provision of the Indenture to affect, disturb or prejudice the rights of any other such Holder, or to obtain or seek to obtain priority over or preference to any other such Holder or to enforce any right under the Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders of the applicable series. For the protection and enforcement of the provisions of this Section, each and every Holder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Section 4.07. *Unconditional Right of Holders to Institute Certain Suits.* Notwithstanding any other provision in the Indenture and any provision of any Security, the right of any Holder of any Security to receive payment of the principal of and interest on such Security on or after the respective due dates expressed in such Security, or to institute 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 4.08. *Powers and Remedies Cumulative; Delay or Omission Not Waiver of Default.* Except as provided in Section 4.06, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

No delay or omission of the Trustee or of any Holder to exercise any right or power accruing upon any Event of Default occurring and continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein; and, subject to Section 4.06, every power and remedy

given by the Indenture or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders.

Section 4.09. *Control by Holders.* The Holders of a majority in aggregate principal amount of the Securities of each series affected (voting together as a single class) at the time Outstanding shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee with respect to the Securities of each such series by the Indenture; provided, however, that such direction shall not be otherwise than in accordance with law and the provisions of the Indenture. Subject to the provisions of Section 5.01, the Trustee shall have the right to decline to follow any such direction if the Trustee, being advised by counsel, shall determine that the action or proceeding so directed may not lawfully be taken or if the Trustee in good faith shall determine that the action or proceedings so directed would involve the Trustee in personal liability or if the Trustee in good faith shall determine that the actions or forbearances specified in or pursuant to such direction would be unduly prejudicial to the interests of Holders of the Securities of all series so affected not joining in the giving of said direction, it being understood that (subject to Section 5.01) the Trustee shall have no duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders.

Nothing in the Indenture shall impair the right of the Trustee in its discretion to take any action deemed proper by the Trustee and which is not inconsistent with such direction or directions by Holders.

Section 4.10. *Waiver of Past Defaults.* Except as otherwise provided in Sections 4.01, 4.07 and Section 7.02, the Holders of a majority in aggregate principal amount of the Outstanding Securities of one or more series (voting together as a single class) may, by notice to the Trustee, on behalf of the Holders of all Securities of each such series waive an existing default and its consequences. Upon such waiver, the default will cease to exist, and any Event of Default arising therefrom will be deemed to have been cured, but no such waiver will extend to any subsequent or other default or impair any right consequent thereon.

Section 4.11. *Trustee to Give Notice of Default, But May Withhold in Certain Circumstances.* The Trustee shall give to the Holders of any series, as the names and addresses of such Holders appear on the registry books, notice by mail of all defaults known to the Trustee which have occurred with respect to such series, such notice to be transmitted within 45 days after the occurrence thereof, unless such defaults shall have been cured before the giving of such notice (the term "default" or "defaults" for the purposes of this section being hereby defined to mean any event or condition which is, or with notice or lapse of time or both would become, an Event of Default); provided that, except in the case of default in the payment of the principal of or interest on any of the Securities of such series, or in the payment of any sinking or purchase fund installment with respect to the Securities of such series, the Trustee shall be protected in withholding

such notice if and so long as the board of directors, the executive committee, or a trust committee of directors or trustees and/or responsible officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of such series.

Section 4.12. *Right of Court to Require Filing of Undertaking to Pay Costs.* In any suit for the enforcement of any right or remedy under the Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court may require any party litigant in such suit (other than the Trustee) to file an undertaking to pay the costs of the suit, and the court may assess reasonable costs, including reasonable attorneys fees, against any party litigant (other than the Trustee) in the suit having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by a Holder to enforce payment of principal of or interest on any Security on the respective due dates.

## ARTICLE 5 CONCERNING THE TRUSTEE

Section 5.01. *Duties and Responsibilities of the Trustee; During Default; Prior to Default.*

(a) The duties and responsibilities of the Trustee are as provided by the Trust Indenture Act and as set forth herein. Whether or not expressly so provided, every provision of the Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to this Article.

(b) Except during the continuance of an Event of Default, the Trustee need perform only those duties that are specifically set forth in the Indenture and no others, and no implied covenants or obligations will be read into the Indenture against the Trustee. In case an Event of Default of which a Responsible Officer shall have actual knowledge or shall have received written notice from the Issuer or any holder of Securities of any series has occurred and is continuing, the Trustee shall exercise those rights and powers vested in it by the Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(c) No provision of the Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct.

Section 5.02. *Trustee's Obligations with Respect to the Covenants.* The Trustee shall not be obligated to monitor or confirm, on a continuing basis or otherwise, the Issuer's compliance with the covenants contained in Article 4 or with respect to any reports or other documents filed under the Indenture; provided, however, that nothing herein shall relieve the Trustee of any obligations to monitor the Issuer's timely delivery

of all reports and certificates required under Section 3.04 and Section 3.05 of the Indenture and to fulfill its obligations under Article 5 hereof.

Section 5.03. *Moneys Held by Trustee.* Subject to the provisions of Section 9.06 hereof, all moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. Neither the Trustee nor any agent of the Issuer or the Trustee shall be liable for interest on any money received by it hereunder except such as it may agree with the Issuer in writing to pay thereon.

Section 5.04. *Reports by the Trustee to Holders.* Within 60 days after each May 15, beginning with May 15, 2009, the Trustee will mail to each Holder, as provided in Trust Indenture Act Section 313(c), a brief report dated as of such May 15, if required by Trust Indenture Act Section 313(a), and file such reports with each stock exchange upon which its Securities are listed and with the Commission if, and to the extent, required by Trust Indenture Act Section 313(d).

The Trustee shall comply with Section 313(b) and 313(c) of the Trust Indenture Act.

A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with the Issuer, with each stock exchange upon which any Securities are listed (if so listed) and also with the Commission.

Section 5.05. *Certain Rights of the Trustee.* Subject to Trust Indenture Act Sections 315(a) through (d):

(a) In the absence of bad faith on its part, the Trustee may rely, and will be protected in acting or refraining from acting, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or 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, but, in the case of any document which is specifically required to be furnished to the Trustee pursuant to any provision hereof, the Trustee shall examine the document to determine whether it conforms to the requirements of the Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein). The Trustee, in its discretion, may make further inquiry or investigation into such facts or matters as it sees fit.

(b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel conforming to Section 10.05 and the Trustee will not be liable for any action it takes or omits to take in good faith in reliance on the certificate or opinion.

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

(d) The Trustee will be under no obligation to exercise any of the rights or powers vested in it by the Indenture or to institute, conduct or defend any litigation hereunder or in relation hereto at the request or direction of any of the Holders, unless such Holders have offered to the Trustee security or indemnity as it may reasonably require against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

(e) The Trustee will not be liable in its individual capacity for any action it takes, suffers or omits to take in good faith that it believes to be authorized or within its rights or powers or for any action it takes or omits to take in accordance with the direction of the Holders in accordance with Section 4.09 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under the Indenture.

(f) The Trustee may consult with counsel, and any advice of such counsel or any Opinion of Counsel will be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(g) No provision of the Indenture will require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties hereunder, or in the exercise of its rights or powers, unless it receives indemnity satisfactory to it against any loss, liability or expense.

(h) The Trustee shall not be liable in its individual capacity for an error in judgment made in good faith by a Responsible Officer or other officers of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts.

(i) The Trustee shall not be personally liable for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by the Indenture.

(j) The Trustee shall have no duty to see to any recording, filing or depositing of the Indenture or any agreement referred to herein or any financing statement or continuation statement evidencing a security interest, or to see to the maintenance of any such re-recording or re-filing or re-depositing thereof.

(k) The Trustee shall not be required to take notice or be deemed to have notice or knowledge of any default or Event of Default unless a Responsible Officer of the Trustee shall have received written notice from the Issuer or any holder of the Securities or obtained actual knowledge thereof. In the absence of receipt of such notice or actual knowledge, the Trustee may conclusively assume that there is no default or Event of Default.

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Section 5.06. *Trustee and Agents May Hold Securities; Collections, etc.* The Trustee or any agent of the Issuer or the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities with the same rights it would have if it were not the Trustee or such agent and may otherwise deal with the Issuer and receive, collect, hold and retain collections from the Issuer with the same rights it would have if it were not the Trustee or such agent.

Section 5.07. *Compensation and Indemnification of Trustee and Its Prior Claim.* (a) The Issuer will pay the Trustee compensation as agreed upon in writing for its services. The compensation of the Trustee is not limited by any law on compensation of a Trustee of an express trust. The Issuer will reimburse the Trustee upon request for all reasonable out-of-pocket expenses, disbursements and advances incurred or made by the Trustee, (including the reasonable compensation and the expenses and disbursements of its counsel and of all agents and other persons not regularly in its employ) except to the extent any such expense, disbursement or advance may arise from its negligence or bad faith. The Issuer also covenants to indemnify the Trustee, its directors, officers, employees and agents and each predecessor Trustee, its directors, officers, employees and agents for, and to hold each of them harmless against, any loss, liability or expense arising out of or in connection with the acceptance or administration of the Indenture or the trusts hereunder and the performance of its duties hereunder and under the Securities, including the costs and expenses of defending itself against or investigating any claim of liability in the premises and the costs and expenses of defending itself against any claim or liability and of complying with any process served upon it or any of its officers, except to the extent such loss liability or expense is due to the negligence or bad faith of the Trustee or such predecessor Trustee.

Anything in the Indenture to the contrary notwithstanding, in no event shall the Trustee be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits) unless it shall be proved that the Trustee acted in bad faith or was grossly negligent in acting or failing to act.

(b) To secure the Issuer's payment obligations in this Section, the Trustee will have a lien prior to the Securities on all money or property held or collected by the Trustee, in its capacity as Trustee, except money or property held in trust to pay principal of, and interest on particular Securities.

The obligations of the Issuer under this Section 5.07 shall survive the resignation and removal of the Trustee and payment of the Securities, and shall extend to any co-trustee or separate trustee.

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Section 5.08. *Right of Trustee to Rely on Officer's Certificate, etc.* Subject to Sections 5.01 and Section 5.05, whenever in the administration of the trusts of the Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established 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 negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Trustee, and such certificate, in the absence of negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted by it under the provisions of the Indenture upon the faith thereof.

Section 5.09. *Disqualification; Conflicting Interests.* If the Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Trustee and the Issuer shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

Section 5.10. *Persons Eligible for Appointment as Trustee.* The Indenture must always have a Trustee that satisfies the requirements of Trust Indenture Act Section 310(a) and has a combined capital and surplus of at least \$25,000,000 as set forth in its most recent published annual report of condition.

Section 5.11. *Resignation and Removal; Appointment of Successor Trustee.*

(a) The Trustee, or any trustee or trustees hereafter appointed, may at any time resign with respect to one or more or all series of Securities by giving written notice of resignation to the Issuer and by mailing notice thereof by first class mail to Holders of the applicable series of Securities at their last addresses as they shall appear on the Register. Upon receiving such notice of resignation, the Issuer shall promptly appoint a successor trustee or trustees with respect to the applicable series by written instrument in duplicate, executed by authority of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee or trustees. If no successor trustee shall have been so appointed with respect to any series and have accepted appointment within 30 days after the mailing of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee, or any Holder who has been a *bona fide* Holder of a Security or Securities of the applicable series for at least six months may, subject to the provisions of Section 4.12, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall fail to comply with the provisions of Section 310(b) of the Trust Indenture Act with respect to any series of Securities after

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written request therefor by the Issuer or by any Holder who has been a *bona fide* Holder of a Security or Securities of such series for at least six months; or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 310(a) of the Trust Indenture Act and shall fail to resign after written request therefor by the Issuer or by any Holder; or

(iii) the Trustee shall become incapable of acting with respect to any series of Securities, or shall be adjudged a bankrupt or insolvent, or a receiver or liquidator of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation;

then, in any such case, the Issuer may remove the Trustee with respect to the applicable series of Securities and appoint a successor trustee for such series by written instrument, in duplicate, executed by order of the Board of Directors of the Issuer, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or any Holder who has been a *bona fide* Holder of a Security or Securities of such series for at least six months may on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee with respect to such series. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The Holders of a majority in aggregate principal amount of the Securities of each series at the time Outstanding may at any time remove the Trustee with respect to Securities of such series and appoint a successor trustee with respect to the Securities of such series with the consent of the Issuer by delivering to the Trustee so removed, to the successor trustee so appointed and to the Issuer the evidence provided for in Section 6.01 of the action in that regard taken by the Holders.

(d) Any resignation or removal of the Trustee with respect to any series and any appointment of a successor trustee with respect to such series pursuant to any of the provisions of this Section 5.11 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 5.12.

(e) Any successor trustee appointed pursuant to this Section may be appointed with respect to the Securities of one or more series or all of such series, and at any time there shall be only one Trustee with respect to the Securities of any particular series.

Section 5.12. *Acceptance of Appointment by Successor.* Any successor trustee appointed as provided in Section 5.11 shall execute and deliver to the Issuer and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee with respect to all or any applicable

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series shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all rights, powers, duties and obligations with respect to such series of its predecessor hereunder, with like effect as if originally named as trustee for such series hereunder; but, nevertheless, on the written request of the Issuer or of the successor trustee, upon payment of its charges then unpaid, the trustee ceasing to act shall, subject to Section 9.06, pay over to the successor trustee all moneys at the time held by it hereunder and shall execute and deliver an instrument transferring to such successor trustee all such rights, powers, duties and obligations.

If a successor trustee is appointed with respect to the Securities of one or more (but not all) series, the Issuer, the predecessor Trustee and each successor trustee with respect to the Securities of any applicable series shall execute and deliver an indenture supplemental hereto prepared by and at the expense of the Issuer which (1) shall contain such provisions as shall be deemed necessary or desirable to transfer and confirm to, and to vest in, each successor trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor trustee relates, (2) shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the predecessor Trustee with respect to the Securities of any series as to which the predecessor Trustee is not retiring shall continue to be vested in the predecessor Trustee, and (3) shall add to or change any of the provisions of the Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such trustees co-trustees of the same trust and that each such trustee shall be trustee of a trust or trusts under separate indentures.

Upon acceptance of appointment by any successor trustee as provided in this Section 5.12, the Issuer shall mail notice thereof by first-class mail to the Holders of any series for which such successor trustee is acting as trustee at their last addresses as they shall appear in the Register. If the acceptance of appointment is substantially contemporaneous with the resignation, then the notice called for by the preceding sentence may be combined with the notice called for by Section 5.11. If the Issuer fails to mail such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Issuer.

Section 5.13. *Merger, Conversion, Consolidation or Succession to Business of Trustee.* If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation or national banking association, the resulting, surviving or transferee corporation or national banking association without any further act will be the successor Trustee with the same effect as if the successor Trustee had been named as the Trustee in the Indenture.

