

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

FORM 10-Q

(MARK ONE)

Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

for the quarterly period ended September 30, 2000 or

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 000-26025

U.S. CONCRETE, INC.
(exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

76-0586680
(I.R.S. Employer
Identification No.)

1300 Post Oak Blvd., Suite 1220, Houston, Texas
(Address of principal executive offices)

77056
(Zip code)

Registrant's telephone number, including area code: (713) 499-6200

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.

Yes No _____

U.S. Concrete, Inc. had 22,349,599 shares of its Common Stock, par value \$.001 per share, outstanding at November 14, 2000.

U.S. CONCRETE, INC. AND SUBSIDIARIES

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PART I - FINANCIAL INFORMATION

Item 1. Financial Statements

U.S. CONCRETE, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands)

| | September 30, 2000 ----- (unaudited) | December 31, 1999 ----- |
|--|---|-------------------------------|
| ASSETS | | |
| Current assets: | | |
| Cash and cash equivalents | \$ 2,542 | \$ 627 |
| Trade accounts receivable, net | 74,912 | 44,085 |
| Other receivables | 1,813 | 1,496 |
| Inventories | 9,144 | 4,351 |
| Prepaid expenses and other current assets | 1,210 | 1,758 |
| | ----- | ----- |
| Total current assets | 89,621 | 52,317 |
| | ----- | ----- |
| Property, plant and equipment, net | 83,383 | 53,949 |
| Goodwill, net | 189,370 | 105,492 |
| Other assets | 2,459 | 976 |
| | ----- | ----- |
| Total assets | \$364,833 | \$212,734 |
| | ===== | ===== |
| LIABILITIES AND STOCKHOLDERS' EQUITY | | |
| Current liabilities: | | |
| Current maturities of long-term debt | \$ 129 | \$ 140 |
| Accounts payable and accrued liabilities | 56,263 | 37,599 |
| | ----- | ----- |
| Total current liabilities | 56,392 | 37,739 |
| | ----- | ----- |
| Long-term debt, net of current maturities | 150,562 | 57,235 |
| Deferred income taxes | 9,986 | 6,967 |
| | ----- | ----- |
| Total liabilities | 216,940 | 101,941 |
| | ----- | ----- |
| Stockholders' equity | | |
| Common stock | 22 | 19 |
| Additional paid-in capital | 126,463 | 104,271 |
| Retained earnings | 21,408 | 6,503 |
| | ----- | ----- |
| Total stockholders' equity | 147,893 | 110,793 |
| | ----- | ----- |
| Total liabilities and stockholders' equity | \$364,833 | \$212,734 |
| | ===== | ===== |

The accompanying notes are an integral part of these condensed consolidated financial statements.

U.S. CONCRETE, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share amounts; unaudited)

| | Three Months Ended September 30 | | Nine Months Ended September 30 | |
|--|------------------------------------|----------|-----------------------------------|-----------|
| | 2000 | 1999 | 2000 | 1999 |
| Sales | \$116,591 | \$59,803 | \$290,987 | \$100,407 |
| Cost of goods sold | 91,338 | 48,078 | 230,560 | 80,853 |
| Gross profit | 25,253 | 11,725 | 60,427 | 19,554 |
| Selling, general and administrative expenses | 7,302 | 2,281 | 18,525 | 5,738 |
| Stock compensation charge | -- | -- | -- | 2,880 |
| Depreciation and amortization | 2,747 | 1,148 | 8,165 | 2,106 |
| Income from operations | 15,204 | 8,296 | 33,737 | 8,830 |
| Interest expense, net | 4,023 | 463 | 9,673 | 742 |
| Other income, net | 227 | 292 | 1,122 | 626 |
| Income before income tax provision | 11,408 | 8,125 | 25,186 | 8,714 |
| Income tax provision | 4,676 | 3,212 | 10,281 | 4,854 |
| Net income | \$ 6,732 | \$ 4,913 | \$ 14,905 | \$ 3,860 |
| Net income per share: | | | | |
| Basic | \$ 0.31 | \$ 0.30 | \$ 0.70 | \$ 0.40 |
| Diluted | \$ 0.31 | \$ 0.30 | \$ 0.70 | \$ 0.40 |
| Number of shares used in calculating net income per share: | | | | |
| Basic | 22,027 | 16,498 | 21,312 | 9,562 |
| Diluted | 22,037 | 16,589 | 21,337 | 9,636 |

The accompanying notes are an integral part of these condensed consolidated financial statements.

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U.S. CONCRETE, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands; unaudited)

| | Nine Months Ended September 30 | |
|--|-----------------------------------|----------|
| | 2000 | 1999 |
| CASH FLOWS FROM OPERATING ACTIVITIES: | | |
| Net income | \$ 14,905 | \$ 3,860 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | |
| Depreciation and amortization | 8,165 | 2,106 |
| Net gain on sale of property, plant and equipment | (415) | (217) |
| Deferred income tax provision | 2,000 | 924 |
| Provision for doubtful accounts | 66 | 242 |
| Stock compensation charge | -- | 2,880 |
| Changes in assets and liabilities, excluding effects of acquisitions: | | |
| Receivables | (16,565) | (9,322) |
| Prepaid expenses and other current assets | 64 | (1,608) |
| Accounts payable and accrued liabilities | 4,629 | 9,108 |
| Net cash provided by operating activities | 12,849 | 7,973 |
| CASH FLOWS FROM INVESTING ACTIVITIES: | | |
| Purchases of property, plant and equipment | (6,514) | (2,847) |
| Payments for acquisitions accounted for as purchases, net of cash received of \$3,961 and \$10,078 | (97,935) | (55,661) |
| Proceeds from disposals of property, plant and equipment | 1,839 | 2,330 |
| Net cash used in investing activities | (102,610) | (56,178) |
| CASH FLOWS FROM FINANCING ACTIVITIES: | | |
| Proceeds from borrowings | 93,420 | 32,148 |
| Repayments of borrowings | (104) | (3,501) |
| Proceeds from issuances of common stock | -- | 32,512 |
| Common stock issuance costs | (242) | (3,459) |
| Debt issuance costs | (1,398) | -- |

| | | |
|---|----------|----------|
| Distributions to stockholders | -- | (7,714) |
| Net cash provided by financing activities | 91,676 | 49,986 |
| NET INCREASE IN CASH AND CASH EQUIVALENTS | 1,915 | 1,781 |
| CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD | 627 | 4,213 |
| CASH AND CASH EQUIVALENTS AT END OF PERIOD | \$ 2,542 | \$ 5,994 |
| SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION: | | |
| Cash paid for interest | \$ 9,071 | \$ 705 |
| Cash paid for income taxes | \$ 889 | \$ 370 |
| NONCASH FINANCING ACTIVITY: | | |
| Distribution of cash surrender value of life insurance to stockholder | \$ -- | \$ 1,155 |

The accompanying notes are an integral part of these condensed consolidated financial statements.

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U.S. CONCRETE, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

1. ORGANIZATION AND BASIS OF PRESENTATION

U.S. Concrete, Inc., a Delaware corporation, was founded in July 1997 to create a leading provider of ready-mixed concrete and related products and services to the construction industry in major markets in the United States. It did not conduct any operations prior to May 1999. On May 28, 1999, it completed the initial public offering of its common stock and concurrently acquired six operating businesses. From the date of its IPO through September 30, 2000, U.S. Concrete acquired 14 additional operating businesses and intends to acquire additional companies to expand its operations.

For financial statement presentation purposes, (1) we present Central Concrete Supply Co., Inc., one of the businesses we initially acquired, as the acquirer of the other acquired businesses and U.S. Concrete, (2) we account for these acquisitions in accordance with the purchase method of accounting and (3) the effective date of the initial acquisitions is May 31, 1999. Our financial statements are those of Central prior to June 1, 1999 and of U.S. Concrete and its consolidated subsidiaries after that date. Our financial statements reflect the operations of the businesses we acquired after May 31, 1999 from their respective dates of acquisition.

U.S. Concrete's future success depends on a number of factors, which include integrating operations successfully, identifying and integrating satisfactory acquisition candidates, obtaining acquisition financing, managing growth, attracting and retaining qualified management and employees, complying with government regulations and other regulatory requirements or contract specifications, and addressing risks associated with competition, seasonality and quarterly fluctuations.

Under applicable regulations of the SEC, the historical consolidated financial statements in this report are unaudited and omit information and footnote disclosures that financial statements prepared in accordance with generally accepted accounting principles normally would include. In the opinion of management, (1) the disclosures herein are adequate to make the information presented not misleading and (2) the consolidated financial statements reflect all elimination entries and normal adjustments that are necessary for a fair presentation of the results for the interim periods presented.

Operating results for interim periods are not necessarily indicative of the results for full years. You should read these condensed consolidated financial statements together with the audited financial statements and related notes in U.S. Concrete's annual report on Form 10-K for the year ended December 31, 1999.

2. SIGNIFICANT ACCOUNTING POLICIES

U.S. Concrete has not added to or changed its accounting policies significantly since December 31, 1999. For a description of these policies, refer to Note 2 of the Consolidated Financial Statements in U.S. Concrete's annual report on Form 10-K for the year ended December 31, 1999.

3. BUSINESS COMBINATIONS

During the first nine months of 2000, U.S. Concrete acquired six businesses. The aggregate consideration it paid in these transactions, all of which are accounted for as purchases, consisted of \$94.1 million in cash and 3.7 million shares of common stock. The accompanying balance sheet as of September 30, 2000 includes a preliminary allocation of this consideration and is subject to final adjustment. This allocation resulted in the addition of \$83.6 million to goodwill that is being amortized over 40 years. The following summarized pro forma financial information adjusts the historical financial information by assuming that all the businesses acquired through September 30, 2000 by U.S. Concrete had been acquired on January 1, 1999:

| | Three Months Ended September 30 | | Nine Months Ended September 30 | |
|------------------------------|---|------------|-----------------------------------|------------|
| | 2000 | 1999 | 2000 | 1999 |
| | ----- ----- (dollars in thousands, except per share amounts; unaudited) | | | |
| Revenues..... | \$ 119,668 | \$ 121,952 | \$ 312,724 | \$ 302,679 |
| Net income..... | \$ 6,731 | \$ 8,592 | \$ 14,995 | \$ 13,416 |
| Basic earnings per share.... | \$ 0.30 | \$ 0.38 | \$ 0.67 | \$ 0.60 |
| Diluted earnings per share.. | \$ 0.30 | \$ 0.38 | \$ 0.67 | \$ 0.60 |

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The pro forma adjustments these amounts include primarily relate to:

- . contractual reductions in salaries, bonuses and benefits to former owners of the businesses;
- . elimination of legal, accounting and other professional fees incurred in connection with the acquisitions;
- . amortization of goodwill resulting from the acquisitions;
- . reduction in interest expense, net of interest expense on borrowings to fund acquisitions; and
- . adjustments to the federal and state income tax provisions based on pro forma operating results.

The pro forma financial information does not purport to represent what the combined financial results of operations of U.S. Concrete actually would have been if these transactions had in fact occurred when assumed and are not necessarily representative of its financial results of operations for any future period.

4. SHARES USED IN COMPUTING EARNINGS PER SHARE

The following table summarizes the number of shares (in thousands) of common stock we have used on a weighted average basis in calculating earnings per share:

| | Three Months Ended September 30 | | Nine Months Ended September 30 | |
|---|------------------------------------|--------|-----------------------------------|-------|
| | 2000 | 1999 | 2000 | 1999 |
| | ----- ----- (unaudited) | | | |
| Shares issued to Central's owners | 3,120 | 3,120 | 3,120 | 3,120 |
| Shares issued to owners of acquired businesses other than Central | 11,684 | 6,155 | 10,969 | 2,782 |
| Shares issued to initial stockholders and management personnel of U.S. Concrete | 2,853 | 2,853 | 2,853 | 1,688 |
| Shares issued in the IPO | 4,370 | 4,370 | 4,370 | 1,972 |
| | ----- | | | |
| Number of shares used in calculating basic earnings per share | 22,027 | 16,498 | 21,312 | 9,562 |
| Effect of shares issuable under stock options and warrants based on the treasury stock method | 10 | 91 | 25 | 74 |
| | ----- | | | |
| Number of shares used in calculating diluted earnings per share | 22,037 | 16,589 | 21,337 | 9,636 |
| | ===== | | | |

5. LONG-TERM DEBT

A summary of long-term debt is as follows (dollars in thousands):

| | September 30, 2000 | December 31, 1999 |
|---|-----------------------|----------------------|
| | ----- (unaudited) | ----- |
| Secured revolving credit facility | \$ 150,520 | \$ 57,100 |
| Other | 171 | 275 |
| | ----- | ----- |
| | 150,691 | 57,375 |
| Less: current maturities | (129) | (140) |
| | ----- | ----- |
| Long-term debt, net of current maturities | \$ 150,562 | \$ 57,235 |
| | ===== | ===== |

U.S. Concrete has a revolving credit facility (\$200 million at September 30, 2000 and \$100 million at December 31, 1999) with a group of banks that is due May 31, 2002. It may use this facility for working capital, to finance acquisitions, to internally expand operations and for other general corporate purposes. Availability under the facility is tied to consolidated cash flow and liquidity. Advances bear interest, at U.S. Concrete's option, at a prime rate or LIBOR, in each case plus a margin keyed to the ratio of consolidated indebtedness to cash flow. Commitment fees are due on any unused borrowing capacity. The facility requires U.S. Concrete to maintain financial covenants regarding net worth, coverage ratios and additional indebtedness and prohibits dividends on its common stock. Subsidiary guarantees and pledges of substantially all U.S. Concrete's fixed assets secure the payment of all obligations owing under the facility.

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6. INCOME TAXES

Prior to their respective acquisitions, Central and several other acquired businesses were S corporations and were not subject to federal income taxes. Effective with their acquisitions, they became subject to those taxes, and U.S. Concrete has recorded an estimated deferred tax liability to provide for its estimated future income tax liability as a result of the difference between the book and tax bases of the net assets of these corporations as of the dates of their acquisitions. These consolidated financial statements reflect the federal and state income taxes of these corporations since their dates of acquisition.

7. SUBSEQUENT EVENT

On November 10, 2000, U.S. Concrete, Inc. issued and sold to institutional investors in a private placement \$95 million aggregate principal amount of its 12.00% senior subordinated notes due November 10, 2010 for cash consideration equal to 100% of that aggregate principal amount. The terms of these notes will require U.S. Concrete to repay them in equal annual installments of approximately \$13.6 million on November 10 in each of the years 2004 through 2010. U.S. Concrete used the proceeds from its sale of the notes to reduce amounts outstanding under its secured revolving credit facility. U.S. Concrete intends to keep that facility in place and may borrow under that facility to fund future growth opportunities and for general corporate purposes.

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Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Statements we make in the following discussion which express a belief, expectation or intention, as well as those that are not historical fact, are forward-looking statements that are subject to risks, uncertainties and assumptions. Our actual results, performance or achievements, or industry results, could differ materially from those we express in the following discussion as a result of a variety of factors, including the risks and uncertainties we have referred to under the heading "Cautionary Statement Concerning Forward-looking Statements" following Items 1 and 2 of Part I of our annual report on Form 10-K for the year ended December 31, 1999 and under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations - Factors That May Affect Our Future Operating Results" in Item 7 of Part II of that annual report.

Results of Operations

The following table sets forth for us selected historical statements of operations information and that information as a percentage of sales for the periods indicated. These financial statements are those of Central prior to June 1, 1999 and of U.S. Concrete and its consolidated subsidiaries after that date. Except as we note below, the consolidation of operating results beginning on June 1, 1999 and our subsequent acquisitions in 1999 and the first three quarters of 2000 principally account for the changes in 2000 from 1999.

| | Three Months Ended September 30 | | | | Nine Months Ended September 30 | | | |
|--|---------------------------------|--------|----------|--------|--------------------------------|--------|-----------|--------|
| | 2000 | | 1999 | | 2000 | | 1999 | |
| (dollars in thousands; unaudited) | | | | | | | | |
| Sales | \$116,591 | 100.0% | \$59,803 | 100.0% | \$290,987 | 100.0% | \$100,407 | 100.0% |
| Cost of goods sold | 91,338 | 78.3 | 48,078 | 80.4 | 230,560 | 79.2 | 80,853 | 80.5 |
| Gross profit | 25,253 | 21.7 | 11,725 | 19.6 | 60,427 | 20.8 | 19,554 | 19.5 |
| Selling, general and administrative expenses | 7,302 | 6.3 | 2,281 | 3.8 | 18,525 | 6.4 | 5,738 | 5.7 |
| Stock compensation charge | -- | -- | -- | -- | -- | -- | 2,880 | 2.9 |
| Depreciation and amortization | 2,747 | 2.4 | 1,148 | 1.9 | 8,165 | 2.8 | 2,106 | 2.1 |
| Income from operations | 15,204 | 13.0 | 8,296 | 13.9 | 33,737 | 11.6 | 8,830 | 8.8 |
| Interest expense, net | 4,023 | 3.5 | 463 | 0.8 | 9,673 | 3.3 | 742 | 0.7 |
| Other income, net | 227 | 0.2 | 292 | 0.5 | 1,122 | 0.4 | 626 | 0.6 |
| Income before income tax provision | 11,408 | 9.7 | 8,125 | 13.6 | 25,186 | 8.7 | 8,714 | 8.7 |
| Income tax provision | 4,676 | 4.0 | 3,212 | 5.4 | 10,281 | 3.5 | 4,854 | 4.8 |
| Net income | \$ 6,732 | 5.7% | \$ 4,913 | 8.2% | \$ 14,905 | 5.2% | \$ 3,860 | 3.9% |

Sales. Sales increased \$56.8 million, or 95.0%, and \$190.6 million, or 189.8%, for the three- and nine-month periods ended September 30, 2000, respectively, as compared with the corresponding periods in 1999.

Gross profit. Gross profit increased \$13.5 million, or 115.4%, and \$40.9 million, or 209.0%, for the three- and nine-month periods ended September 30, 2000, respectively, as compared with the corresponding periods in 1999. Gross margins increased from 19.6% in the three months ended September 30, 1999 to 21.7% in the three months ended September 30, 2000 and increased from 19.5% in the nine months ended September 30, 1999 to 20.8% in the nine months ended September 30, 2000. The increase in gross margins for the three- and nine-month periods is attributable to improved pricing terms we have negotiated with key materials suppliers in our major ready-mixed markets.

Selling, general and administrative expenses. Selling, general and administrative expenses increased \$5.0 million, or 220.1%, and \$12.8 million, or 222.8%, for the three- and nine-month periods ended September 30, 2000, respectively, as compared with the corresponding periods in 1999. Selling, general and administrative expenses as a percentage of sales increased from 3.8% in the three months ended September 30, 1999 to 6.3% in the three months ended September 30, 2000 and increased from 5.7% in the nine months ended September 30, 1999 to 6.4% in the nine months ended September 30, 2000. The increase in selling, general and administrative expenses as a percentage of sales for both the three- and nine-month periods is attributable to additions to the corporate overhead infrastructure to accommodate our growth strategy as well as management additions in certain of our markets.

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Stock compensation charge. The 1999 stock compensation charge represents a noncash charge related to 400,000 shares of common stock U.S. Concrete issued in December 1998 and March 1999 to management and nonemployee directors at a nominal cost. The amount of this charge reflected a fair value of \$7.20 per share, which represented a 10% discount from the initial offering price to the public of \$8.00 per share in the IPO.

Depreciation and amortization. Depreciation and amortization expense increased \$1.6 million, or 139.3%, and \$6.1 million, or 287.7%, for the three- and nine-

month periods ended September 30, 2000, respectively, as compared with the corresponding periods in 1999. This increase includes amortization of the goodwill attributable to our acquisition activity. We are amortizing this goodwill over 40 years for each acquisition. At September 30, 2000, the annualized amount of this noncash expense was \$4.8 million.

Interest expense, net. Interest expense, net, increased \$3.6 million, or 768.9%, and \$8.9 million, or 1,203.6%, for the three- and nine-month periods ended September 30, 2000, respectively, as compared with the corresponding periods in 1999. This increase was attributable principally to borrowings we made to pay the cash portion of the purchase prices for our acquisitions. At September 30, 2000, we had borrowings totaling \$150.6 million outstanding under our credit facility at a weighted average interest cost of 9.1% per annum.

Other income, net. Other income, net decreased \$65,000, or 22.3%, and increased \$496,000, or 79.2%, for the three- and nine-month periods ended September 30, 2000, respectively, as compared with the corresponding periods in 1999. The nine-month increase was attributable to the sale of a customer contract, a gain from the involuntary conversion of property and numerous other items of income and expense.

Income tax provision. Income tax provision increased \$1.5 million, or 45.6%, and \$5.4 million, or 111.8%, for the three- and nine-month periods ended September 30, 2000, respectively, as compared with the corresponding periods in 1999. These increases were attributable to the fact that Central was an S corporation during the first five months of 1999 and thus made no provision for federal income taxes in that period.

Liquidity and Capital Resources

Our acquisitions since December 31, 1999 principally account for the changes in our working capital accounts and our property, plant and equipment account from December 31, 1999 to September 30, 2000.

During the first three quarters of 2000, we purchased six businesses that we have accounted for in accordance with the purchase method of accounting. The aggregate consideration we paid in these transactions consisted of \$94.1 million in cash and 3.7 million shares of common stock.

In February 2000, we increased the size of our secured revolving credit facility to \$200 million. We had \$150.6 million of outstanding borrowings under the facility at September 30, 2000. The facility has a term expiring in May 2002 and a \$5.0 million sublimit for letters of credit issued on our behalf. Our borrowing capacity under the facility will vary from time to time depending on our satisfaction of several financial tests. We may use the facility for the following purposes:

- . financing acquisitions;
- . funding the internal expansion of our operations;
- . working capital; and
- . general corporate purposes.

Our subsidiaries have guaranteed the repayment of all amounts owing under the facility, and we secured the facility with the capital stock and assets of our subsidiaries. The facility:

- . requires the consent of the lenders for certain acquisitions;
- . prohibits the payment of cash dividends on our common stock;
- . limits our ability to incur additional indebtedness; and
- . requires us to comply with financial covenants.

The failure to comply with these covenants and restrictions would constitute an event of default under the facility.

On November 10, 2000, we issued and sold to institutional investors in a private placement \$95 million aggregate principal amount of our 12.00% senior subordinated notes due November 10, 2010 for cash consideration equal to 100% of that aggregate principal amount. The terms of these notes will require us to repay them in equal annual installments of approximately \$13.6 million on November 10 in each of the years 2004 through 2010. We used the net proceeds from our sale of the notes to reduce amounts outstanding under our secured revolving credit facility. We intend to keep that facility in place and may

borrow under that facility to fund future growth opportunities and for general corporate purposes.

We anticipate that our consolidated cash flow from our operations will exceed our normal working capital needs, debt service requirements and the amount of our planned capital expenditures, excluding acquisitions, for at least the next 12 months.

The continuation of our growth strategy will require substantial capital. We currently intend to finance future acquisitions through issuances of our common stock or debt securities, including convertible debt securities, and borrowings under our credit facility. Using debt to complete acquisitions could substantially limit our operational and financial flexibility. The extent to which we will be able or willing to use our common stock to make acquisitions will depend on its market value from time to time and the willingness of potential sellers to accept it as full or partial payment. Using our common stock for this purpose may result in dilution to our then existing stockholders. To the extent we are unable to use our common stock to make future acquisitions, our ability to grow will be limited by the extent to which we are able to raise capital for this purpose, as well as to expand existing operations, through debt or additional equity financings. If we are unable to obtain additional capital on acceptable terms, we may be required to reduce the scope of our presently anticipated expansion, which could materially adversely affect our business and the value of our common stock.

We cannot accurately predict the timing, size and success of our acquisition efforts or our associated potential capital commitments.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Borrowings under our revolving credit facility expose us to market risks. Outstanding borrowings under our credit facility were \$150.6 million at September 30, 2000. A change of one percent in the interest rate would cause a change in interest expense on these outstanding borrowings of approximately \$1.5 million, or \$0.04 per share, on an annual basis. We did not enter into our credit facility for trading purposes, and the facility carries interest at a pre-agreed percentage point spread from either a prime interest rate or a LIBOR interest rate.

PART II - OTHER INFORMATION

Item 2. Changes in Securities and Use of Proceeds

(c) Unregistered Sales of Securities.

Between July 1, 2000 and September 30, 2000, U.S. Concrete issued 385,832 shares of common stock as part of the consideration we paid to the former owners of the businesses we acquired in the current and prior period. We issued these shares without registration under the Securities Act in reliance on the exemption Section 4(2) of the Securities Act provides for transactions not involving any public offering. Each acquisition involved a small number of owners who received shares of U.S. Concrete common stock.

Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits.

| Exhibit Number | Description |
|-------------------|--|
| 2.1* | -- Agreement and Plan of Reorganization dated as of March 22, 1999 by and among U.S. Concrete, OCC Acquisition Inc., Opportunity Concrete Corporation and the stockholders named therein (Form S-1 (Reg. No. 333-74855), Exhibit 2.1). |
| 2.2* | -- Agreement and Plan of Reorganization dated as of March 22, 1999 by and among U.S. Concrete, Walker's Acquisition Inc., Walker's Concrete, Inc. and the stockholders named therein (Form S-1 (Reg. No. 333-74855), Exhibit 2.2). |
| 2.3* | -- Agreement and Plan of Reorganization dated as of March 22, 1999 by and among U.S. Concrete, Central Concrete Acquisition Inc., Central |

- Concrete Supply Co., Inc. and the stockholders named therein (Form S-1 (Reg. No. 333-74855), Exhibit 2.3).
- 2.4* -- Agreement and Plan of Reorganization dated as of March 22, 1999 by and among U.S. Concrete, Bay Cities Acquisition Inc., Bay Cities Building Materials Co., Inc. and the stockholders named therein (Form S-1 (Reg. No. 333-74855), Exhibit 2.4).
- 2.5* -- Agreement and Plan of Reorganization dated as of March 22, 1999 by and among U.S. Concrete, Baer Acquisition Inc., Baer Concrete, Incorporated and the stockholders named therein (Form S-1 (Reg. No. 333-74855), Exhibit 2.5).
- 2.6* -- Agreement and Plan of Reorganization dated as of March 22, 1999 by and among U.S. Concrete, Santa Rosa Acquisition Inc., R.G. Evans/Associates (d/b/a Santa Rosa Cast Products Co.) and the stockholders named therein (Form S-1 (Reg. No. 333-74855), Exhibit 2.6).
- 2.7* -- Uniform Provisions for the Acquisitions (incorporated into the agreements filed as Exhibits 2.1 through 2.6 hereto) (Form S-1 (Reg. No. 333-74855), Exhibit 2.7).
- 2.8* -- Acquisition Agreement and Plan of Reorganization dated as of September 14, 1999 by and among U.S. Concrete, Inc., Concrete XI Acquisition, Inc., Carrier Excavation and Foundation Company, John F. Carrier, William Henry Carrier, Michael K. Carrier, Mary G. Carrier, Trustee for Anne Carrier (TN UGMA), William Henry Carrier, Trustee for William Henry Carrier, Jr. (TN UGMA), and Mary G. Carrier (Form 10-K for the year ended December 31, 1999 (File No. 000-26025), Exhibit 2.8).
- 2.9* -- Stock Purchase Agreement dated as of November 5, 1999 by and among U.S. Concrete, Inc., B. Thomas Stover, as Trustee under Trust Agreement dated February 20, 1986 for B. Thomas Stover, Sarah M. Stover, as Trustee under Trust Agreement dated February 27, 1990 for Sarah M. Stover, B. Andrew Stover, B. Thomas Stover, Custodian under Michigan Uniform Gifts to Minors Act for the benefit of Carolyn A. Stover, Jeffery D. Spahr, Jeffrey T. Stover, and Bradley C. Stover (Form 10-K for the year ended December 31, 1999 (File No. 000-26025), Exhibit 2.9).
- 2.10* -- Stock Purchase Agreement dated as of January 20, 2000 by and among Robert S. Beall, Chase Bank of Texas, National Association, in its capacity as Trustee for Allison Beall 1999 Trust, Logan Beall 1999 Trust, Allison Beall Descendents' Trust and Logan Beall Descendents' Trust and U.S. Concrete, Inc. (Form 8-K dated February 23, 2000 (File No. 000-26025), Exhibit 2.1).

| Exhibit Number | Description |
|-------------------|---|
| 2.11* | -- Amendment No. 1 to Stock Purchase Agreement dated as of January 28, 2000 by and among Robert S. Beall, Chase Bank of Texas, National Association, in its capacity as trustee for Allison Beall 1999 Trust, Logan Beall 1999 Trust, Allison Beall Descendents' Trust and Logan Beall Descendents' Trust and U.S. Concrete, Inc. (Form 8-K dated February 23, 2000 (File No. 000-26025), Exhibit 2.2). |
| 2.12* | -- Stock Purchase Agreement dated as of January 24, 2000 by and among Fallis Arch Beall, Nola Sue Beall, Robert S. Beall, Leigh Ann Gathright, Doris W. Stokes and Fallis Arch Beall, in his capacity as Trustee for the R. E. Stokes Trust and U.S. Concrete, Inc. (Form 8-K dated February 23, 2000 (File No. 000-26025), Exhibit 2.3). |
| 2.13* | -- Acquisition Agreement and Plan of Reorganization dated as of February 8, 2000 by and among U.S. Concrete, Inc., Concrete XIX Acquisition, Inc., Cornillie Fuel & Supply, Inc., Richard A. Deneweth and Joseph C. Cornillie, Trustee URTA of Joseph C. Cornillie (Form 10-K for the year ended December 31, 1999 (File No. 000-26025), Exhibit 2.13). |
| 2.14* | -- Stock Purchase Agreement dated as of February 8, 2000 by and among U.S. Concrete, Inc., Cornillie Fuel & Supply, Inc., Dencor, Inc., Richard A. Deneweth and Joseph C. Cornillie, Trustee URTA of Joseph C. Cornillie (Form 10-K for the year ended December 31, 1999 (File No. 000-26025), Exhibit 2.14). |
| 2.15* | -- Acquisition Agreement and Plan of Reorganization dated as of February 8, 2000 by and among U.S. Concrete, Inc., Concrete XVIII Acquisition, Inc., Cornillie Leasing, Inc., Richard A. Deneweth and |

Joseph C. Cornillie, Trustee URTA of Joseph C. Cornillie (Form 10-K for the year ended December 31, 1999 (File No. 000-26025), Exhibit 2.15).

- 2.16* -- Acquisition Agreement and Plan of Reorganization dated as of March 2, 2000 by and among U.S. Concrete, Inc., Concrete XXIV Acquisition, Inc., Stancon Inc. and Donald S. Butler and John Grace (Form 10-K for the year ended December 31, 1999 (File No. 000-26025), Exhibit 2.16).
- 3.1* -- Restated Certificate of Incorporation of U.S. Concrete (Form S-1 (Reg. No. 333-74855), Exhibit 3.1).
- 3.2 -- Amended and Restated Bylaws of U.S. Concrete.
- 3.3* -- Certificate of Designations of Series A Junior Participating Preferred Stock of U.S. Concrete, Inc.
- 4.1* -- Amended and Restated Credit Agreement dated as of February 9, 2000 among U.S. Concrete, the Guarantors named therein, the Lenders named therein, Bankers Trust Company, as syndication agent, First Union Nation Bank, as documentation agent, Bank One, Texas, NA, Branch Banking & Trust Company, Credit Lyonnais New York Branch and The Bank of Nova Scotia, as co-managing agents and Chase Bank of Texas, N.A., as the Administrative Agent, and Chase Securities, Inc. as sole book manager and lead arranger (Form 10-K for the year ended December 31, 1999 (File No. 000-26025), Exhibit 4.6).
- 10.1 -- Amended and Restated Indemnification Agreements dated August 17, 2000 between U.S. Concrete and each of its directors and officers.
- 10.2 -- Indemnification Agreement dated August 17, 2000 between U.S. Concrete and Raymond C. Turpin.
- 27.1 -- Financial Data Schedule.

* Incorporated by reference to the filing indicated.

(b) Reports on Form 8-K.

U.S. Concrete did not file any reports on Form 8-K during the quarter ended September 30, 2000.

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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.

U.S. CONCRETE, INC.

Date: November 14, 2000

By: /s/ Michael W. Harlan

Michael W. Harlan
Senior Vice President -- Chief
Financial Officer

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SECOND AMENDED AND RESTATED

BYLAWS

OF

U.S. CONCRETE, INC.

EFFECTIVE AS OF AUGUST 17, 2000

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SECOND AMENDED AND RESTATED
BYLAWS
OF
U.S. CONCRETE, INC.

The Board of Directors of U.S. Concrete, Inc. (the "Corporation") by resolution has duly adopted these Bylaws to govern the Corporation's internal affairs.

ARTICLE I
STOCKHOLDERS

Section 1.1 Annual Meetings. If required by applicable law, the Corporation will hold an annual meeting of the holders of its capital stock (each, a "Stockholder") for the election of directors of the Corporation (each, a "Director") at such date, time and place as the Board of Directors of the Corporation (the "Board") by resolution may designate from time to time. The Corporation may transact any other business at an annual meeting which has properly come before that meeting in accordance with Section 1.11.

Section 1.2 Special Meetings. Any of the following may call special meetings of Stockholders for any purpose or purposes at any time and designate the date, time and place of any such meeting: (i) the Board pursuant to a resolution that a majority of the total number of Directors the Corporation would have if there were no vacancies (the "Whole Board") has duly adopted; (ii) any committee of the Board (each, a "Board Committee") the Board has duly designated and empowered to call special meetings; and (iii) the chairman of the Board (the "Chairman"). Except as the certificate of incorporation of the Corporation (as amended from time to time and including each certificate of designation, if any, respecting any class or series of preferred stock of the Corporation which has been executed, acknowledged and filed in accordance with applicable law, the "Certificate of Incorporation") or applicable law otherwise

provides, no other Person or Persons may call a special meeting of Stockholders. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 1.3 Notice of Meetings. By or at the direction of the Chairman or the secretary of the Corporation (the "Secretary") whenever Stockholders are to take any action at a meeting, the Corporation will give a notice of that meeting to the Stockholders entitled to vote at that meeting which states the place, if any, date, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at the meeting, and hour of that meeting and, in the case of a special meeting, the purpose or purposes for which that meeting is called. Unless the Certificate of Incorporation, these Bylaws or applicable law otherwise

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provides, the Corporation will give the notice of any meeting of Stockholders not less than 10 nor more than 60 days before the date of that meeting. If mailed to any Stockholder, any such notice will be deemed given (whether or not delivered) when deposited in the United States mail, postage prepaid, directed to that Stockholder at his address as it appears in the stock records of the Corporation.

Section 1.4 Adjournments. Any meeting of Stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business it might have transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment the Board fixes a new record date for the adjourned meeting, the Corporation will give, in accordance with Section 1.3, notice of the adjourned meeting to each Stockholder of record and entitled to vote at the adjourned meeting.

Section 1.5 Quorum. Except as the Certificate of Incorporation, these Bylaws or applicable law otherwise provides: (i) at each meeting of Stockholders the presence in person or by proxy of the holders of shares of stock having a majority of the votes the holders of all outstanding shares of stock entitled to vote at the meeting could cast will be necessary and sufficient to constitute a quorum; and (ii) the holders of stock so present and entitled to vote at any duly convened meeting at which the necessary quorum has been ascertained may continue to transact business until that meeting adjourns notwithstanding any withdrawal from that meeting of shares of stock counted in determining the existence of that quorum. In the absence of a quorum, the chairman of the meeting or the Stockholders so present may, by majority vote, adjourn the meeting from time to time in the manner Section 1.4 provides until a quorum attends. Shares of its own stock belonging to the Corporation or to another corporation, limited liability company, partnership or other entity (each, an "Entity"), if the Corporation, directly or indirectly, holds a majority of the shares entitled to vote in the election of directors (or the equivalent) of that other Entity, will be neither entitled to vote nor counted for quorum purposes; provided, however, that the foregoing will not limit the right of the Corporation to vote stock, including but not limited to its own stock, it holds in a fiduciary capacity.

Section 1.6 Organization. The Chairman will chair and preside over any meeting of Stockholders at which he is present. The Board will designate the chairman and presiding officer over any meeting of Stockholders from which the Chairman is absent. In the absence of such designation by the Board, the chairman of the meeting will be chosen at the meeting. The Secretary will act as secretary of meetings of Stockholders, but in his absence from any such meeting the chairman of that meeting may appoint any person to act as secretary of that meeting. The chairman of any meeting of Stockholders will announce at that meeting the date and time of the opening and the closing of the polls for each matter on which the Stockholders will vote at that meeting.

Section 1.7 Voting; Proxies. (a) Except as the Certificate of Incorporation otherwise provides, each Stockholder entitled to vote at any meeting of Stockholders will be entitled to one vote for each share of capital stock of the Corporation he holds which has voting power on

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the matter in question. Each Stockholder entitled to vote at a meeting of Stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such Stockholder by proxy, but no proxy will be voted or acted on after three years from its date, unless that proxy provides for a longer period. A proxy will be irrevocable if it states that it is irrevocable and if, and only so long as, it is coupled with an interest sufficient in law to support an irrevocable power. A Stockholder may revoke any proxy which is not irrevocable by attending that meeting and voting in person or by filing an instrument in writing revoking the proxy or by delivering a proxy in accordance with applicable law bearing a later date to the Secretary. Proxies for use at any meeting of Stockholders must be filed, before or at the time of that meeting, with the Secretary or such other person as the Board by resolution may designate from time to time.

(b) The secretary of any meeting of Stockholders will take charge of and canvass all ballots delivered at that meeting and will decide all questions relating to the qualification of voters, the validity of proxies and the acceptance or rejection of votes at that meeting, unless the chairman has appointed an inspector or inspectors to decide those questions. Voting at meetings of Stockholders: (i) need not be by written ballot unless the Board, in its discretion, by resolution so requires or, in the case of any such meeting, the chairman of that meeting, in his discretion, so requires; and (ii) unless applicable law otherwise requires, need not be conducted by inspectors of election unless so determined by the holders of shares of stock having a majority of the votes the holders of all outstanding shares of stock entitled to vote thereon which are present in person or by proxy at that meeting could cast.

(c) The Corporation may, and shall if required by law, in advance of any meeting of Stockholders, appoint one or more inspectors of election, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of Stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share, (ii) determine the shares of capital stock of the Corporation represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of capital stock of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of Stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

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(d) At all meetings of Stockholders at which a quorum is present for the election of Directors, a plurality of the votes cast by the holders of outstanding shares of stock of the Corporation entitled to vote in the election of Directors will be sufficient to elect, except as the Certificate of Incorporation may otherwise provide. In the case of any question to which the stockholder approval policy of any national securities exchange or quotation system on which capital stock of the Corporation is traded or quoted on the Corporation's application, the requirements under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or any provision of the Internal Revenue Code of 1986, as amended, or the rules and regulations thereunder (the "Code") applies, in each case for which question the Certificate of Incorporation, these Bylaws or the General Corporation Law of the State of Delaware, as amended (the "DGCL"), does not specify a higher voting requirement, that question will be decided by the requisite vote that stockholder approval policy, Exchange Act requirement or Code provision, as the case may be, specifies (or the highest requisite vote if more than one applies). A majority of the votes cast on the question whether to approve the appointment of independent public accountants (if that question is submitted for a vote of Stockholders) will be sufficient to

approve. All other elections and questions which have properly come before any meeting will, unless the Certificate of Incorporation, these Bylaws or applicable law otherwise provides, be decided by the vote of the holders of shares of stock of the Corporation present in person or by proxy at that meeting and having a majority of the votes entitled to vote thereon.

Section 1.8 Fixing Date for Determination of Stockholders of Record. In order that the Corporation may determine the Stockholders entitled to notice of or to vote at any meeting of Stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board by resolution may fix a record date, which record date: (i) must not precede the date on which the Board adopts that resolution; (ii) in the case of a determination of Stockholders entitled to vote at any meeting of Stockholders or adjournment thereof, will, unless applicable law otherwise requires, not be more than 60 nor less than 10 days before the date of that meeting; (iii) in the case of a determination of Stockholders entitled to express consent to corporate action in writing without a meeting, will not be more than 10 days from the date on which the Board adopts the resolution fixing the record date; and (iv) in the case of any other action, will not be more than 60 days prior to that other action. If the Board does not fix a record date: (i) the record date for determining Stockholders entitled to notice of or to vote at a meeting of Stockholders will be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (ii) the record date for determining Stockholders entitled to express consent to corporate action in writing without a meeting will be (A) if applicable law does not require a prior action by the Board, the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law; and (B) if applicable law requires prior action by the Board, at the close of business on the day on which the Board adopts the resolution taking that prior action; and (iii) the record date for determining Stockholders for any other purpose will be at the close of business on

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the day on which the Board adopts the resolution relating thereto. A determination of Stockholders of record entitled to notice of or to vote at a meeting of Stockholders will apply to any adjournment of that meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

Section 1.9 List of Stockholders Entitled To Vote. The Secretary will prepare and make, at least 10 days before each meeting of Stockholders, a list of the Stockholders entitled to vote at that meeting which complies with the requirements of Section 219 of the DGCL as in effect at that time.

Section 1.1 Election of Directors. (a) Subject to such rights of the holders of any class or series of the Corporation's capital stock as the Certificate of Incorporation may prescribe, only persons who are nominated in accordance with the procedures this Section 1.10 sets forth will be eligible for election by Stockholders as Directors. Nominations of persons for election to the Board may be made at any meeting of Stockholders at which Directors are to be elected: (i) by or at the direction of the Board or any Board Committee the Board has duly designated and empowered to nominate persons for election as Directors; or (ii) by any Stockholder who (A) is a Stockholder of record at the time that Stockholder gives the notice this Section 1.10 specifies below, (B) will be entitled to vote at that meeting in the election of the Director for which that Stockholder is making the nomination and (C) complies with this Section 1.10.

(b) For a Stockholder to bring any nomination of a person for election as a Director properly before any meeting of Stockholders held after the date the first registration of any class or series of the Corporation's capital stock becomes effective under the Exchange Act (that date being the "Exchange Act Effective Date"), that Stockholder must have given timely notice of that nomination (a "Nomination Notice") in proper written form to the Secretary. To be timely, a Stockholder's Nomination Notice must be delivered to the Secretary, or mailed and received by the Secretary, at the principal executive offices of the Corporation: (i) if it relates to an election at any annual meeting of Stockholders, not later than the close of business on the 90th day and not earlier than the 120th day prior to the first anniversary of the preceding

year's annual meeting; provided, however, that (i) with respect to the first annual meeting to be held after the Exchange Act Effective Date or in the event that the date of the pending annual meeting is more than 30 days before or more than 60 days after that anniversary date, that it will be timely if it is so delivered not later than the last to occur of the close of business on (A) the 90th day prior to the pending annual meeting or (B) the 10th day following the day on which the Corporation first makes a public announcement of the date of the pending annual meeting; and (ii) if it relates to any special meeting of Stockholders, provided that the Board of Directors has determined that directors shall be elected at such meeting, not earlier than 120 days prior to that special meeting and not later than the last to occur of the close of business on (A) the 90th day prior to that special meeting or (B) the 10th day following the day on which the Corporation first makes a public announcement of the date of that special meeting. The public disclosure of an adjournment of any annual or special meeting will not in any event commence a new time period for the giving of any Nomination Notice.

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(c) To be in proper written form, any Nomination Notice of a Stockholder must: (i) set forth (A) as to each person whom that Stockholder proposes to nominate for election as a Director, (1) the name, age and business address of that person, (2) the principal occupation or employment of that person, (3) the class or series and number of shares of capital stock of the Corporation which that person owns beneficially or of record and (4) all other information, if any, relating to that person which Section 14 of the Exchange Act and the rules and regulations thereunder would require the Corporation or that Stockholder to disclose in a proxy statement or any other filing in connection with solicitations of proxies for an election of directors and (B) as to that Stockholder and the beneficial owner, if any, of capital stock of the Corporation on whose behalf the nomination is being made, (1) the name and address of that Stockholder as they appear in the stock records of the Corporation and the name and address of that beneficial owner, (2) the class or series and the number of shares of capital stock of the Corporation which that Stockholder and that beneficial owner each owns beneficially or of record, (3) a description of all arrangements and understandings between that Stockholder or that beneficial owner and each proposed nominee of that Stockholder and any other person or persons (including their names) pursuant to which the nomination(s) are to be made by that Stockholder, (4) a representation by that Stockholder that he intends to appear in person or by proxy at that meeting to nominate the person(s) named in that Nomination Notice, (5) a representation whether the Stockholder or the beneficial owner, if any, intends or is part of a group which intends (a) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to elect the nominee and/or (b) to otherwise solicit proxies from Stockholders in support of such nomination, and (6) all other information, if any, relating to that Stockholder and that beneficial owner which Section 14 of the Exchange Act and the rules and regulations thereunder would require the Corporation or that Stockholder to disclose in a proxy statement or any other filing in connection with solicitations of proxies for an election of directors; and (ii) be accompanied by a written consent of each person that Stockholder proposes to nominate for election as a Director to be named as such a nominee and to serve as a Director if elected. The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a Director of the Corporation.

(d) Except as the Certificate of Incorporation, these Bylaws or applicable law otherwise provides, the chairman of any meeting of Stockholders at which Directors are to be elected will have the power and duty to determine whether nominations of persons for election as Directors have been made in accordance with the procedures this Section 1.10 sets forth (including whether the Stockholder or beneficial owner, if any, on whose behalf the nomination is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such Stockholder's nominee in compliance with such Stockholder's representation as required by clause (c) (i) (B) (5) of this Section 1.10) and, if that chairman determines that any such nomination has not been made in compliance with these procedures, to declare to that meeting that such nomination is defective and will be disregarded. Notwithstanding the foregoing provisions of this Section 1.10, if the Stockholder (or a qualified representative of the Stockholder) does not appear at the annual or special meeting of Stockholders of the Corporation to present a nomination, such nomination shall

be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

(e) Notwithstanding anything in Section 1.10(b) to the contrary, if the number of Directors to be elected at an annual meeting of Stockholders held after the Exchange Act Effective Date is increased and the Corporation has not made a public announcement (i) at least 90 days prior to the date of that meeting, in the case of the first annual meeting of Stockholders held after the Exchange Act Effective Date, or (ii) at least 100 days prior to the first anniversary of the preceding year's annual meeting, in the case of any other annual meeting of Stockholders held after the Exchange Act Effective Date, which announcement (A) names all the nominees for Director of the Board or any duly designated and empowered Board Committee or (B) specifies the size of the increased Board, a Stockholder's Nomination Notice will be timely, but only with respect to nominees for any new positions that increase creates, if that Nomination Notice is delivered to the Secretary, or mailed and received by the Secretary at, the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which the Corporation first makes that public announcement.

(f) For purposes of Section 1.11 and this Section 1.10, "public announcement" means disclosure in a press release the Dow Jones News Service, Associated Press or any comparable national news service in the United States reports or in a document the Corporation publicly files with the Securities and Exchange Commission (the "SEC") pursuant to the Exchange Act; provided, however, that prior to the Exchange Act Effective Date, a written notice the Corporation mails, postage prepaid, to Stockholders of record at their addresses as they appear in the stock records of the Corporation will be a "public announcement" three days after the date of that mailing.

(g) Notwithstanding the foregoing provisions of this Section 1.10, a Stockholder also must comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters this Section 1.10 sets forth.

Section 1.1 Other Stockholder Business. (a) At any annual meeting the Corporation holds pursuant to Section 1.1, the Stockholders will transact only such business, in addition to the election of Directors, as has been properly brought before that meeting. Except as the Certificate of Incorporation otherwise provides, to be brought properly before any annual meeting, business other than the election of Directors ("Other Business") must be (i) business the notice of that meeting (or any supplement thereto) given by or at the direction of the Board specifies, (ii) business otherwise properly brought before that meeting by or at the direction of the Board and (iii) business (A) properly brought before that meeting by a Stockholder who (1) is a Stockholder of record at the time that Stockholder gives the notice this Section 1.11 specifies below, (2) will be entitled to vote on that business at that meeting and (3) complies with this Section 1.11, (B) that is a proper subject for Stockholder action and (C) is properly introduced at that meeting.

(b) For a Stockholder to bring any Other Business properly before any annual meeting of Stockholders held after the Exchange Act Effective Date, that Stockholder must have given timely notice thereof (a "Business Notice") in proper written form to the Secretary. To be timely, a Stockholder's Business Notice must be delivered to the Secretary, or mailed and received by the Secretary at, the principal executive offices of the Corporation not later than the close of business on the 90th day and not earlier than the 120th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that with respect to the first annual meeting to be held after the Exchange Act Effective Date or in the event that the date of the pending annual meeting is more than 30 days before or more than 60 days after that anniversary date, that Business Notice will be timely if it is so delivered not later than the last to occur of the close of business on (A) the 90th day prior to that pending annual meeting or (B) the 10th day following the day on which the Corporation first makes a public announcement of the date of the pending meeting. The public disclosure of an adjournment of any annual meeting will not in any event commence a new time period for the giving of any Business Notice.

