

This instrument prepared by:

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Telephone: (601) 353-3234

When recorded return to:

When recorded mail to:  
First American Title Insurance  
Lenders Advantage  
1100 Superior Avenue, Suite 200  
Cleveland, Ohio 44114  
Attn: Roseann Glisha

STATE OF TEXAS

COUNTY OF SHELBY

**SURFACE USE AGREEMENT**

This SURFACE USE AGREEMENT (this "Agreement"), dated as of October 30, 2006 ("Effective Date"), is among TimberStar Nacogdoches I LP, a Delaware limited partnership and TimberStar Nacogdoches II LP, a Delaware limited partnership (individually, a "Surface Owner" and collectively "Surface Owners") and International Paper Company, a New York corporation, Sustainable Forests L.L.C., a Delaware limited liability company and Blue Sky Timber Properties LLC, a Delaware limited liability company (individually, a "Mineral Owner" and collectively "Mineral Owners") (Surface Owners and Mineral Owners collectively the "Parties").

RECITALS

WHEREAS, pursuant to that certain Purchase Agreement dated as of April 4, 2006 (the "Purchase Agreement") among TimberStar Southwest Parent LLC, a Delaware limited liability company, TimberStar Southwest LLC, a Delaware limited liability company, the other buying parties becoming party thereto in accordance with, Section 15.16 thereof, International Paper Company, and the other selling parties named therein, Mineral Owners have sold, assigned and transferred to Surface Owners, among other assets and properties, the property described on Exhibit A attached hereto (the "Property");

WHEREAS, the Mineral Owners have retained and reserved to the Mineral Owners, as their interests may appear, the Reserved Minerals and Gases and the Reserved Mineral and Gas

Rights, which are located in and under the Property, the foregoing rights being more particularly defined on **Exhibit B** attached hereto;

WHEREAS, the Parties desire to enter into this Surface Use Agreement in order to set forth the Parties' rights and obligations with respect to the Property and the Reserved Minerals and Gases and Reserved Mineral and Gas Rights;

NOW, THEREFORE, in consideration of the foregoing, and intending to be legally bound hereby, the Parties agree as follows:

(1) **Definitions.** Capitalized terms used but not defined in this Agreement shall have the meanings ascribed to such terms in the Purchase Agreement. "Mineral Owner" as used herein shall mean each Mineral Owner and its successors and assigns, as its interest may appear with respect to the applicable property described on **Exhibit A**, attached hereto. "**Mineral Operator**" as used herein shall mean the Mineral Owners, their successors and assigns, the Mineral Owners lessees and their successors and assigns, and the Mineral Owners operators and their successors and assigns, but only, in each instance, if and to the extent any such entities are conducting Operations on all or any portion of the Property. "Operations" as used herein shall mean all operations after the Effective Date by Mineral Operator on the Property in connection with the Reserved Minerals and Gases and Reserved Mineral and Gas Rights, including, without limitation: (a) surveying, inspecting, reconnaissance, drilling, mining, exploring, developing, producing, pumping, processing, cleaning, storing, removing, treating, transporting, conducting seismic activities, excavating pits, constructing and maintaining roads, pipelines and locations, gathering line construction, drilling water wells, using sand and gravel for the purposes of constructing and maintaining roads and locations, and all other related activities; and (b) without limiting the foregoing in any way, with respect to coal and lignite, to make and use openings, to dispose of, use and pile up the overburden and other substances removed in surface mining, to store in and upon the Property coal and lignite mined and overburden removed from the Property, to erect, use and maintain on the Property such buildings, reservoirs, engines, machinery, railroad tracks, conveyors, shops, ditches, power and communications lines and other equipment and facilities necessary for the mining and sale of coal and lignite, but specifically excluding any plants, equipments or facilities designed for the burning of coal for power generation, or other ultimate use of coal on the Property. "**Surface Owner**" as used herein shall mean each Surface Owner and, its successors and assigns, as its interest may appear with respect to the applicable Property on **Exhibit A**.