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In case at the time such successor to the Trustee shall succeed to the trusts created by the Indenture any of the Securities of any series 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 of any series 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 Trustee; and in all such cases such certificate shall have the full force which it is anywhere in the Securities of such series or in the Indenture provided that the certificate of the Trustee shall have; provided, that the right to adopt the certificate of authentication of any predecessor Trustee or to authenticate Securities of any series in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 5.14. *Preferential Collection of Claims Against the Issuer.* The Trustees shall comply with Section 311(a) of the Trust Indenture Act, excluding any creditor relationship described in Section 311(b) of the Trust Indenture Act. A Trustee who has resigned or been removed shall be subject to Section 311(a) of the Trust Indenture Act to the extent included therein.

Section 5.15. *Trustee's Disclaimer.* The Trustee (i) makes no representation as to the validity or adequacy of the Indenture or the Securities, (ii) is not accountable for the Issuer's use or application of the proceeds from the Securities and (iii) is not responsible for any statement in the Securities other than its certificate of authentication.

## ARTICLE 6 CONCERNING THE HOLDERS

Section 6.01. *Evidence of Action Taken by Holders.* Any request, demand, authorization, direction, notice, consent, waiver or other action provided by the Indenture to be given or taken by a specified percentage in principal amount of the Holders of any or all series may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such specified percentage of Holders in person or by agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee.

If the Issuer shall solicit from the Holders of any series any request, demand, authorization, direction, notice, consent, waiver or other action, the Issuer may, at its option, as evidenced by an Officer's Certificate, fix in advance a record date for such series for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other action, but the Issuer shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other action, may be given before or after the record

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date, but only the Holders of the requisite proportion of Outstanding Securities of that series who have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other action, and for that purpose the Outstanding Securities of that series shall be computed as of the record date; provided, however, that no such authorization, agreement or consent by such Holders on the record date shall be deemed effective unless it shall become effective pursuant to the provisions of the Indenture not later than six months after the record date.

Proof of execution of any instrument or of a writing appointing any such agent shall be sufficient for any purpose of the Indenture and (subject to Section 5.01 and Section 5.05) conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Article.

Section 6.02. *Proof of Execution of Instruments and of Holding of Securities; Record Date.* Subject to Section 5.01 and Section 5.05, the execution of any instrument by a Holder or his agent or proxy may be proved in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Securities shall be proved by the Register or by a certificate of the registrar thereof. The Issuer may set a record date for purposes of determining the identity of Holders of any series entitled to vote or consent to any action referred to in Section 6.01, which record date may be set at any time or from time to time by notice to the Trustee, for any date or dates (in the case of any adjournment or reconsideration) not more than 60 days nor less than five days prior to the proposed date of such vote or consent, and thereafter, notwithstanding any other provisions hereof, only Holders of such series of record on such record date shall be entitled to so vote or give such consent or revoke such vote or consent. Notice of such record date may be given before or after any request for any action referred to in Section 6.01 is made by the Issuer.

Section 6.03. *Holders to Be Treated as Owners.* Prior to the due presentment for registration of transfer of any Security, the Issuer, the Trustee and any agent of the Issuer or the Trustee may deem and treat the person in whose name any Security shall be registered upon the Register for such series as the absolute owner of such Security (whether or not such Security shall be overdue and notwithstanding any notation of ownership or other writing thereon) for the purpose of receiving payment of or on account of the principal of, and, subject to the provisions of the Indenture, interest on such Security and for all other purposes; and neither the Issuer, the Trustee, nor any agent of the Issuer or the Trustee shall be affected by any notice to the contrary. All such payments so made to any such person, or upon his order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable upon any such Security.

Section 6.04. *Securities Owned by Issuer Deemed Not Outstanding.* In determining whether the Holders of the requisite aggregate principal amount of

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Outstanding Securities of any or all series have concurred in any direction, consent or waiver under the Indenture, Securities which are owned by the Issuer or any other obligor on the Securities with respect to which such determination is being made or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Issuer or any other obligor on the Securities with respect to which such determination is being made shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver only Securities which a Responsible Officer of the Trustee actually knows are so owned, or has received written notice that such Securities are so owned, shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Issuer or any other obligor upon the Securities or any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Issuer or any other obligor on the Securities. In case of a dispute as to such right, the advice of counsel shall be full protection in respect of any decision made by the Trustee in accordance with such advice. Upon request of the Trustee, the Issuer shall furnish to the Trustee promptly an Officer's Certificate listing and identifying all Securities, if any, known by the Issuer to be owned or held by or for the account of any of the above-described persons; and, subject to Section 5.01 and Section 5.05, the Trustee shall be entitled to accept such Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all Securities not listed therein are Outstanding for the purpose of any such determination.

Section 6.05. *Right of Revocation of Action Taken.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 6.01, of the taking of any action by the Holders of the percentage in aggregate principal amount of the Securities of any or all series, as the case may be, specified in the Indenture in connection with such action, any Holder of a Security the serial number of which is shown by the evidence to be included among the serial numbers of the Securities the Holders of which have consented to such action may, by filing written notice at the applicable Corporate Trust Office and upon proof of holding as provided in this Article, revoke such action so far as concerns such Security. Except as aforesaid any such action taken by the Holder of any Security shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Security and of any Securities issued in

**ARTICLE 7**  
**AMENDMENTS, SUPPLEMENTS AND WAIVERS**

Section 7.01. *Supplemental Indentures without Consent of Holders.* The Issuer and the Trustee may amend the Indenture or the Securities or enter into an indenture supplemental hereto without notice to or the consent of any Holder to

- (a) to cure any ambiguity, defect or inconsistency;
- (b) to provide for uncertificated Securities of any series in addition to or in place of certificated Securities of the applicable series;
- (c) to comply with Article 8 in the case of a merger or consolidation;
- (d) to maintain the qualification of the Indenture under the Trust Indenture Act;
- (e) to evidence and provide for the acceptance of appointment by a successor Trustee;
- (f) to conform the text of this Indenture or the terms of the Securities of any series to any prospectus, offering memorandum, offering circular or any other document pursuant to which the Securities of such series were offered;
- (g) to establish the form or terms of Securities of any series;
- (h) to provide for the assumption by a successor corporation, partnership, trust or limited liability company of the Issuer's obligations to the Holders of the Securities of any series, in each case in compliance with the applicable provisions of the Indenture; or
- (i) to make any change that would provide any additional rights or benefits to the Holders of Securities of any series (including to secure Securities of any series, add guarantees with respect thereto, to add to the covenants of the Issuer for the benefit of the Holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of the applicable series), or to surrender any right or power herein conferred upon the Issuer, or that does not adversely affect the legal rights under this Indenture of any Holder of Securities of any series in any material respect.

The Trustee is hereby authorized to join with the Issuer in the execution of any such amendment or supplemental indenture, to make any further appropriate agreements and stipulations which may be therein contained and to accept the conveyance, transfer, assignment, mortgage or pledge of any property thereunder, but the Trustee shall not be obligated to enter into any such amendment or supplemental indenture which affects the Trustee's own rights, duties or immunities under the Indenture or otherwise.

Any amendment or supplemental indenture authorized by the provisions of this section may be executed without notice to and without the consent of the Holders of any of the Securities at the time Outstanding, notwithstanding any of the provisions of Section 7.02.

Section 7.02. *Supplemental Indentures with Consent of Holders.*

(a) With the consent (evidenced as provided in Article 6) of the Holders of not less than a majority in aggregate principal amount of the Securities at the time Outstanding of all series affected by such amendment or supplemental indenture (voting together as a single class), the Issuer, when authorized by a resolution of its Board of Directors, and the Trustee may, from time to time and at any time, enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or of modifying in any manner the rights of the Holders of the Securities of each such series and such Holders may waive future compliance by the Issuer with a provision of the Indenture or the Securities.

(b) Notwithstanding the provisions of paragraph (a), without the consent of each affected Holder of a particular series, an amendment, supplement or waiver may not

- (i) reduce the aggregate principal amount of Securities of any series at maturity whose Holders must consent to an amendment;
- (ii) reduce the rate of or change or have the effect of changing the time for payment of interest, including defaulted interest, on Securities of any series;
- (iii) reduce the principal of or change or have the effect of changing the fixed maturity of Securities of any series, or change the date on which Securities of any series may be subject to redemption or repurchase or reduce the redemption price therefor;
- (iv) make Securities of any series payable in money other than that stated in the Securities of the applicable series or change the place of payment of the Securities of any series from that stated in the Securities of such series or in the Indenture;
- (v) make any change in provisions of the Indenture protecting the right of each Holder to receive payment of principal of and interest on such Holder's Security or Securities on or after the due date thereof or to bring suit to enforce such payment, or permitting Holders of a majority in aggregate principal amount of Securities of each series affected (voting together as a single class) to waive defaults or Events of Default;
- (vi) make any change in these amendment and waiver provisions; or

- (vii) make any change or modification to the ranking of the Securities of any series that would adversely affect the Holders.

It shall not be necessary for the consent of the Holders under this section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

Section 7.03. *Execution of Amendments or Supplemental Indentures or Waivers.* Upon the request of the Issuer, accompanied by a copy of a Resolution of the Board of Directors certified by the secretary or an assistant secretary of the Issuer authorizing the execution of any such amendment, supplemental indenture or waiver and upon the filing with the Trustee of evidence of the consent of Holders as aforesaid and other documents, if any, required by Section 6.01, the Trustee shall join with the Issuer in the execution of such amendment, supplemental indenture or waiver unless such supplemental indenture or waiver affects the Trustee's own rights, duties or immunities under the Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such amendment, supplemental indenture or waiver.

The Trustee, subject to the provisions of Sections 5.01 and 5.05, may receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any amendment, supplemental indenture or waiver executed pursuant to this Article 7 complies with the applicable provisions of the Indenture; provided, however, that such Officer's Certificate and Opinion of Counsel need not be provided in connection with the execution of an amendment, supplemental indenture or waiver that establishes the terms of a series of Securities pursuant to Section 2.01 hereof.

Promptly after the execution by the Issuer and the Trustee of any amendment, supplemental indenture or waiver pursuant to the provisions of this Section, the Issuer shall mail a notice thereof by first class mail to the Holders of each series affected thereby at their addresses as they shall appear on the registry books of the Issuer, setting forth in general terms the substance of such amendment, supplemental indenture or waiver. Any failure of the Issuer to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment, supplemental indenture or waiver.

Section 7.04. *Effect of Amendment, Supplemental Indenture or Waiver.* Upon the execution of any amendment, supplemental indenture or waiver pursuant to the provisions hereof, the Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under the Indenture of the Trustee, the Issuer and the Holders of each series affected thereby shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such amendment, supplemental indenture or waiver shall be and be deemed to be part of the terms and conditions of the Indenture for any and all purposes.

Section 7.05. *Effect of Consent.* After an amendment, supplement or waiver becomes effective, it will bind every Holder unless it is of the type requiring the consent of each Holder affected. If the amendment, supplement or waiver is of the type requiring the consent of each Holder affected, the amendment, supplement or waiver will bind each Holder that has consented to it and every subsequent Holder of a Security that evidences the same debt as the Security of the consenting Holder.



Section 7.06. *Notation on Securities in Respect of Amendments, Supplemental Indentures or Waivers.* Securities of any series authenticated and delivered after the execution of any amendment, supplemental indenture or waiver pursuant to the provisions of this Article may bear a notation in form approved by the Trustee for such series, as to any matter provided for by such amendment, supplemental indenture or waiver or as to any action taken at any such meeting. If the Trustee shall so determine, new Securities of any series so modified as to conform, in the opinion of the Trustee and the Board of Directors of the Issuer, to any modification of the Indenture contained in any such amendment, supplemental indenture or waiver may be prepared by the Issuer, authenticated by the Trustee and delivered in exchange for the Securities of such series then Outstanding.

Section 7.07. *Conformity with the Trust Indenture Act.* Every amendment, supplemental indenture or waiver executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

## ARTICLE 8 CONSOLIDATION, MERGER, SALE OR CONVEYANCE

Section 8.01. *Consolidation, Merger or Sale of Assets by the Issuer.*

(a) The Issuer shall not merge into or consolidate with any other Person or Persons (whether or not affiliated with the Issuer) or sell, convey, transfer, lease or otherwise dispose of all or substantially all of its property or assets to any other Person or Persons (whether or not affiliated with the Issuer), and the Issuer shall not permit any Person to consolidate with or merge into the Issuer or convey, transfer or lease substantially all of its property or assets to the Issuer, unless:

(i) either (a) the transaction is a merger or consolidation and the Issuer is the surviving entity; or (b) the successor Person (or the Person which acquires by sale, conveyance, transfer or lease all or substantially all of the property or assets of the Issuer) is organized under the laws of the United States, any state thereof or the District of Columbia and expressly assumes, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the Issuer's obligation for the due and punctual payment of the principal of (and premium, if any, on) and interest on all the Outstanding Securities of any series and the performance and observance of every covenant of

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the Outstanding Securities of such series and this Indenture on the part of the Issuer to be performed or observed;

(ii) immediately after giving effect to such transaction and treating any Indebtedness which becomes an obligation of the Issuer or any Subsidiary as a result of such transaction as having been incurred by the Issuer or such Subsidiary at the time of such transaction, no Event of Default shall have occurred and be continuing; and

(iii) the Issuer has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

(b) The restrictions in Sections 8.01(ii) and 8.01(iii) hereof shall not be applicable to:

(i) the merger or consolidation of the Issuer with an affiliate of the Issuer if the Board of Directors determines in good faith that the purpose of such transaction is principally to change the state of incorporation of the Issuer or convert the form of organization of the Issuer to another form; or

(ii) the merger of the Issuer with or into a single direct or indirect wholly owned subsidiary of the Issuer pursuant to Section 251(g) (or any successor provision) of the General Corporation Law of the State of Delaware (or similar provision of the Issuer's state of incorporation).

Section 8.02. *Successor Substituted.* Upon any consolidation of the Issuer with, or merger of the Issuer into, any other Person or any sale, transfer or other conveyance of substantially all of the properties and assets of the Issuer in accordance with Section 8.01, but not in the case of a lease, the successor Person formed by such consolidation or into which the Issuer is merged or to which such sale, transfer or other conveyance is made shall succeed to, and be substituted for, and may exercise every right and power of, the Issuer under the Indenture with the same effect as if such successor Person had been named as the Issuer herein, and thereafter, the predecessor Person shall be released of all obligations to pay principal and interest on the Securities and all other obligations and covenants under the Indenture and the Securities. For purposes of the foregoing, if the Issuer consummates a Holding Company Reorganization, New HoldCo shall be treated as the "successor Person" and the Holding Company Reorganization shall constitute the transfer to New HoldCo of substantially all of the Issuer's assets.