(c) To be in proper written form, any Business Notice of a Stockholder

must set forth: (i) as to each matter of Other Business that Stockholder proposes to bring before an annual meeting, (A) a brief description of that Other Business, (B) the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws of the Corporation, the language of the proposed amendment), (C) the reasons for conducting that Other Business at an annual meeting and (D) each material interest in that Other Business of that Stockholder and the beneficial owner, if any, of capital stock of the Corporation on whose behalf that proposal is being made; and (ii) as to that Stockholder and each such beneficial owner, (A) the name and address of that Stockholder as they appear on the Corporation's books and the name and address of that beneficial owner, (B) the class or series and the number of shares of capital stock of the Corporation which that Stockholder and that beneficial owner each owns beneficially or of record, (C) a description of all arrangements and understandings between that Stockholder or that beneficial owner and any other person or persons (including their names) in connection with that Other Business, (D) a representation by that Stockholder that he intends to appear in person or by proxy at that meeting to bring that Other Business before that meeting, and (E) a representation whether the Stockholder or the beneficial owner, if any, intends or is part of a group which intends (a) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal and/or (b) otherwise to solicit proxies from Stockholders in support of such proposal. The foregoing notice requirements shall be deemed satisfied by a Stockholder if the Stockholder has notified the Corporation of his or her intention to present a proposal at an annual meeting in compliance with Rule 14a-8 (or any successor thereof) promulgated under the Exchange Act and such Stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

(d) Except as applicable law otherwise provides, the chairman of any annual meeting of Stockholders will have the power and duty to determine whether proposals by Stockholders of any Other Business to be brought before that meeting have been made in accordance

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with the procedures this Section 1.11 sets forth (including whether the Stockholder or beneficial owner, if any, on whose behalf the proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such Stockholder's proposal in compliance with such Stockholder's representation as required by clause (c)(ii)(E) of this Section 1.11) and, if that chairman determines that any such proposal has not been made in compliance with these procedures, to declare to that meeting that such proposal is defective and will be disregarded.

(e) At any special meeting the Corporation holds pursuant to Section 1.2, the Stockholders will transact only such business as (i) the notice given of that meeting pursuant to Section 1.3 sets forth and (ii) constitutes matters incident to the conduct of that meeting as the chairman of that meeting determines to be appropriate.

(f) Notwithstanding the foregoing provisions of this Section 1.11, after the Exchange Act Effective Date, a Stockholder also must comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters this Section 1.11 sets forth.

Section 1.12 Action By Consent of Stockholders. Unless the Certificate of Incorporation otherwise provides, Stockholders may, prior to the Exchange Act Effective Date but not thereafter, without a meeting, prior notice or a vote, take any action they must or may take at any annual or special meeting, if the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all shares entitled to vote thereon were present consent to that action which sets forth that action and cause the delivery of that consent in accordance with applicable law to the Corporation (i) at its registered office in the State of Delaware or its principal place of business or (ii) to an officer or agent of the corporation having custody of the books in which the Corporation records minutes of proceedings or other actions of Stockholders. Stockholders may execute any consent pursuant to this Section 1.12 in counterparts, all of which together will constitute a single consent. The Corporation will give prompt notice of the taking pursuant to this Section 1.12 of any action without a meeting by less than unanimous consent, to the extent required by law, to those Stockholders who have not consented to that action and

who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation.

Section 1.13 Conduct of Meetings. The Board may adopt by resolution such rules and regulations for the conduct of meetings of Stockholders as it deems appropriate. Except to the extent inconsistent with those rules and regulations, if any, the chairman of any meeting of Stockholders will have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of that chairman, are appropriate for the proper conduct of that meeting. Those rules, regulations or procedures whether adopted by the Board or prescribed by the chairman of the meeting may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the

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meeting to Stockholders of record, their duly authorized and constituted proxies or such other persons as the chairman of the meeting may determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. Except to the extent the Board or the chairman of any meeting otherwise prescribes, no rules or parliamentary procedure will govern any meeting of Stockholders.

ARTICLE II

BOARD OF DIRECTORS

Section 2.1 Regular Meetings. The Board will hold its regular meetings at such places, on such dates and at such times as the Board by resolution may determine from time to time, and any such resolution will constitute due notice to all Directors of the regular meeting or meetings to which it relates. By notice pursuant to Section 2.6, the Chairman or a majority of the Board may change the place, date or time of any regular meeting of the Board.

Section 2.2 Special Meetings. The Board will hold a special meeting at any place or time whenever the Chairman or a majority of the Board by resolution calls that meeting by notice pursuant to Section 2.6.

Section 2.3 Telephonic Meetings. Members of the Board may hold and participate in any Board meeting by means of conference telephone or other communications equipment that permits all persons participating in the meeting to hear each other, and participation of any Director in a meeting pursuant to this Section 2.3 will constitute the presence in person of that Director at that meeting for purposes of these Bylaws, except in the case of a Director who so participates only for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting has not been called or convened in accordance with applicable law or these Bylaws.

Section 2.4 Organization. The Chairman will chair and preside over meetings of the Board at which he is present. A majority of the Directors present at any meeting of the Board from which the Chairman is absent will designate one of their number as chairman and presiding officer over that meeting. The Secretary will act as secretary of meetings of the Board, but in his absence from any such meeting the chairman of that meeting may appoint any person to act as secretary of that meeting.

Section 2.5 Order of Business. The Board will transact business at its meetings in such order as the Chairman or the Board by resolution will determine.

Section 2.6 Notice of Meetings. To call a special meeting of the Board, the Chairman or a majority of the Board must give a timely notice to each Director of the time and place of, and the general nature of the business the Board will transact at, all special meetings of the Board. To change the time or place of any regular meeting of the Board, the Chairman or a majority of the

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Board must give a timely notice to each Director of that change. To be timely, any notice this Section 2.6 requires must be delivered to each Director personally or by mail, telegraph, telecopier or other communication at least one day before the meeting to which it relates; provided, however, that notice of any meeting of the Board need not be given to any Director who waives the requirement of that notice (whether after that meeting or otherwise) or is present at that meeting.

Section 2.7 Quorum; Vote Required for Action. At all meetings of the Board, the presence in person of a majority of the total number of Directors then in office will constitute a quorum for the transaction of business, and the participation by a Director in any meeting of the Board will constitute that Director's presence in person at that meeting unless that Director expressly limits that participation to objecting, at the beginning of the meeting, to the transaction of any business at that meeting on the ground that the meeting has not been called or convened in accordance with applicable law or these Bylaws. Except in cases in which the Certificate of Incorporation or these Bylaws otherwise provide, the vote of a majority of the Directors present at a meeting at which a quorum is present will be the act of the Board.

Section 2.8 Informal Action by Directors. Unless the Certificate of Incorporation or these Bylaws otherwise provides, the Board may, without a meeting, prior notice or a vote, take any action it must or may take at any meeting, if all members of the Board consent thereto in writing or electronic transmission, and the written consents or electronic transmissions are filed with the minutes of proceedings of the Board the Secretary will keep.

ARTICLE III

BOARD COMMITTEES

Section 3.1 Board Committees. (a) The Board may designate one or more Board Committees consisting of one or more of the Directors. The Board may designate one or more Directors as alternate members of any Board Committee, who may replace any absent or disqualified member at any meeting of that committee. The member or members present at any meeting of any Board Committee and not disqualified from voting at that meeting may, whether or not constituting a quorum, unanimously appoint another Director to act at that meeting in any place of any member of that committee who is absent from or disqualified to vote at that meeting.

(b) The Board by resolution may change the membership of any Board Committee at any time and fill vacancies on any of those committees. A majority of the members of any Board Committee will constitute a quorum for the transaction of business by that committee unless the Board by resolution requires a greater number for that purpose. The Board by resolution may elect a chairman of any Board Committee. The election or appointment of any Director to a Board Committee will not create any contract rights of that Director, and the Board's removal of any member of any Board Committee will not prejudice any contract rights that member otherwise may have.

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(c) Pursuant to Section 3.1(a), the Board may designate an executive committee (the "Executive Committee") to exercise, subject to applicable provisions of law, all the powers of the Board in the management of the business and affairs of the Corporation when the Board is not in session, including the powers to (i) declare dividends and (ii) authorize the issuance by the Corporation of any class or series of its capital stock. The Executive Committee will include the Chairman among its members.

(d) Each other Board Committee the Board may designate pursuant to Section 3.1(a) will, subject to applicable provisions of law, have and may exercise all the powers and authorities of the Board to the extent the Board resolution designating that committee so provides.

Section 3.2 Board Committee Rules. Unless the Board otherwise provides, each Board Committee may make, alter and repeal rules for the conduct of its business. In the absence of those rules, each Board Committee will conduct its business in the same manner as the Board conducts its business pursuant to Article II.

ARTICLE IV

OFFICERS

Section 4.1 Designation. The officers of the Corporation will consist of a chief executive officer ("CEO"), chief financial officer, chief operating officer, chief accounting officer, president, secretary, treasurer and such senior or other vice presidents, assistant secretaries, assistant treasurers and other officers as the Board or the CEO may elect or appoint from time to time. Any person may hold any number of offices of the Corporation.

Section 4.2 CEO. The CEO will, subject to the control of the Board: (i) have general supervision and control of the affairs, business, operations and properties of the Corporation; (ii) see that all orders and resolutions of the Board are carried into effect; (iii) have the power to appoint and remove all subordinate officers, employees and agents of the Corporation, except for those the Board elects or appoints; and (iv) sign and execute, under the seal of the Corporation, all contracts, instruments, mortgages and other documents (collectively, "documents") of the Corporation which require that seal, except as applicable law otherwise requires or permits any document to be signed and executed and except as these Bylaws, the Board or the CEO authorize other officers of the Corporation to sign and execute documents. The CEO also will perform such other duties and may exercise such other powers as generally pertain to his office or these Bylaws or the Board by resolution assigns to him from time to time.

Section 4.3 Powers and Duties of Other Officers. The other officers of the Corporation will have such powers and duties in the management of the Corporation as the Board by resolution may prescribe and, except to the extent so prescribed, as generally pertain to their respective offices, subject to the control of the Board. The Board may require any officer, agent or employee to give security for the faithful performance of his duties.

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Section 4.4 Term of Office, etc. Each officer will hold office until the first meeting of the Board after the annual meeting of Stockholders next succeeding his election, and until his successor is elected and qualified or until his earlier resignation or removal. No officer of the Corporation will have any contractual right against the Corporation for compensation by reason of his election or appointment as an officer of the Corporation beyond the date of his service as such, except as a written employment or other contract otherwise may provide. The Board may remove any officer with or without cause at any time, but any such removal will not prejudice the contractual rights of that officer, if any, against the Corporation. The Board by resolution may fill any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise for the unexpired portion of the term of that office at any time.

ARTICLE V

CAPITAL STOCK

Section 5.1 Certificates. Shares of capital stock of the Corporation will be evidenced by certificates in such form or forms as the Board by resolution may approve from time to time or, if and to the extent the Board so authorizes by resolution, may be uncertificated. The Chairman, the president or any vice president of the Corporation and the Secretary or any assistant secretary of the Corporation may sign certificates evidencing certificated shares. Any of or all the signatures and the Corporation's seal on each such certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before the Corporation issues that certificate, the Corporation may issue that certificate with the same effect as if he were such officer, transfer agent or registrar at the date of that issue.

Section 5.2 Transfer of Shares. The Corporation may act as its own transfer agent and registrar for shares of its capital stock or use the services of such one or more transfer agents and registrars as the Board by resolution may appoint from time to time. Shares of the Corporation's capital stock will be transferable only on the books of the Corporation by the holders thereof in person or by their duly authorized attorneys or legal representatives on surrender and cancellation of certificates for a like number of shares.

Section 5.3 Ownership of Shares. The Corporation will be entitled to treat the holder of record of any share or shares of its capital stock as the holder in fact thereof and, accordingly, will not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it has express or other notice thereof, except as the applicable laws of the State of Delaware otherwise provide.

Section 5.4 Regulations Regarding Certificates. The Board will have the power and authority to make all such rules and regulations as it may deem expedient concerning the issue, transfer and registration or the replacement of certificates for shares of capital stock of the Corporation.

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Section 5.5 Lost or Destroyed Certificates. The Board may determine the conditions on which a new certificate of stock may be issued in place of a certificate alleged to have been lost, stolen or destroyed and may, in its discretion, require the owner of the allegedly lost, stolen or destroyed certificate or his legal representative to give bond, with sufficient surety, to indemnify the Corporation and each transfer agent and registrar against any and all losses or claims that may arise by reason of the issue of a new certificate in the place of the one allegedly so lost, stolen or destroyed.

ARTICLE VI

INDEMNIFICATION

Section 6.1 Right to Indemnification. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "Covered Person") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he, or a person for whom he is the legal representative, is or was a Director or officer of the Corporation or, while a Director or officer of the Corporation, is or was serving at the request of the Corporation as a Director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except as otherwise provided in Section 6.3, the Corporation shall be required to indemnify a Covered Person in connection with a proceeding (or part thereof) commenced by such Covered Person only if the commencement of such proceeding (or part thereof) by the Covered Person was authorized by the Board of Directors of the Corporation.

Section 6.2 Prepayment of Expenses. The Corporation shall pay the expenses (including attorneys' fees) incurred by a Covered Person in defending any proceeding in advance of its final disposition, provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Article VI or otherwise.

Section 6.3 Claims. If a claim for indemnification or advancement of expenses under this Article VI is not paid in full within thirty days after a written claim therefor by the Covered Person has been received by the Corporation, the Covered Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

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Section 6.4 Nonexclusivity of Rights. The rights conferred on any Covered Person by this Article VI shall not be exclusive of any other rights which such Covered Person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these Bylaws, agreement, vote of Stockholders or disinterested Directors or otherwise.

Section 6.5 Other Sources. The Corporation's obligation, if any, to

indemnify or to advance expenses to any Covered Person who was or is serving at its request as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

Section 6.6 Amendment or Repeal. Any repeal or modification of the foregoing provisions of this Article VI shall not adversely affect any right or protection hereunder of any Covered Person in respect of any act or omission occurring prior to the time of such repeal or modification.

Section 6.7 Other Indemnification and Prepayment of Expenses. This Article VI shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

ARTICLE VII

MISCELLANEOUS

Section 7.1 Fiscal Year. The Board by resolution will determine the fiscal year of the Corporation.

Section 7.2 Seal. The corporate seal will have the name of the Corporation inscribed thereon and will be in such form as the Board by resolution may approve from time to time.

Section 7.3 Interested Directors; Quorum. No contract or transaction between the Corporation and one or more of its Directors or officers, or between the Corporation and any other Entity in which one or more of its Directors or officers are directors or officers (or hold equivalent offices or positions), or have a financial interest, will be void or voidable solely for this reason, or solely because the Director or officer is present at or participates in the meeting of the Board or Board Committee which authorizes the contract or transaction, or solely because his or their votes are counted for that purpose, if: (i) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the Board Committee, and the Board or Board Committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; or (ii) the material facts as to the Director's or officer's relationship or interest and as to

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the contract or transaction are disclosed or are known to the Stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of those Stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board, a Board Committee or the Stockholders. Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or of a Board Committee which authorizes the contract or transaction.

Section 7.4 Form of Records. Any records the Corporation maintains in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or be in the form of, punch cards, magnetic tape, photographs, microphotographs or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time.

Section 7.5 Bylaw Amendments. The Board has the power to adopt, amend and repeal from time to time the Bylaws of the Corporation, subject to the right of Stockholders entitled to vote with respect thereto to amend or repeal those Bylaws as adopted or amended by the Board. Bylaws of the Corporation may be adopted, amended or repealed by the affirmative vote of the holders of at least 66.7% of the combined voting power of the outstanding shares of all classes of capital stock of the Corporation entitled to vote generally in the election of Directors, voting together as a single class, at any annual meeting, or at any special meeting if notice of the proposed amendment is contained in the notice of that special meeting, or by the Board as specified in the preceding sentence.

Section 7.6 Notices; Waiver of Notice. Whenever any notice is required to be given to any Stockholder, Director or member of any Board Committee under the provisions of the DGCL, the Certificate of Incorporation or these Bylaws, that notice will be deemed to be sufficient if given (i) by telegraphic, facsimile, cable or wireless transmission or other lawful means or (ii) by deposit of the same in the United States mail, with postage paid thereon, addressed to the person entitled thereto at his address as it appears in the records of the Corporation, and that notice will be deemed to have been given on the day of such transmission or mailing, as the case may be.

Whenever any notice is required to be given to any Stockholder or Director under the provisions of the DGCL, the Certificate of Incorporation or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to that notice or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, will be equivalent to the giving of that notice. Attendance of a person at a meeting will constitute a waiver of notice of that meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Stockholders, the Board or any Board Committee need be specified in any written waiver of notice or any waiver by electronic transmission unless the Certificate of Incorporation or these Bylaws so require.

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Section 7.7 Resignations. Any Director or officer of the Corporation may resign at any time. Any such resignation will take effect at the time specified in that resignation, or, if that resignation does not specify any time, at the time of its receipt by the Chairman or the Secretary. The acceptance of a resignation will not be necessary to make it effective, unless that resignation expressly so provides.

Section 7.8 Reliance on Books, Reports and Records. Each Director and each member of any Board Committee designated by the Board will, in the performance of his duties, be fully protected in relying in good faith on the books of account or reports made to the Corporation by any of its officers, or by an independent certified public accountant, or by an appraiser selected with reasonable care by the Board or by any such committee, or in relying in good faith upon other records of the Corporation.

Section 7.9 Certain Definitional Provisions. (a) When used in these Bylaws, the words "herein," "hereof" and "hereunder" and words of similar import refer to these Bylaws as a whole and not to any provision of these Bylaws, and the words "Article" and "Section" refer to Articles and Sections of these Bylaws unless otherwise specified.

(b) Whenever the context so requires, the singular number includes the plural and vice versa, and a reference to one gender includes the other gender and the neuter.

(c) The word "including" (and, with correlative meaning, the word "include") means including, without limiting the generality of any description preceding that word, and the words "shall" and "will" are used interchangeably and have the same meaning.

Section 7.10 Captions. Captions to Articles and Sections of these Bylaws are included for convenience of reference only, and these captions do not constitute a part hereof for any other purpose or in any way affect the meaning or construction of any provision hereof.

End of Bylaws

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AMENDED AND RESTATED INDEMNIFICATION AGREEMENT

THIS AMENDED AND RESTATED INDEMNIFICATION AGREEMENT (this "Agreement") is made as of August 17, 2000 by and between U.S. Concrete, Inc., a Delaware corporation (the "Company"), and William T. Albanese ("Indemnitee"). This Agreement amends and restates in its entirety the Indemnification Agreement, dated as of May 28, 1999, between the Company and Indemnitee.

PRELIMINARY STATEMENT

Highly competent persons have become more reluctant to serve corporations as directors or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of corporations.

The Board of Directors of the Company (the "Board") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of that insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Board believes that, given current market conditions and trends, that insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises increasingly are being subjected to expensive and time-consuming litigation relating to, among other matters, matters that traditionally would have been brought only against the corporation or business enterprise itself. The uncertainties relating to liability insurance and to indemnification have increased the difficulty of attracting and retaining those persons, and the Board has determined that (i) this increased difficulty is detrimental to the best interests of the Company's stockholders and that the Company should act to assure those persons that there will be increased certainty of such protection in the future and (ii) it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify those persons to the fullest extent applicable law permits so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified.

The Bylaws of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the Delaware General Corporation Law ("DGCL"). The Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification.

This Agreement is a supplement to and in furtherance of the Bylaws of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

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The Indemnitee does not regard the protection available under the Company's Bylaws and insurance as adequate in the present circumstances, and may not be willing to serve as an officer or director without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he be so indemnified.

NOW, THEREFORE, in consideration of the premises and the covenants herein, the parties to this Agreement agree as follows:

Section 1. Services by Indemnitee. Indemnitee agrees to serve as a director and/or officer of the Company and, as mutually agreed by Indemnitee and the Company, as a director, officer, trustee, general partner, managing member, employee, agent or fiduciary of other corporations, limited liability companies, partnerships, joint ventures, trusts or other enterprises (including, without

limitation, employee benefit plans)(each, an "Enterprise"). Indemnitee may at any time and for any reason resign from any such position (subject to any other contractual obligation or any obligation applicable law imposes), in which event the Company will have no obligation under this Agreement to continue Indemnitee in that position. This Agreement is not and is not to be construed as an employment contract between the Company (or any of its subsidiaries) and Indemnitee. Indemnitee specifically acknowledges that Indemnitee's employment with the Company (or any of its subsidiaries), if any, is at will, and the Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Company (or any of its subsidiaries), other applicable formal severance policies duly adopted by the Board or, with respect to service as a director of the Company, by the Company's Certificate of Incorporation, Bylaws and the DGCL. The foregoing notwithstanding, subject to Section 12, this Agreement will continue in force after Indemnitee has ceased to serve as an officer or director of the Company and no longer serves at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise.

Section 2. Indemnification--General. The Company will indemnify, and advance Expenses (as hereinafter defined) to, Indemnitee (i) as this Agreement permits and (ii) (subject to the provisions hereof) to the fullest extent applicable law in effect on the date hereof and as amended from time to time permits. The rights the preceding sentence provide to Indemnitee will include, but will not be limited to, the rights the other Sections hereof set forth.

Section 3. Proceedings Other Than by or in the Right of the Company. Indemnitee will be entitled to the rights of indemnification this Section 3 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant in any threatened, pending or completed Proceeding (as hereinafter defined), other than a Proceeding by or in the right of the Company. Pursuant to this Section 3, the Company will indemnify Indemnitee against, and will hold Indemnitee harmless from and in respect of, all Expenses, judgments, penalties, fines (including excise taxes) and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of those Expenses, judgments, fines, penalties or amounts paid in settlement) actually and reasonably incurred by him or on his behalf in connection with that Proceeding or any claim, issue or matter therein, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and,

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with respect to any criminal Proceeding, had no reasonable cause to believe his conduct was unlawful.

Section 4. Proceedings by or in the Right of the Company. Indemnitee will be entitled to the rights of indemnification this Section 4 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant (as a witness or otherwise) in any threatened, pending or completed Proceeding brought by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, the Company will indemnify Indemnitee against, and will hold Indemnitee harmless from and in respect of, all Expenses actually and reasonably incurred by him or on his behalf in connection with that Proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that no indemnification against those Expenses will be made in respect of any claim, issue or matter in that Proceeding as to which Indemnitee has been adjudged to be liable to the Company unless and to the extent that the Court of Chancery, or the court in which that Proceeding has been brought or is pending, determines that despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification.

Section 5. Indemnification for Expenses of a Party Who Is Wholly or Partly Successful. Notwithstanding any other provision hereof, to the extent that Indemnitee is, by reason of his Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in defense of any Proceeding, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is not wholly successful in defense of any Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in that Proceeding, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on

his behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in any Proceeding by dismissal, with or without prejudice, will be deemed to be a successful result as to that claim, issue or matter.

Section 6. Indemnification for Expenses as a Witness. Notwithstanding any other provision hereof, to the extent that Indemnatee is, by reason of his Corporate Status, a witness in any Proceeding to which Indemnatee is not a party, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

Section 7. Advancement of Expenses. The Company will advance all reasonable Expenses incurred by or on behalf of Indemnatee in connection with any Proceeding within 10 days after the Company receives a statement or statements from Indemnatee requesting such advance or advances from time to time, whether prior to or after final disposition of that Proceeding. Each such statement must reasonably evidence the Expenses incurred by or on behalf of Indemnatee and include or be preceded or accompanied by an undertaking by or on behalf of Indemnatee to repay any Expenses advanced if it ultimately is determined that Indemnatee is not entitled to be indemnified by the Company against those Expenses. The Company will accept any such undertaking without reference to the financial ability of Indemnatee to make repayment, and without regard to Indemnatee's ultimate entitlement to indemnification under other provisions of this Agreement.

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Section 8. Procedure for Determination of Entitlement to Indemnification. (a) Within sixty (60) days after the actual receipt by Indemnatee of notice that he or she is a party to or a participant (as a witness or otherwise) in any Proceeding, Indemnatee shall submit to the Company a written notice identifying the Proceeding. The omission by the Indemnatee to notify the Company will not relieve the Company from any liability which it may have to Indemnatee (i) otherwise than under this Agreement, and (ii) under this Agreement only to the extent the Company can establish that such omission to notify resulted in actual prejudice to the Company.

(b) Indemnatee shall thereafter deliver to the Company a written application to indemnify Indemnatee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnatee deems appropriate in his or her sole discretion. Following such a written application for indemnification by Indemnatee, the Indemnatee's entitlement to indemnification shall be determined according to Section 8(c) of this Agreement.