(2) **General.** Except as expressly contemplated by this Agreement, Mineral Owners and Surface Owner shall conduct their respective operations on the Property so as not to unreasonably interfere with the operations or activities of the other Party. Mineral Operator shall conduct all Operations in full compliance with all applicable laws, rules, regulations and orders of any governmental authority having jurisdiction over the Property, including, but not limited to those laws, rules, regulations and orders for protection of the environment, prevention of water pollution and prevention and suppression of forest fires. Mineral Operator shall protect and prevent the Property from being contaminated or damaged by hazardous substances in such manner as may be required by governmental regulations. Unless

first consented to in writing by Surface Owner, no new oil or gas well shall be drilled nearer than 200 feet to any then inhabited structure now or hereafter placed on the Property.

(3) **Reserved Water Rights.** Without limiting anything in the Section (2) above, with respect to Reserved Water Rights, Surface Owner agrees that Surface Owner shall not: (a) unreasonably interfere with or oppose Mineral Operator's Reserved Water Rights; (b) sell or donate groundwater from any portion of the Texas Property to any third party; (c) cause or permit any third party to transport captured or collected groundwater from any portion of the Texas Property; (d) intentionally take or permit any action reasonably expected to cause damage to any underground water formation on the Texas Property other than damages that may occur in connection with Surface Owner's reasonable silviculture operations or Surface Owner's drilling of water wells for non-commercial on-site use on the Texas Property; and (e) inject (or expressly permit Surface Owner's Affiliates or any third party to inject) wastewater or waste material, Hazardous Substances or salt water into any formation on the Texas Property. Surface Owner shall not authorize its Affiliates or third parties to inject wastewater or waste material, Hazardous Substances or salt water into any underground formation on the Texas Property. Surface Owner acknowledges that future operations related to Mineral Operator's Reserved Water Rights and the Operations on the Texas Property with respect to the Reserved Water Rights may interfere with surface activities on the Texas Property, provided, such interference shall not unreasonably and adversely interfere with surface activities on the Texas Property. Mineral Owner hereby agrees that Surface Owner and its assigns, shall be permitted to: (x) use the groundwater of the Texas Property for silviculture operations in compliance with all applicable laws, including Environmental Laws, including the right to drill water wells and maintain such wells and ancillary equipment necessary for groundwater withdrawal; (y) with respect to any portion of the Texas Property transferred in accordance with the terms of the Support Agreement by and between the Parties of even date herewith (the "Support Agreement"), the New Owner (as defined in the Support Agreement) may use the groundwater under such portion of the Texas Property for its own agricultural operations, provided such use shall comply with best water management practices and with all applicable laws, including Environmental Laws, including the right to drill water wells and maintain such wells and ancillary equipment necessary for groundwater withdrawal; (subsections (x) and (y) collectively referred to as "Permitted Uses") and (z) use the groundwater of the Texas Property for non-commercial on-site use in compliance with all applicable law, including Environmental Laws, including the right to drill water wells and maintain such wells and ancillary equipment necessary for groundwater withdrawal ; provided, however, that Surface Owner, on its behalf and on behalf of its Affiliates, agrees that Mineral Owner's Reserved Water Rights supersede Surface Owner's permitted uses of groundwater on the Texas Property hereunder and that, in the event all available groundwater resources are needed for the full exercise of Mineral Operator's Reserved Water Rights, the authorized uses by Surface Owner and its Affiliates (and New Owner, if applicable) of groundwater on the Texas Property hereunder, other than Permitted Uses, may be terminated, either temporarily or permanently, by Mineral Operator, upon forty-five (45) days advance written notice to Surface Owner. The foregoing shall not be deemed to waive any rights of Surface Owner under Texas Law. Surface Owner shall indemnify, defend and hold Mineral Owner harmless from and against any and all claims, demands, losses, expenses, damages, costs and liabilities, suffered or incurred by any third party or by Mineral Operator or Mineral Operator's employees, agents, Affiliates or representatives that are attributable to the acts or

omissions of Surface Owner and its employees, agents, Affiliates or representatives arising in connection with the permitted uses by Surface Owner and its Affiliates of groundwater on the Texas Property as described in this Agreement. "Affiliate" as used herein shall mean, with respect to any individual, general partnership, limited partnership, corporation, limited liability company, joint venture, trust, business trust, cooperative or association ("Person"), any other Person directly or indirectly controlling, controlled by or under common control with such Person. "Control" when used with respect to any Person means the ownership of not less than 50% of the ownership interest in such Person and the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" or "controlled" have meanings correlative to the foregoing.