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## ARTICLE 9 DEFEASANCE AND DISCHARGE; UNCLAIMED MONEYS

Section 9.01. *Satisfaction and Discharge of Indenture.* The Issuer may terminate its obligations under the Indenture, when:

(a) either (i) all the Securities of any series issued that have been authenticated and delivered have been delivered to the Trustee for cancellation (other than any Securities of such series which shall have been destroyed, lost or stolen and which shall have been replaced or paid as provided in Section 2.09); or (ii) all the Securities of any series issued that have not been delivered to the Trustee for cancellation shall have (A) become due and payable, or (B) are by their terms to become due and payable within one year, or are to be called for redemption within one year and the Issuer shall have made irrevocable arrangements satisfactory to the Trustee for the giving of notice of redemption by such Trustee in the Issuer's name, and at the Issuer's expense and the Issuer have irrevocably deposited or caused to be deposited with the Trustee sufficient funds to pay and discharge the entire indebtedness on the applicable series of Securities not theretofore delivered to the Trustee for cancellation, for principal, premium, if any, and interest to the date of such deposit (in the case of Securities that have become due and payable) or to the applicable maturity or redemption date, as the case may be, together with irrevocable instructions from the Issuer directing the Trustee to apply such funds to the payment thereof at the applicable maturity or redemption date, as the case may be;

(b) The Issuer shall have paid or caused to be paid all other sums then due and payable under the Indenture; and

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

If the foregoing conditions are met, the Trustee, on demand of the Issuer accompanied by an Officer's Certificate and an Opinion of counsel and at the cost and expense of the Issuer, shall execute proper instruments prepared by the Issuer acknowledging such satisfaction of and discharging the Indenture with respect to such series except as to:

- (1) rights of Holders to receive payments when due of principal thereof and interest thereon, and remaining rights of the holders to receive mandatory sinking fund payments, if any;
- (2) obligations of the Issuer in respect of issuing temporary Securities, registration of Securities, substitution of mutilated, defaced, destroyed, lost or stolen Securities and the maintenance of an office or agency for payment on Securities;

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- (3) rights of registration of transfer and exchange of Securities of such series, and the Issuer's right of optional redemption, if any;
- (4) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the obligations of the Issuer in connection therewith;
- (5) the rights of the Holders of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them;
- (6) the defeasance provisions of Section 9.02; and
- (7) the rights of the Issuer to be repaid any money pursuant to Sections 9.05 and 9.06.

Section 9.02. *Legal Defeasance.* After the 91st day following the deposit referred to in Section 9.01, the Issuer will be deemed to have paid the entire indebtedness represented by, and will be discharged from its obligations in respect of, the Securities of any series and the Indenture, other than its obligations in Article 2 and Section 3.01, Section 3.02, Section 5.07, Section 5.11, and listed in clauses (1), (2), (3), (4), (5), (6) and (7) of Section 9.01, provided the following conditions have been satisfied:

(a) The Issuer has irrevocably deposited or caused to be deposited with the Trustee as trust funds for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to the benefits of the holders of the Securities of a series in cash or Governmental Obligations or a combination thereof (other than moneys repaid by the Trustee or any paying agent to the Issuer in accordance with Section 9.06) in each case sufficient without reinvestment, in the written opinion of a nationally recognized firm of independent public accountants to pay and discharge, and which shall be applied by the Trustee to pay and discharge, all of the principal, interest and any premium at due date or maturity or if the Issuer has made irrevocable arrangements satisfactory to the Trustee for the giving of notice of redemption by the trustee in the Issuer's name and at the Issuer's expense, the redemption date;

(b) The Issuer has delivered to the Trustee an Opinion of Counsel stating that, as a result of an IRS ruling or a change in applicable federal income tax law, the holders of the Securities of that series will not recognize gain or loss for federal income tax purposes as a result of the deposit, defeasance and discharge to be effected and will be subject to the same federal income tax as would be the case if the deposit, defeasance and discharge did not occur;

(c) No default with respect to the outstanding Securities of that series has occurred and is continuing at the time of such deposit after giving effect to the deposit or, in the case of legal defeasance, no default relating to bankruptcy or insolvency has occurred and is continuing at any time on or before the 91st day after the date of such

deposit (other than an Event of Default resulting from the borrowing of funds to be applied to such deposit and the grant of any Lien securing such borrowings), it being understood that this condition is not deemed satisfied until after the 91st day;

(d) The defeasance will not cause the Trustee to have a conflicting interest within the meaning of the Trust Indenture Act, assuming all Securities of a series were in default within the meaning of such Act;

(e) The defeasance will not result in a breach or violation of, or constitute a default under the Indenture (other than an Event of Default resulting from the borrowing of funds to be applied to such deposit and the grant of any Lien securing such borrowings), or any other material agreement or instrument to which the Issuer or any of its Subsidiaries is a party or by which it or any of its Subsidiaries is bound;

(f) The defeasance will not result in the trust arising from such deposit constituting an investment company within the meaning of the Investment Company Act of 1940, as amended, unless the trust is registered under such Act or exempt from registration;

(g) The Issuer has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, in each case stating that all conditions precedent provided for herein relating to the defeasance have been complied with; and

(h) the Issuer shall have delivered to the Trustee an Opinion of Counsel to the effect that, assuming no intervening bankruptcy of the Issuer between the date of deposit and the 91st day following the date of deposit and that no Holder of such Securities is an insider of the Issuer, after the 91st day following the date of deposit, the trust funds will not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally.

Prior to the end of the 91-day period, none of the Issuer's obligations under the Indenture will be discharged. Thereafter, the Trustee upon request will acknowledge in writing the discharge of the Issuer's obligations under the Securities and the Indenture except for the surviving obligations specified above.

Section 9.03. *Covenant Defeasance.* After the 91st day following the deposit referred to in Section 9.01, the Issuer's obligations set forth in Section 3.04, Section 3.05 and Section 8.01 will terminate and Section 4.01(d) will no longer constitute an Event of Default, provided the following conditions have been satisfied:

(a) The Issuer has complied with clauses (a), (c), (d), (e), (f) and (g) of Section 9.02; and

(b) the Issuer has delivered to the Trustee an Opinion of Counsel to the effect that the holders of the Securities of that series will not recognize gain or loss for U.S.

federal income tax purposes as a result of the deposit and covenant defeasance to be effected and will be subject to the same federal income tax as would be the case if the deposit and covenant defeasance did not occur.

Except as specifically stated above, none of the Issuer's obligations under the Indenture will be discharged.

Section 9.04. *Application by Trustee of Funds Deposited for Payment of Securities.* Subject to Section 9.06, all moneys deposited with the Trustee pursuant to Section 9.01 shall be held in trust and applied by it to the payment, either directly or through any paying agent (including the Issuer acting as its own paying agent), to the Holders of the particular Securities of such series for the payment or redemption of which such moneys or Governmental Obligations have been deposited with the Trustee, of all sums due and to become due thereon for principal and interest. Such money need not be segregated from other funds except to the extent required by law.

Section 9.05. *Repayment of Moneys Held by Paying Agent.* In connection with the satisfaction and discharge of the Indenture with respect to Securities of any series, all moneys then held by any paying agent under the provisions of the Indenture with respect to such series of Securities shall, upon demand of the Issuer, be repaid to the Issuer or paid to the Trustee and thereupon such paying agent shall be released from all further liability with respect to such moneys or Governmental Obligations.

Section 9.06. *Return of Moneys Held by Trustee and Paying Agent Unclaimed for Two Years.* Any moneys or Governmental Obligations deposited with or paid to the Trustee or any paying agent for the payment of the principal or of interest on any Security of any series and not applied but remaining unclaimed for two years after the date upon which such principal or interest shall have become due and payable, shall, upon the written request of the Issuer and unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property law, be repaid to the Issuer by the Trustee for such series or such paying agent, and the Holder of the Security of such series shall, unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property laws, thereafter look only to the Issuer for any payment which such Holder may be entitled to collect, and all liability of the Trustee or any paying agent with respect to such moneys shall thereupon cease.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

Section 10.01. *Incorporators, Stockholders, Employees, Officers and Directors of Issuer Exempt from Individual Liability.* No past, present or future director, officer, employee, incorporator, agent, stockholder or Affiliate of the Issuer or any of its Subsidiaries, as applicable, shall have any liability for any obligations of the Issuer or any

of its Subsidiaries under the Securities, this Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Security waives and releases all such liabilities. The waiver and release are part of the consideration for issuance of the Securities.

Section 10.02. *Provisions of Indenture for the Sole Benefit of Parties and Holders.* Nothing in the Indenture or in the Securities, expressed or implied, shall give or be construed to give to any person, firm or corporation, other than the parties hereto and their successors and the Holders, any legal or equitable right, remedy or claim under the Indenture or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the parties hereto and their successors and of the Holders.

Section 10.03. *Successors and Assigns of Issuer Bound by Indenture.* All the agreements of the Issuer in the Indenture and the Securities shall bind its successors and assigns.

Section 10.04. *Notices and Demands on Issuer, Trustee and Holders.* Any notice or demand which by any provision of the Indenture is required or permitted to be given or served by the Trustee or by the Holders to or on the Issuer may be given or served by being deposited postage prepaid, first-class mail (except as otherwise specifically provided herein) addressed (until another address of the Issuer is filed by the Issuer with the Trustee) to Roper Industries, Inc., 6901 Professional Parkway East, Suite 200, Sarasota, Florida 34240 Attention: Chief Financial Officer and a copy of such notice or demand shall be sent to the Issuer's General Counsel at the same address. Any notice, direction, request or demand by the Issuer or any Holder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or made at the applicable Corporate Trust Office of the Trustee.

Where the Indenture provides for notice to Holders, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder entitled thereto, at his last address as it appears in the Register. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where the Indenture provides for notice in any manner, such notice may be waived in writing by the person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case, by reason of the suspension of or irregularities in regular mail service, it shall be impracticable to mail notice to the Issuer and Holders when such notice is required to be given pursuant to any provision of the Indenture, then any manner of

giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice.

Section 10.05. *Officer's Certificates and Opinions of Counsel; Statements to Be Contained Therein.* Upon any application or demand by the Issuer to the Trustee to take any action under any of the provisions of the Indenture, the Issuer shall furnish to the Trustee an Officer's Certificate stating that all conditions precedent, if any, provided for in the Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent have been complied with, except that in the case of any such application or demand as to which the furnishing of such documents is specifically required by any provision of the Indenture relating to such particular application or demand, no additional certificate or opinion need be furnished.

Each certificate or opinion provided for in the Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in the Indenture shall include (a) a statement that the person 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 person, he has made such examination or investigation as is necessary to enable him 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 person, such condition or covenant has been complied with.

Any certificate, statement or opinion of an officer of the Issuer may be based, insofar as it relates to legal matters, upon a certificate or opinion of or representations by counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous. Any certificate, statement or opinion of counsel may be based, insofar as it relates to factual matters, information with respect to which is in the possession of the Issuer, upon the certificate, statement or opinion of or representations by an

officer or officers of the Issuer, unless such counsel knows that the certificate, statement or opinion or representations with respect to the matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous.

Any certificate, statement or opinion of an officer of the Issuer or of counsel may be based, insofar as it relates to accounting matters, upon a certificate or opinion of or representations by an accountant or firm of accountants in the employ of the Issuer, unless such officer or counsel, as the case may be, knows that the certificate or opinion or representations with respect to the accounting matters upon which his certificate,

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statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous.

Any certificate or opinion of any independent firm of public accountants filed with the Trustee shall contain a statement that such firm is independent.

Section 10.06. *Payments Due on Saturdays, Sundays and Holidays.* Except as provided pursuant to Section 2.01 pursuant to a Resolution of the Board of Directors, and as set forth in an Officer's Certificate, or established in one or more indentures supplemental to the Indenture, if the date of maturity of interest on or principal of the Securities of any series or the date fixed for redemption or repayment of any such Security shall not be a Business Day, then payment of interest or principal need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

Section 10.07. *Trust Indenture Act of 1939.* The Indenture shall incorporate and be governed by the provisions of the Trust Indenture Act that are required to be part of and to govern indentures qualified under the Trust Indenture Act.

Section 10.08. *New York Law to Govern.* The Indenture and each Security shall be governed by and construed in accordance with the laws of the State of New York.

Section 10.09. *Counterparts.* The Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 10.10. *Effect of Headings.* The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 10.11. *Separability.* In case any one or more of the provisions contained in the Indenture or in the Securities of any series shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect or impair any other provisions of the Indenture or of such Securities, but the Indenture and such Securities shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

## ARTICLE 11

### REDEMPTION OF SECURITIES AND SINKING FUND PROVISIONS

Section 11.01. *Applicability of Article.* The provisions of this Article shall be applicable to the Securities of any series which are redeemable before their maturity or to

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any sinking fund for the retirement of Securities of a series except as otherwise specified as contemplated by Section 2.03 for Securities of such series.

Section 11.02. *Notice of Redemption; Partial Redemptions.* Notice of redemption to the Holders of any series to be redeemed as a whole or in part at the option of the Issuer shall be given by mailing notice of such redemption by first class mail, postage prepaid, at least 30 days and not more than 60 days prior to the date fixed for redemption to such Holders of such series at their last addresses as they shall appear upon the registry books. Any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the Holder receives the notice. Failure to give notice by mail, or any defect in the notice to the Holder of any Security of a series designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Security of such series.

The notice of redemption to each such Holder shall specify the principal amount of each Security of such series held by such Holder to be redeemed, the date fixed for redemption, the redemption price, the place or places of payment, that payment will be made upon presentation and surrender of such Securities, that such redemption is pursuant to the mandatory or optional sinking fund, or both, if such be the case, that interest accrued to the date fixed for redemption will be paid as specified in such notice and that on and after said date interest thereon or on the portions thereof to be redeemed will cease to accrue. In case any Security of a series is to be redeemed in part only the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that on and after the date fixed for redemption, upon surrender of such Security, a new Security or Securities of such series in principal amount equal to the unredeemed portion thereof will be issued.

The notice of redemption of Securities of any series to be redeemed shall be prepared and given by the Issuer or, at the Issuer's request, prepared by the Issuer and given by the Trustee in the name and at the expense of the Issuer.

If less than all the Securities of any series are to be redeemed, the Trustee shall select Securities of such series to be redeemed in whole or in part in compliance with the requirements of the principal national securities exchange, if any, on which the Securities of the applicable series are listed or, if the Securities of such series are not so listed, on a *pro rata* basis, by lot or by such method as it shall deem fair and appropriate. Securities may be redeemed in part in multiples equal to the minimum authorized denomination for Securities of such series or any multiple thereof. The Trustee shall promptly notify the Issuer in writing of the Securities of such series selected for redemption and, in the case of any Securities of such series selected for partial redemption, the principal amount thereof to be redeemed. For all purposes of the Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities of any series shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security which has been or is to be redeemed.

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At least one Business Day prior to the redemption date specified in the notice of redemption given as provided in this Section, the Issuer will deposit with the Trustee or with one or more paying agents (or, if the Issuer is acting as its own paying agent, set aside, segregate and hold in trust as provided in Section 3.03) an amount of money sufficient to redeem on the redemption date all the Securities of such series so called for redemption at the appropriate redemption price, together with accrued interest to the date fixed for redemption.