(c) On written request by Indemnatee for indemnification pursuant to Section 8(b), a determination, if applicable law requires, with respect to Indemnatee's entitlement thereto will be made in the specific case: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, or (ii) if so requested by the Indemnatee in his or her sole discretion by an Independent Counsel in a written opinion to the Board, a copy of which will be delivered to Indemnatee. If it is so determined that Indemnatee is entitled to indemnification hereunder, the Company will: (i) within 10 days after that determination pay to Indemnatee all amounts theretofore incurred by or on behalf of Indemnatee in respect of which Indemnatee is entitled to that indemnification by reason of that determination; and (ii) thereafter on written request by Indemnatee, pay to Indemnatee within 10 days after that request such additional amounts theretofore incurred by or on behalf of Indemnatee in respect of which Indemnatee is entitled to that indemnification by reason of that determination. Indemnatee will cooperate with the person, persons or entity making the determination with respect to Indemnatee's entitlement to indemnification under this Agreement, including providing to such person, persons or entity on reasonable advance request any documentation or information which is (i) not privileged or otherwise protected from disclosure, (ii) reasonably available to Indemnatee and (iii) reasonably necessary to that determination. The Company will bear all costs and expenses (including attorneys' fees and disbursements) Indemnatee incurs in so cooperating (irrespective of the determination as to Indemnatee's entitlement to indemnification) and hereby indemnifies and agrees to hold Indemnatee harmless therefrom.

(d) If an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c), the Independent Counsel

will be selected as this Section 8(d) provides. If a Change of Control has not occurred within two years prior to the date of Indemnatee's written request for indemnification pursuant to Section 8(a), the Board will select the Independent Counsel, and the Company will give written notice to Indemnatee advising him of the identity of the Independent Counsel so selected. If a Change of Control has occurred within two years prior to the date of that written request, Indemnatee will select the Independent Counsel (unless Indemnatee requests that the Board make the selection, in which event the preceding sentence will apply), and Indemnatee will give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnatee or the Company, as the case may be, may, within 10 days after the written notice of selection has been given, deliver to the Company or

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to Indemnatee, as the case may be, a written objection to the selection; provided, however, that any such objection may be asserted only on the ground that the Independent Counsel so selected is not an "Independent Counsel" as Section 17 defines that term, and the objection must set forth with particularity the factual basis for that assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If any such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until that objection is withdrawn or a court of competent jurisdiction has determined that objection is without merit. If (i) an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c) and (ii) within 20 days after submission by Indemnatee of a written request for indemnification pursuant to Section 8(a), no Independent Counsel has been selected and not objected to, either the Company or Indemnatee may petition the Court of Chancery or other court of competent jurisdiction for resolution of any objection that has been made by the Company or Indemnatee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the petitioned court or by such other person as the petitioned court designates, and the person with respect to whom all objections are so resolved or the person so appointed will act as the Independent Counsel under Section 8(c). The Company will pay any and all reasonable fees and expenses the Independent Counsel incurs in connection with acting pursuant to Section 8(c), and the Company will pay all reasonable fees and expenses incident to the procedures this Section 8(d) sets forth, regardless of the manner in which the Independent Counsel is selected or appointed. If (i) the Independent Counsel selected or appointed pursuant to this Section 8(d) does not make any determination respecting Indemnatee's entitlement to indemnification hereunder within 45 days after the Company receives a written request therefor and (ii) any judicial proceeding or arbitration pursuant to Section 10(a) is then commenced, that Independent Counsel will be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 9. Presumptions and Effect of Certain Proceedings. (a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making that determination must presume that Indemnatee is entitled to indemnification hereunder if Indemnatee has submitted a request for indemnification in accordance with Section 8(a), and the Company will have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnatee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnatee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnatee has not met the applicable standard of conduct.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or on a plea of nolo contendere or its equivalent, will not (except as this Agreement otherwise expressly provides) of itself adversely affect the right of Indemnatee to indemnification hereunder or create a presumption that Indemnatee did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the

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Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his conduct was unlawful.

(c) Any action Indemnitee takes or omits to take in connection with any employee benefit plan will, if taken or omitted in good faith by Indemnitee and in a manner Indemnitee reasonably believed to be in the interest of the participants in or beneficiaries of that plan, be deemed to have been taken or omitted in a manner "not opposed to the best interests of the Company" for all purposes hereof.

(d) Reliance as Safe Harbor. For purposes of any determination of good

faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise. The provisions of this Section 9(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

(e) Actions of Others. The knowledge and/or actions, or failure to act, of

any other director, trustee, partner, managing member, fiduciary, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 10. Remedies of Indemnitee. (a) In the event that (i) a determination is made pursuant to Section 8 that Indemnitee is not entitled to indemnification hereunder, (ii) advancement of Expenses is not timely made pursuant to Section 7, (iii) no determination as to Indemnitee's entitlement to indemnification shall have been made pursuant to Section 8(c) of this Agreement hereunder, or that determination shall not have been made within 45 days after receipt by the Company of the request for that indemnification, (iv) payment of indemnification is not made pursuant to Section 5 or 6 within 10 days after receipt by the Company of a written request therefor or (v) payment of indemnification pursuant to Section 8(c) is not made timely, Indemnitee will be entitled to an adjudication from the Court of Chancery of his entitlement to that indemnification or advancement of Expenses. Alternatively, Indemnitee, at his option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee must commence any such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence that proceeding pursuant to this Section 10(a); provided, however, that this sentence will not apply in respect of a proceeding brought by Indemnitee to enforce his rights under Section 5.

(b) If a determination has been made pursuant to Section 8(c) that Indemnitee is not entitled to indemnification hereunder, any judicial proceeding or arbitration commenced pursuant to this Section 10 will be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee will not be prejudiced by reason of that adverse determination. In any judicial

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proceeding or arbitration commenced pursuant to this Section 10, the Company will have the burden of proving that Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be and the Company may not refer to or introduce into evidence any determination pursuant to Section 8(c) of this Agreement adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 10, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 7 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(c) If a determination has been made pursuant to Section 8(c) that Indemnitee is entitled to indemnification hereunder, the Company will be bound by that determination in any judicial proceeding or arbitration commenced pursuant to this Section 10, absent (i) a misstatement by Indemnitee of a

material fact, or an omission by Indemnitee of a material fact necessary to make Indemnitee's statements not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) If Indemnitee, pursuant to this Section 10, seeks a judicial adjudication of or an award in arbitration to enforce his rights under, or to recover damages for breach of, this Agreement, Indemnitee will be entitled to recover from the Company, and will be indemnified by the Company against, any and all expenses (of the types described in the definition of Expenses in Section 18) actually and reasonably incurred by him in that judicial adjudication or arbitration, but only if he prevails therein. If it is determined in that judicial adjudication or arbitration that Indemnitee is entitled to receive part of, but not all, the indemnification or advancement of expenses sought, the Expenses incurred by Indemnitee in connection with that judicial adjudication or arbitration will be appropriately prorated between those in respect of which this Section 10(d) entitles Indemnitee to indemnification and those Indemnitee must bear.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 10 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(f) The Company shall indemnify Indemnitee to the fullest extent permitted by law against all Expenses and, if requested by Indemnitee, shall (within ten (10) days after the Company's receipt of such written request) advance such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any judicial proceeding or arbitration brought by Indemnitee for (i) indemnification or advances of Expenses by the Company under this Agreement or any other agreement or provision of the Company's Certificate of Incorporation or Bylaws now or hereafter in effect or (ii) recovery or advances under any insurance policy maintained by any person for the benefit of Indemnitee, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advance or insurance recovery, as the case may be.

Section 11. Non-exclusivity; Survival of Rights; Insurance; Subrogation. (a) The rights to indemnification and advancement of Expenses this Agreement provides are not and will not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under

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applicable law, the Company's Certificate of Incorporation, the Company's Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or termination of this Agreement or any provision hereof will limit or restrict any right of Indemnitee hereunder in respect of any action Indemnitee has taken or omitted in his Corporate Status prior to that amendment, alteration or termination. To the extent that a change in Delaware law (whether by statute or judicial decision) permits greater indemnification by agreement than would be afforded currently under this Agreement, it is the intent and agreement of the parties hereto that Indemnitee will enjoy by this Agreement the greater benefits that change affords. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall 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 right or remedy.

(b) If the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managing members, employees, agents or fiduciaries of the Company or of any other Enterprise that any such person serves at the request of the Company, Indemnitee will be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, managing member, employee, agent or fiduciary under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such

insurers to pay, on behalf of the Indemnatee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) The Company will not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or for which advancement is provided hereunder) hereunder if and to the extent that Indemnatee has otherwise actually received that payment or obtained the entire benefit therefrom under any insurance policy, contract, agreement or otherwise.

(d) If the Company makes any payment hereunder, it will be subrogated to the extent of that payment to all the rights of recovery of Indemnatee, who will execute all papers required and take all action necessary to secure those rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce those rights.

(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnatee with respect to Indemnatee's service at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise will be reduced by any amount Indemnatee has actually received as indemnification or advancement of Expenses from that other Enterprise.

Section 12. Duration of Agreement. This Agreement will continue until and terminate on the later of: (i) 10 years after the date that Indemnatee has ceased to serve as a director or officer of the Company or as a director, officer, trustee, partner, managing partner, employee,

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agent or fiduciary of any other Enterprise that Indemnatee served on behalf of the Company at the request of the Company; or (ii) one year after the final termination of any Proceeding (including any rights of appeal thereto) then pending in respect of which Indemnatee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnatee pursuant to Section 10 relating thereto including any rights of appeal of any Section 10 Proceeding. This Agreement will be binding on the Company and its successors and assigns and will inure to the benefit of Indemnatee and his spouse (if Indemnatee resides in Texas or another community property state), heirs, executors and administrators.

Section 13. Severability. If any provision or provisions of this Agreement is or are invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions hereof (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will not in any way be affected or impaired thereby; (ii) such provision or provisions will be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (iii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will be construed so as to give effect to the intent manifested thereby.

Section 14. Exception to Right of Indemnification or Advancement of Expenses. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnatee:

(a) for which payment has actually been received by or on behalf of Indemnatee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount actually received under any insurance policy or other indemnity provision; or

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnatee of securities of the Company within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law; or

(c) except as otherwise provided in Sections 10(d) - (f) hereof, prior to a Change in Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnatee, including any Proceeding (or any part of any Proceeding) initiated by Indemnatee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board of Directors of the Company authorized the Proceeding (or any part of any Proceeding) prior to

its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

Section 15. Enforcement and Binding Effect.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve

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as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

Section 16. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed to be an original but all of which together will constitute one and the same agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 17. Headings. The headings of the Sections hereof are inserted for convenience only and do not and will not be deemed to constitute part of this Agreement or to affect the construction thereof.

Section 18. Definitions. For purposes of this Agreement:

"Acquiring Person" means any Person who or which, together with all its Affiliates and Associates, is or are the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding, but does not include any Exempt Person; provided, however, that a Person will not be or become an Acquiring Person if that Person, together with its Affiliates and Associates, becomes the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding solely as a result of a reduction in the number of shares of Common Stock outstanding which results from the Company's direct or indirect repurchase of Common Stock, unless and until such time as that Person or any Affiliate or Associate of that Person purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person, unless, in either such case, that Person, together with all its Affiliates and Associates, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

Notwithstanding anything in this definition of "Acquiring Person" to the contrary, so long as Main Street Merchant Partners II, L.P., a Delaware limited partnership ("Main Street"), together with all Affiliates and Associates thereof, remains the Beneficial Owner of 15% or more of the outstanding shares of Common Stock, Main Street and any Affiliate or Associate thereof will not be or become an Acquiring Person unless and until that Person, together with all Affiliates and Associates thereof, purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person

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unless, in either such case, that Person, together with all Affiliates and Associates of that Person, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

"Affiliate" has the meaning Exchange Act Rule 12b-2 specifies.

"Associate" means, with reference to any Person, (i) any corporation, firm, partnership, limited liability company, association, unincorporated organization or other entity (other than the Company or a subsidiary of the Company) of which that Person is an officer or general partner (or officer or general partner of a general partner) or is, directly or indirectly, the Beneficial Owner of 10% or more of any class of its equity securities or interests, (ii) any trust or other estate in which that Person has a substantial beneficial interest or for or of which that Person serves as trustee or in a similar fiduciary capacity and (iii) any relative or spouse of that Person, or any relative of that spouse, who has the same home as that Person.

A specified Person is deemed the "Beneficial Owner" of, and is deemed to "beneficially own," any securities:

(i) of which that Person or any of that Person's Affiliates or Associates, directly or indirectly, is the "beneficial owner" (as determined pursuant to Exchange Act Rule 13d-3) or otherwise has the right to vote or dispose of, including pursuant to any agreement, arrangement or understanding (whether or not in writing); provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," any security under this subparagraph (i) as a result of an agreement, arrangement or understanding to vote that security if that agreement, arrangement or understanding: (A) arises solely from a revocable proxy or consent given in response to a public (that is, not including a solicitation exempted by Exchange Act Rule 14a-2(b)(2)) proxy or consent solicitation made pursuant to, and in accordance with, the applicable provisions of the Exchange Act; and (B) is not then reportable by that Person on Exchange Act Schedule 13D (or any comparable or successor report);

(ii) which that Person or any of that Person's Affiliates or Associates, directly or indirectly, has the right or obligation to acquire (whether that right or obligation is exercisable or effective immediately or only after the passage of time or the occurrence of an event) pursuant to any agreement, arrangement or understanding (whether or not in writing) or on the exercise of conversion rights, exchange rights, other rights, warrants or options, or otherwise; provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," securities tendered pursuant to a tender or exchange offer made by that Person or any of that Person's Affiliates or Associates until those tendered securities are accepted for purchase or exchange; or

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(iii) which are beneficially owned, directly or indirectly, by (A) any other Person (or any Affiliate or Associate thereof) with which the specified Person or any of the specified Person's Affiliates or Associates has any agreement, arrangement or understanding (whether or not in writing) for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy or consent as described in the proviso to subparagraph (i) of this definition) or disposing of any voting securities of the Company or (B) any group (as Exchange Act Rule 13d-5(b) uses that term) of which that specified Person is a member;

provided, however, that nothing in this definition will cause a Person engaged in business as an underwriter of securities to be the "Beneficial Owner" of, or to "beneficially own," any securities that Person acquires through its participation in good faith in a firm commitment underwriting (including, without limitation, securities acquired pursuant to stabilizing transactions to facilitate a public offering in accordance with Exchange Act Regulation M or to cover overallocments created in connection with a public offering) until the expiration of 40 days after the date of that acquisition. For purposes of this definition, "voting" a security includes voting, granting a proxy, acting by consent, making a request or demand relating to corporate action (including, without limitation, calling a stockholder meeting) or otherwise giving an authorization (within the meaning of Section 14(a) of the Exchange Act) in respect of that security.

"Change of Control" means the occurrence of any of the following events that occurs after the IPO Closing Date: (i) any Person becomes an Acquiring

Person; (ii) at any time the then Continuing Directors cease to constitute a majority of the members of the Board; (iii) a merger of the Company with or into, or a sale by the Company of its properties and assets substantially as an entirety to, another Person occurs and, immediately after that occurrence, any Person, other than an Exempt Person, together with all Affiliates and Associates of that Person (other than Exempt Persons), will be the Beneficial Owner of 15% or more of the total voting power of the then outstanding Voting Shares of the Person surviving that transaction (in the case of a merger or consolidation) or the Person acquiring those properties and assets substantially as an entirety unless that Person, together with all its Affiliates and Associates, was the Beneficial Owner of 15% or more of the shares of Common Stock outstanding prior to that transaction; (iv) the approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets; or (v) occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

"Common Stock" means (i) the common stock, par value \$.001 per share, of the Company and (ii) any other class of capital stock of the Company which is (A) except for less voting rights, identical to the common stock clause (i) of this definition describes and (B) convertible into that common stock on a share for share basis on the occurrence of a Change of Control.

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"Continuing Director" means at any time any individual who then (i) is a member of the Board and was a member of the Board as of the IPO Closing Date or whose nomination for his first election, or that first election, to the Board following that date was recommended or approved by a majority of the then Continuing Directors (acting separately or as a part of any action taken by the Board or any committee thereof) and (ii) is not an Acquiring Person, an Affiliate or Associate of an Acquiring Person or a nominee or representative of an Acquiring Person or of any such Affiliate or Associate.

"Corporate Status" describes the status of a natural person who is or was a director, officer, trustee, general partner, managing member, employee or agent of the Company or of any other Enterprise, provided that person is or was serving in that capacity at the request of the Company. For purposes of this Agreement, "serving at the request of the Company" includes any service by Indemnitee which imposes duties on, or involves services by, Indemnitee with respect to any employee benefit plan or its participants or beneficiaries.

"Court of Chancery" means the Court of Chancery of the State of Delaware.

"Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee hereunder.

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

"Exempt Person" means: (i) (A) the Company, any subsidiary of the Company, any employee benefit plan of the Company or of any subsidiary of the Company and (B) any Person organized, appointed or established by the Company for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of the Company or any subsidiary of the Company; and (ii) Indemnitee, any Affiliate or Associate of Indemnitee or any group (as Exchange Act Rule 13d-5(b) uses that term) of which Indemnitee or any Affiliate or Associate of Indemnitee is a member.

"Expenses" include all attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding and all interest or finance charges attributable to any thereof. Should any payments by the Company under this Agreement be determined to be subject to any federal, state or local income or excise tax, "Expenses" also will include such amounts as are necessary to place Indemnitee in the same after-tax position (after giving effect to all applicable taxes) he would have been in had no such tax been determined to apply to those payments. Expenses

also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its

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equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

"Independent Counsel" means a law firm, or a member of a law firm, that or who is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company, its affiliates or Indemnitee in any matter material to any such party; or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" does not include at any time any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"IPO" means the first time a registration statement the Company has filed under the Securities Act of 1933, as amended, and respecting an underwritten primary offering by the Company of shares of Common Stock becomes effective under that Act and the Company issues and sells any of the shares registered by that registration statement.

"IPO Closing Date" means the date on which the Company first receives payment for the shares of Common Stock it sells in the IPO.

"Person" means any natural person, sole proprietorship, corporation, partnership of any kind having a separate legal status, limited liability company, business trust, unincorporated organization or association, mutual company, joint stock company, joint venture, estate, trust, union or employee organization or governmental authority.

"Proceeding" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, in which Indemnitee was, is or will be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action taken by him or of any action on his part while acting as director or officer of the Company, or by reason of the fact that he is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

"Voting Shares" means: (i) in the case of any corporation, stock of that corporation of the class or classes having general voting power under ordinary circumstances to elect a majority of that corporation's board of directors; and (ii) in the case of any other entity, equity interests of the class or classes having general voting power under ordinary circumstances equivalent to the Voting Shares of a corporation.

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Section 19. Modification and Waiver. No supplement to or modification or amendment of this Agreement will be binding unless executed in writing by both parties hereto. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provisions hereof (whether or not similar), nor will any such waiver constitute a continuing waiver.

Section 20. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing on being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses hereunder; provided, however, a failure to give that notice will not deprive Indemnitee of his rights to indemnification and advancement of Expenses hereunder unless the Company is actually and materially prejudiced thereby.

Section 21. Notices. All notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered and received (i) if personally delivered or if delivered by telex, telegram, facsimile or courier service, when actually received by the party to whom the notice or communication is sent or (ii) if delivered by mail (whether actually received or not), at the close of business on the third business day in the city in which the Company's principal executive office is located next following the day when placed in the mail, postage prepaid, certified or registered, addressed to the appropriate party at the address of that party set forth below (or at such other address as that party may designate by written notice to the other party in accordance herewith):

(a) If to Indemnitee, to: William T. Albanese
17070 Lon Road
Los Gatos, California 95033

with a copy (which will not constitute notice for the purposes of this Agreement) to such legal counsel, if any, as the Indemnitee may designate in writing; and

(b) If to the Company, to: U.S. Concrete, Inc.
1300 Post Oak Blvd., Suite 1220
Houston, Texas 77056
Attention: President

Section 22. Contribution. To the fullest extent applicable law permits, if the indemnification this Agreement provides is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, will contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all the circumstances of that Proceeding in order to reflect: (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving rise to that

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Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 23. Governing Law; Submission to Jurisdiction. This Agreement and the legal relations among the parties will be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration Indemnitee commences pursuant to Section 10(a), the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement will be brought only in the Court of Chancery and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Court of Chancery for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Court of Chancery and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Court of Chancery has been brought in an improper or otherwise inconvenient forum.

Section 24. Miscellaneous. Use of one gender herein includes usage of each other gender where appropriate. This Agreement uses the words "herein," "hereof" and words of similar import to refer to this Agreement as a whole and not to any provision of this Agreement, and the word "Section" refers to a Section of this Agreement, unless otherwise specified.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

ATTEST: U.S. CONCRETE, INC.

By: /s/ William T. Albanese By: /s/ Eugene P. Martineau

Print Name: William T. Albanese Eugene P. Martineau

President and Chief Executive Officer

ATTEST:

INDEMNITEE:

By:/s/ Eugene P. Martineau

/s/ William T. Albanese

Print Name:Eugene P. Martineau

William T. Albanese

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AMENDED AND RESTATED INDEMNIFICATION AGREEMENT

THIS AMENDED AND RESTATED INDEMNIFICATION AGREEMENT (this "Agreement") is made as of August 17, 2000 by and between U.S. Concrete, Inc., a Delaware corporation (the "Company"), and John R. Colson ("Indemnitee"). This Agreement amends and restates in its entirety the Indemnification Agreement, dated as of May 28, 1999, between the Company and Indemnitee.

PRELIMINARY STATEMENT

Highly competent persons have become more reluctant to serve corporations as directors or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of corporations.

The Board of Directors of the Company (the "Board") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of that insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Board believes that, given current market conditions and trends, that insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises increasingly are being subjected to expensive and time-consuming litigation relating to, among other matters, matters that traditionally would have been brought only against the corporation or business enterprise itself. The uncertainties relating to liability insurance and to indemnification have increased the difficulty of attracting and retaining those persons, and the Board has determined that (i) this increased difficulty is detrimental to the best interests of the Company's stockholders and that the Company should act to assure those persons that there will be increased certainty of such protection in the future and (ii) it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify those persons to the fullest extent applicable law permits so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified.

The Bylaws of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the Delaware General Corporation Law ("DGCL"). The Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification.

This Agreement is a supplement to and in furtherance of the Bylaws of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

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The Indemnitee does not regard the protection available under the Company's Bylaws and insurance as adequate in the present circumstances, and may not be willing to serve as an officer or director without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he be so indemnified.

NOW, THEREFORE, in consideration of the premises and the covenants herein, the parties to this Agreement agree as follows:

Section 1. Services by Indemnitee. Indemnitee agrees to serve as a director and/or officer of the Company and, as mutually agreed by Indemnitee and the Company, as a director, officer, trustee, general partner, managing member, employee, agent or fiduciary of other corporations, limited liability companies, partnerships, joint ventures, trusts or other enterprises (including, without limitation, employee benefit plans) (each, an "Enterprise"). Indemnitee may at any time and for any reason resign from any such position (subject to any other contractual obligation or any obligation applicable law imposes), in which event the Company will have no obligation under this Agreement to continue Indemnitee in that position. This Agreement is not and is not to be construed as an employment contract between the Company (or any of its subsidiaries) and Indemnitee. Indemnitee specifically acknowledges that Indemnitee's employment with the Company (or any of its subsidiaries), if any, is at will, and the Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Company (or any of its subsidiaries), other applicable formal severance policies duly adopted by the Board or, with respect to service as a director of the Company, by the Company's Certificate of Incorporation, Bylaws and the DGCL. The foregoing notwithstanding, subject to Section 12, this Agreement will continue in force after Indemnitee has ceased to serve as an officer or director of the Company and no longer serves at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise.

Section 2. Indemnification--General. The Company will indemnify, and advance Expenses (as hereinafter defined) to, Indemnitee (i) as this Agreement permits and (ii) (subject to the provisions hereof) to the fullest extent applicable law in effect on the date hereof and as amended from time to time permits. The rights the preceding sentence provide to Indemnitee will include, but will not be limited to, the rights the other Sections hereof set forth.

Section 3. Proceedings Other Than by or in the Right of the Company. Indemnitee will be entitled to the rights of indemnification this Section 3 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant in any threatened, pending or completed Proceeding (as hereinafter defined), other than a Proceeding by or in the right of the Company. Pursuant to this Section 3, the Company will indemnify Indemnitee against, and will hold Indemnitee harmless from and in respect of, all Expenses, judgments, penalties, fines (including excise taxes) and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of those Expenses, judgments, fines, penalties or amounts paid in settlement) actually and reasonably incurred by him or on his behalf in connection with that Proceeding or any claim, issue or matter therein, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and,

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with respect to any criminal Proceeding, had no reasonable cause to believe his conduct was unlawful.