(4) **Subsurface Geosequestration Rights.** Mineral Operator shall have the right to use, inject and sequester carbon dioxide and other greenhouse gases in the surface soils and subsurface of the Property, including, without limitation, oil and gas reservoirs, coal seams, and other geological formations, together with the access rights of ingress and egress necessary to utilize these rights, including, without limitation, the right to field test and employ these rights in the surface soils or the subsurface of the Property and to separate, transport and store carbon dioxide and greenhouse gas emissions in surface soils or the subsurface of the Property. These rights also shall include all property, rights, privileges, and benefits in any way belonging, incidental or pertaining to these rights, including, without limitation, the right to any past, present and future tax or other credits related to carbon dioxide or other greenhouse gas use, injection and sequestration. Mineral Operator acknowledges and agrees that Surface Owner has the rights to any biological sequestration above the land surface with respect to the Property. Surface Owner shall not (a) sequester carbon dioxide or other greenhouse gas emissions in the surface soils or subsurface of the Property; (b) engage in field testing relating to carbon dioxide or other greenhouse gas emissions in the surface soils or subsurface of the Property; (c) employ carbon sequestration technology in the surface soils or subsurface of the Property; or (d) separate, transport or store carbon dioxide or other greenhouse gas emissions on the Property.

(5) **Notice.** Mineral Operator shall give at least thirty (30) days prior written notice to Surface Owner for all new Operations to be conducted on the Property. During such 30-day period, Surface Owner has the opportunity, but not the obligation, to salvage timber on the portion of the Property that may be harvested or damaged as the result of such Operations. Each such notice shall contain a map or plat showing the location on the Property of the Operations to be conducted, including, but not limited to, the location of any existing or proposed roads and pipelines that will be used in connection with such Operations, a full description of such Operations, a description of any timber that may be cut and removed from the Property in connection therewith and a timetable showing the anticipated dates on which Operations are expected to commence. It is understood and agreed that activities associated with, related to, in furtherance or continuance of or resulting from operations previously noticed to Surface Owner shall not be considered a new Operation for purposes of this paragraph.

(6) **Roads and Pipelines.** With respect to Operations under oil, gas and mineral leases executed after the Effective Date, Mineral Operator shall build and use only such roads and pipelines as are reasonably necessary to conduct its Operations on the Property, with

the understanding that the Mineral Operator shall use commercially reasonable efforts to minimize damage to the Property, and the Roads must be built and maintained to applicable road construction and maintenance standards (the "Road Standards"), including but not limited to compliance with best management practices of the state in which the roads are located. During such Operations, Mineral Operator shall maintain such roads at its sole cost and expense to the Road Standards. Surface Owner shall have the right in common with Mineral Operator to use any such roads in such a manner so as not to interfere unreasonably with the Operations of Mineral Operator. All roads constructed by Mineral Operator shall become the property of Surface Owner and Surface Owner accepts responsibility for the road maintenance following completion of the Operations of Mineral Operator. With respect to Operations under oil, gas and mineral leases executed before the Effective Date, roads and pipelines shall be built and maintained as required under the applicable agreement and as required by law. When requested by Surface Owner, with respect to Operations under oil, gas and mineral leases executed after the Effective Date, Mineral Operator shall bury pipelines to below ordinary plow depth or to such greater depth that Surface Owner deems necessary for its timber operations. With respect to Operations under oil, gas and mineral leases executed after the Effective Date, all pipelines buried after the Effective Date shall be marked at road crossings and constructed with sufficient strength to permit the passing of heavy equipment over the road without damage to the pipeline.

(7) **Payments.** Mineral Owner shall promptly pay to Surface Owner the following:

(i) With respect to damages to lands and appurtenances of the Property as a result of Operations under leases or other agreements executed before the Effective Date, Surface Owner shall be entitled to damages as provided under such agreements. Mineral Owner shall pay for all damages to lands and appurtenances of the Property caused by or arising out of Operations on the Property under oil, gas and mineral leases executed after the Effective Date, as set forth below.