Section 11.03. *Payment of Securities Called for Redemption.* If notice of redemption has been given as above provided, the Securities or portions of Securities specified in such notice shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with interest accrued to the date fixed for redemption, and on and after said date (unless the Issuer shall default in the payment of such Securities at the redemption price, together with interest accrued to said date) interest on the Securities or portions of Securities so called for redemption shall cease to accrue and such Securities shall cease from and after the date fixed for redemption to be entitled to any benefit or security under the Indenture, and the Holders thereof shall have no right in respect of such Securities except the right to receive the redemption price thereof and unpaid interest to the date fixed for redemption. On presentation and surrender of such Securities at a place of payment specified in said notice, said Securities or the specified portions thereof shall be paid and redeemed by the Issuer at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption; provided that any payment of interest becoming due on or before the date fixed for redemption shall be payable to the Holders of such Securities registered as such on the relevant record date.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid or duly provided for, bear interest from the date fixed for redemption at the rate of interest or Yield to Maturity (in the case of an Original Issue Discount Security) borne by the Security.

Upon presentation of any Security redeemed in part only, the Issuer shall execute and the Trustee shall authenticate and deliver to or on the order of the Holder thereof, at the expense of the Issuer, a new Security or Securities of such series, of authorized denominations, in principal amount equal to the unredeemed portion of the Security so presented.

Section 11.04. *Exclusion of Certain Securities from Eligibility for Selection for Redemption.* Securities shall be excluded from eligibility for selection for redemption if they are identified by registration and certificate number in a written statement signed by an authorized officer of the Issuer and delivered to the Trustee at least 15 days prior to the last date on which notice of redemption may be given as being owned of record and beneficially by, and not pledged or hypothecated by either (a) the Issuer or (b) an entity

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specifically identified in such written statement directly or indirectly controlling or controlled by or under direct or indirect common control with the Issuer.

Section 11.05. *Mandatory and Optional Sinking Funds.* The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a "mandatory sinking fund payment", and any payment in excess of such minimum amount provided for by the terms of Securities of any series is herein referred to as an "optional sinking fund payment". The date on which a sinking fund payment is to be made is herein referred to as the "sinking fund payment date".

In lieu of making all or any part of any mandatory sinking fund payment with respect to any series of Securities in cash, the Issuer may at its option (a) deliver to the Trustee Securities of such series theretofore purchased or otherwise acquired (except upon redemption pursuant to the mandatory sinking fund) by the Issuer or receive credit for Securities of such series (not previously so credited) theretofore purchased or otherwise acquired (except as aforesaid) by the Issuer and delivered to the Trustee for cancellation pursuant to Section 2.10, (b) receive credit for optional sinking fund payments (not previously so credited) made pursuant to this Section, or (c) receive credit for

Securities of such series (not previously so credited) redeemed by the Issuer through any optional redemption provision contained in the terms of such series. Securities so delivered or credited shall be received or credited by the Trustee at the sinking fund redemption price specified in such Securities.

Not less than 60 days prior to each sinking fund payment date for any series, the Issuer will deliver to the Trustee a written statement (which need not contain the statements required by Section 10.05) signed by an authorized officer of the Issuer (a) specifying the portion of the mandatory sinking fund payment to be satisfied by payment of cash and the portion to be satisfied by credit of Securities of such series, (b) stating that none of the Securities of such series has theretofore been so credited, (c) stating that no defaults in the payment of interest or Events of Default with respect to such series have occurred (which have not been waived or cured) and are continuing and (d) stating whether or not the Issuer intends to exercise its right to make an optional sinking fund payment with respect to such series and, if so, specifying the amount of such optional sinking fund payment which the Issuer intends to pay on or before the next succeeding sinking fund payment date. Any Securities of such series to be credited and required to be delivered to the Trustee in order for the Issuer to be entitled to credit therefor as aforesaid which have not theretofore been delivered to the Trustee shall be delivered for cancellation pursuant to Section 2.10 to the Trustee with such written statement (or reasonably promptly thereafter if acceptable to the Trustee). Such written statement shall be irrevocable and upon its receipt by the Trustee the Issuer shall become unconditionally obligated to make all the cash payments or payments therein referred to, if any, on or before the next succeeding sinking fund payment date. Failure of the Issuer, at least 60 days prior to such sinking fund payment date, to deliver such written statement and Securities specified in this paragraph, if any, shall not constitute a default but shall

constitute, on and as of such date, the irrevocable election of the Issuer (i) that the mandatory sinking fund payment for such series due on the next succeeding sinking fund payment date shall be paid entirely in cash without the option to deliver or credit Securities of such series in respect thereof and (ii) that the Issuer will make no optional sinking fund payment with respect to such series as provided in this Section.

The Trustee shall select, in the manner provided in Section 11.02, for redemption on such sinking fund payment date a sufficient principal amount of Securities of such series to absorb said cash, as nearly as may be, and shall (if requested in writing by the Issuer) inform the Issuer of the serial numbers of the Securities of such series (or portions thereof) so selected. Securities of any series which are (a) owned by the Issuer or an entity known by the Trustee to be directly or indirectly controlling or controlled by or under direct or indirect common control with the Issuer, as shown by the Register, and not known to the Trustee to have been pledged or hypothecated by the Issuer or any such entity or (b) identified in an Officer's Certificate at least 60 days prior to the sinking fund payment date as being beneficially owned by, and not pledged or hypothecated by, the Issuer or an entity directly or indirectly controlling or controlled by or under direct or indirect common control with the Issuer shall be excluded from Securities of such series eligible for selection for redemption. The notice of redemption of the Securities of such series to be redeemed shall be prepared and given by the Issuer or, at the Issuer's request, prepared by the Issuer and given by the Trustee in the name and at the expense of the Issuer in substantially the manner provided in Section 11.02 (and with the effect provided in Section 11.03) for the redemption of Securities of such series in part at the option of the Issuer. The amount of any sinking fund payments not so applied or allocated to the redemption of Securities of such series shall be added to the next cash sinking fund payment for such series and, together with such payment, shall be applied in accordance with the provisions of this Section. Any and all sinking fund moneys held on the stated maturity date of the Securities of any particular series (or earlier, if such maturity is accelerated), which are not held for the payment or redemption of particular Securities of such series, shall be applied, together with other moneys, if necessary, sufficient for the purpose, to the payment of the principal of, and interest on, the Securities of such series at maturity.

At least one Business Day before each sinking fund payment date, the Issuer shall pay to the Trustee in cash or shall otherwise provide for the payment of all interest accrued to the date fixed for redemption on Securities to be redeemed on the next following sinking fund payment date.

The Trustee shall not redeem or cause to be redeemed any Securities of a series with sinking fund moneys or mail any notice of redemption of Securities for such series by operation of the sinking fund during the continuance of a default in payment of interest on such Securities or of any Event of Default except that, where the mailing of notice of redemption of any Securities shall theretofore have been made, the Trustee shall redeem or cause to be redeemed such Securities, provided that it shall have received from

the Issuer a sum sufficient for such redemption. Except as aforesaid, any moneys in the sinking fund for such series at the time when any such default or Event of Default shall occur, and any moneys thereafter paid into the sinking fund, shall, during the continuance of such default or Event of Default, be deemed to have been collected under Article 4 and held for the payment of all such Securities. In case such Event of Default shall have been waived as provided in Section 4.09 or the default cured on or before the 60th day preceding the sinking fund payment date in any year, such moneys shall thereafter be applied on the next succeeding sinking fund payment date in accordance with this section to the redemption of such Securities.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused the Indenture to be duly executed as of the date set forth above.

ROPER INDUSTRIES, INC.

By: /s/ David B. Liner  
Name: David B. Liner  
Title: Vice President, General Counsel & Secretary

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee

By: /s/ Elizabeth T. Wagner  
Name: Elizabeth T. Wagner  
Title: Vice President

STATE OF NEW YORK )  
 )  
COUNTY OF \_\_\_\_\_ ) ss.:

On this \_\_\_ day of \_\_\_\_\_ before me personally came \_\_\_\_\_ to me personally known, who, being by me duly sworn, did depose and say that s/he resides at \_\_\_\_\_ that s/he is a \_\_\_\_\_ of Roper Industries, Inc., one of the corporations described in and which executed the above instrument and that s/he signed his name thereto by like authority.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public

STATE OF GEORGIA )  
 )  
COUNTY OF \_\_\_\_\_ ) ss.:

On this \_\_\_ day of January before me personally came \_\_\_\_\_ to me personally known, who, being by me duly sworn, did depose and say that s/he resides at \_\_\_\_\_ that s/he is a \_\_\_\_\_ of Wells Fargo Bank, National Association, one of the corporations described in and which executed the above instrument; and that s/he signed his name thereto by like authority.

[NOTARIAL SEAL]



ROPER INDUSTRIES, INC.  
AMENDED AND RESTATED 2006 INCENTIVE PLAN

ROPER INDUSTRIES, INC.  
AMENDED AND RESTATED 2006 INCENTIVE PLAN

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**ROPER INDUSTRIES, INC.  
AMENDED AND RESTATED 2006 INCENTIVE PLAN**

**ARTICLE 1  
PURPOSE**

1.1. **GENERAL.** The purpose of the Roper Industries, Inc. Amended and Restated 2006 Incentive Plan (the "Plan") is to promote the success, and enhance the value, of Roper Industries, Inc. (the "Company"), by linking the personal interests of employees, officers, directors and consultants of the Company or any Affiliate (as defined below) to those of Company shareholders and by providing such persons with an incentive for outstanding performance. The Plan is further intended to provide flexibility to the Company in its ability to motivate, attract, and retain the services of employees, officers, directors and consultants upon whose judgment, interest, and special effort the successful conduct of the Company's operation is largely dependent. Accordingly, the Plan permits the grant of incentive awards from time to time to selected employees, officers, directors and consultants of the Company and its Affiliates.

**ARTICLE 2  
DEFINITIONS**

2.1. **DEFINITIONS.** When a word or phrase appears in this Plan with the initial letter capitalized, and the word or phrase does not commence a sentence, the word or phrase shall generally be given the meaning ascribed to it in this Section or in Section 1.1 unless a clearly different meaning is required by the context. The following words and phrases shall have the following meanings:

- (a) "Affiliate" means (i) any Subsidiary or Parent, or (ii) an entity that directly or through one or more intermediaries controls, is controlled by or is under common control with, the Company, as determined by the Committee.
- (b) "Award" means any Option, Stock Appreciation Right, Restricted Stock Award, Restricted Stock Unit Award, Deferred Stock Unit Award, Performance Award, Dividend Equivalent Award, Other Stock-Based Award, Performance-Based Cash Awards, or any other right or interest relating to Stock or cash, granted to a Participant under the Plan.

(c) "Award Certificate" means a written document, in such form as the Committee prescribes from time to time, setting forth the terms and conditions of an Award. Award Certificates may be in the form of individual award agreements or certificates or a program document describing the terms and provisions of an Awards or series of Awards under the Plan.

(d) "Board" means the Board of Directors of the Company.

(e) "Cause" as a reason for a Participant's termination of employment shall have the meaning assigned such term in the employment, severance or similar agreement, if any, between such Participant and the Company or an Affiliate, provided, however that if there is no such employment, severance or similar agreement in which such term is defined, and unless otherwise defined in the applicable Award Certificate, "Cause" shall mean any of the following acts by the Participant, as determined by the Board: gross

neglect of duty, prolonged absence from duty without the consent of the Company, intentionally engaging in any activity that is in conflict with or adverse to the business or other interests of the Company, or willful misconduct, misfeasance or malfeasance of duty which is reasonably determined to be detrimental to the Company. With respect to a Participant's termination of directorship, "Cause" means an act or failure to act that constitutes cause for removal of a director under applicable Delaware law. The determination of the Committee as to the existence of "Cause" shall be conclusive on the Participant and the Company.

(f) "Change in Control" means and includes the occurrence of any one of the following events:

(1) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the 1934 Act) (a "Person") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the 1934 Act) of 25% or more of the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); provided, however, that for purposes of this subsection (1), the following acquisitions shall not constitute a Change of Control: (i) any acquisition by a Person who is on the Effective Date the beneficial owner of 25% or more of the Outstanding Company Voting Securities, (ii) any acquisition directly from the Company, (iii) any acquisition by the Company, (iv) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company, or (v) any acquisition by any corporation pursuant to a transaction which complies with clauses (i), (ii) and (iii) of subsection (3) of this definition; or

(2) Individuals who, as of the Effective Date, constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the Effective Date whose election, or nomination for election by the Company's shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board; or

(3) Consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Company (a "Business Combination"), in each case, unless, following such Business Combination, (i) all or substantially all of the individuals and entities who were the beneficial owners of the Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors of the corporation resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one

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or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination of the Outstanding Company Voting Securities, and (ii) no Person (excluding any corporation resulting from such Business Combination or any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 25% or more of the combined voting power of the then outstanding voting securities of such corporation except to the extent that such ownership existed prior to the Business Combination, and (iii) at least a majority of the members of the board of directors of the corporation resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination.

(g) "Code" means the Internal Revenue Code of 1986, as amended from time to time, and includes a reference to the underlying final regulations.

(h) "Committee" means the committee of the Board described in Article 4.

(i) "Company" means Roper Industries, Inc., a Delaware corporation, or any successor corporation.

(j) "Continuous Status as a Participant" means the absence of any interruption or termination of service as an employee, officer, consultant or director of the Company or any Affiliate, as applicable; provided however, that for purposes of an Incentive Stock Option "Continuous Status as a Participant" means the absence of any interruption or termination of service as an employee of the Company or any Parent or Subsidiary, as applicable, pursuant to applicable tax regulations. Continuous Status as a Participant shall not be considered interrupted in the case of any short-term disability or leave of absence authorized in writing by the Company prior to its commencement; provided, however, that for purposes of Incentive Stock Options, if any such leave exceeds 90 days, and the Participant's reemployment upon expiration of such leave is not guaranteed by statute or contract, then on the 91st day of such leave any Incentive Stock Option held by the Participant shall cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Nonstatutory Stock Option.

(k) "Covered Employee" means a covered employee as defined in Code Section 162(m)(3).

(l) "Deferred Stock Unit" means a right granted to a Participant under Article 10 to receive Shares of Stock (or the equivalent value in cash or other property if the Committee so provides) at a future time as determined by the Committee, or as determined by the Participant within guidelines established by the Committee in the case of voluntary deferral elections, which right may be subject to certain restrictions but is not subject to risk of forfeiture.

(m) "Disability" has the same meaning as provided in the long-term disability plan or policy maintained or, if applicable, most recently maintained, by the Company or, if applicable, any Subsidiary of the Company for the Participant. If no long-term disability plan or policy was ever maintained on behalf of the Participant or, if the determination of Disability relates to an Incentive Stock Option, Disability means that condition described in Code Section 22(e)(3), as amended from time to time. In the event

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of a dispute, the determination of Disability will be made by the Committee and will be supported by advice of a physician competent in the area to which such Disability relates.