Section 4. Proceedings by or in the Right of the Company. Indemnitee will be entitled to the rights of indemnification this Section 4 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant (as a witness or otherwise) in any threatened, pending or completed Proceeding brought by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, the Company will indemnify Indemnitee against, and will hold Indemnitee harmless from and in respect of, all Expenses actually and reasonably incurred by him or on his behalf in connection with that Proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that no indemnification against those Expenses will be made in respect of any claim, issue or matter in that Proceeding as to which Indemnitee has been adjudged to be liable to the Company unless and to the extent that the Court of Chancery, or the court in which that Proceeding has been brought or is pending, determines that despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification.

Section 5. Indemnification for Expenses of a Party Who Is Wholly or Partly Successful. Notwithstanding any other provision hereof, to the extent that Indemnitee is, by reason of his Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in defense of any Proceeding, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is not wholly successful in defense of any Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in that Proceeding, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in any Proceeding by dismissal, with or without prejudice, will be deemed to be a successful result as to that claim, issue or matter.

Section 6. Indemnification for Expenses as a Witness. Notwithstanding any other provision hereof, to the extent that Indemnitee is, by reason of his Corporate Status, a witness in any Proceeding to which Indemnitee is not a party, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

Section 7. Advancement of Expenses. The Company will advance all reasonable Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding within 10 days after the Company receives a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of that Proceeding. Each such statement must reasonably evidence the Expenses incurred by or on behalf of Indemnitee and include or be preceded or accompanied by an undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it ultimately is determined that Indemnitee is not entitled to be indemnified by the Company against those Expenses. The Company will accept any such undertaking without reference to the financial ability of Indemnitee to make repayment, and without regard to Indemnitee's ultimate entitlement to indemnification under other provisions of this Agreement.

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Section 8. Procedure for Determination of Entitlement to Indemnification. (a) Within sixty (60) days after the actual receipt by Indemnitee of notice that he or she is a party to or a participant (as a witness or otherwise) in any Proceeding, Indemnitee shall submit to the Company a written notice identifying the Proceeding. The omission by the Indemnitee to notify the Company will not relieve the Company from any liability which it may have to Indemnitee (i) otherwise than under this Agreement, and (ii) under this Agreement only to the extent the Company can establish that such omission to notify resulted in actual prejudice to the Company.

(b) Indemnitee shall thereafter deliver to the Company a written application to indemnify Indemnitee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnitee deems appropriate in his or her sole discretion. Following such a written application for indemnification by Indemnitee, the Indemnitee's entitlement to indemnification shall be determined according to Section 8(c) of this Agreement.

(c) On written request by Indemnitee for indemnification pursuant to Section 8(b), a determination, if applicable law requires, with respect to Indemnitee's entitlement thereto will be made in the specific case: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, or (ii) if so requested by the Indemnitee in his or her sole discretion by an Independent Counsel in a written opinion to the Board, a copy of which will be delivered to Indemnitee. If it is so determined that Indemnitee is entitled to indemnification hereunder, the Company will: (i) within 10 days after that determination pay to Indemnitee all amounts theretofore incurred by or on behalf of Indemnitee in respect of which Indemnitee is entitled to that indemnification by reason of that determination; and (ii) thereafter on written request by Indemnitee, pay to Indemnitee within 10 days after that request such additional amounts theretofore incurred by or on behalf of Indemnitee in respect of which Indemnitee is entitled to that indemnification by reason of that determination. Indemnitee will cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification under this Agreement, including providing to such person,

persons or entity on reasonable advance request any documentation or information which is (i) not privileged or otherwise protected from disclosure, (ii) reasonably available to Indemnitee and (iii) reasonably necessary to that determination. The Company will bear all costs and expenses (including attorneys' fees and disbursements) Indemnitee incurs in so cooperating (irrespective of the determination as to Indemnitee's entitlement to indemnification) and hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(d) If an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c), the Independent Counsel will be selected as this Section 8(d) provides. If a Change of Control has not occurred within two years prior to the date of Indemnitee's written request for indemnification pursuant to Section 8(a), the Board will select the Independent Counsel, and the Company will give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change of Control has occurred within two years prior to the date of that written request, Indemnitee will select the Independent Counsel (unless Indemnitee requests that the Board make the selection, in which event the preceding sentence will apply), and Indemnitee will give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within 10 days after the written notice of selection has been given, deliver to the Company or

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to Indemnitee, as the case may be, a written objection to the selection; provided, however, that any such objection may be asserted only on the ground that the Independent Counsel so selected is not an "Independent Counsel" as Section 17 defines that term, and the objection must set forth with particularity the factual basis for that assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If any such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until that objection is withdrawn or a court of competent jurisdiction has determined that objection is without merit. If (i) an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c) and (ii) within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 8(a), no Independent Counsel has been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery or other court of competent jurisdiction for resolution of any objection that has been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the petitioned court or by such other person as the petitioned court designates, and the person with respect to whom all objections are so resolved or the person so appointed will act as the Independent Counsel under Section 8(c). The Company will pay any and all reasonable fees and expenses the Independent Counsel incurs in connection with acting pursuant to Section 8(c), and the Company will pay all reasonable fees and expenses incident to the procedures this Section 8(d) sets forth, regardless of the manner in which the Independent Counsel is selected or appointed. If (i) the Independent Counsel selected or appointed pursuant to this Section 8(d) does not make any determination respecting Indemnitee's entitlement to indemnification hereunder within 45 days after the Company receives a written request therefor and (ii) any judicial proceeding or arbitration pursuant to Section 10(a) is then commenced, that Independent Counsel will be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 9. Presumptions and Effect of Certain Proceedings. (a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making that determination must presume that Indemnitee is entitled to indemnification hereunder if Indemnitee has submitted a request for indemnification in accordance with Section 8(a), and the Company will have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or on a plea of nolo contendere or its equivalent, will not (except as this Agreement otherwise expressly provides) of itself adversely affect the right of Indemnatee to indemnification hereunder or create a presumption that Indemnatee did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the

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Company or, with respect to any criminal Proceeding, that Indemnatee had reasonable cause to believe that his conduct was unlawful.

(c) Any action Indemnatee takes or omits to take in connection with any employee benefit plan will, if taken or omitted in good faith by Indemnatee and in a manner Indemnatee reasonably believed to be in the interest of the participants in or beneficiaries of that plan, be deemed to have been taken or omitted in a manner "not opposed to the best interests of the Company" for all purposes hereof.

(d) Reliance as Safe Harbor. For purposes of any determination

of good faith, Indemnatee shall be deemed to have acted in good faith if Indemnatee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnatee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise. The provisions of this Section 9(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnatee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

(e) Actions of Others. The knowledge and/or actions, or failure to

act, of any other director, trustee, partner, managing member, fiduciary, officer, agent or employee of the Enterprise shall not be imputed to Indemnatee for purposes of determining the right to indemnification under this Agreement.

Section 10. Remedies of Indemnatee. (a) In the event that (i) a determination is made pursuant to Section 8 that Indemnatee is not entitled to indemnification hereunder, (ii) advancement of Expenses is not timely made pursuant to Section 7, (iii) no determination as to Indemnatee's entitlement to indemnification shall have been made pursuant to Section 8(c) of this Agreement hereunder, or that determination shall not have been made within 45 days after receipt by the Company of the request for that indemnification, (iv) payment of indemnification is not made pursuant to Section 5 or 6 within 10 days after receipt by the Company of a written request therefor or (v) payment of indemnification pursuant to Section 8(c) is not made timely, Indemnatee will be entitled to an adjudication from the Court of Chancery of his entitlement to that indemnification or advancement of Expenses. Alternatively, Indemnatee, at his option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnatee must commence any such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnatee first has the right to commence that proceeding pursuant to this Section 10(a); provided, however, that this sentence will not apply in respect of a proceeding brought by Indemnatee to enforce his rights under Section 5.

(b) If a determination has been made pursuant to Section 8(c) that Indemnatee is not entitled to indemnification hereunder, any judicial proceeding or arbitration commenced pursuant to this Section 10 will be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnatee will not be prejudiced by reason of that adverse determination. In any judicial

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proceeding or arbitration commenced pursuant to this Section 10, the Company will have the burden of proving that Indemnatee is not entitled to indemnification or advancement of Expenses, as the case may be and the Company

may not refer to or introduce into evidence any determination pursuant to Section 8(c) of this Agreement adverse to Indemnatee for any purpose. If Indemnatee commences a judicial proceeding or arbitration pursuant to this Section 10, Indemnatee shall not be required to reimburse the Company for any advances pursuant to Section 7 until a final determination is made with respect to Indemnatee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(c) If a determination has been made pursuant to Section 8(c) that Indemnatee is entitled to indemnification hereunder, the Company will be bound by that determination in any judicial proceeding or arbitration commenced pursuant to this Section 10, absent (i) a misstatement by Indemnatee of a material fact, or an omission by Indemnatee of a material fact necessary to make Indemnatee's statements not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) If Indemnatee, pursuant to this Section 10, seeks a judicial adjudication of or an award in arbitration to enforce his rights under, or to recover damages for breach of, this Agreement, Indemnatee will be entitled to recover from the Company, and will be indemnified by the Company against, any and all expenses (of the types described in the definition of Expenses in Section 18) actually and reasonably incurred by him in that judicial adjudication or arbitration, but only if he prevails therein. If it is determined in that judicial adjudication or arbitration that Indemnatee is entitled to receive part of, but not all, the indemnification or advancement of expenses sought, the Expenses incurred by Indemnatee in connection with that judicial adjudication or arbitration will be appropriately prorated between those in respect of which this Section 10(d) entitles Indemnatee to indemnification and those Indemnatee must bear.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 10 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(f) The Company shall indemnify Indemnatee to the fullest extent permitted by law against all Expenses and, if requested by Indemnatee, shall (within ten (10) days after the Company's receipt of such written request) advance such Expenses to Indemnatee, which are incurred by Indemnatee in connection with any judicial proceeding or arbitration brought by Indemnatee for (i) indemnification or advances of Expenses by the Company under this Agreement or any other agreement or provision of the Company's Certificate of Incorporation or Bylaws now or hereafter in effect or (ii) recovery or advances under any insurance policy maintained by any person for the benefit of Indemnatee, regardless of whether Indemnatee ultimately is determined to be entitled to such indemnification, advance or insurance recovery, as the case may be.

Section 11. Non-exclusivity; Survival of Rights; Insurance; Subrogation. (a) The rights to indemnification and advancement of Expenses this Agreement provides are not and will not be deemed exclusive of any other rights to which Indemnatee may at any time be entitled under

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applicable law, the Company's Certificate of Incorporation, the Company's Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or termination of this Agreement or any provision hereof will limit or restrict any right of Indemnatee hereunder in respect of any action Indemnatee has taken or omitted in his Corporate Status prior to that amendment, alteration or termination. To the extent that a change in Delaware law (whether by statute or judicial decision) permits greater indemnification by agreement than would be afforded currently under this Agreement, it is the intent and agreement of the parties hereto that Indemnatee will enjoy by this Agreement the greater benefits that change affords. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall 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 right or remedy.

(b) If the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managing members, employees, agents or fiduciaries of the Company or of any other Enterprise that any such person serves at the request of the Company, Indemnitee will be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, managing member, employee, agent or fiduciary under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) The Company will not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or for which advancement is provided hereunder) hereunder if and to the extent that Indemnitee has otherwise actually received that payment or obtained the entire benefit therefrom under any insurance policy, contract, agreement or otherwise.

(d) If the Company makes any payment hereunder, it will be subrogated to the extent of that payment to all the rights of recovery of Indemnitee, who will execute all papers required and take all action necessary to secure those rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce those rights.

(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee with respect to Indemnitee's service at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise will be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from that other Enterprise.

Section 12. Duration of Agreement. This Agreement will continue until and terminate on the later of: (i) 10 years after the date that Indemnitee has ceased to serve as a director or officer of the Company or as a director, officer, trustee, partner, managing partner, employee,

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agent or fiduciary of any other Enterprise that Indemnitee served on behalf of the Company at the request of the Company; or (ii) one year after the final termination of any Proceeding (including any rights of appeal thereto) then pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnitee pursuant to Section 10 relating thereto including any rights of appeal of any Section 10 Proceeding. This Agreement will be binding on the Company and its successors and assigns and will inure to the benefit of Indemnitee and his spouse (if Indemnitee resides in Texas or another community property state), heirs, executors and administrators.

Section 13. Severability. If any provision or provisions of this Agreement is or are invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions hereof (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will not in any way be affected or impaired thereby; (ii) such provision or provisions will be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (iii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will be construed so as to give effect to the intent manifested thereby.

Section 14. Exception to Right of Indemnification or Advancement of Expenses. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnitee:

(a) for which payment has actually been received by or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with

respect to any excess beyond the amount actually received under any insurance policy or other indemnity provision; or

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law; or

(c) except as otherwise provided in Sections 10(d) - (f) hereof, prior to a Change in Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board of Directors of the Company authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

Section 15. Enforcement and Binding Effect.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve

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as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

Section 16. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed to be an original but all of which together will constitute one and the same agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 17. Headings. The headings of the Sections hereof are inserted for convenience only and do not and will not be deemed to constitute part of this Agreement or to affect the construction thereof.

Section 18. Definitions. For purposes of this Agreement:

"Acquiring Person" means any Person who or which, together with all its Affiliates and Associates, is or are the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding, but does not include any Exempt Person; provided, however, that a Person will not be or become an Acquiring Person if that Person, together with its Affiliates and Associates, becomes the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding solely as a result of a reduction in the number of shares of Common Stock outstanding which results from the Company's direct or indirect repurchase of Common Stock, unless and until such time as that Person or any Affiliate or Associate of that Person purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person, unless, in either such case, that Person, together with all its Affiliates and Associates, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

Notwithstanding anything in this definition of "Acquiring Person" to the contrary, so long as Main Street Merchant Partners II, L.P., a Delaware limited partnership ("Main Street"), together with all Affiliates and Associates thereof, remains the Beneficial Owner of 15% or more of the outstanding shares of Common Stock, Main Street and any Affiliate or Associate thereof will not be or become an Acquiring Person unless and until that Person, together with all Affiliates and Associates thereof, purchases or otherwise becomes the Beneficial Owner of additional shares of

Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person

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unless, in either such case, that Person, together with all Affiliates and Associates of that Person, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

"Affiliate" has the meaning Exchange Act Rule 12b-2 specifies.

"Associate" means, with reference to any Person, (i) any corporation, firm, partnership, limited liability company, association, unincorporated organization or other entity (other than the Company or a subsidiary of the Company) of which that Person is an officer or general partner (or officer or general partner of a general partner) or is, directly or indirectly, the Beneficial Owner of 10% or more of any class of its equity securities or interests, (ii) any trust or other estate in which that Person has a substantial beneficial interest or for or of which that Person serves as trustee or in a similar fiduciary capacity and (iii) any relative or spouse of that Person, or any relative of that spouse, who has the same home as that Person.

A specified Person is deemed the "Beneficial Owner" of, and is deemed to "beneficially own," any securities:

(i) of which that Person or any of that Person's Affiliates or Associates, directly or indirectly, is the "beneficial owner" (as determined pursuant to Exchange Act Rule 13d-3) or otherwise has the right to vote or dispose of, including pursuant to any agreement, arrangement or understanding (whether or not in writing); provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," any security under this subparagraph (i) as a result of an agreement, arrangement or understanding to vote that security if that agreement, arrangement or understanding: (A) arises solely from a revocable proxy or consent given in response to a public (that is, not including a solicitation exempted by Exchange Act Rule 14a-2(b)(2)) proxy or consent solicitation made pursuant to, and in accordance with, the applicable provisions of the Exchange Act; and (B) is not then reportable by that Person on Exchange Act Schedule 13D (or any comparable or successor report);

(ii) which that Person or any of that Person's Affiliates or Associates, directly or indirectly, has the right or obligation to acquire (whether that right or obligation is exercisable or effective immediately or only after the passage of time or the occurrence of an event) pursuant to any agreement, arrangement or understanding (whether or not in writing) or on the exercise of conversion rights, exchange rights, other rights, warrants or options, or otherwise; provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," securities tendered pursuant to a tender or exchange offer made by that Person or any of that Person's Affiliates or Associates until those tendered securities are accepted for purchase or exchange; or

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(iii) which are beneficially owned, directly or indirectly, by (A) any other Person (or any Affiliate or Associate thereof) with which the specified Person or any of the specified Person's Affiliates or Associates has any agreement, arrangement or understanding (whether or not in writing) for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy or consent as described in the proviso to subparagraph (i) of this definition) or disposing of any voting securities of the Company or (B) any group (as Exchange Act Rule 13d-5(b) uses that term) of which that specified Person is a member;

provided, however, that nothing in this definition will cause a Person engaged in business as an underwriter of securities to be the "Beneficial

Owner" of, or to "beneficially own," any securities that Person acquires through its participation in good faith in a firm commitment underwriting (including, without limitation, securities acquired pursuant to stabilizing transactions to facilitate a public offering in accordance with Exchange Act Regulation M or to cover overallocments created in connection with a public offering) until the expiration of 40 days after the date of that acquisition. For purposes of this definition, "voting" a security includes voting, granting a proxy, acting by consent, making a request or demand relating to corporate action (including, without limitation, calling a stockholder meeting) or otherwise giving an authorization (within the meaning of Section 14(a) of the Exchange Act) in respect of that security.

"Change of Control" means the occurrence of any of the following events that occurs after the IPO Closing Date: (i) any Person becomes an Acquiring Person; (ii) at any time the then Continuing Directors cease to constitute a majority of the members of the Board; (iii) a merger of the Company with or into, or a sale by the Company of its properties and assets substantially as an entirety to, another Person occurs and, immediately after that occurrence, any Person, other than an Exempt Person, together with all Affiliates and Associates of that Person (other than Exempt Persons), will be the Beneficial Owner of 15% or more of the total voting power of the then outstanding Voting Shares of the Person surviving that transaction (in the case of a merger or consolidation) or the Person acquiring those properties and assets substantially as an entirety unless that Person, together with all its Affiliates and Associates, was the Beneficial Owner of 15% or more of the shares of Common Stock outstanding prior to that transaction; (iv) the approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets; or (v) occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

"Common Stock" means (i) the common stock, par value \$.001 per share, of the Company and (ii) any other class of capital stock of the Company which is (A) except for less voting rights, identical to the common stock clause (i) of this definition describes and (B) convertible into that common stock on a share for share basis on the occurrence of a Change of Control.

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"Continuing Director" means at any time any individual who then (i) is a member of the Board and was a member of the Board as of the IPO Closing Date or whose nomination for his first election, or that first election, to the Board following that date was recommended or approved by a majority of the then Continuing Directors (acting separately or as a part of any action taken by the Board or any committee thereof) and (ii) is not an Acquiring Person, an Affiliate or Associate of an Acquiring Person or a nominee or representative of an Acquiring Person or of any such Affiliate or Associate.

"Corporate Status" describes the status of a natural person who is or was a director, officer, trustee, general partner, managing member, employee or agent of the Company or of any other Enterprise, provided that person is or was serving in that capacity at the request of the Company. For purposes of this Agreement, "serving at the request of the Company" includes any service by Indemnitee which imposes duties on, or involves services by, Indemnitee with respect to any employee benefit plan or its participants or beneficiaries.

"Court of Chancery" means the Court of Chancery of the State of Delaware.

"Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee hereunder.

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

"Exempt Person" means: (i) (A) the Company, any subsidiary of the Company, any employee benefit plan of the Company or of any subsidiary of the Company and (B) any Person organized, appointed or established by the Company for or pursuant to the terms of any such plan or for the purpose of funding any such

plan or funding other employee benefits for employees of the Company or any subsidiary of the Company; and (ii) Indemnitee, any Affiliate or Associate of Indemnitee or any group (as Exchange Act Rule 13d-5(b) uses that term) of which Indemnitee or any Affiliate or Associate of Indemnitee is a member.

"Expenses" include all attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding and all interest or finance charges attributable to any thereof. Should any payments by the Company under this Agreement be determined to be subject to any federal, state or local income or excise tax, "Expenses" also will include such amounts as are necessary to place Indemnitee in the same after-tax position (after giving effect to all applicable taxes) he would have been in had no such tax been determined to apply to those payments. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its

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equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

"Independent Counsel" means a law firm, or a member of a law firm, that or who is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company, its affiliates or Indemnitee in any matter material to any such party; or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" does not include at any time any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"IPO" means the first time a registration statement the Company has filed under the Securities Act of 1933, as amended, and respecting an underwritten primary offering by the Company of shares of Common Stock becomes effective under that Act and the Company issues and sells any of the shares registered by that registration statement.

"IPO Closing Date" means the date on which the Company first receives payment for the shares of Common Stock it sells in the IPO.

"Person" means any natural person, sole proprietorship, corporation, partnership of any kind having a separate legal status, limited liability company, business trust, unincorporated organization or association, mutual company, joint stock company, joint venture, estate, trust, union or employee organization or governmental authority.

"Proceeding" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, in which Indemnitee was, is or will be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action taken by him or of any action on his part while acting as director or officer of the Company, or by reason of the fact that he is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

"Voting Shares" means: (i) in the case of any corporation, stock of that corporation of the class or classes having general voting power under ordinary circumstances to elect a majority of that corporation's board of directors; and (ii) in the case of any other entity, equity interests of the class or classes having general voting power under ordinary circumstances equivalent to the Voting Shares of a corporation.

Section 19. Modification and Waiver. No supplement to or modification or amendment of this Agreement will be binding unless executed in writing by both parties hereto. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provisions hereof (whether or not similar), nor will any such waiver constitute a continuing waiver.

Section 20. Notice by Indemnatee. Indemnatee agrees promptly to notify the Company in writing on being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses hereunder; provided, however, a failure to give that notice will not deprive Indemnatee of his rights to indemnification and advancement of Expenses hereunder unless the Company is actually and materially prejudiced thereby.

Section 21. Notices. All notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered and received (i) if personally delivered or if delivered by telex, telegram, facsimile or courier service, when actually received by the party to whom the notice or communication is sent or (ii) if delivered by mail (whether actually received or not), at the close of business on the third business day in the city in which the Company's principal executive office is located next following the day when placed in the mail, postage prepaid, certified or registered, addressed to the appropriate party at the address of that party set forth below (or at such other address as that party may designate by written notice to the other party in accordance herewith):

(a) If to Indemnatee, to: John R. Colson
106 North Wynden Estates Court
Houston, Texas 77056

with a copy (which will not constitute notice for the purposes of this Agreement) to such legal counsel, if any, as the Indemnatee may designate in writing; and

(b) If to the Company, to: U.S. Concrete, Inc.
1300 Post Oak Blvd., Suite 1220
Houston, Texas 77056
Attention: President

Section 22. Contribution. To the fullest extent applicable law permits, if the indemnification this Agreement provides is unavailable to Indemnatee for any reason whatsoever, the Company, in lieu of indemnifying Indemnatee, will contribute to the amount incurred by Indemnatee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all the circumstances of that Proceeding in order to reflect: (i) the relative benefits received by the Company and Indemnatee as a result of the event(s) and/or transaction(s) giving rise to that

Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnatee in connection with such event(s) and/or transaction(s).

Section 23. Governing Law; Submission to Jurisdiction. This Agreement and the legal relations among the parties will be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration Indemnatee commences pursuant to Section 10(a), the Company and Indemnatee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement will be brought only in the Court of Chancery and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Court of Chancery for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Court of Chancery and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Court of Chancery has been brought

in an improper or otherwise inconvenient forum.

Section 24. Miscellaneous. Use of one gender herein includes usage of each other gender where appropriate. This Agreement uses the words "herein," "hereof" and words of similar import to refer to this Agreement as a whole and not to any provision of this Agreement, and the word "Section" refers to a Section of this Agreement, unless otherwise specified.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

ATTEST: U.S. CONCRETE, INC.

By: /s/ John R. Colson By: /s/ Eugene P. Martineau

Print Name: John R. Colson Eugene P. Martineau
----- President and Chief Executive Officer

ATTEST: INDEMNITEE:

By: /s/Eugene P. Martineau /s/ John R. Colson

Print Name: Eugene P. Martineau John R. Colson

AMENDED AND RESTATED INDEMNIFICATION AGREEMENT

THIS AMENDED AND RESTATED INDEMNIFICATION AGREEMENT (this "Agreement") is made as of August 17, 2000 by and between U.S. Concrete, Inc., a Delaware corporation (the "Company"), and Peter T. Dameris ("Indemnatee"). This Agreement amends and restates in its entirety the Indemnification Agreement, dated as of May 28, 1999, between the Company and Indemnatee.