(ii) Mineral Owner shall pay for all damage to timber and for loss of use by Surface Owner for timber growing purposes of the Property used by Mineral Owner or Mineral Operator in their Operations: (a) related to oil, gas, and liquid hydrocarbons as more fully described in subsection (i) on **Exhibit B** in an amount as determined pursuant to clauses (iv) and (v) below, and (b) related to coal, lignite, coalbed methane, coalseam gas and geothermal energy resources as more fully described in subsections (ii), (iii), and (iv) on **Exhibit B** in an amount as determined pursuant to clauses (iv) and (vi) below.

(iii) If Mineral Owner or Mineral Operator conducts any seismic operations on the Property, Mineral Owner or Mineral Operator shall pay Surface Owner in respect of any seismic operation \$5,000.00 per square mile in the case of a 3-D seismic operation and \$2,500.00 per linear mile in the case of a 2-D seismic operation.

(iv) In the event Operations result in injury or damage to any standing or down timber, and/or crops thereon, Mineral Owner shall pay to Surface Owner, as its sole remedy and compensation for the loss of such timber and/or crops the fair market value of such timber/crops at the time of damage. If the Mineral Owner and the Surface Owner cannot agree upon such fair

market value within thirty (30) days after the damage, then fair market value shall be determined by a qualified independent timber appraiser mutually acceptable to both Mineral Owner and Surface Owner with costs of such appraisal to be split equally between the Parties. In the event that the Mineral Owner and Surface Owner cannot agree upon a qualified independent timber appraiser, then the Mineral Owner and the Surface Owner shall each appoint a qualified independent timber appraiser at each party's own cost and the two appraisers thus appointed shall appoint a third qualified independent timber appraiser who shall determine the fair market value at the time of the damage with costs of such appraisal to be split equally between the parties. Upon the payment by Mineral Owner to the Surface Owner of damages as contemplated by this section, the timber/crops so damaged shall become the property of the Mineral Owner. With respect to merchantable timber, fair market value shall be determined by calculating the net present value of the expected future operating cash flow from the then existing crop, if any, using fair market prices, costs and discount rates. With respect to pre-merchantable timber, fair market value shall be determined by calculating the net present value of the expected future operating cash flow from the then existing crop, if any, using fair market prices, costs and discount rates.

(v) For loss of use by Surface Owner for timber growing purposes of the Property used by Mineral Owner or Mineral Operator in its Operations related to oil, gas, and hydrocarbons as more fully described in subsection (i) on **Exhibit B** (excluding seismic operations which are covered by clause (iii) above), Mineral Owner shall pay \$5,000.00 for the surface area used by Mineral Owner or Mineral Operator plus, if the area used exceeds five acres, \$1,000.00 for each acre or portion of an acre in excess of five acres. The payment due pursuant to this clause for use of land for pipelines and utility lines shall be calculated based upon the area used. With respect to any surface area, the sum payable under this clause is a one-time sum and no additional payment under this clause (v) shall be required either periodically or for an additional or different use of the same surface area.

(vi) For loss of use by Surface Owner for timber growing purposes of the Property used by Mineral Owner or Mineral Operator in its Operations related to coal, lignite, coalbed methane, coalseam gas and geothermal energy resources as more fully described in subsections (ii), (iii) and (iv) on **Exhibit B** (excluding seismic operations which are covered by clause (iii) above), Mineral Owner shall pay Surface Owner the amount set forth below:

For loss of use commencing within five (5) years following the Effective Date, a one time payment of \$500.00 per acre for each acre that is actually disturbed and unavailable for use by Surface Owner for timber growing purposes;

For loss of use commencing more than five (5) years following the Effective Date, the one time payment of \$500.00 per acre set forth above shall be adjusted if at all as per clause (vii) below.

Upon the payment by Mineral Owner to the Surface Owner of damages as contemplated by this Paragraph (7), any timber/crops damaged shall become the property of the Mineral Owner. With respect to any surface area, the sum payable under this clause (vi) is a one-time sum and no additional payment under this clause (vi) shall be required either periodically or for an additional or different use of the same surface area.