(n) "Dividend Equivalent" means a right granted to a Participant under Article 12.

(o) "Effective Date" has the meaning assigned such term in Section 3.1.

(p) "Eligible Participant" means an employee, officer, consultant or director of the Company or any Affiliate.

(q) "Exchange" means the New York Stock Exchange or any national securities exchange on which the Stock may from time to time be listed or traded.

(r) "Fair Market Value," on any date, means (i) if the Stock is listed on a securities exchange, the closing sales price on such exchange on such date or, in the absence of reported sales on such date, the closing sales price on the immediately preceding date on which sales were reported, or (ii) if the Stock is not listed on a securities exchange, the mean between the bid and offered prices of Stock in the over-the-counter market on that date or the last business day prior to that date, as reported by the NASDAQ Stock Market, or, if not so reported, by a generally accepted reporting service; provided that if it is determined that the fair market value is not properly reflected by such quotations, Fair Market Value will be determined by such other method as the Committee determines in good faith to be reasonable, with due consideration being given to the most recent independent appraisal of the Company, if such appraisal is not more than twelve months old, and the valuation methodology used in any such appraisal.

(s) "Full Value Award" means an Award other than in the form of an Option or SAR, and which is settled by the issuance of Stock.

(t) "Good Reason" has the meaning assigned such term in an employment, severance or similar agreement, if any, between a Participant and the Company or an Affiliate.

(u) "Grant Date" of an Award means the first date on which all necessary corporate action has been taken to approve the grant of the Award as provided in the Plan, or such later date as is determined and specified as part of that authorization process. Notice of the grant shall be provided to the grantee within a reasonable time after the Grant Date.

(v) "Incentive Stock Option" means an Option that is intended to be an incentive stock option and meets the requirements of Section 422 of the Code or any successor provision thereto.

(w) "Independent Directors" means those members of the Board of Directors who qualify at any given time as "independent" directors under Section 303A of the New York Stock Exchange Listed Company Manual, "non-employee" directors under Rule 16b-3 of the 1934 Act, and "outside" directors under Section 162(m) of the Code.

(x) "Non-Employee Director" means a director of the Company who is not a common law employee of the Company or an Affiliate.

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- (y) "Nonstatutory Stock Option" means an Option that is not an Incentive Stock Option.
- (z) "Option" means a right granted to a Participant under Article 7 of the Plan to purchase Stock at a specified price during specified time periods. An Option may be either an Incentive Stock Option or a Nonstatutory Stock Option.
- (aa) "Other Stock-Based Award" means a right, granted to a Participant under Article 13, that relates to or is valued by reference to Stock or other Awards relating to Stock.
- (bb) "Parent" means a corporation, limited liability company, partnership or other entity which owns or beneficially owns a majority of the outstanding voting stock or voting power of the Company. Notwithstanding the above, with respect to an Incentive Stock Option, Parent shall have the meaning set forth in Section 424(e) of the Code.
- (cc) "Participant" means a person who, as an employee, officer, director or consultant of the Company or any Affiliate, has been granted an Award under the Plan; provided that in the case of the death of a Participant, the term "Participant" refers to a beneficiary designated pursuant to Section 14.4 or the legal guardian or other legal representative acting in a fiduciary capacity on behalf of the Participant under applicable state law and court supervision.
- (dd) "Performance Award" means Performance Shares or Performance Units or Performance-Based Cash Awards granted pursuant to Article 9.
- (ee) "Performance-Based Cash Award" means a right granted to a Participant under Article 9 to a cash award to be paid upon achievement of such performance goals as the Committee establishes with regard to such Award.
- (ff) "Performance Share" means any right granted to a Participant under Article 9 to a unit to be valued by reference to a designated number of Shares to be paid upon achievement of such performance goals as the Committee establishes with regard to such Performance Share.
- (gg) "Performance Unit" means a right granted to a Participant under Article 9 to a unit valued by reference to a designated amount of cash or property other than Shares, to be paid to the Participant upon achievement of such performance goals as the Committee establishes with regard to such Performance Unit.
- (hh) "Person" means any individual, entity or group, within the meaning of Section 3(a)(9) of the 1934 Act and as used in Section 13(d)(3) or 14(d)(2) of the 1934 Act.
- (ii) "Plan" means this Roper Industries, Inc. Amended and Restated 2006 Incentive Plan, as further amended from time to time.
- (jj) "Qualified Performance-Based Award" means an Award that is either (i) intended to qualify for the Section 162(m) Exemption and is made subject to performance goals based on Qualified Business Criteria as set forth in Section 11.2, or (ii) an Option

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or SAR having an exercise price equal to or greater than the Fair Market Value of the underlying Stock as of the Grant Date.

- (kk) "Qualified Business Criteria" means one or more of the Business Criteria listed in Section 11.2 upon which performance goals for certain Qualified Performance-Based Awards may be established by the Committee.
- (ll) "Restricted Stock Award" means Stock granted to a Participant under Article 10 that is subject to certain restrictions and to risk of forfeiture.
- (mm) "Restricted Stock Unit Award" means the right granted to a Participant under Article 10 to receive shares of Stock (or the equivalent value in cash or other property if the Committee so provides) in the future, which right is subject to certain restrictions and to risk of forfeiture.
- (nn) "Retirement" means a Participant's voluntary termination of employment with the Company or an Affiliate after attaining any normal or early retirement age specified in any pension, profit sharing or other retirement program sponsored by the Company, or, in the event of the inapplicability thereof with respect to the Participant in question, after attaining age 65 with at least five years of service with the Company or its Affiliates.
- (oo) "Section 162(m) Exemption" means the exemption from the limitation on deductibility imposed by Section 162(m) of the Code that is set forth in Section 162(m)(4)(C) of the Code or any successor provision thereto.
- (pp) "Shares" means shares of the Company's Stock. If there has been an adjustment or substitution pursuant to Section 15.1, the term "Shares" shall also include any shares of stock or other securities that are substituted for Shares or into which Shares are adjusted pursuant to Section 15.1.
- (qq) "Stock" means the \$0.01 par value common stock of the Company and such other securities of the Company as may be substituted for Stock pursuant to Article 15.
- (rr) "Stock Appreciation Right" or "SAR" means a right granted to a Participant under Article 8 to receive a payment equal to the difference between the Fair Market Value of a Share as of the date of exercise of the SAR over the grant price of the SAR, all as determined pursuant to Article 8.
- (ss) "Subsidiary" means any corporation, limited liability company, partnership or other entity of which a majority of the outstanding voting stock or voting power is beneficially owned directly or indirectly by the Company. Notwithstanding the above, with respect to an Incentive Stock Option, Subsidiary shall have the meaning set forth in Section 424(f) of the Code.
- (tt) "1933 Act" means the Securities Act of 1933, as amended from time to time.
- (uu) "1934 Act" means the Securities Exchange Act of 1934, as amended from time to time.

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### ARTICLE 3 EFFECTIVE TERM OF PLAN

3.1. **EFFECTIVE DATE.** The Plan first became effective on June 28, 2006, the date that it was approved by the shareholders of the Company (the "Effective Date").

3.2. **TERMINATION OF PLAN.** The Plan shall terminate on the tenth anniversary of the Effective Date unless earlier terminated as provided herein. The termination of the Plan on such date shall not affect the validity of any Award outstanding on the date of termination.

### ARTICLE 4 ADMINISTRATION

4.1. **COMMITTEE.** The Plan shall be administered by a Committee appointed by the Board (which Committee shall consist of at least two directors) or, at the discretion of the Board from time to time, the Plan may be administered by the Board. It is intended that at least two of the directors appointed to serve on the Committee shall be Independent Directors and that any such members of the Committee who do not so qualify shall abstain from participating in any decision to make or administer Awards that are made to Eligible Participants who at the time of consideration for such Award (i) are persons subject to the short-swing profit rules of Section 16 of the 1934 Act, or (ii) are reasonably anticipated to become Covered Employees during the term of the Award. However, the mere fact that a Committee member shall fail to qualify as an Independent Director or shall fail to abstain from such action shall not invalidate any Award made by the Committee which Award is otherwise validly made under the Plan. The members of the Committee shall be appointed by, and may be changed at any time and from time to time in the discretion of, the Board. The Board may reserve to itself any or all of the authority and responsibility of the Committee under the Plan or may act as administrator of the Plan for any and all purposes. To the extent the Board has reserved any authority and responsibility or during any time that the Board is acting as administrator of the Plan, it shall have all the powers of the Committee hereunder, and any reference herein to the Committee (other than in this Section 4.1) shall include the Board. To the extent any action of the Board under the Plan conflicts with actions taken by the Committee, the actions of the Board shall control.

4.2. **ACTION AND INTERPRETATIONS BY THE COMMITTEE.** For purposes of administering the Plan, the Committee may from time to time adopt rules, regulations, guidelines and procedures for carrying out the provisions and purposes of the Plan and make such other determinations, not inconsistent with the Plan, as the Committee may deem appropriate. The Committee's interpretation of the Plan, any Awards granted under the Plan, any Award Certificate and all decisions and determinations by the Committee with respect to the Plan are final, binding, and conclusive on all parties. Each member of the Committee is entitled to, in good faith, rely or act upon any report or other information furnished to that member by any officer or other employee of the Company or any Affiliate, the Company's or an Affiliate's independent certified public accountants, Company counsel or any executive compensation consultant or other professional retained by the Company to assist in the administration of the Plan.

4.3. **AUTHORITY OF COMMITTEE.** Except as provided below, the Committee has the exclusive power, authority and discretion to:

- (a) Grant Awards;

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- (b) Designate Participants;
- (c) Determine the type or types of Awards to be granted to each Participant;
- (d) Determine the number of Awards to be granted and the number of Shares or dollar amount to which an Award will relate;
- (e) Determine the terms and conditions of any Award granted under the Plan, including but not limited to, the exercise price, grant price, or purchase price, any restrictions or limitations on the Award, any schedule for lapse of forfeiture restrictions or restrictions on the exercisability of an Award, and accelerations or waivers thereof, based in each case on such considerations as the Committee in its sole discretion determines;
- (f) Accelerate the vesting, exercisability or lapse of restrictions of any outstanding Award in accordance with Article 11 or 14;
- (g) Determine whether, to what extent, and under what circumstances an Award may be settled in, or the exercise price of an Award may be paid in, cash, Stock, other Awards, or other property, or an Award may be canceled, forfeited, or surrendered;
- (h) Prescribe the form of each Award Certificate, which need not be identical for each Participant;
- (i) Decide all other matters that must be determined in connection with an Award;
- (j) Establish, adopt or revise any rules, regulations, guidelines or procedures as it may deem necessary or advisable to administer the Plan;
- (k) Make all other decisions and determinations that may be required under the Plan or as the Committee deems necessary or advisable to administer the Plan;
- (l) Amend the Plan or any Award Certificate as provided herein; and
- (m) Adopt such modifications, procedures, and subplans as may be necessary or desirable to comply with provisions of the laws of non-U.S. jurisdictions in which the Company or any Affiliate may operate, in order to assure the viability of the benefits of Awards granted to participants located in such other jurisdictions and to meet the objectives of the Plan.

Notwithstanding the foregoing:

- (1) Grants of Awards to Non-Employee Directors hereunder shall be made only in accordance with the terms, conditions and parameters of a plan, program or policy for the compensation of Non-Employee Directors as in effect from time to time, and the Committee may not make discretionary grants hereunder to Non-Employee Directors.
- (2) The Board or the Committee may, by resolution, expressly delegate to a special committee, consisting of one or more directors who are also officers of the Company, the authority, within specified parameters, to (i) designate officers, employees

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and/or consultants of the Company or any of its Affiliates to be recipients of Awards under the Plan, and (ii) to determine the number of such Awards to be received by any such Participants; provided, however, that such delegation of duties and responsibilities to an officer of the Company may not be made with respect to the grant of Awards to eligible participants (a) who are subject to Section 16(a) of the 1934 Act at the Grant Date, or (b) who as of the Grant Date are reasonably anticipated to become Covered Employees during the term of the Award. The acts of such delegates shall be treated hereunder as acts of the Board and such delegates shall report regularly to the Board and the Compensation Committee regarding the delegated duties and responsibilities and any Awards so granted.

(3) The Board may from time to time reserve to the Independent Directors, as a group, any or all of the authority and responsibility of the Committee under the Plan for any and all purposes other than the grant to the Chief Executive Officer of the Company of performance-based Awards that entail the setting of goals and objectives and the evaluation of performance against such goals and objectives. To the extent and during such time as the Board has so reserved any authority and responsibility, the Independent Directors shall have all the powers of the Committee hereunder, and any reference herein to the Committee (other than in this Section 4.3) shall include the Independent Directors. To the extent any action of the Independent Directors under the Plan made within such authority conflicts with actions taken by the Committee, the actions of the Independent Directors shall control.

4.4. AWARD CERTIFICATES. Each Award shall be evidenced by an Award Certificate. Each Award Certificate shall include such provisions, not inconsistent with the Plan, as may be specified by the Committee.

#### ARTICLE 5 SHARES SUBJECT TO THE PLAN

5.1. NUMBER OF SHARES. Subject to adjustment as provided in Sections 5.2 and 15.1, the aggregate number of Shares reserved and available for issuance pursuant to Awards granted under the Plan shall be (i) 5,000,000 Shares, plus (ii) the number of Shares remaining available for issuance under the Plan as of June 5, 2008, plus (iii) the number of Shares remaining available for issuance under the Company's Amended and Restated 2000 Incentive Plan (the "2000 Plan") but not subject to outstanding awards as of the Effective Date, plus (iv) a number of additional Shares underlying awards outstanding as of the Effective Date under the 2000 Plan that thereafter terminate or expire unexercised, or are cancelled, forfeited or lapse for any reason after the Effective Date. The maximum number of Shares that may be issued upon exercise of Incentive Stock Options granted under the Plan shall be 3,000,000.

5.2. SHARE COUNTING.

(a) Awards of Options and Stock Appreciation Rights granted on or after June 6, 2008 shall count against the number of Shares remaining available for issuance pursuant to Awards granted under the Plan as 1 Share for each Share covered by such Awards, and Full Value Awards granted on or after June 6, 2008 shall count against the number of Shares remaining available for issuance pursuant to Awards granted under the Plan as 1.90 Shares for each Share covered by such Awards.

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(b) From and after June 6, 2008, the full number of Shares subject to an Option shall count against the number of Shares remaining available for issuance pursuant to Awards granted under the Plan, even if the exercise price of the Option is satisfied through net-settlement or by delivering Shares to the Company (by either actual delivery or attestation).

(c) From and after June 6, 2008, upon exercise of Stock Appreciation Rights that are settled in Shares, the full number of Stock Appreciation Rights (rather than the net number of Shares actually delivered upon exercise) shall count against the number of Shares remaining available for issuance pursuant to Awards granted under the Plan.