PRELIMINARY STATEMENT

Highly competent persons have become more reluctant to serve corporations as directors or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of corporations.

The Board of Directors of the Company (the "Board") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of that insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Board believes that, given current market conditions and trends, that insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises increasingly are being subjected to expensive and time-consuming litigation relating to, among other matters, matters that traditionally would have been brought only against the corporation or business enterprise itself. The uncertainties relating to liability insurance and to indemnification have increased the difficulty of attracting and retaining those persons, and the Board has determined that (i) this increased difficulty is detrimental to the best interests of the Company's stockholders and that the Company should act to assure those persons that there will be increased certainty of such protection in the future and (ii) it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify those persons to the fullest extent applicable law permits so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified.

The Bylaws of the Company require indemnification of the officers and directors of the Company. Indemnatee may also be entitled to indemnification pursuant to the Delaware General Corporation Law ("DGCL"). The Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into

between the Company and members of the board of directors, officers and other persons with respect to indemnification.

This Agreement is a supplement to and in furtherance of the Bylaws of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

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The Indemnitee does not regard the protection available under the Company's Bylaws and insurance as adequate in the present circumstances, and may not be willing to serve as an officer or director without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he be so indemnified.

NOW, THEREFORE, in consideration of the premises and the covenants herein, the parties to this Agreement agree as follows:

Section 1. Services by Indemnitee. Indemnitee agrees to serve as a director and/or officer of the Company and, as mutually agreed by Indemnitee and the Company, as a director, officer, trustee, general partner, managing member, employee, agent or fiduciary of other corporations, limited liability companies, partnerships, joint ventures, trusts or other enterprises (including, without limitation, employee benefit plans) (each, an "Enterprise"). Indemnitee may at any time and for any reason resign from any such position (subject to any other contractual obligation or any obligation applicable law imposes), in which event the Company will have no obligation under this Agreement to continue Indemnitee in that position. This Agreement is not and is not to be construed as an employment contract between the Company (or any of its subsidiaries) and Indemnitee. Indemnitee specifically acknowledges that Indemnitee's employment with the Company (or any of its subsidiaries), if any, is at will, and the Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Company (or any of its subsidiaries), other applicable formal severance policies duly adopted by the Board or, with respect to service as a director of the Company, by the Company's Certificate of Incorporation, Bylaws and the DGCL. The foregoing notwithstanding, subject to Section 12, this Agreement will continue in force after Indemnitee has ceased to serve as an officer or director of the Company and no longer serves at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise.

Section 2. Indemnification--General. The Company will indemnify, and advance Expenses (as hereinafter defined) to, Indemnitee (i) as this Agreement permits and (ii) (subject to the provisions hereof) to the fullest extent applicable law in effect on the date hereof and as amended from time to time permits. The rights the preceding sentence provide to Indemnitee will include, but will not be limited to, the rights the other Sections hereof set forth.

Section 3. Proceedings Other Than by or in the Right of the Company. Indemnitee will be entitled to the rights of indemnification this Section 3 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant in any threatened, pending or completed Proceeding (as hereinafter defined), other than a Proceeding by or in the right of the Company. Pursuant to this Section 3, the Company will indemnify Indemnitee against, and will hold Indemnitee harmless from and in respect of, all Expenses, judgments, penalties, fines (including excise taxes) and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of those Expenses, judgments, fines, penalties or amounts paid in settlement) actually and reasonably incurred by him or on his behalf in connection with that Proceeding or any claim, issue or matter therein, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and,

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with respect to any criminal Proceeding, had no reasonable cause to believe his conduct was unlawful.

Section 4. Proceedings by or in the Right of the Company. Indemnatee will be entitled to the rights of indemnification this Section 4 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant (as a witness or otherwise) in any threatened, pending or completed Proceeding brought by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, the Company will indemnify Indemnatee against, and will hold Indemnatee harmless from and in respect of, all Expenses actually and reasonably incurred by him or on his behalf in connection with that Proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that no indemnification against those Expenses will be made in respect of any claim, issue or matter in that Proceeding as to which Indemnatee has been adjudged to be liable to the Company unless and to the extent that the Court of Chancery, or the court in which that Proceeding has been brought or is pending, determines that despite the adjudication of liability but in view of all the circumstances of the case, Indemnatee is fairly and reasonably entitled to indemnification.

Section 5. Indemnification for Expenses of a Party Who Is Wholly or Partly Successful. Notwithstanding any other provision hereof, to the extent that Indemnatee is, by reason of his Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in defense of any Proceeding, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnatee is not wholly successful in defense of any Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in that Proceeding, the Company will indemnify Indemnatee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in any Proceeding by dismissal, with or without prejudice, will be deemed to be a successful result as to that claim, issue or matter.

Section 6. Indemnification for Expenses as a Witness. Notwithstanding any other provision hereof, to the extent that Indemnatee is, by reason of his Corporate Status, a witness in any Proceeding to which Indemnatee is not a party, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

Section 7. Advancement of Expenses. The Company will advance all reasonable Expenses incurred by or on behalf of Indemnatee in connection with any Proceeding within 10 days after the Company receives a statement or statements from Indemnatee requesting such advance or advances from time to time, whether prior to or after final disposition of that Proceeding. Each such statement must reasonably evidence the Expenses incurred by or on behalf of Indemnatee and include or be preceded or accompanied by an undertaking by or on behalf of Indemnatee to repay any Expenses advanced if it ultimately is determined that Indemnatee is not entitled to be indemnified by the Company against those Expenses. The Company will accept any such undertaking without reference to the financial ability of Indemnatee to make repayment, and without regard to Indemnatee's ultimate entitlement to indemnification under other provisions of this Agreement.

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Section 8. Procedure for Determination of Entitlement to Indemnification. (a) Within sixty (60) days after the actual receipt by Indemnatee of notice that he or she is a party to or a participant (as a witness or otherwise) in any Proceeding, Indemnatee shall submit to the Company a written notice identifying the Proceeding. The omission by the Indemnatee to notify the Company will not relieve the Company from any liability which it may have to Indemnatee (i) otherwise than under this Agreement, and (ii) under this Agreement only to the extent the Company can establish that such omission to notify resulted in actual prejudice to the Company.

(b) Indemnatee shall thereafter deliver to the Company a written application to indemnify Indemnatee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnatee deems appropriate in his or her sole discretion. Following such a written application for indemnification by Indemnatee, the Indemnatee's entitlement to indemnification shall be determined according to Section 8(c) of this Agreement.

(c) On written request by Indemnitee for indemnification pursuant to Section 8(b), a determination, if applicable law requires, with respect to Indemnitee's entitlement thereto will be made in the specific case: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, or (ii) if so requested by the Indemnitee in his or her sole discretion by an Independent Counsel in a written opinion to the Board, a copy of which will be delivered to Indemnitee. If it is so determined that Indemnitee is entitled to indemnification hereunder, the Company will: (i) within 10 days after that determination pay to Indemnitee all amounts theretofore incurred by or on behalf of Indemnitee in respect of which Indemnitee is entitled to that indemnification by reason of that determination; and (ii) thereafter on written request by Indemnitee, pay to Indemnitee within 10 days after that request such additional amounts theretofore incurred by or on behalf of Indemnitee in respect of which Indemnitee is entitled to that indemnification by reason of that determination. Indemnitee will cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification under this Agreement, including providing to such person, persons or entity on reasonable advance request any documentation or information which is (i) not privileged or otherwise protected from disclosure, (ii) reasonably available to Indemnitee and (iii) reasonably necessary to that determination. The Company will bear all costs and expenses (including attorneys' fees and disbursements) Indemnitee incurs in so cooperating (irrespective of the determination as to Indemnitee's entitlement to indemnification) and hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(d) If an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c), the Independent Counsel will be selected as this Section 8(d) provides. If a Change of Control has not occurred within two years prior to the date of Indemnitee's written request for indemnification pursuant to Section 8(a), the Board will select the Independent Counsel, and the Company will give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change of Control has occurred within two years prior to the date of that written request, Indemnitee will select the Independent Counsel (unless Indemnitee requests that the Board make the selection, in which event the preceding sentence will apply), and Indemnitee will give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within 10 days after the written notice of selection has been given, deliver to the Company or

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to Indemnitee, as the case may be, a written objection to the selection; provided, however, that any such objection may be asserted only on the ground that the Independent Counsel so selected is not an "Independent Counsel" as Section 17 defines that term, and the objection must set forth with particularity the factual basis for that assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If any such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until that objection is withdrawn or a court of competent jurisdiction has determined that objection is without merit. If (i) an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c) and (ii) within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 8(a), no Independent Counsel has been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery or other court of competent jurisdiction for resolution of any objection that has been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the petitioned court or by such other person as the petitioned court designates, and the person with respect to whom all objections are so resolved or the person so appointed will act as the Independent Counsel under Section 8(c). The Company will pay any and all reasonable fees and expenses the Independent Counsel incurs in connection with acting pursuant to Section 8(c), and the Company will pay all reasonable fees and expenses incident to the procedures this Section 8(d) sets forth, regardless of the manner in which the Independent Counsel is selected or appointed. If (i) the Independent Counsel selected or appointed pursuant to this Section 8(d) does not make any determination respecting Indemnitee's entitlement to indemnification hereunder within 45 days after the Company receives a written request therefor and (ii) any judicial proceeding or arbitration pursuant to Section 10(a) is then commenced, that Independent Counsel will be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of

professional conduct then prevailing).

Section 9. Presumptions and Effect of Certain Proceedings. (a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making that determination must presume that Indemnitee is entitled to indemnification hereunder if Indemnitee has submitted a request for indemnification in accordance with Section 8(a), and the Company will have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or on a plea of nolo contendere or its equivalent, will not (except as this Agreement otherwise expressly provides) of itself adversely affect the right of Indemnitee to indemnification hereunder or create a presumption that Indemnitee did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the

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Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his conduct was unlawful.

(c) Any action Indemnitee takes or omits to take in connection with any employee benefit plan will, if taken or omitted in good faith by Indemnitee and in a manner Indemnitee reasonably believed to be in the interest of the participants in or beneficiaries of that plan, be deemed to have been taken or omitted in a manner "not opposed to the best interests of the Company" for all purposes hereof.

(d) Reliance as Safe Harbor. For purposes of any determination -----
of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise. The provisions of this Section 9(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

(e) Actions of Others. The knowledge and/or actions, or failure to -----
act, of any other director, trustee, partner, managing member, fiduciary, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 10. Remedies of Indemnitee. (a) In the event that (i) a determination is made pursuant to Section 8 that Indemnitee is not entitled to indemnification hereunder, (ii) advancement of Expenses is not timely made pursuant to Section 7, (iii) no determination as to Indemnitee's entitlement to indemnification shall have been made pursuant to Section 8(c) of this Agreement hereunder, or that determination shall not have been made within 45 days after receipt by the Company of the request for that indemnification, (iv) payment of indemnification is not made pursuant to Section 5 or 6 within 10 days after receipt by the Company of a written request therefor or (v) payment of indemnification pursuant to Section 8(c) is not made timely, Indemnitee will be entitled to an adjudication from the Court of Chancery of his entitlement to that indemnification or advancement of Expenses. Alternatively, Indemnitee, at his option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee must commence any such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on

which Indemnitee first has the right to commence that proceeding pursuant to this Section 10(a); provided, however, that this sentence will not apply in respect of a proceeding brought by Indemnitee to enforce his rights under Section 5.

(b) If a determination has been made pursuant to Section 8(c) that Indemnitee is not entitled to indemnification hereunder, any judicial proceeding or arbitration commenced pursuant to this Section 10 will be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee will not be prejudiced by reason of that adverse determination. In any judicial

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proceeding or arbitration commenced pursuant to this Section 10, the Company will have the burden of proving that Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be and the Company may not refer to or introduce into evidence any determination pursuant to Section 8(c) of this Agreement adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 10, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 7 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(c) If a determination has been made pursuant to Section 8(c) that Indemnitee is entitled to indemnification hereunder, the Company will be bound by that determination in any judicial proceeding or arbitration commenced pursuant to this Section 10, absent (i) a misstatement by Indemnitee of a material fact, or an omission by Indemnitee of a material fact necessary to make Indemnitee's statements not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) If Indemnitee, pursuant to this Section 10, seeks a judicial adjudication of or an award in arbitration to enforce his rights under, or to recover damages for breach of, this Agreement, Indemnitee will be entitled to recover from the Company, and will be indemnified by the Company against, any and all expenses (of the types described in the definition of Expenses in Section 18) actually and reasonably incurred by him in that judicial adjudication or arbitration, but only if he prevails therein. If it is determined in that judicial adjudication or arbitration that Indemnitee is entitled to receive part of, but not all, the indemnification or advancement of expenses sought, the Expenses incurred by Indemnitee in connection with that judicial adjudication or arbitration will be appropriately prorated between those in respect of which this Section 10(d) entitles Indemnitee to indemnification and those Indemnitee must bear.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 10 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(f) The Company shall indemnify Indemnitee to the fullest extent permitted by law against all Expenses and, if requested by Indemnitee, shall (within ten (10) days after the Company's receipt of such written request) advance such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any judicial proceeding or arbitration brought by Indemnitee for (i) indemnification or advances of Expenses by the Company under this Agreement or any other agreement or provision of the Company's Certificate of Incorporation or Bylaws now or hereafter in effect or (ii) recovery or advances under any insurance policy maintained by any person for the benefit of Indemnitee, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advance or insurance recovery, as the case may be.

Section 11. Non-exclusivity; Survival of Rights; Insurance; Subrogation. (a) The rights to indemnification and advancement of Expenses this Agreement provides are not and will not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under

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applicable law, the Company's Certificate of Incorporation, the Company's Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or termination of this Agreement or any provision hereof will limit or restrict any right of Indemnitee hereunder in respect of any action Indemnitee has taken or omitted in his Corporate Status prior to that amendment, alteration or termination. To the extent that a change in Delaware law (whether by statute or judicial decision) permits greater indemnification by agreement than would be afforded currently under this Agreement, it is the intent and agreement of the parties hereto that Indemnitee will enjoy by this Agreement the greater benefits that change affords. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall 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 right or remedy.

(b) If the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managing members, employees, agents or fiduciaries of the Company or of any other Enterprise that any such person serves at the request of the Company, Indemnitee will be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, managing member, employee, agent or fiduciary under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) The Company will not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or for which advancement is provided hereunder) hereunder if and to the extent that Indemnitee has otherwise actually received that payment or obtained the entire benefit therefrom under any insurance policy, contract, agreement or otherwise.

(d) If the Company makes any payment hereunder, it will be subrogated to the extent of that payment to all the rights of recovery of Indemnitee, who will execute all papers required and take all action necessary to secure those rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce those rights.

(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee with respect to Indemnitee's service at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise will be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from that other Enterprise.

Section 12. Duration of Agreement. This Agreement will continue until and terminate on the later of: (i) 10 years after the date that Indemnitee has ceased to serve as a director or officer of the Company or as a director, officer, trustee, partner, managing partner, employee,

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agent or fiduciary of any other Enterprise that Indemnitee served on behalf of the Company at the request of the Company; or (ii) one year after the final termination of any Proceeding (including any rights of appeal thereto) then pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnitee pursuant to Section 10 relating thereto including any rights of appeal of any Section 10 Proceeding. This Agreement will be binding on the Company and its successors and assigns and will inure to the benefit of Indemnitee and his spouse (if Indemnitee resides in Texas or another community property state), heirs, executors and administrators.

Section 13. Severability. If any provision or provisions of this Agreement is or are invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions hereof (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal

or unenforceable) will not in any way be affected or impaired thereby; (ii) such provision or provisions will be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (iii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will be construed so as to give effect to the intent manifested thereby.

Section 14. Exception to Right of Indemnification or Advancement of Expenses. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnitee:

(a) for which payment has actually been received by or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount actually received under any insurance policy or other indemnity provision; or

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law; or

(c) except as otherwise provided in Sections 10(d) - (f) hereof, prior to a Change in Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board of Directors of the Company authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

Section 15. Enforcement and Binding Effect.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve

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as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

Section 16. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed to be an original but all of which together will constitute one and the same agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 17. Headings. The headings of the Sections hereof are inserted for convenience only and do not and will not be deemed to constitute part of this Agreement or to affect the construction thereof.

Section 18. Definitions. For purposes of this Agreement:

"Acquiring Person" means any Person who or which, together with all its Affiliates and Associates, is or are the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding, but does not include any Exempt Person; provided, however, that a Person will not be or become an Acquiring Person if that Person, together with its Affiliates and Associates, becomes the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding solely as a result of a reduction in the number of shares of Common Stock outstanding which results from the Company's direct or indirect repurchase of Common Stock, unless and until such time as that Person or any Affiliate or Associate of that Person purchases or otherwise becomes the Beneficial Owner of additional shares of

Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person, unless, in either such case, that Person, together with all its Affiliates and Associates, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

Notwithstanding anything in this definition of "Acquiring Person" to the contrary, so long as Main Street Merchant Partners II, L.P., a Delaware limited partnership ("Main Street"), together with all Affiliates and Associates thereof, remains the Beneficial Owner of 15% or more of the outstanding shares of Common Stock, Main Street and any Affiliate or Associate thereof will not be or become an Acquiring Person unless and until that Person, together with all Affiliates and Associates thereof, purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person

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unless, in either such case, that Person, together with all Affiliates and Associates of that Person, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

"Affiliate" has the meaning Exchange Act Rule 12b-2 specifies.

"Associate" means, with reference to any Person, (i) any corporation, firm, partnership, limited liability company, association, unincorporated organization or other entity (other than the Company or a subsidiary of the Company) of which that Person is an officer or general partner (or officer or general partner of a general partner) or is, directly or indirectly, the Beneficial Owner of 10% or more of any class of its equity securities or interests, (ii) any trust or other estate in which that Person has a substantial beneficial interest or for or of which that Person serves as trustee or in a similar fiduciary capacity and (iii) any relative or spouse of that Person, or any relative of that spouse, who has the same home as that Person.

A specified Person is deemed the "Beneficial Owner" of, and is deemed to "beneficially own," any securities:

(i) of which that Person or any of that Person's Affiliates or Associates, directly or indirectly, is the "beneficial owner" (as determined pursuant to Exchange Act Rule 13d-3) or otherwise has the right to vote or dispose of, including pursuant to any agreement, arrangement or understanding (whether or not in writing); provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," any security under this subparagraph (i) as a result of an agreement, arrangement or understanding to vote that security if that agreement, arrangement or understanding: (A) arises solely from a revocable proxy or consent given in response to a public (that is, not including a solicitation exempted by Exchange Act Rule 14a-2(b)(2)) proxy or consent solicitation made pursuant to, and in accordance with, the applicable provisions of the Exchange Act; and (B) is not then reportable by that Person on Exchange Act Schedule 13D (or any comparable or successor report);

(ii) which that Person or any of that Person's Affiliates or Associates, directly or indirectly, has the right or obligation to acquire (whether that right or obligation is exercisable or effective immediately or only after the passage of time or the occurrence of an event) pursuant to any agreement, arrangement or understanding (whether or not in writing) or on the exercise of conversion rights, exchange rights, other rights, warrants or options, or otherwise; provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," securities tendered pursuant to a tender or exchange offer made by that Person or any of that Person's Affiliates or Associates until those tendered securities are accepted for purchase or exchange; or

(iii) which are beneficially owned, directly or indirectly, by (A) any other Person (or any Affiliate or Associate thereof) with which the specified Person or any of the specified Person's Affiliates or Associates has any agreement, arrangement or understanding (whether or not in writing) for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy or consent as described in the proviso to subparagraph (i) of this definition) or disposing of any voting securities of the Company or (B) any group (as Exchange Act Rule 13d-5(b) uses that term) of which that specified Person is a member;

provided, however, that nothing in this definition will cause a Person engaged in business as an underwriter of securities to be the "Beneficial Owner" of, or to "beneficially own," any securities that Person acquires through its participation in good faith in a firm commitment underwriting (including, without limitation, securities acquired pursuant to stabilizing transactions to facilitate a public offering in accordance with Exchange Act Regulation M or to cover overallocments created in connection with a public offering) until the expiration of 40 days after the date of that acquisition. For purposes of this definition, "voting" a security includes voting, granting a proxy, acting by consent, making a request or demand relating to corporate action (including, without limitation, calling a stockholder meeting) or otherwise giving an authorization (within the meaning of Section 14(a) of the Exchange Act) in respect of that security.

"Change of Control" means the occurrence of any of the following events that occurs after the IPO Closing Date: (i) any Person becomes an Acquiring Person; (ii) at any time the then Continuing Directors cease to constitute a majority of the members of the Board; (iii) a merger of the Company with or into, or a sale by the Company of its properties and assets substantially as an entirety to, another Person occurs and, immediately after that occurrence, any Person, other than an Exempt Person, together with all Affiliates and Associates of that Person (other than Exempt Persons), will be the Beneficial Owner of 15% or more of the total voting power of the then outstanding Voting Shares of the Person surviving that transaction (in the case of a merger or consolidation) or the Person acquiring those properties and assets substantially as an entirety unless that Person, together with all its Affiliates and Associates, was the Beneficial Owner of 15% or more of the shares of Common Stock outstanding prior to that transaction; (iv) the approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets; or (v) occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

"Common Stock" means (i) the common stock, par value \$.001 per share, of the Company and (ii) any other class of capital stock of the Company which is (A) except for less voting rights, identical to the common stock clause (i) of this definition describes and (B) convertible into that common stock on a share for share basis on the occurrence of a Change of Control.

"Continuing Director" means at any time any individual who then (i) is a member of the Board and was a member of the Board as of the IPO Closing Date or whose nomination for his first election, or that first election, to the Board following that date was recommended or approved by a majority of the then Continuing Directors (acting separately or as a part of any action taken by the Board or any committee thereof) and (ii) is not an Acquiring Person, an Affiliate or Associate of an Acquiring Person or a nominee or representative of an Acquiring Person or of any such Affiliate or Associate.

"Corporate Status" describes the status of a natural person who is or was a director, officer, trustee, general partner, managing member, employee or agent of the Company or of any other Enterprise, provided that

person is or was serving in that capacity at the request of the Company. For purposes of this Agreement, "serving at the request of the Company" includes any service by Indemnitee which imposes duties on, or involves services by, Indemnitee with respect to any employee benefit plan or its participants or beneficiaries.

"Court of Chancery" means the Court of Chancery of the State of Delaware.

"Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee hereunder.

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

"Exempt Person" means: (i) (A) the Company, any subsidiary of the Company, any employee benefit plan of the Company or of any subsidiary of the Company and (B) any Person organized, appointed or established by the Company for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of the Company or any subsidiary of the Company; and (ii) Indemnitee, any Affiliate or Associate of Indemnitee or any group (as Exchange Act Rule 13d-5(b) uses that term) of which Indemnitee or any Affiliate or Associate of Indemnitee is a member.

"Expenses" include all attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding and all interest or finance charges attributable to any thereof. Should any payments by the Company under this Agreement be determined to be subject to any federal, state or local income or excise tax, "Expenses" also will include such amounts as are necessary to place Indemnitee in the same after-tax position (after giving effect to all applicable taxes) he would have been in had no such tax been determined to apply to those payments. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its

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equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

"Independent Counsel" means a law firm, or a member of a law firm, that or who is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company, its affiliates or Indemnitee in any matter material to any such party; or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" does not include at any time any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"IPO" means the first time a registration statement the Company has filed under the Securities Act of 1933, as amended, and respecting an underwritten primary offering by the Company of shares of Common Stock becomes effective under that Act and the Company issues and sells any of the shares registered by that registration statement.

"IPO Closing Date" means the date on which the Company first receives payment for the shares of Common Stock it sells in the IPO.

"Person" means any natural person, sole proprietorship, corporation, partnership of any kind having a separate legal status, limited liability company, business trust, unincorporated organization or association, mutual company, joint stock company, joint venture, estate, trust, union or employee organization or governmental authority.

"Proceeding" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, in which Indemnitee was, is or will be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action taken by him or of any action on his part while acting as director or officer of the Company, or by reason of the fact that he is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

"Voting Shares" means: (i) in the case of any corporation, stock of that corporation of the class or classes having general voting power under ordinary circumstances to elect a majority of that corporation's board of directors; and (ii) in the case of any other entity, equity interests of the class or classes having general voting power under ordinary circumstances equivalent to the Voting Shares of a corporation.

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Section 19. Modification and Waiver. No supplement to or modification or amendment of this Agreement will be binding unless executed in writing by both parties hereto. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provisions hereof (whether or not similar), nor will any such waiver constitute a continuing waiver.

Section 20. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing on being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses hereunder; provided, however, a failure to give that notice will not deprive Indemnitee of his rights to indemnification and advancement of Expenses hereunder unless the Company is actually and materially prejudiced thereby.