(vii) For damages in clauses (iii) and (v) above incurred more than five (5) years following the Effective Date, the payment amount specified shall be increased or decreased annually on the anniversary of the Effective Date by multiplying the then current value by the percent of change in the Producer Price Index. For damages in clause (vi) above commencing more than five (5) years following the Effective Date, the payment amount specified shall be increased or decreased annually on the anniversary of the Effective Date by multiplying the then current value by the percent of change in the Producer Price Index. The percent of change in the Producer Price Index will be computed by comparing the Producer Price Index published for the month prior to the beginning of the annual period with the Producer Price Index published for the month prior to the end of such annual period. The Producer Price Index will be measured by the U.S. Department of Labor revised Producer Price Index for all commodities as published by the Bureau of Labor Statistics. If the Producer Price Index shall hereafter be converted to a different standard base or otherwise revised, the determination of the Producer Price Index shall be made with the use of such conversion factor, formula or table for converting the Producer Price Index as may be published by the Bureau of Labor Statistics or, if such Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by any nationally recognized publisher of similar statistical information chosen by Surface Owner and Mineral Owner.

(viii) All damage payments by Mineral Owner required under this Agreement shall be delivered to the Surface Owner at the address set forth in Paragraph (12) below.

(8) **Conduct of Operations by Third Parties.** Mineral Owner agrees to use reasonable efforts to cause each Mineral Operator to conduct its Operations in accordance with the terms and conditions of this Agreement; provided, however, that nothing contained herein shall relieve Mineral Owner from the obligations of Mineral Operator hereunder.

(9) **Taxes.** Mineral Owner and Mineral Operator shall be responsible for and shall pay any and all taxes that may be levied or assessed against the Reserved Minerals and Gases and the Reserved Mineral and Gas Rights.

10) **Insurance.** Before conducting any Operations, Mineral Owner shall obtain and maintain, or shall cause the Mineral Operator to obtain and maintain, insurance policies as may be reasonable and customary for the industry, which policies shall name Surface Owner as an additional insured thereunder.

(11) **Dispute Resolution.** In the event of any dispute, claim, question, disagreement or controversy arising from or relating to this Agreement or the breach thereof, Mineral Owner and Surface Owner shall use their reasonable efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to the parties. If Mineral Owner and Surface Owner do not reach such a solution within a period of 30 days after written notice by either Mineral Owner or Surface Owner requesting that such discussions be initiated, the parties agree that any and all disputes, claims, questions, disagreements or controversies arising from or relating to this Agreement or the breach thereof, shall be submitted to non-binding, voluntary mediation. Either Mineral Owner or

Surface Owner may commence mediation by providing Surface Owner (in the case of Mineral Owner) or Mineral Owner (in the case of Surface Owner) with a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with one another in selecting a single mediator, and in promptly scheduling the mediation proceedings. If the parties cannot agree upon a mediator, they shall appoint the American Arbitration Association as a mediation body (which shall in turn select a single mediator), and shall implement the Commercial Mediation Rules. All settlement offers, promises, conduct and statements, whether oral or written, made in the course of the settlement and mediation process by either Mineral Owner or Surface Owner, their agents, employees, experts and attorneys, and by the mediator, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties; provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its disclosure during settlement or mediation efforts. During the pendency of the settlement and mediation process, the parties agree to forebear from filing or otherwise proceeding with litigation; provided, however, that either Mineral Owner, on the one hand, or Surface Owner, shall be entitled to seek a temporary restraining order or preliminary injunction to prevent the breach of the Mineral Owner's or Surface Owner's obligations, as the case may be, under this Agreement. If the agreement of the parties to use mediation breaks down and a later litigation is commenced or application for an injunction is made, the parties will not assert a defense of laches or statute of limitations based upon the time spent in mediation. Either Mineral Owner or Surface Owner may initiate litigation with respect to the matters submitted to mediation at any time following 60 days after the initial mediation session or 90 days after the date of sending the written request for mediation, whichever occurs first. The mediation may continue after the commencement of litigation if Mineral Owner and Surface Owner so mutually elect in writing. The provisions of this Section 11 may be enforced by any court of competent jurisdiction and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the party against whom enforcement is ordered.