(d) From and after June 6, 2008, Shares withheld from an Award to satisfy tax withholding requirements shall count against the number of Shares remaining available for issuance pursuant to Awards granted under the Plan, and Shares delivered by a Participant to satisfy tax withholding requirements shall not be added to the Plan share reserve.

(e) To the extent that an Award is canceled, terminates, expires, is forfeited or lapses for any reason, any unissued or forfeited Shares subject to the Award will again be available for issuance pursuant to Awards granted under the Plan.

(f) Shares subject to Awards settled in cash will again be available for issuance pursuant to Awards granted under the Plan.

(g) Substitute Awards granted pursuant to Section 14.11 of the Plan shall not count against the Shares otherwise available for issuance under the Plan under Section 5.1.

5.3. STOCK DISTRIBUTED. Any Stock distributed pursuant to an Award may consist, in whole or in part, of authorized and unissued Stock, treasury Stock or Stock purchased on the open market.

5.4. LIMITATION ON INDIVIDUAL AWARDS. Notwithstanding any provision in the Plan to the contrary (but subject to adjustment as provided in Section 15.1): (i) the maximum number of Shares with respect to one or more Options and/or SARs that may be granted during any one 12-month period under the Plan to any one Participant is 600,000; (ii) the maximum aggregate grant with respect to performance-based Awards of Restricted Stock, Restricted Stock Units, Deferred Stock Units, Performance Shares or other Stock-Based Awards (other than Options or SARs) granted in any one 12-month period to any one Participant is 600,000; and (iii) the aggregate dollar value of any Performance-Based Cash Award or other cash-based award that may be paid to any one Participant during any one 12-month period under the Plan is \$10,000,000.

#### ARTICLE 6 ELIGIBILITY

6.1. GENERAL. Awards may be granted only to Eligible Participants; except that Incentive Stock Options may be granted to only to Eligible Participants who are employees of the Company or a Parent or Subsidiary as defined in Section 424(e) and (f) of the Code. Eligible Participants who are service providers to an Affiliate may be granted Options or SARs under this

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Plan only if the Affiliate qualifies as an "eligible issuer of service recipient stock" within the meaning of §1.409A-1(b)(5)(iii)(E) of the final regulations under Code Section 409A.

#### ARTICLE 7

## STOCK OPTIONS

7.1. GENERAL. The Committee is authorized to grant Options to Participants on the following terms and conditions:

- (a) EXERCISE PRICE. The exercise price per Share under an Option shall be determined by the Committee, provided that the exercise price for any Option (other than an Option issued as a substitute Award pursuant to Section 14.11) shall not be less than the Fair Market Value as of the Grant Date.
- (b) PROHIBITION ON REPRICING. Except as otherwise provided in Article 15, the exercise price of an Option may not be reduced, directly or indirectly by cancellation and regrant or otherwise, without the prior approval of the shareholders of the Company.
- (c) TIME AND CONDITIONS OF EXERCISE. The Committee shall determine the time or times at which an Option may be exercised in whole or in part, subject to Section 7.1(e). The Committee shall also determine the performance or other conditions, if any, that must be satisfied before all or part of an Option may be exercised or vested.
- (d) PAYMENT. The Committee shall determine the methods by which the exercise price of an Option may be paid, the form of payment, including, without limitation, cash, Shares, or other property (including net share settlements), and the methods by which Shares shall be delivered or deemed to be delivered to Participants.
- (e) EXERCISE TERM. In no event may any Option be exercisable for more than ten years from the Grant Date.
- (f) NO DEFERRAL FEATURE. No Option shall provide for any feature for the deferral of compensation other than the deferral of recognition of income until the later of the exercise or disposition of the Option.

7.2. INCENTIVE STOCK OPTIONS. The terms of any Incentive Stock Options granted under the Plan must comply with the requirements of Section 422 of the Code. If all of the requirements of Section 422 of the Code are not met, the Option shall automatically become a Nonstatutory Stock Option.

## ARTICLE 8 STOCK APPRECIATION RIGHTS

8.1. GRANT OF STOCK APPRECIATION RIGHTS. The Committee is authorized to grant Stock Appreciation Rights to Participants on the following terms and conditions:

- (a) STAND-ALONE AND TANDEM STOCK APPRECIATION RIGHTS. Stock Appreciation Rights granted under the Plan may, in the discretion of the Committee, be granted either alone or in tandem with an Option granted under the Plan.

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- (b) RIGHT TO PAYMENT. Upon the exercise of a Stock Appreciation Right, the Participant to whom it is granted has the right to receive the excess, if any, of:
  - (1) The Fair Market Value of one Share on the date of exercise; over
  - (2) The base price of the Stock Appreciation Right as determined by the Committee, which shall not be less than the Fair Market Value of one Share on the Grant Date.
- (c) PROHIBITION ON REPRICING. Except as otherwise provided in Article 15, the base price of a Stock Appreciation Right may not be reduced, directly or indirectly by cancellation and regrant or otherwise, without the prior approval of the shareholders of the Company.
- (d) EXERCISE TERM. In no event may any Stock Appreciation Right be exercisable for more than ten years from the Grant Date.
- (e) NO DEFERRAL FEATURE. No Stock Appreciation Right shall provide for any feature for the deferral of compensation other than the deferral of recognition of income until the later of the exercise or disposition of the Stock Appreciation Right.
- (f) OTHER TERMS. All Stock Appreciation Rights shall be evidenced by an Award Certificate. Subject to the limitations of this Article 8, the terms, methods of exercise, methods of settlement, form of consideration payable in settlement, and any other terms and conditions of any Stock Appreciation Right shall be determined by the Committee at the time of the grant of the Award and shall be reflected in the Award Certificate.

## ARTICLE 9 PERFORMANCE AWARDS

9.1. GRANT OF PERFORMANCE AWARDS. The Committee is authorized to grant Performance Shares, Performance Units or Performance-Based Cash Awards to Participants on such terms and conditions as may be selected by the Committee. The Committee shall have the complete discretion to determine the number of Performance Awards granted to each Participant, subject to Section 5.4, and to designate the provisions of such Performance Awards as provided in Section 4.3. All Performance Awards shall be evidenced by an Award Certificate or a written program established by the Committee, pursuant to which Performance Awards are awarded under the Plan under uniform terms, conditions and restrictions set forth in such written program.

9.2. PERFORMANCE GOALS. The Committee may establish performance goals for Performance Awards which may be based on any criteria selected by the Committee. Such performance goals may be described in terms of Company-wide objectives or in terms of objectives that relate to the performance of the Participant, an Affiliate or a division, region, department or function within the Company or an Affiliate. If the Committee determines that a change in the business, operations, corporate structure or capital structure of the Company or the manner in which the Company or an Affiliate conducts its business, or other events or circumstances render performance goals to be unsuitable, the Committee may modify such

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performance goals in whole or in part, as the Committee deems appropriate. If a Participant is promoted, demoted or transferred to a different business unit or function during a performance period, the Committee may determine that the performance goals or performance period are no longer appropriate and may (i) adjust, change or eliminate the performance goals or the applicable performance period as it deems appropriate to make such goals and period comparable to the initial goals and period, or (ii) make a cash payment to the participant in an amount determined by the Committee. The foregoing two sentences shall not apply with respect to a Performance Award that is intended to be a Qualified Performance-Based Award if the recipient of such award (a) was a Covered Employee on the date of the modification, adjustment, change or elimination of the performance goals or performance period, or (b) in the reasonable judgment of the Committee, may be a Covered Employee on the date the Performance Award is expected to be paid.

9.3. RIGHT TO PAYMENT. The grant of a Performance Share to a Participant will entitle the Participant to receive at a specified later time a specified number of Shares, or the equivalent cash value if the Committee so provides, if the performance goals established by the Committee are achieved and the other terms and conditions thereof are satisfied. The grant of a Performance Unit to a Participant will entitle the Participant to receive at a specified later time a specified dollar value in cash or other property (including Shares) as determined by the Committee, variable under conditions specified in the Award, if the performance goals in the Award are achieved and the other terms and conditions thereof are satisfied. The grant of a Performance-Based Cash Award to a Participant will entitle the Participant to receive at a specified later time a specified dollar value in cash variable under conditions specified in the Award, if the performance goals in the Award are achieved and the other terms and conditions thereof are satisfied. The Committee shall set performance goals and other terms or conditions to payment of the Performance Awards in its discretion which, depending on the extent to which they are met, will determine the value of the Performance Awards that will be paid to the Participant.

9.4. OTHER TERMS. Performance Awards may be payable in cash, Stock, or other property in the discretion of the Committee, and have such other terms and conditions as determined by the Committee and reflected in the Award Certificate. For purposes of determining the number of Shares to be used in payment of a Performance Award denominated in cash but payable in whole or in part in Shares or Restricted Stock, the number of Shares to be so paid will be determined by dividing the cash value of the Award to be so paid by the Fair Market Value of a Share on the date of determination by the Committee of the amount of the payment under the Award, or, if the Committee so directs, the date immediately preceding the date the Award is paid.

## ARTICLE 10 RESTRICTED STOCK, RESTRICTED STOCK UNITS AND DEFERRED STOCK UNITS

10.1. GRANT OF RESTRICTED STOCK, RESTRICTED STOCK UNITS AND DEFERRED STOCK UNITS. The Committee is authorized to make Awards of Restricted Stock, Restricted Stock Units or Deferred Stock Units to Participants in such amounts and subject to such terms and conditions as may be selected by the Committee. An Award of Restricted Stock, Restricted Stock Units or Deferred Stock Units shall be evidenced by an Award Certificate setting forth the terms, conditions, and restrictions applicable to the Award.

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10.2. ISSUANCE AND RESTRICTIONS. Restricted Stock, Restricted Stock Units or Deferred Stock Units shall be subject to such restrictions on transferability and other restrictions as the Committee may impose (including, without limitation, limitations on the right to vote Restricted Stock or the right to receive dividends on the Restricted Stock). These restrictions may lapse separately or in combination at such times, under such circumstances, in such installments, upon the satisfaction of performance goals or otherwise, as the Committee determines at the time of the grant of the Award or thereafter. Except as otherwise provided in an Award Certificate or any special Plan document governing an Award, the Participant shall have all of the rights of a shareholder with respect to the Restricted Stock, and the Participant shall have none of the rights of a shareholder with respect to Restricted Stock Units or Deferred Stock Units until such time as Shares of Stock are paid in settlement of the Restricted Stock Units or Deferred Stock Units. Unless otherwise provided in the applicable Award Certificate, Awards of Restricted Stock will be entitled to full dividend rights and any dividends paid thereon will be paid or distributed to the holder no later than the end of the calendar year in which the dividends are paid to shareholders or, if later, the 15th day of the third month following the date the dividends are paid to shareholders.

10.3. **FORFEITURE.** Except as otherwise determined by the Committee at the time of the grant of the Award or thereafter, upon termination of Continuous Status as a Participant during the applicable restriction period or upon failure to satisfy a performance goal during the applicable restriction period, Restricted Stock or Restricted Stock Units that are at that time subject to restrictions shall be forfeited; provided, however, that the Committee may provide in any Award Certificate that restrictions or forfeiture conditions relating to Restricted Stock or Restricted Stock Units will be waived in whole or in part in the event of terminations resulting from specified causes, and the Committee may in other cases waive in whole or in part restrictions or forfeiture conditions relating to Restricted Stock or Restricted Stock Units. Awards of Deferred Stock Units shall be fully vested at the time of grant and shall not be subject to forfeiture.

10.4. **DELIVERY OF RESTRICTED STOCK.** Shares of Restricted Stock shall be delivered to the Participant at the time of grant either by book-entry registration or by delivering to the Participant, or a custodian or escrow agent (including, without limitation, the Company or one or more of its employees) designated by the Committee, a stock certificate or certificates registered in the name of the Participant. If physical certificates representing shares of Restricted Stock are registered in the name of the Participant, such certificates must bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock.

## ARTICLE 11 QUALIFIED PERFORMANCE-BASED AWARDS

11.1. **OPTIONS AND STOCK APPRECIATION RIGHTS.** The provisions of the Plan are intended to ensure that all Options and Stock Appreciation Rights granted hereunder to any Covered Employee shall qualify for the Section 162(m) Exemption; provided that the exercise or base price of such Award is not less than the Fair Market Value of the Shares on the Grant Date.

11.2. **OTHER AWARDS.** When granting any other Award, the Committee may designate such Award as a Qualified Performance-Based Award, based upon a determination that the recipient is or may be a Covered Employee with respect to such Award, and the Committee wishes such Award to qualify for the Section 162(m) Exemption. If an Award is so designated, the Committee shall establish performance goals for such Award within the time period prescribed by Section 162(m) of the Code based on one or more of the following Qualified

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Business Criteria, which may be expressed in terms of Company-wide objectives or in terms of objectives that relate to the performance of an Affiliate or a division, region, department or function within the Company or an Affiliate:

- Revenue
- Sales
- Profit (net profit, gross profit, operating profit, economic profit, profit margins or other corporate profit measures)
- Earnings (EBIT, EBITDA, earnings per share, or other corporate earnings measures)
- Net income (before or after taxes, operating income or other income measures)
- Cash (cash flow, cash generation or other cash measures)
- Stock price or performance
- Total shareholder return (stock price appreciation plus reinvested dividends divided by beginning share price)
- Economic value added
- Return measures (including, but not limited to, return on assets, capital, equity, investments or sales, and cash flow return on assets, capital, equity, or sales);
- Market share
- Improvements in capital structure
- Expenses (expense management, expense ratio, expense efficiency ratios or other expense measures)
- Business expansion or consolidation (acquisitions and divestitures)
- Internal rate of return or increase in net present value
- Working capital targets relating to inventory and/or accounts receivable
- Productivity measures
- Cost reduction measures
- Capital structure optimization
- Strategic plan development and implementation

Performance goals with respect to the foregoing Qualified Business Criteria may be specified in absolute terms, in percentages, or in terms of growth from period to period or growth rates over time, as well as measured relative to an established or specially-created performance index of Company competitors or peers. Any member of an index that disappears during a measurement period shall be disregarded for the entire measurement period. Performance Goals need not be based upon an increase or positive result under a business criterion and could include, for example, the maintenance of the status quo or the limitation of economic losses (measured, in each case, by reference to a specific business criterion).

11.3. **PERFORMANCE GOALS.** Each Qualified Performance-Based Award (other than a market-priced Option or SAR) shall be earned, vested and payable (as applicable) only upon the achievement of performance goals established by the Committee based upon one or more of the Qualified Business Criteria, together with the satisfaction of any other conditions, such as continued employment, as the Committee may determine to be appropriate; provided, however, that the Committee may provide, either in connection with the grant thereof or by amendment thereafter, that achievement of such performance goals will be waived, in whole or in part, upon (i) the termination of employment of a Participant by reason of death or Disability, or

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(ii) the occurrence of a Change in Control. Performance periods established by the Committee for any such Qualified Performance-Based Award may be as short as three months and may be any longer period. In addition, the Committee may reserve the right, in connection with the grant of a Qualified Performance-Based Award, to exercise negative discretion to determine that the portion of such Award actually earned, vested and/or payable (as applicable) shall be less than the portion that would be earned, vested and/or payable based solely upon application of the applicable performance goals.