Section 21. Notices. All notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered and received (i) if personally delivered or if delivered by telex, telegram, facsimile or courier service, when actually received by the party to whom the notice or communication is sent or (ii) if delivered by mail (whether actually received or not), at the close of business on the third business day in the city in which the Company's principal executive office is located next following the day when placed in the mail, postage prepaid, certified or registered, addressed to the appropriate party at the address of that party set forth below (or at such other address as that party may designate by written notice to the other party in accordance herewith):

(a) If to Indemnitee, to: Peter T. Dameris
2323 Seyborn
Houston, Texas 77027

with a copy (which will not constitute notice for the purposes of this Agreement) to such legal counsel, if any, as the Indemnitee may designate in writing; and

(b) If to the Company, to: U.S. Concrete, Inc.
1300 Post Oak Blvd., Suite 1220
Houston, Texas 77056
Attention: President

Section 22. Contribution. To the fullest extent applicable law permits, if the indemnification this Agreement provides is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, will contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all the circumstances of that Proceeding in order to

reflect: (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving rise to that

Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 23. Governing Law; Submission to Jurisdiction. This Agreement and the legal relations among the parties will be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration Indemnitee commences pursuant to Section 10(a), the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement will be brought only in the Court of Chancery and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Court of Chancery for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Court of Chancery and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Court of Chancery has been brought in an improper or otherwise inconvenient forum.

Section 24. Miscellaneous. Use of one gender herein includes usage of each other gender where appropriate. This Agreement uses the words "herein," "hereof" and words of similar import to refer to this Agreement as a whole and not to any provision of this Agreement, and the word "Section" refers to a Section of this Agreement, unless otherwise specified.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

ATTEST: U.S. CONCRETE, INC.

By: /s/ Peter T. Dameris By: /s/ Eugene P. Martineau

Print Name: Peter T. Dameris Eugene P. Martineau

President and Chief Executive Officer

ATTEST: INDEMNITEE:

By: /s/ Eugene P. Martineau /s/ Peter T. Dameris

Print Name:Eugene P. Martineau Peter T. Dameris

AMENDED AND RESTATED INDEMNIFICATION AGREEMENT

THIS AMENDED AND RESTATED INDEMNIFICATION AGREEMENT (this "Agreement") is made as of August 17, 2000 by and between U.S. Concrete, Inc., a Delaware corporation (the "Company"), and Vincent D. Foster ("Indemnitee"). This Agreement amends and restates in its entirety the Indemnification Agreement, dated as of May 28, 1999, between the Company and Indemnitee.

PRELIMINARY STATEMENT

Highly competent persons have become more reluctant to serve corporations as directors or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of corporations.

The Board of Directors of the Company (the "Board") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability

insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of that insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Board believes that, given current market conditions and trends, that insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises increasingly are being subjected to expensive and time-consuming litigation relating to, among other matters, matters that traditionally would have been brought only against the corporation or business enterprise itself. The uncertainties relating to liability insurance and to indemnification have increased the difficulty of attracting and retaining those persons, and the Board has determined that (i) this increased difficulty is detrimental to the best interests of the Company's stockholders and that the Company should act to assure those persons that there will be increased certainty of such protection in the future and (ii) it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify those persons to the fullest extent applicable law permits so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified.

The Bylaws of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the Delaware General Corporation Law ("DGCL"). The Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification.

This Agreement is a supplement to and in furtherance of the Bylaws of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

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The Indemnitee does not regard the protection available under the Company's Bylaws and insurance as adequate in the present circumstances, and may not be willing to serve as an officer or director without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he be so indemnified.

NOW, THEREFORE, in consideration of the premises and the covenants herein, the parties to this Agreement agree as follows:

Section 1. Services by Indemnitee. Indemnitee agrees to serve as a director and/or officer of the Company and, as mutually agreed by Indemnitee and the Company, as a director, officer, trustee, general partner, managing member, employee, agent or fiduciary of other corporations, limited liability companies, partnerships, joint ventures, trusts or other enterprises (including, without limitation, employee benefit plans) (each, an "Enterprise"). Indemnitee may at any time and for any reason resign from any such position (subject to any other contractual obligation or any obligation applicable law imposes), in which event the Company will have no obligation under this Agreement to continue Indemnitee in that position. This Agreement is not and is not to be construed as an employment contract between the Company (or any of its subsidiaries) and Indemnitee. Indemnitee specifically acknowledges that Indemnitee's employment with the Company (or any of its subsidiaries), if any, is at will, and the Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Company (or any of its subsidiaries), other applicable formal severance policies duly adopted by the Board or, with respect to service as a director of the Company, by the Company's Certificate of Incorporation, Bylaws and the DGCL. The foregoing notwithstanding, subject to Section 12, this Agreement will continue in force after Indemnitee has ceased to serve as an officer or director of the Company and no longer serves at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise.

Section 2. Indemnification--General. The Company will indemnify, and advance Expenses (as hereinafter defined) to, Indemnitee (i) as this Agreement permits and (ii) (subject to the provisions hereof) to the fullest extent applicable law in effect on the date hereof and as amended from time to time permits. The rights the preceding sentence provide to Indemnitee will

include, but will not be limited to, the rights the other Sections hereof set forth.

Section 3. Proceedings Other Than by or in the Right of the Company. Indemnitee will be entitled to the rights of indemnification this Section 3 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant in any threatened, pending or completed Proceeding (as hereinafter defined), other than a Proceeding by or in the right of the Company. Pursuant to this Section 3, the Company will indemnify Indemnitee against, and will hold Indemnitee harmless from and in respect of, all Expenses, judgments, penalties, fines (including excise taxes) and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of those Expenses, judgments, fines, penalties or amounts paid in settlement) actually and reasonably incurred by him or on his behalf in connection with that Proceeding or any claim, issue or matter therein, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and,

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with respect to any criminal Proceeding, had no reasonable cause to believe his conduct was unlawful.

Section 4. Proceedings by or in the Right of the Company. Indemnitee will be entitled to the rights of indemnification this Section 4 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant (as a witness or otherwise) in any threatened, pending or completed Proceeding brought by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, the Company will indemnify Indemnitee against, and will hold Indemnitee harmless from and in respect of, all Expenses actually and reasonably incurred by him or on his behalf in connection with that Proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that no indemnification against those Expenses will be made in respect of any claim, issue or matter in that Proceeding as to which Indemnitee has been adjudged to be liable to the Company unless and to the extent that the Court of Chancery, or the court in which that Proceeding has been brought or is pending, determines that despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification.

Section 5. Indemnification for Expenses of a Party Who Is Wholly or Partly Successful. Notwithstanding any other provision hereof, to the extent that Indemnitee is, by reason of his Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in defense of any Proceeding, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is not wholly successful in defense of any Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in that Proceeding, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in any Proceeding by dismissal, with or without prejudice, will be deemed to be a successful result as to that claim, issue or matter.

Section 6. Indemnification for Expenses as a Witness. Notwithstanding any other provision hereof, to the extent that Indemnitee is, by reason of his Corporate Status, a witness in any Proceeding to which Indemnitee is not a party, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

Section 7. Advancement of Expenses. The Company will advance all reasonable Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding within 10 days after the Company receives a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of that Proceeding. Each such statement must reasonably evidence the Expenses incurred by or on behalf of Indemnitee and include or be preceded or accompanied by an undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it ultimately is determined that Indemnitee is not entitled to be indemnified by the Company against those Expenses. The Company will accept any such undertaking without reference to the financial ability of Indemnitee to make repayment, and without

regard to Indemnitee's ultimate entitlement to indemnification under other provisions of this Agreement.

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Section 8. Procedure for Determination of Entitlement to Indemnification. (a) Within sixty (60) days after the actual receipt by Indemnitee of notice that he or she is a party to or a participant (as a witness or otherwise) in any Proceeding, Indemnitee shall submit to the Company a written notice identifying the Proceeding. The omission by the Indemnitee to notify the Company will not relieve the Company from any liability which it may have to Indemnitee (i) otherwise than under this Agreement, and (ii) under this Agreement only to the extent the Company can establish that such omission to notify resulted in actual prejudice to the Company.

(b) Indemnitee shall thereafter deliver to the Company a written application to indemnify Indemnitee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnitee deems appropriate in his or her sole discretion. Following such a written application for indemnification by Indemnitee, the Indemnitee's entitlement to indemnification shall be determined according to Section 8(c) of this Agreement.

(c) On written request by Indemnitee for indemnification pursuant to Section 8(b), a determination, if applicable law requires, with respect to Indemnitee's entitlement thereto will be made in the specific case: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, or (ii) if so requested by the Indemnitee in his or her sole discretion by an Independent Counsel in a written opinion to the Board, a copy of which will be delivered to Indemnitee. If it is so determined that Indemnitee is entitled to indemnification hereunder, the Company will: (i) within 10 days after that determination pay to Indemnitee all amounts theretofore incurred by or on behalf of Indemnitee in respect of which Indemnitee is entitled to that indemnification by reason of that determination; and (ii) thereafter on written request by Indemnitee, pay to Indemnitee within 10 days after that request such additional amounts theretofore incurred by or on behalf of Indemnitee in respect of which Indemnitee is entitled to that indemnification by reason of that determination. Indemnitee will cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification under this Agreement, including providing to such person, persons or entity on reasonable advance request any documentation or information which is (i) not privileged or otherwise protected from disclosure, (ii) reasonably available to Indemnitee and (iii) reasonably necessary to that determination. The Company will bear all costs and expenses (including attorneys' fees and disbursements) Indemnitee incurs in so cooperating (irrespective of the determination as to Indemnitee's entitlement to indemnification) and hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(d) If an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c), the Independent Counsel will be selected as this Section 8(d) provides. If a Change of Control has not occurred within two years prior to the date of Indemnitee's written request for indemnification pursuant to Section 8(a), the Board will select the Independent Counsel, and the Company will give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change of Control has occurred within two years prior to the date of that written request, Indemnitee will select the Independent Counsel (unless Indemnitee requests that the Board make the selection, in which event the preceding sentence will apply), and Indemnitee will give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within 10 days after the written notice of selection has been given, deliver to the Company or

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to Indemnitee, as the case may be, a written objection to the selection; provided, however, that any such objection may be asserted only on the ground that the Independent Counsel so selected is not an "Independent Counsel" as Section 17 defines that term, and the objection must set forth with particularity the factual basis for that assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If any such written objection is so made and substantiated, the Independent Counsel so

selected may not serve as Independent Counsel unless and until that objection is withdrawn or a court of competent jurisdiction has determined that objection is without merit. If (i) an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c) and (ii) within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 8(a), no Independent Counsel has been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery or other court of competent jurisdiction for resolution of any objection that has been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the petitioned court or by such other person as the petitioned court designates, and the person with respect to whom all objections are so resolved or the person so appointed will act as the Independent Counsel under Section 8(c). The Company will pay any and all reasonable fees and expenses the Independent Counsel incurs in connection with acting pursuant to Section 8(c), and the Company will pay all reasonable fees and expenses incident to the procedures this Section 8(d) sets forth, regardless of the manner in which the Independent Counsel is selected or appointed. If (i) the Independent Counsel selected or appointed pursuant to this Section 8(d) does not make any determination respecting Indemnitee's entitlement to indemnification hereunder within 45 days after the Company receives a written request therefor and (ii) any judicial proceeding or arbitration pursuant to Section 10(a) is then commenced, that Independent Counsel will be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 9. Presumptions and Effect of Certain Proceedings. (a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making that determination must presume that Indemnitee is entitled to indemnification hereunder if Indemnitee has submitted a request for indemnification in accordance with Section 8(a), and the Company will have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or on a plea of nolo contendere or its equivalent, will not (except as this Agreement otherwise expressly provides) of itself adversely affect the right of Indemnitee to indemnification hereunder or create a presumption that Indemnitee did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the

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Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his conduct was unlawful.

(c) Any action Indemnitee takes or omits to take in connection with any employee benefit plan will, if taken or omitted in good faith by Indemnitee and in a manner Indemnitee reasonably believed to be in the interest of the participants in or beneficiaries of that plan, be deemed to have been taken or omitted in a manner "not opposed to the best interests of the Company" for all purposes hereof.

(d) Reliance as Safe Harbor. For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise. The provisions of this Section 9(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this

Agreement.

(e) Actions of Others. The knowledge and/or actions, or failure to

act, of any other director, trustee, partner, managing member, fiduciary,
officer, agent or employee of the Enterprise shall not be imputed to Indemnitee
for purposes of determining the right to indemnification under this Agreement.

Section 10. Remedies of Indemnitee. (a) In the event that (i) a
determination is made pursuant to Section 8 that Indemnitee is not entitled to
indemnification hereunder, (ii) advancement of Expenses is not timely made
pursuant to Section 7, (iii) no determination as to Indemnitee's entitlement to
indemnification shall have been made pursuant to Section 8(c) of this Agreement
hereunder, or that determination shall not have been made within 45 days after
receipt by the Company of the request for that indemnification, (iv) payment of
indemnification is not made pursuant to Section 5 or 6 within 10 days after
receipt by the Company of a written request therefor or (v) payment of
indemnification pursuant to Section 8(c) is not made timely, Indemnitee will be
entitled to an adjudication from the Court of Chancery of his entitlement to
that indemnification or advancement of Expenses. Alternatively, Indemnitee, at
his option, may seek an award in arbitration to be conducted by a single
arbitrator pursuant to the Commercial Arbitration Rules of the American
Arbitration Association. Indemnitee must commence any such proceeding seeking an
adjudication or an award in arbitration within 180 days following the date on
which Indemnitee first has the right to commence that proceeding pursuant to
this Section 10(a); provided, however, that this sentence will not apply in
respect of a proceeding brought by Indemnitee to enforce his rights under
Section 5.

(b) If a determination has been made pursuant to Section 8(c) that
Indemnitee is not entitled to indemnification hereunder, any judicial proceeding
or arbitration commenced pursuant to this Section 10 will be conducted in all
respects as a de novo trial, or arbitration, on the merits and Indemnitee will
not be prejudiced by reason of that adverse determination. In any judicial

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proceeding or arbitration commenced pursuant to this Section 10, the Company
will have the burden of proving that Indemnitee is not entitled to
indemnification or advancement of Expenses, as the case may be and the Company
may not refer to or introduce into evidence any determination pursuant to
Section 8(c) of this Agreement adverse to Indemnitee for any purpose. If
Indemnitee commences a judicial proceeding or arbitration pursuant to this
Section 10, Indemnitee shall not be required to reimburse the Company for any
advances pursuant to Section 7 until a final determination is made with respect
to Indemnitee's entitlement to indemnification (as to which all rights of appeal
have been exhausted or lapsed).

(c) If a determination has been made pursuant to Section 8(c) that
Indemnitee is entitled to indemnification hereunder, the Company will be bound
by that determination in any judicial proceeding or arbitration commenced
pursuant to this Section 10, absent (i) a misstatement by Indemnitee of a
material fact, or an omission by Indemnitee of a material fact necessary to make
Indemnitee's statements not materially misleading, in connection with the
request for indemnification, or (ii) a prohibition of such indemnification under
applicable law.

(d) If Indemnitee, pursuant to this Section 10, seeks a judicial
adjudication of or an award in arbitration to enforce his rights under, or to
recover damages for breach of, this Agreement, Indemnitee will be entitled to
recover from the Company, and will be indemnified by the Company against, any
and all expenses (of the types described in the definition of Expenses in
Section 18) actually and reasonably incurred by him in that judicial
adjudication or arbitration, but only if he prevails therein. If it is
determined in that judicial adjudication or arbitration that Indemnitee is
entitled to receive part of, but not all, the indemnification or advancement of
expenses sought, the Expenses incurred by Indemnitee in connection with that
judicial adjudication or arbitration will be appropriately prorated between
those in respect of which this Section 10(d) entitles Indemnitee to
indemnification and those Indemnitee must bear.

(e) The Company shall be precluded from asserting in any judicial
proceeding or arbitration commenced pursuant to this Section 10 that the
procedures and presumptions of this Agreement are not valid, binding and

enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(f) The Company shall indemnify Indemnitee to the fullest extent permitted by law against all Expenses and, if requested by Indemnitee, shall (within ten (10) days after the Company's receipt of such written request) advance such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any judicial proceeding or arbitration brought by Indemnitee for (i) indemnification or advances of Expenses by the Company under this Agreement or any other agreement or provision of the Company's Certificate of Incorporation or Bylaws now or hereafter in effect or (ii) recovery or advances under any insurance policy maintained by any person for the benefit of Indemnitee, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advance or insurance recovery, as the case may be.

Section 11. Non-exclusivity; Survival of Rights; Insurance; Subrogation. (a) The rights to indemnification and advancement of Expenses this Agreement provides are not and will not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under

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applicable law, the Company's Certificate of Incorporation, the Company's Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or termination of this Agreement or any provision hereof will limit or restrict any right of Indemnitee hereunder in respect of any action Indemnitee has taken or omitted in his Corporate Status prior to that amendment, alteration or termination. To the extent that a change in Delaware law (whether by statute or judicial decision) permits greater indemnification by agreement than would be afforded currently under this Agreement, it is the intent and agreement of the parties hereto that Indemnitee will enjoy by this Agreement the greater benefits that change affords. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall 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 right or remedy.

(b) If the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managing members, employees, agents or fiduciaries of the Company or of any other Enterprise that any such person serves at the request of the Company, Indemnitee will be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, managing member, employee, agent or fiduciary under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) The Company will not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or for which advancement is provided hereunder) hereunder if and to the extent that Indemnitee has otherwise actually received that payment or obtained the entire benefit therefrom under any insurance policy, contract, agreement or otherwise.

(d) If the Company makes any payment hereunder, it will be subrogated to the extent of that payment to all the rights of recovery of Indemnitee, who will execute all papers required and take all action necessary to secure those rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce those rights.

(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee with respect to Indemnitee's service at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise will be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from that other Enterprise.

Section 12. Duration of Agreement. This Agreement will continue until and terminate on the later of: (i) 10 years after the date that Indemnatee has ceased to serve as a director or officer of the Company or as a director, officer, trustee, partner, managing partner, employee,

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agent or fiduciary of any other Enterprise that Indemnatee served on behalf of the Company at the request of the Company; or (ii) one year after the final termination of any Proceeding (including any rights of appeal thereto) then pending in respect of which Indemnatee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnatee pursuant to Section 10 relating thereto including any rights of appeal of any Section 10 Proceeding. This Agreement will be binding on the Company and its successors and assigns and will inure to the benefit of Indemnatee and his spouse (if Indemnatee resides in Texas or another community property state), heirs, executors and administrators.

Section 13. Severability. If any provision or provisions of this Agreement is or are invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions hereof (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will not in any way be affected or impaired thereby; (ii) such provision or provisions will be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (iii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will be construed so as to give effect to the intent manifested thereby.

Section 14. Exception to Right of Indemnification or Advancement of Expenses. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnatee:

(a) for which payment has actually been received by or on behalf of Indemnatee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount actually received under any insurance policy or other indemnity provision; or

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnatee of securities of the Company within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law; or

(c) except as otherwise provided in Sections 10(d) - (f) hereof, prior to a Change in Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnatee, including any Proceeding (or any part of any Proceeding) initiated by Indemnatee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board of Directors of the Company authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

Section 15. Enforcement and Binding Effect.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnatee to serve

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as a director or officer of the Company, and the Company acknowledges that Indemnatee is relying upon this Agreement in serving as a director or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

Section 16. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed to be an original but all of which together will constitute one and the same agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 17. Headings. The headings of the Sections hereof are inserted for convenience only and do not and will not be deemed to constitute part of this Agreement or to affect the construction thereof.

Section 18. Definitions. For purposes of this Agreement:

"Acquiring Person" means any Person who or which, together with all its Affiliates and Associates, is or are the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding, but does not include any Exempt Person; provided, however, that a Person will not be or become an Acquiring Person if that Person, together with its Affiliates and Associates, becomes the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding solely as a result of a reduction in the number of shares of Common Stock outstanding which results from the Company's direct or indirect repurchase of Common Stock, unless and until such time as that Person or any Affiliate or Associate of that Person purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person, unless, in either such case, that Person, together with all its Affiliates and Associates, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

Notwithstanding anything in this definition of "Acquiring Person" to the contrary, so long as Main Street Merchant Partners II, L.P., a Delaware limited partnership ("Main Street"), together with all Affiliates and Associates thereof, remains the Beneficial Owner of 15% or more of the outstanding shares of Common Stock, Main Street and any Affiliate or Associate thereof will not be or become an Acquiring Person unless and until that Person, together with all Affiliates and Associates thereof, purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person

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unless, in either such case, that Person, together with all Affiliates and Associates of that Person, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

"Affiliate" has the meaning Exchange Act Rule 12b-2 specifies.

"Associate" means, with reference to any Person, (i) any corporation, firm, partnership, limited liability company, association, unincorporated organization or other entity (other than the Company or a subsidiary of the Company) of which that Person is an officer or general partner (or officer or general partner of a general partner) or is, directly or indirectly, the Beneficial Owner of 10% or more of any class of its equity securities or interests, (ii) any trust or other estate in which that Person has a substantial beneficial interest or for or of which that Person serves as trustee or in a similar fiduciary capacity and (iii) any relative or spouse of that Person, or any relative of that spouse, who has the same home as that Person.

A specified Person is deemed the "Beneficial Owner" of, and is deemed to "beneficially own," any securities:

(i) of which that Person or any of that Person's Affiliates or Associates, directly or indirectly, is the "beneficial owner" (as determined pursuant to Exchange Act Rule 13d-3) or otherwise has the right to vote or dispose of, including pursuant to any agreement,

arrangement or understanding (whether or not in writing); provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," any security under this subparagraph (i) as a result of an agreement, arrangement or understanding to vote that security if that agreement, arrangement or understanding: (A) arises solely from a revocable proxy or consent given in response to a public (that is, not including a solicitation exempted by Exchange Act Rule 14a-2(b)(2)) proxy or consent solicitation made pursuant to, and in accordance with, the applicable provisions of the Exchange Act; and (B) is not then reportable by that Person on Exchange Act Schedule 13D (or any comparable or successor report);

(ii) which that Person or any of that Person's Affiliates or Associates, directly or indirectly, has the right or obligation to acquire (whether that right or obligation is exercisable or effective immediately or only after the passage of time or the occurrence of an event) pursuant to any agreement, arrangement or understanding (whether or not in writing) or on the exercise of conversion rights, exchange rights, other rights, warrants or options, or otherwise; provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," securities tendered pursuant to a tender or exchange offer made by that Person or any of that Person's Affiliates or Associates until those tendered securities are accepted for purchase or exchange; or

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(iii) which are beneficially owned, directly or indirectly, by (A) any other Person (or any Affiliate or Associate thereof) with which the specified Person or any of the specified Person's Affiliates or Associates has any agreement, arrangement or understanding (whether or not in writing) for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy or consent as described in the proviso to subparagraph (i) of this definition) or disposing of any voting securities of the Company or (B) any group (as Exchange Act Rule 13d-5(b) uses that term) of which that specified Person is a member;

provided, however, that nothing in this definition will cause a Person engaged in business as an underwriter of securities to be the "Beneficial Owner" of, or to "beneficially own," any securities that Person acquires through its participation in good faith in a firm commitment underwriting (including, without limitation, securities acquired pursuant to stabilizing transactions to facilitate a public offering in accordance with Exchange Act Regulation M or to cover overallocments created in connection with a public offering) until the expiration of 40 days after the date of that acquisition. For purposes of this definition, "voting" a security includes voting, granting a proxy, acting by consent, making a request or demand relating to corporate action (including, without limitation, calling a stockholder meeting) or otherwise giving an authorization (within the meaning of Section 14(a) of the Exchange Act) in respect of that security.

"Change of Control" means the occurrence of any of the following events that occurs after the IPO Closing Date: (i) any Person becomes an Acquiring Person; (ii) at any time the then Continuing Directors cease to constitute a majority of the members of the Board; (iii) a merger of the Company with or into, or a sale by the Company of its properties and assets substantially as an entirety to, another Person occurs and, immediately after that occurrence, any Person, other than an Exempt Person, together with all Affiliates and Associates of that Person (other than Exempt Persons), will be the Beneficial Owner of 15% or more of the total voting power of the then outstanding Voting Shares of the Person surviving that transaction (in the case of a merger or consolidation) or the Person acquiring those properties and assets substantially as an entirety unless that Person, together with all its Affiliates and Associates, was the Beneficial Owner of 15% or more of the shares of Common Stock outstanding prior to that transaction; (iv) the approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets; or (v) occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting

requirement.