(12) **Notice.** Any notice given pursuant to this Agreement shall be given in writing and delivered in person, by overnight courier, by facsimile (with a copy sent by regular mail) or by registered or certified mail, postpaid, return receipt requested, addressed as follows:

If to the Mineral Owners to:

International Paper Company  
6400 Poplar Avenue, Tower III  
Memphis, TN 38197  
Attention: Senior VP/General Counsel  
(901) 419-9000



If to Surface Owners to:

TimberStar Nacogdoches I LP  
TimberStar Nacogdoches II LP  
c/o TimberStar Southwest Manager, LLC  
8570 Business Park Drive, Suite 200  
Shreveport, Louisiana 71105  
Phone: (318) 629-1830

with a copy to:

Katten Muchin Rosenman LLP  
525 West Monroe Street  
Chicago, Illinois 60661-3693  
Attn: Kenneth M. Jacobson

with a copy to:

TimberStar Operating Partnership LP  
1600 RiverEdge Parkway, Suite 810  
Atlanta, Georgia 30328  
Tel: (678) 339-2070  
Fax: (678) 339-2071

Such notices, if delivered personally or by overnight courier service, shall be deemed given at the time of delivery; if sent by registered or certified mail, shall be deemed given two days after the time of mailing; and if sent by facsimile, shall be deemed given on the next day following the day on which such facsimile was sent, provided that a copy is also sent by regular mail.

(13) **Further Assurances.** Each of the parties shall execute such further conveyance instruments and such other documents or instruments and do such other acts or things as may be reasonably required or desirable to carry out the intent of the parties hereunder and the provisions of this Agreement and the transactions contemplated hereby.

(14) **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

(15) **Amendment and Waiver.** This Agreement may not be amended or modified in any manner other than by an agreement in writing signed by Mineral Owner and Surface Owner or their respective successors or assigns. No waiver under this Agreement shall be valid or binding unless set forth in a writing duly executed and delivered by the party against whom enforcement of such waiver is sought. Neither the waiver by any of the parties of a breach of or a default under any of the provisions of this Agreement, nor the failure by any of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall be construed as a waiver of any other breach or

default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder.

(16) **GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED IN ALL RESPECTS, INCLUDING VALIDITY, CONSTRUCTION, INTERPRETATION AND EFFECT, BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS TO THE EXTENT SUCH PRINCIPLES OR RULES WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION. EACH OF THE PARTIES HEREBY (I) IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE IN WHICH THE PROPERTY IS LOCATED (THE "SUBJECT STATE") AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE SUBJECT STATE FOR THE PURPOSE OF ANY ACTION OR PROCEEDING ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, (II) AGREES THAT IT WILL NOT ATTEMPT TO DENY OR DEFEAT SUCH PERSONAL JURISDICTION BY MOTION OR OTHER REQUEST FOR LEAVE FROM ANY SUCH COURT, AND (III) AGREES THAT IT WILL NOT BRING ANY ACTION RELATING TO THIS AGREEMENT IN ANY COURT OTHER THAN A SUBJECT STATE COURT OR FEDERAL COURT LOCATED IN THE SUBJECT STATE. EACH OF THE PARTIES HEREBY CONSENTS TO AND GRANTS ANY SUCH COURT JURISDICTION OVER THE PERSON OF SUCH PARTY AND OVER THE SUBJECT MATTER OF ANY SUCH DISPUTE AND AGREES THAT MAILING OF PROCESS OR OTHER PAPERS IN CONNECTION WITH ANY SUCH ACTION OR PROCEEDING IN THE MANNER PROVIDED IN SECTION 12, OR IN SUCH OTHER MANNER AS MAY BE PERMITTED BY LAW, SHALL BE VALID AND SUFFICIENT SERVICE THEREOF ON SUCH PARTY.

EACH PARTY HEREBY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE ANCILLARY AGREEMENTS, OR THE BREACH, TERMINATION OR VALIDITY OF THIS AGREEMENT OR ANY ANCILLARY AGREEMENTS, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY HEREBY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (II) SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (III) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (IV) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS SET FORTH IN THIS SECTION.

(17) **Counterparts.** This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and, when taken together, shall constitute one agreement.

(18) **Legal Fees.** In the event any legal proceeding should be brought to enforce the terms of this Agreement or for breach of any provision of this Agreement, the non-prevailing party shall reimburse the prevailing party for all reasonable costs and expenses of the prevailing party (including its attorneys' fees and disbursements).

**[Signatures Begin on Next Page]**