11.4. **INCLUSIONS AND EXCLUSIONS FROM PERFORMANCE CRITERIA.** The Committee may provide in any Qualified Performance-Based Award that any evaluation of performance will include or exclude any of the following that occur during the performance period: (a) asset write-downs or impairment charges; (b) litigation or claim judgments or settlements; (c) the effect of changes in tax laws, accounting principles or other laws or provisions affecting reported results; (d) accruals for reorganization and restructuring programs; (e) extraordinary nonrecurring items as described in Accounting Principles Board Opinion No. 30 and/or in management's discussion and analysis of financial condition and results of operations appearing in the Company's annual report to shareholders for the applicable year; (f) acquisitions or divestitures; and (g) foreign exchange gains and losses. To the extent such inclusions or exclusions affect Awards to Covered Employees, they shall be prescribed in a form that meets the requirements of Code Section 162(m) for deductibility.

11.5. **CERTIFICATION OF PERFORMANCE GOALS.** Any payment of a Qualified Performance-Based Award granted with performance goals pursuant to Section 11.3 above shall be conditioned on the written certification of the Committee in each case that the performance goals and any other material conditions were satisfied. Except as specifically provided in Section 11.3, no Qualified Performance-Based Award held by a Covered Employee or by an employee who in the reasonable judgment of the Committee may be a Covered Employee on the date of payment, may be amended, nor may the Committee exercise any discretionary authority it may otherwise have under the Plan with respect to a Qualified Performance-Based Award under the Plan, in any manner to waive the achievement of the applicable performance goal based on Qualified Business Criteria or to increase the amount payable pursuant thereto or the value thereof, or otherwise in a manner that would cause the Qualified Performance-Based Award to cease to qualify for the Section 162(m) Exemption.

11.6. **AWARD LIMITS.** Section 5.4 sets forth the maximum number of Shares or dollar value that may be granted in any one-year period to a Participant in designated forms of Qualified Performance-Based Awards.

## ARTICLE 12 DIVIDEND EQUIVALENTS

12.1. **GRANT OF DIVIDEND EQUIVALENTS.** The Committee is authorized to grant Dividend Equivalents to Participants with respect to Awards granted hereunder, subject to such terms and conditions as may be selected by the Committee. Dividend Equivalents shall entitle the Participant to receive payments equal to dividends with respect to all or a portion of the number of Shares subject to an Award, as determined by the Committee. The Committee may provide that Dividend Equivalents be paid or distributed when accrued or be deemed to have been reinvested in additional Shares, or otherwise reinvested.

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## ARTICLE 13 STOCK OR OTHER STOCK-BASED AWARDS

13.1. **GRANT OF STOCK OR OTHER STOCK-BASED AWARDS.** The Committee is authorized, subject to limitations under applicable law, to grant to Participants such other Awards that are payable in, valued in whole or in part by reference to, or otherwise based on or related to Shares, as deemed by the Committee to be consistent with the purposes of the Plan, including without limitation Shares awarded purely as a "bonus" and not subject to any restrictions or conditions, convertible or exchangeable debt securities, other rights convertible or exchangeable into Shares, and Awards valued by reference to book value of Shares or the value of securities of or the performance of specified Parents or Subsidiaries. The Committee shall determine the terms and conditions of such Awards.

## ARTICLE 14 PROVISIONS APPLICABLE TO AWARDS

14.1. **TERM OF AWARD.** The term of each Award shall be for the period as determined by the Committee, provided that in no event shall the term of any Option or a Stock Appreciation Right exceed a period of ten years from its Grant Date (or, where required by Code Section 422 in the case of certain Incentive Stock Options, five years from its Grant Date).

14.2. **FORM OF PAYMENT FOR AWARDS.** Subject to the terms of the Plan and any applicable law or Award Certificate, payments or transfers to be made by the Company or an Affiliate on the grant or exercise of an Award may be made in such form as the Committee determines at or after the Grant Date, including without limitation, cash, Stock, other Awards, or other property, or any combination, and may be made in a single payment or transfer, in installments, or on a deferred basis, in each case determined in accordance with rules adopted by, and at the discretion of, the Committee.

14.3. **LIMITS ON TRANSFER.** No right or interest of a Participant in any unexercised or restricted Award may be pledged, encumbered, or hypothecated to or in favor of any party other than the Company or an Affiliate, or shall be subject to any lien, obligation, or liability of such Participant to any other party other than the Company or an Affiliate. No unexercised or restricted Award shall be assignable or transferable by a Participant other than by will or the laws of descent and distribution; provided, however, that the Committee may (but need not) permit other transfers (other than transfers for value) where the Committee concludes that such transferability (i) does not result in accelerated taxation, (ii) does not cause any Option intended to be an Incentive Stock Option to fail to be described in Code Section 422(b), and (iii) is otherwise appropriate and desirable, taking into account any factors deemed relevant, including without limitation, state or federal tax or securities laws applicable to transferable Awards.

14.4. **BENEFICIARIES.** Notwithstanding Section 14.3, a Participant may, in the manner determined by the Committee, designate a beneficiary to exercise the rights of the Participant and to receive any distribution with respect to any Award upon the Participant's death by filing a beneficiary designation form, in such form as determined by the Committee, with the Company. A beneficiary, legal guardian, legal representative, or other person claiming any rights under the Plan is subject to all terms and conditions of the Plan and any Award Certificate applicable to the Participant, except to the extent the Plan and Award Certificate otherwise provide, and to any additional restrictions deemed necessary or appropriate by the Committee. If no beneficiary has been designated or survives the Participant, payment shall be made in

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accordance with applicable law. Subject to the foregoing, a beneficiary designation may be changed or revoked by a Participant at any time provided the change or revocation is filed.

14.5. **STOCK CERTIFICATES.** All Stock issuable under the Plan is subject to any stop-transfer orders and other restrictions as the Committee deems necessary or advisable to comply with federal or state securities laws, rules and regulations and the rules of any national securities exchange or automated quotation system on which the Stock is listed, quoted, or traded. The Committee may place legends on any Stock certificate or issue instructions to the transfer agent to reference restrictions applicable to the Stock.

14.6. **ACCELERATION UPON DEATH OR DISABILITY.** Except as otherwise provided in the Award Certificate or any special Plan document governing an Award, upon the termination of a person's Continuous Status as a Participant by reason of death or Disability, (i) all of such Participant's outstanding Options, SARs, and other Awards in the nature of rights that may be exercised shall become fully exercisable, (ii) all time-based vesting restrictions on the Participant's outstanding Awards shall lapse, and (iii) the target payout opportunities attainable under all of such Participant's outstanding performance-based Awards shall be deemed to have been fully earned as of the date of termination based upon an assumed achievement of all relevant performance goals at the "target" level and there shall be a pro rata payout to the Participant or his or her estate within thirty (30) days following the date of termination (unless a later date is required by Section 17.4 hereof) based upon the length of time within the performance period that has elapsed prior to the date of termination. Any Awards shall thereafter continue or lapse in accordance with the other provisions of the Plan and the Award Certificate. To the extent that this provision causes Incentive Stock Options to exceed the dollar limitation set forth in Code Section 422(d), the excess Options shall be deemed to be Nonstatutory Stock Options.

14.7. **EFFECT OF A CHANGE IN CONTROL.** The provisions of this Section 14.7 shall apply in the case of a Change in Control, unless otherwise provided in the Award Certificate or any special Plan document or separate agreement with a Participant governing an Award.

(a) **Awards not Assumed or Substituted by Surviving Entity.** Upon the occurrence of a Change in Control, and except with respect to any Awards assumed by the Surviving Entity or otherwise equitably converted or substituted in connection with the Change in Control in a manner approved by the Committee or the Board: (i) outstanding Options, SARs, and other Awards in the nature of rights that may be exercised shall become fully exercisable, (ii) time-based vesting restrictions on outstanding Awards shall lapse, and (iii) the target payout opportunities attainable under all outstanding performance-based Awards shall be deemed to have been fully earned as of the date of the Change in Control based upon an assumed achievement of all relevant performance goals at the "target" level and, subject to Section 17.4, there shall be a pro rata payout to Participants within thirty (30) days following the date of the Change in Control (unless a later date is required by Section 17.4 hereof) based upon the length of time within the performance period that has elapsed prior to the date of the Change in Control. Any Awards shall thereafter continue or lapse in accordance with the other provisions of the Plan and the Award Certificate. To the extent that this provision causes Incentive Stock Options to exceed the dollar limitation set forth in Code Section 422(d), the excess Options shall be deemed to be Nonstatutory Stock Options.

(b) **Awards Assumed or Substituted by Surviving Entity.** With respect to Awards assumed by the Surviving Entity or otherwise equitably converted or substituted in connection with a Change in Control: if within two years after the effective date of the

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Change in Control, a Participant's employment is terminated without Cause or (subject to the following sentence) the Participant resigns for Good Reason, then (i) all of that Participant's outstanding Options, SARs and other Awards in the nature of rights that may be exercised shall become fully exercisable, (ii) all time-based vesting restrictions on the his or her outstanding Awards shall lapse, and (iii) the payout opportunities attainable under all of such Participant's outstanding performance-based Awards shall be earned based on actual performance through the end of the performance period, and there shall be a pro rata payout to the Participant or his or her estate within 30 days after the amount earned has been determined (unless a later date is required by Section 17.4 hereof) based upon the length of time within the performance period that has elapsed prior to the date of termination. With regard to each Award, a Participant shall not be considered to have resigned for Good Reason unless either (i) the Award Certificate includes such provision or (ii) the Participant is party to an employment, severance or similar agreement with the Company or an Affiliate that includes provisions in which the Participant is permitted to resign for Good Reason. Any Awards shall thereafter continue or lapse in accordance with the other provisions of the Plan and the Award Certificate. To the extent that this provision causes Incentive Stock Options to exceed the dollar limitation set forth in Code Section 422(d), the excess Options shall be deemed to be Nonstatutory Stock Options.

14.8. **ACCELERATION FOR ANY OTHER REASON.** Regardless of whether an event has occurred as described in Section 14.6 or 14.7 above, and subject to Section 11.3 as to Qualified Performance-Based Awards, the Committee may in its sole discretion at any time determine that, upon the termination of service of a Participant, or the occurrence of a Change in Control, all or a portion of such Participant's Options, SARs and other Awards in the nature of rights that may be exercised shall become fully or partially exercisable, that all or a part of the restrictions on all or a portion of the Participant's outstanding Awards shall lapse, and/or that any performance-based criteria with respect to any Awards held by that Participant shall be deemed to be wholly or partially satisfied, in each case, as of such date as the Committee may, in its sole discretion, declare. The Committee may discriminate among Participants and among Awards granted to a Participant in exercising its discretion pursuant to this Section 14.8.

14.9. **EFFECT OF ACCELERATION.** If an Award is accelerated under Section 14.6, 14.7 or 14.8, the Committee may, in its sole discretion, provide (i) that the Award will expire after a designated period of time after such acceleration to the extent not then exercised, (ii) that the Award will be settled in cash rather than Stock, (iii) that the Award will be assumed by another party to a transaction giving rise to the acceleration or otherwise be equitably converted or substituted in connection with such transaction, (iv) that the Award may be settled by payment in cash or cash equivalents equal to the excess of the Fair Market Value of the underlying Stock, as of a specified date associated with the transaction, over the exercise price of the Award, or (v) any combination of the foregoing. The Committee's determination need not be uniform and may be different for different Participants whether or not such Participants are similarly situated. To the extent that such acceleration causes Incentive Stock Options to exceed the dollar limitation set forth in Code Section 422(d), the excess Options shall be deemed to be Nonstatutory Stock Options.

14.10. **TERMINATION OF EMPLOYMENT.** Whether military, government or other service or other leave of absence shall constitute a termination of employment shall be determined in each case by the Committee at its discretion, and any determination by the Committee shall be final and conclusive. A Participant's Continuous Status as a Participant shall not be deemed to terminate (i) in a circumstance in which a Participant transfers from the

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Company to an Affiliate, transfers from an Affiliate to the Company, or transfers from one Affiliate to another Affiliate, or (ii) in the discretion of the Committee as specified at or prior to such occurrence, in the case of a spin-off, sale or disposition of the Participant's employer from the Company or any Affiliate. To the extent that this provision causes Incentive Stock Options to extend beyond three months from the date a Participant is deemed to be an employee of the Company, a Parent or Subsidiary for purposes of Sections 424(e) and 424(f) of the Code, the Options held by such Participant shall be deemed to be Nonstatutory Stock Options.

14.11. **SUBSTITUTE AWARDS.** The Committee may grant Awards under the Plan in substitution for stock and stock-based awards held by employees of another entity who become employees of the Company or an Affiliate as a result of a merger or consolidation of the former employing entity with the Company or an Affiliate or the acquisition by the Company or an Affiliate of property or stock of the former employing corporation. The Committee may direct that the substitute awards be granted on such terms and conditions as the Committee considers appropriate in the circumstances.

14.12. **FORFEITURE EVENTS.** The Committee may specify in an Award Certificate that the Participant's rights, payments and benefits with respect to an Award shall be subject to reduction, cancellation, forfeiture or recoupment upon the occurrence of certain specified events, in addition to any otherwise applicable vesting or performance conditions of an Award. Such events shall include, but shall not be limited to, termination of employment for Cause, violation of material Company or Affiliate policies, breach of noncompetition, confidentiality or other restrictive covenants that may apply to the Participant, or other conduct by the Participant that is detrimental to the business or reputation of the Company or any Affiliate.

## ARTICLE 15 CHANGES IN CAPITAL STRUCTURE

15.1. **MANDATORY ADJUSTMENTS.** In the event of a nonreciprocal transaction between the Company and its shareholders that causes the per-share value of the Stock to change (including, without limitation, any stock dividend, stock split, spin-off, rights offering, or large nonrecurring cash dividend), the authorization limits under Sections 5.1 and 5.4 shall be adjusted proportionately, and the Committee shall make such adjustments to the Plan and Awards as it deems necessary, in its sole discretion, to prevent dilution or enlargement of rights immediately resulting from such transaction. Action by the Committee may include: (i) adjustment of the number and kind of shares that may be delivered under the Plan; (ii) adjustment of the number and kind of shares subject to outstanding Awards; (iii) adjustment of the exercise price of outstanding Awards or the measure to be used to determine the amount of the benefit payable on an Award; and (iv) any other adjustments that the Committee determines to be equitable. Without limiting the foregoing, in the event of a subdivision of the outstanding Stock (stock-split), a declaration of a dividend payable in Shares, or a combination or consolidation of the outstanding Stock into a lesser number of Shares, the authorization limits under Sections 5.1 and 5.4 shall automatically be adjusted proportionately, and the Shares then subject to each Award shall automatically, without the necessity for any additional action by the Committee, be adjusted proportionately without any change in the aggregate purchase price therefor.

15.2. **DISCRETIONARY ADJUSTMENTS.** Upon the occurrence or in anticipation of any corporate event or transaction involving the Company (including, without limitation, any merger, reorganization, recapitalization, combination or exchange of shares, or any transaction described in Section 15.1), the Committee may, in its sole discretion, provide (i) that Awards will be settled in cash rather than Stock, (ii) that Awards will become immediately vested and

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exercisable and will expire after a designated period of time to the extent not then exercised, (iii) that Awards will be assumed by another party to a transaction or otherwise be equitably converted or substituted in connection with such transaction, (iv) that outstanding Awards may be settled by payment in cash or cash equivalents equal to the excess of the Fair Market Value of the underlying Stock, as of a specified date associated with the transaction, over the exercise price of the Award, (v) that performance targets and performance periods for Performance Awards will be modified, consistent with Code Section 162(m) where applicable, or (vi) any combination of the foregoing. The Committee's determination need not be uniform and may be different for different Participants whether or not such Participants are similarly situated.

15.3 GENERAL. Any discretionary adjustments made pursuant to this Article 15 shall be subject to the provisions of Section 16.2. To the extent that any adjustments made pursuant to this Article 15 cause Incentive Stock Options to cease to qualify as Incentive Stock Options, such Options shall be deemed to be Nonstatutory Stock Options.

#### ARTICLE 16 AMENDMENT, MODIFICATION AND TERMINATION

16.1. AMENDMENT, MODIFICATION AND TERMINATION. The Board or the Committee may, at any time and from time to time, amend, modify or terminate the Plan without shareholder approval; provided, however, that if an amendment to the Plan would, in the reasonable opinion of the Board or the Committee, constitute a material change requiring shareholder approval under applicable laws, policies or regulations or the applicable listing or other requirements of an Exchange, then such amendment shall be subject to shareholder approval; and provided, further, that the Board or Committee may condition any other amendment or modification on the approval of shareholders of the Company for any reason, including by reason of such approval being necessary or deemed advisable (i) to comply with the listing or other requirements of an Exchange, or (ii) to satisfy any other tax, securities or other applicable laws, policies or regulations.

16.2. AWARDS PREVIOUSLY GRANTED. At any time and from time to time, the Committee may amend, modify or terminate any outstanding Award without approval of the Participant; provided, however:

- (a) Subject to the terms of the applicable Award Certificate, such amendment, modification or termination shall not, without the Participant's consent, reduce or diminish the value of such Award determined as if the Award had been exercised, vested, cashed in or otherwise settled on the date of such amendment or termination (with the per-share value of an Option or SAR for this purpose being calculated as the excess, if any, of the Fair Market Value as of the date of such amendment or termination over the exercise or base price of such Award);
- (b) The original term of an Option or SAR may not be extended without the prior approval of the shareholders of the Company;
- (c) Except as otherwise provided in Article 15, the exercise price of an Option or SAR may not be reduced, directly or indirectly, without the prior approval of the shareholders of the Company; and
- (d) No termination, amendment, or modification of the Plan shall adversely affect any Award previously granted under the Plan, without the written consent of the

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Participant affected thereby. An outstanding Award shall not be deemed to be "adversely affected" by a Plan amendment if such amendment would not reduce or diminish the value of such Award determined as if the Award had been exercised, vested, cashed in or otherwise settled on the date of such amendment (with the per-share value of an Option or SAR for this purpose being calculated as the excess, if any, of the Fair Market Value as of the date of such amendment over the exercise or base price of such Award).

#### ARTICLE 17 GENERAL PROVISIONS

17.1. NO RIGHTS TO AWARDS; NON-UNIFORM DETERMINATIONS. No Participant or any Eligible Participant shall have any claim to be granted any Award under the Plan. Neither the Company, its Affiliates nor the Committee is obligated to treat Participants or Eligible Participants uniformly, and determinations made under the Plan may be made by the Committee selectively among Eligible Participants who receive, or are eligible to receive, Awards (whether or not such Eligible Participants are similarly situated).

17.2. NO SHAREHOLDER RIGHTS. No Award gives a Participant any of the rights of a shareholder of the Company unless and until Shares are in fact issued to such person in connection with such Award.

17.3. WITHHOLDING. The Company or any Affiliate shall have the authority and the right to deduct or withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy federal, state, and local taxes (including the Participant's FICA obligation) required by law to be withheld with respect to any exercise, lapse of restriction or other taxable event arising as a result of the Plan or an Award. With respect to withholding required upon any taxable event under the Plan, the Committee may, at the time the Award is granted or thereafter, require or permit that any such withholding requirement be satisfied, in whole or in part, by withholding from the Award Shares having a Fair Market Value on the date of withholding equal to the minimum amount (and not any greater amount) required to be withheld for tax purposes, all in accordance with such procedures as the Committee establishes.

17.4. Special Provisions related to Section 409A of the Code.

(a) Notwithstanding anything in the Plan or in any Award Certificate to the contrary, to the extent that any amount or benefit that would constitute non-exempt "deferred compensation" for purposes of Section 409A of the Code would otherwise be payable or distributable under the Plan or any Award Certificate by reason of the occurrence of a Change in Control or the Participant's Disability or separation from service, such amount or benefit will not be payable or distributable to the Participant by reason of such circumstance unless (i) the circumstances giving rise to such Change in Control, Disability or separation from service meet the description or definition of "change in control event", "disability" or "separation from service", as the case may be, in Section 409A of the Code and applicable final regulations (without giving effect to any elective provisions that may be available under such definition), or (ii) the payment or distribution of such amount or benefit would be exempt from the application of Section 409A of the Code by reason of the short-term deferral exemption or otherwise. This provision does not prohibit the vesting of any Award upon a Change in Control, Disability or separation from service, however defined. If this provision prevents the payment or distribution of any amount or benefit, such payment or distribution shall be made on the next earliest

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payment or distribution date or event specified in the Award Certificate that is permissible under Section 409A.

(b) If any one or more Awards granted under the Plan to a Participant could qualify for any separation pay exemption described in Treas. Reg. Section 1.409A-1(b)(9), but such Awards in the aggregate exceed the dollar limit permitted for the separation pay exemptions, the Company (acting through the Committee or the Head of Human Resources) shall determine which Awards or portions thereof will be subject to such exemptions.

(c) Notwithstanding anything in the Plan or in any Award Certificate to the contrary, if any amount or benefit that would constitute non-exempt "deferred compensation" for purposes of Section 409A of the Code would otherwise be payable or distributable under this Plan or any Award Certificate by reason of a Participant's separation from service during a period in which the Participant is a Specified Employee (as defined below), then, subject to any permissible acceleration of payment by the Committee under Treas. Reg. Section 1.409A-3(j)(4)(ii) (domestic relations order), (j)(4)(iii) (conflicts of interest), or (j)(4)(vi) (payment of employment taxes):

(i) if the payment or distribution is payable in a lump sum, the Participant's right to receive payment or distribution of such non-exempt deferred compensation will be delayed until the earlier of the Participant's death or the first day of the seventh month following the Participant's separation from service; and

(ii) if the payment or distribution is payable over time, the amount of such non-exempt deferred compensation that would otherwise be payable during the six-month period immediately following the Participant's separation from service will be accumulated and the Participant's right to receive payment or distribution of such accumulated amount will be delayed until the earlier of the Participant's death or the first day of the seventh month following the Participant's separation from service, whereupon the accumulated amount will be paid or distributed to the Participant and the normal payment or distribution schedule for any remaining payments or distributions will resume.

For purposes of this Plan, the term "Specified Employee" has the meaning given such term in Code Section 409A and the final regulations thereunder, *provided, however*, that, as permitted in such final regulations, the Company's Specified Employees and its application of the six-month delay rule of Code Section 409A(a)(2)(B)(i) shall be determined in accordance with rules adopted by the Board or any committee of the Board, which shall be applied consistently with respect to all nonqualified deferred compensation arrangements of the Company, including this Plan.

17.5. NO RIGHT TO CONTINUED SERVICE. Nothing in the Plan, any Award Certificate or any other document or statement made with respect to the Plan, shall interfere with or limit in any way the right of the Company or any Affiliate to terminate any Participant's employment or status as an officer, director or consultant at any time, nor confer upon any Participant any right to continue as an employee, officer, director or consultant of the Company or any Affiliate, whether for the duration of a Participant's Award or otherwise.

17.6. UNFUNDED STATUS OF AWARDS. The Plan is intended to be an "unfunded" plan for incentive and deferred compensation. With respect to any payments not yet made to a Participant pursuant to an Award, nothing contained in the Plan or any Award

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Certificate shall give the Participant any rights that are greater than those of a general creditor of the Company or any Affiliate. This Plan is not intended to be subject to ERISA.

17.7. RELATIONSHIP TO OTHER BENEFITS. No payment under the Plan shall be taken into account in determining any benefits under any pension, retirement, savings, profit sharing, group insurance, welfare or benefit plan of the Company or any Affiliate unless provided otherwise in such other plan.

17.8. EXPENSES. The expenses of administering the Plan shall be borne by the Company and its Affiliates.

17.9. TITLES AND HEADINGS. The titles and headings of the Sections in the Plan are for convenience of reference only, and in the event of any conflict, the text of the Plan, rather than such titles or headings, shall control.

17.10. GENDER AND NUMBER. Except where otherwise indicated by the context, any masculine term used herein also shall include the feminine; the plural shall include the singular and the singular shall include the plural.

17.11. FRACTIONAL SHARES. No fractional Shares shall be issued and the Committee shall determine, in its discretion, whether cash shall be given in lieu of fractional Shares or whether such fractional Shares shall be eliminated by rounding up or down.

17.12. GOVERNMENT AND OTHER REGULATIONS.

(a) Notwithstanding any other provision of the Plan, no Participant who acquires Shares pursuant to the Plan may, during any period of time that such Participant is an affiliate of the Company (within the meaning of the rules and regulations of the Securities and Exchange Commission under the 1933 Act), sell such Shares, unless such offer and sale is made (i) pursuant to an effective registration statement under the 1933 Act, which is current and includes the Shares to be sold, or (ii) pursuant to an appropriate exemption from the registration requirement of the 1933 Act, such as that set forth in Rule 144 promulgated under the 1933 Act.

(b) Notwithstanding any other provision of the Plan, if at any time the Committee shall determine that the registration, listing or qualification of the Shares covered by an Award upon any Exchange or under any foreign, federal, state or local law or practice, or the consent or approval of any governmental regulatory body, is necessary or desirable as a condition of, or in connection with, the granting of such Award or the purchase or receipt of Shares thereunder, no Shares may be purchased, delivered or received pursuant to such Award unless and until such registration, listing, qualification, consent or approval shall have been effected or obtained free of any condition not acceptable to the Committee. Any Participant receiving or purchasing Shares pursuant to an Award shall make such representations and agreements and furnish such information as the Committee may request to assure compliance with the foregoing or any other applicable legal requirements. The Company shall not be required to issue or deliver any certificate or certificates for Shares under the Plan prior to the Committee's determination that all related requirements have been fulfilled. The Company shall in no event be obligated to register any securities pursuant to the 1933 Act or applicable state or foreign law or to take any other action in order to cause the issuance and delivery of such certificates to comply with any such law, regulation or requirement.

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17.13. GOVERNING LAW. To the extent not governed by federal law, the Plan and all Award Certificates shall be construed in accordance with and governed by the laws of the State of Delaware.

17.14. ADDITIONAL PROVISIONS. Each Award Certificate may contain such other terms and conditions as the Committee may determine; provided that such other terms and conditions are not inconsistent with the provisions of the Plan.

17.15. NO LIMITATIONS ON RIGHTS OF COMPANY. The grant of any Award shall not in any way affect the right or power of the Company to make adjustments, reclassification or changes in its capital or business structure or to merge, consolidate, dissolve, liquidate, sell or transfer all or any part of its business or assets. The Plan shall not restrict the authority of the Company, for proper corporate purposes, to draft or assume awards, other than under the Plan, to or with respect to any person. If the Committee so directs, the Company may issue or transfer Shares to an Affiliate, for such lawful consideration as the Committee may specify, upon the condition or understanding that the Affiliate will transfer such Shares to a Participant in accordance with the terms of an Award granted to such Participant and specified by the Committee pursuant to the provisions of the Plan.

17.16. INDEMNIFICATION. Each person who is or shall have been a member of the Committee, or of the Board, or an officer of the Company to whom authority was delegated in accordance with Article 4 shall be indemnified and held harmless by the Company against and from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by him or her in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action taken or failure to act under the Plan and against and from any and all amounts paid by him or her in settlement thereof, with the Company's approval, or paid by him or her in satisfaction of any judgment in any such action, suit, or proceeding against him or her, provided he or she shall give the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf, unless such loss, cost, liability, or expense is a result of his or her own willful misconduct or except as expressly provided by statute. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company's charter or bylaws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

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The foregoing is hereby acknowledged as being the Roper Industries, Inc. Amended and Restated 2006 Incentive Plan as adopted by the Board on April 25, 2008 and by the shareholders on June 6, 2008.

ROPER INDUSTRIES, Inc.

By: /s/ David B. Liner  
Its: General Counsel and Corporate Secretary

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I, Brian D. Jellison, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Roper Industries, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2008

/s/ Brian D. Jellison

Brian D. Jellison  
Chairman, President and  
Chief Executive Officer



I, John Humphrey, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Roper Industries, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2008

/s/ John Humphrey

John Humphrey  
Vice President, Chief Financial Officer

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Roper Industries, Inc. (the "Company") on Form 10-Q for the period ending September 30, 2008, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Brian D. Jellison, Chief Executive Officer of the Company certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to the best of my knowledge that:

1. The Report fully complies with the requirements of section 13(a) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the dates and periods covered by the Report.

This certificate is being made for the exclusive purpose of compliance by the Chief Executive Officer of the Company with the requirements of Section 906 of the Sarbanes-Oxley Act of 2002, and may not be disclosed, distributed or used by any person or for any reason other than specifically required by law.

/s/ Brian D. Jellison

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Brian D. Jellison  
Chairman, President and Chief Executive Officer  
November 7, 2008

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Roper Industries, Inc. (the "Company") on Form 10-Q for the period ending September 30, 2008, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, John Humphrey, Chief Financial Officer of the Company certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to the best of my knowledge that:

1. The Report fully complies with the requirements of section 13(a) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the dates and periods covered by the Report.

This certificate is being made for the exclusive purpose of compliance by the Chief Financial Officer of the Company with the requirements of Section 906 of the Sarbanes-Oxley Act of 2002, and may not be disclosed, distributed or used by any person or for any reason other than specifically required by law.

/s/ John Humphrey

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John Humphrey  
Vice President, Chief Financial Officer  
November 7, 2008