"Common Stock" means (i) the common stock, par value \$.001 per share, of the Company and (ii) any other class of capital stock of the Company which is (A) except for less voting rights, identical to the common stock clause (i) of this definition describes and (B) convertible into that common stock on a share for share basis on the occurrence of a Change of Control.

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"Continuing Director" means at any time any individual who then (i) is a member of the Board and was a member of the Board as of the IPO Closing Date or whose nomination for his first election, or that first election, to the Board following that date was recommended or approved by a majority of the then Continuing Directors (acting separately or as a part of any action taken by the Board or any committee thereof) and (ii) is not an Acquiring Person, an Affiliate or Associate of an Acquiring Person or a nominee or representative of an Acquiring Person or of any such Affiliate or Associate.

"Corporate Status" describes the status of a natural person who is or was a director, officer, trustee, general partner, managing member, employee or agent of the Company or of any other Enterprise, provided that person is or was serving in that capacity at the request of the Company. For purposes of this Agreement, "serving at the request of the Company" includes any service by Indemnitee which imposes duties on, or involves services by, Indemnitee with respect to any employee benefit plan or its participants or beneficiaries.

"Court of Chancery" means the Court of Chancery of the State of Delaware.

"Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee hereunder.

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

"Exempt Person" means: (i) (A) the Company, any subsidiary of the Company, any employee benefit plan of the Company or of any subsidiary of the Company and (B) any Person organized, appointed or established by the Company for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of the Company or any subsidiary of the Company; and (ii) Indemnitee, any Affiliate or Associate of Indemnitee or any group (as Exchange Act Rule 13d-5(b) uses that term) of which Indemnitee or any Affiliate or Associate of Indemnitee is a member.

"Expenses" include all attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding and all interest or finance charges attributable to any thereof. Should any payments by the Company under this Agreement be determined to be subject to any federal, state or local income or excise tax, "Expenses" also will include such amounts as are necessary to place Indemnitee in the same after-tax position (after giving effect to all applicable taxes) he would have been in had no such tax been determined to apply to those payments. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its

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equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

"Independent Counsel" means a law firm, or a member of a law firm, that or who is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company, its affiliates or Indemnitee in any matter material to any

such party; or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" does not include at any time any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"IPO" means the first time a registration statement the Company has filed under the Securities Act of 1933, as amended, and respecting an underwritten primary offering by the Company of shares of Common Stock becomes effective under that Act and the Company issues and sells any of the shares registered by that registration statement.

"IPO Closing Date" means the date on which the Company first receives payment for the shares of Common Stock it sells in the IPO.

"Person" means any natural person, sole proprietorship, corporation, partnership of any kind having a separate legal status, limited liability company, business trust, unincorporated organization or association, mutual company, joint stock company, joint venture, estate, trust, union or employee organization or governmental authority.

"Proceeding" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, in which Indemnitee was, is or will be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action taken by him or of any action on his part while acting as director or officer of the Company, or by reason of the fact that he is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

"Voting Shares" means: (i) in the case of any corporation, stock of that corporation of the class or classes having general voting power under ordinary circumstances to elect a majority of that corporation's board of directors; and (ii) in the case of any other entity, equity interests of the class or classes having general voting power under ordinary circumstances equivalent to the Voting Shares of a corporation.

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Section 19. Modification and Waiver. No supplement to or modification or amendment of this Agreement will be binding unless executed in writing by both parties hereto. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provisions hereof (whether or not similar), nor will any such waiver constitute a continuing waiver.

Section 20. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing on being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses hereunder; provided, however, a failure to give that notice will not deprive Indemnitee of his rights to indemnification and advancement of Expenses hereunder unless the Company is actually and materially prejudiced thereby.

Section 21. Notices. All notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered and received (i) if personally delivered or if delivered by telex, telegram, facsimile or courier service, when actually received by the party to whom the notice or communication is sent or (ii) if delivered by mail (whether actually received or not), at the close of business on the third business day in the city in which the Company's principal executive office is located next following the day when placed in the mail, postage prepaid, certified or registered, addressed to the appropriate party at the address of that party set forth below (or at such other address as that party may designate by written notice to the other party in accordance herewith):

(a) If to Indemnitee, to: Vincent D. Foster

675 Strey Lane
Houston, Texas 77024

with a copy (which will not constitute notice for the purposes of this Agreement) to such legal counsel, if any, as the Indemnatee may designate in writing; and

(b) If to the Company, to: U.S. Concrete, Inc.
1300 Post Oak Blvd., Suite 1220
Houston, Texas 77056
Attention: President

Section 22. Contribution. To the fullest extent applicable law permits, if the indemnification this Agreement provides is unavailable to Indemnatee for any reason whatsoever, the Company, in lieu of indemnifying Indemnatee, will contribute to the amount incurred by Indemnatee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all the circumstances of that Proceeding in order to reflect: (i) the relative benefits received by the Company and Indemnatee as a result of the event(s) and/or transaction(s) giving rise to that

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Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnatee in connection with such event(s) and/or transaction(s).

Section 23. Governing Law; Submission to Jurisdiction. This Agreement and the legal relations among the parties will be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration Indemnatee commences pursuant to Section 10(a), the Company and Indemnatee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement will be brought only in the Court of Chancery and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Court of Chancery for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Court of Chancery and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Court of Chancery has been brought in an improper or otherwise inconvenient forum.

Section 24. Miscellaneous. Use of one gender herein includes usage of each other gender where appropriate. This Agreement uses the words "herein," "hereof" and words of similar import to refer to this Agreement as a whole and not to any provision of this Agreement, and the word "Section" refers to a Section of this Agreement, unless otherwise specified.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

ATTEST: U.S. CONCRETE, INC.

By: /s/ Vincent D. Foster By: /s/ Eugene P. Martineau

Print Name: Vincent D. Foster Eugene P. Martineau

President and Chief Executive Officer

ATTEST: INDEMNITEE:

By: /s/ Eugene P. Martineau /s/ Vincent D. Foster

Print Name: Eugene P. Martineau Vincent D. Foster

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THIS AMENDED AND RESTATED INDEMNIFICATION AGREEMENT (this "Agreement") is made as of August 17, 2000 by and between U.S. Concrete, Inc., a Delaware corporation (the "Company"), and Michael W. Harlan ("Indemnitee"). This Agreement amends and restates in its entirety the Indemnification Agreement, dated as of May 28, 1999, between the Company and Indemnitee.

PRELIMINARY STATEMENT

Highly competent persons have become more reluctant to serve corporations as directors or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of corporations.

The Board of Directors of the Company (the "Board") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of that insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Board believes that, given current market conditions and trends, that insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises increasingly are being subjected to expensive and time-consuming litigation relating to, among other matters, matters that traditionally would have been brought only against the corporation or business enterprise itself. The uncertainties relating to liability insurance and to indemnification have increased the difficulty of attracting and retaining those persons, and the Board has determined that (i) this increased difficulty is detrimental to the best interests of the Company's stockholders and that the Company should act to assure those persons that there will be increased certainty of such protection in the future and (ii) it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify those persons to the fullest extent applicable law permits so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified.

The Bylaws of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the Delaware General Corporation Law ("DGCL"). The Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification.

This Agreement is a supplement to and in furtherance of the Bylaws of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

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The Indemnitee does not regard the protection available under the Company's Bylaws and insurance as adequate in the present circumstances, and may not be willing to serve as an officer or director without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he be so indemnified.

NOW, THEREFORE, in consideration of the premises and the covenants herein, the parties to this Agreement agree as follows:

Section 1. Services by Indemnitee. Indemnitee agrees to serve as a director and/or officer of the Company and, as mutually agreed by Indemnitee and the Company, as a director, officer, trustee, general partner, managing member, employee, agent or fiduciary of other corporations, limited liability companies, partnerships, joint ventures, trusts or other enterprises (including, without limitation, employee benefit plans) (each, an "Enterprise"). Indemnitee may at any time and for any reason resign from any such position (subject to any other contractual obligation or any obligation applicable law imposes), in which event the Company will have no obligation under this Agreement to continue Indemnitee in that position. This Agreement is not and is not to be construed as an employment contract between the Company (or any of its subsidiaries) and

Indemnitee. Indemnitee specifically acknowledges that Indemnitee's employment with the Company (or any of its subsidiaries), if any, is at will, and the Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Company (or any of its subsidiaries), other applicable formal severance policies duly adopted by the Board or, with respect to service as a director of the Company, by the Company's Certificate of Incorporation, Bylaws and the DGCL. The foregoing notwithstanding, subject to Section 12, this Agreement will continue in force after Indemnitee has ceased to serve as an officer or director of the Company and no longer serves at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise.

Section 2. Indemnification--General. The Company will indemnify, and advance Expenses (as hereinafter defined) to, Indemnitee (i) as this Agreement permits and (ii) (subject to the provisions hereof) to the fullest extent applicable law in effect on the date hereof and as amended from time to time permits. The rights the preceding sentence provide to Indemnitee will include, but will not be limited to, the rights the other Sections hereof set forth.

Section 3. Proceedings Other Than by or in the Right of the Company. Indemnitee will be entitled to the rights of indemnification this Section 3 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant in any threatened, pending or completed Proceeding (as hereinafter defined), other than a Proceeding by or in the right of the Company. Pursuant to this Section 3, the Company will indemnify Indemnitee against, and will hold Indemnitee harmless from and in respect of, all Expenses, judgments, penalties, fines (including excise taxes) and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of those Expenses, judgments, fines, penalties or amounts paid in settlement) actually and reasonably incurred by him or on his behalf in connection with that Proceeding or any claim, issue or matter therein, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and,

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with respect to any criminal Proceeding, had no reasonable cause to believe his conduct was unlawful.

Section 4. Proceedings by or in the Right of the Company. Indemnitee will be entitled to the rights of indemnification this Section 4 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant (as a witness or otherwise) in any threatened, pending or completed Proceeding brought by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, the Company will indemnify Indemnitee against, and will hold Indemnitee harmless from and in respect of, all Expenses actually and reasonably incurred by him or on his behalf in connection with that Proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that no indemnification against those Expenses will be made in respect of any claim, issue or matter in that Proceeding as to which Indemnitee has been adjudged to be liable to the Company unless and to the extent that the Court of Chancery, or the court in which that Proceeding has been brought or is pending, determines that despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification.

Section 5. Indemnification for Expenses of a Party Who Is Wholly or Partly Successful. Notwithstanding any other provision hereof, to the extent that Indemnitee is, by reason of his Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in defense of any Proceeding, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is not wholly successful in defense of any Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in that Proceeding, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in any Proceeding by dismissal, with or without prejudice, will be deemed to be a successful result as to that claim, issue or matter.

Section 6. Indemnification for Expenses as a Witness.

Notwithstanding any other provision hereof, to the extent that Indemnitee is, by reason of his Corporate Status, a witness in any Proceeding to which Indemnitee is not a party, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

Section 7. Advancement of Expenses. The Company will advance all reasonable Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding within 10 days after the Company receives a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of that Proceeding. Each such statement must reasonably evidence the Expenses incurred by or on behalf of Indemnitee and include or be preceded or accompanied by an undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it ultimately is determined that Indemnitee is not entitled to be indemnified by the Company against those Expenses. The Company will accept any such undertaking without reference to the financial ability of Indemnitee to make repayment, and without regard to Indemnitee's ultimate entitlement to indemnification under other provisions of this Agreement.

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Section 8. Procedure for Determination of Entitlement to Indemnification. (a) Within sixty (60) days after the actual receipt by Indemnitee of notice that he or she is a party to or a participant (as a witness or otherwise) in any Proceeding, Indemnitee shall submit to the Company a written notice identifying the Proceeding. The omission by the Indemnitee to notify the Company will not relieve the Company from any liability which it may have to Indemnitee (i) otherwise than under this Agreement, and (ii) under this Agreement only to the extent the Company can establish that such omission to notify resulted in actual prejudice to the Company.

(b) Indemnitee shall thereafter deliver to the Company a written application to indemnify Indemnitee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnitee deems appropriate in his or her sole discretion. Following such a written application for indemnification by Indemnitee, the Indemnitee's entitlement to indemnification shall be determined according to Section 8(c) of this Agreement.

(c) On written request by Indemnitee for indemnification pursuant to Section 8(b), a determination, if applicable law requires, with respect to Indemnitee's entitlement thereto will be made in the specific case: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, or (ii) if so requested by the Indemnitee in his or her sole discretion by an Independent Counsel in a written opinion to the Board, a copy of which will be delivered to Indemnitee. If it is so determined that Indemnitee is entitled to indemnification hereunder, the Company will: (i) within 10 days after that determination pay to Indemnitee all amounts theretofore incurred by or on behalf of Indemnitee in respect of which Indemnitee is entitled to that indemnification by reason of that determination; and (ii) thereafter on written request by Indemnitee, pay to Indemnitee within 10 days after that request such additional amounts theretofore incurred by or on behalf of Indemnitee in respect of which Indemnitee is entitled to that indemnification by reason of that determination. Indemnitee will cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification under this Agreement, including providing to such person, persons or entity on reasonable advance request any documentation or information which is (i) not privileged or otherwise protected from disclosure, (ii) reasonably available to Indemnitee and (iii) reasonably necessary to that determination. The Company will bear all costs and expenses (including attorneys' fees and disbursements) Indemnitee incurs in so cooperating (irrespective of the determination as to Indemnitee's entitlement to indemnification) and hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(d) If an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c), the Independent Counsel will be selected as this Section 8(d) provides. If a Change of Control has not occurred within two years prior to the date of Indemnitee's written request for indemnification pursuant to Section 8(a), the Board will select the Independent Counsel, and the Company will give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change of Control has occurred within two years prior to the date of that written request, Indemnitee

will select the Independent Counsel (unless Indemnitee requests that the Board make the selection, in which event the preceding sentence will apply), and Indemnitee will give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within 10 days after the written notice of selection has been given, deliver to the Company or

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to Indemnitee, as the case may be, a written objection to the selection; provided, however, that any such objection may be asserted only on the ground that the Independent Counsel so selected is not an "Independent Counsel" as Section 17 defines that term, and the objection must set forth with particularity the factual basis for that assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If any such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until that objection is withdrawn or a court of competent jurisdiction has determined that objection is without merit. If (i) an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c) and (ii) within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 8(a), no Independent Counsel has been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery or other court of competent jurisdiction for resolution of any objection that has been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the petitioned court or by such other person as the petitioned court designates, and the person with respect to whom all objections are so resolved or the person so appointed will act as the Independent Counsel under Section 8(c). The Company will pay any and all reasonable fees and expenses the Independent Counsel incurs in connection with acting pursuant to Section 8(c), and the Company will pay all reasonable fees and expenses incident to the procedures this Section 8(d) sets forth, regardless of the manner in which the Independent Counsel is selected or appointed. If (i) the Independent Counsel selected or appointed pursuant to this Section 8(d) does not make any determination respecting Indemnitee's entitlement to indemnification hereunder within 45 days after the Company receives a written request therefor and (ii) any judicial proceeding or arbitration pursuant to Section 10(a) is then commenced, that Independent Counsel will be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 9. Presumptions and Effect of Certain Proceedings. (a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making that determination must presume that Indemnitee is entitled to indemnification hereunder if Indemnitee has submitted a request for indemnification in accordance with Section 8(a), and the Company will have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or on a plea of nolo contendere or its equivalent, will not (except as this Agreement otherwise expressly provides) of itself adversely affect the right of Indemnitee to indemnification hereunder or create a presumption that Indemnitee did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the

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Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his conduct was unlawful.

(c) Any action Indemnitee takes or omits to take in connection with any employee benefit plan will, if taken or omitted in good faith by Indemnitee

and in a manner Indemnitee reasonably believed to be in the interest of the participants in or beneficiaries of that plan, be deemed to have been taken or omitted in a manner "not opposed to the best interests of the Company" for all purposes hereof.

(d) Reliance as Safe Harbor. For purposes of any determination of good

faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise. The provisions of this Section 9(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

(e) Actions of Others. The knowledge and/or actions, or failure to

act, of any other director, trustee, partner, managing member, fiduciary, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 10. Remedies of Indemnitee. (a) In the event that (i) a determination is made pursuant to Section 8 that Indemnitee is not entitled to indemnification hereunder, (ii) advancement of Expenses is not timely made pursuant to Section 7, (iii) no determination as to Indemnitee's entitlement to indemnification shall have been made pursuant to Section 8(c) of this Agreement hereunder, or that determination shall not have been made within 45 days after receipt by the Company of the request for that indemnification, (iv) payment of indemnification is not made pursuant to Section 5 or 6 within 10 days after receipt by the Company of a written request therefor or (v) payment of indemnification pursuant to Section 8(c) is not made timely, Indemnitee will be entitled to an adjudication from the Court of Chancery of his entitlement to that indemnification or advancement of Expenses. Alternatively, Indemnitee, at his option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee must commence any such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence that proceeding pursuant to this Section 10(a); provided, however, that this sentence will not apply in respect of a proceeding brought by Indemnitee to enforce his rights under Section 5.

(b) If a determination has been made pursuant to Section 8(c) that Indemnitee is not entitled to indemnification hereunder, any judicial proceeding or arbitration commenced pursuant to this Section 10 will be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee will not be prejudiced by reason of that adverse determination. In any judicial

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proceeding or arbitration commenced pursuant to this Section 10, the Company will have the burden of proving that Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be and the Company may not refer to or introduce into evidence any determination pursuant to Section 8(c) of this Agreement adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 10, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 7 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(c) If a determination has been made pursuant to Section 8(c) that Indemnitee is entitled to indemnification hereunder, the Company will be bound by that determination in any judicial proceeding or arbitration commenced pursuant to this Section 10, absent (i) a misstatement by Indemnitee of a material fact, or an omission by Indemnitee of a material fact necessary to make Indemnitee's statements not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) If Indemnitee, pursuant to this Section 10, seeks a judicial

adjudication of or an award in arbitration to enforce his rights under, or to recover damages for breach of, this Agreement, Indemnatee will be entitled to recover from the Company, and will be indemnified by the Company against, any and all expenses (of the types described in the definition of Expenses in Section 18) actually and reasonably incurred by him in that judicial adjudication or arbitration, but only if he prevails therein. If it is determined in that judicial adjudication or arbitration that Indemnatee is entitled to receive part of, but not all, the indemnification or advancement of expenses sought, the Expenses incurred by Indemnatee in connection with that judicial adjudication or arbitration will be appropriately prorated between those in respect of which this Section 10(d) entitles Indemnatee to indemnification and those Indemnatee must bear.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 10 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(f) The Company shall indemnify Indemnatee to the fullest extent permitted by law against all Expenses and, if requested by Indemnatee, shall (within ten (10) days after the Company's receipt of such written request) advance such Expenses to Indemnatee, which are incurred by Indemnatee in connection with any judicial proceeding or arbitration brought by Indemnatee for (i) indemnification or advances of Expenses by the Company under this Agreement or any other agreement or provision of the Company's Certificate of Incorporation or Bylaws now or hereafter in effect or (ii) recovery or advances under any insurance policy maintained by any person for the benefit of Indemnatee, regardless of whether Indemnatee ultimately is determined to be entitled to such indemnification, advance or insurance recovery, as the case may be.

Section 11. Non-exclusivity; Survival of Rights; Insurance; Subrogation. (a) The rights to indemnification and advancement of Expenses this Agreement provides are not and will not be deemed exclusive of any other rights to which Indemnatee may at any time be entitled under

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applicable law, the Company's Certificate of Incorporation, the Company's Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or termination of this Agreement or any provision hereof will limit or restrict any right of Indemnatee hereunder in respect of any action Indemnatee has taken or omitted in his Corporate Status prior to that amendment, alteration or termination. To the extent that a change in Delaware law (whether by statute or judicial decision) permits greater indemnification by agreement than would be afforded currently under this Agreement, it is the intent and agreement of the parties hereto that Indemnatee will enjoy by this Agreement the greater benefits that change affords. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall 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 right or remedy.

(b) If the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managing members, employees, agents or fiduciaries of the Company or of any other Enterprise that any such person serves at the request of the Company, Indemnatee will be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, managing member, employee, agent or fiduciary under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding as to which Indemnatee is a party or a participant (as a witness or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnatee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) The Company will not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or for which advancement is provided

hereunder) hereunder if and to the extent that Indemnatee has otherwise actually received that payment or obtained the entire benefit therefrom under any insurance policy, contract, agreement or otherwise.

(d) If the Company makes any payment hereunder, it will be subrogated to the extent of that payment to all the rights of recovery of Indemnatee, who will execute all papers required and take all action necessary to secure those rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce those rights.

(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnatee with respect to Indemnatee's service at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise will be reduced by any amount Indemnatee has actually received as indemnification or advancement of Expenses from that other Enterprise.

Section 12. Duration of Agreement. This Agreement will continue until and terminate on the later of: (i) 10 years after the date that Indemnatee has ceased to serve as a director or officer of the Company or as a director, officer, trustee, partner, managing partner, employee,

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agent or fiduciary of any other Enterprise that Indemnatee served on behalf of the Company at the request of the Company; or (ii) one year after the final termination of any Proceeding (including any rights of appeal thereto) then pending in respect of which Indemnatee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnatee pursuant to Section 10 relating thereto including any rights of appeal of any Section 10 Proceeding. This Agreement will be binding on the Company and its successors and assigns and will inure to the benefit of Indemnatee and his spouse (if Indemnatee resides in Texas or another community property state), heirs, executors and administrators.

Section 13. Severability. If any provision or provisions of this Agreement is or are invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions hereof (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will not in any way be affected or impaired thereby; (ii) such provision or provisions will be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (iii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will be construed so as to give effect to the intent manifested thereby.

Section 14. Exception to Right of Indemnification or Advancement of Expenses. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnatee:

(a) for which payment has actually been received by or on behalf of Indemnatee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount actually received under any insurance policy or other indemnity provision; or

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnatee of securities of the Company within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law; or

(c) except as otherwise provided in Sections 10(d) - (f) hereof, prior to a Change in Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnatee, including any Proceeding (or any part of any Proceeding) initiated by Indemnatee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board of Directors of the Company authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

Section 15. Enforcement and Binding Effect.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve

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as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

Section 16. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed to be an original but all of which together will constitute one and the same agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 17. Headings. The headings of the Sections hereof are inserted for convenience only and do not and will not be deemed to constitute part of this Agreement or to affect the construction thereof.

Section 18. Definitions. For purposes of this Agreement:

"Acquiring Person" means any Person who or which, together with all its Affiliates and Associates, is or are the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding, but does not include any Exempt Person; provided, however, that a Person will not be or become an Acquiring Person if that Person, together with its Affiliates and Associates, becomes the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding solely as a result of a reduction in the number of shares of Common Stock outstanding which results from the Company's direct or indirect repurchase of Common Stock, unless and until such time as that Person or any Affiliate or Associate of that Person purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person, unless, in either such case, that Person, together with all its Affiliates and Associates, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

Notwithstanding anything in this definition of "Acquiring Person" to the contrary, so long as Main Street Merchant Partners II, L.P., a Delaware limited partnership ("Main Street"), together with all Affiliates and Associates thereof, remains the Beneficial Owner of 15% or more of the outstanding shares of Common Stock, Main Street and any Affiliate or Associate thereof will not be or become an Acquiring Person unless and until that Person, together with all Affiliates and Associates thereof, purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person

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unless, in either such case, that Person, together with all Affiliates and Associates of that Person, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

"Affiliate" has the meaning Exchange Act Rule 12b-2 specifies.

"Associate" means, with reference to any Person, (i) any corporation, firm, partnership, limited liability company, association, unincorporated organization or other entity (other than the Company or a subsidiary of the Company) of which that Person is an officer or general partner (or officer or general partner of a general partner) or is, directly or indirectly, the

Beneficial Owner of 10% or more of any class of its equity securities or interests, (ii) any trust or other estate in which that Person has a substantial beneficial interest or for or of which that Person serves as trustee or in a similar fiduciary capacity and (iii) any relative or spouse of that Person, or any relative of that spouse, who has the same home as that Person.

A specified Person is deemed the "Beneficial Owner" of, and is deemed to "beneficially own," any securities:

(i) of which that Person or any of that Person's Affiliates or Associates, directly or indirectly, is the "beneficial owner" (as determined pursuant to Exchange Act Rule 13d-3) or otherwise has the right to vote or dispose of, including pursuant to any agreement, arrangement or understanding (whether or not in writing); provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," any security under this subparagraph (i) as a result of an agreement, arrangement or understanding to vote that security if that agreement, arrangement or understanding: (A) arises solely from a revocable proxy or consent given in response to a public (that is, not including a solicitation exempted by Exchange Act Rule 14a-2(b)(2)) proxy or consent solicitation made pursuant to, and in accordance with, the applicable provisions of the Exchange Act; and (B) is not then reportable by that Person on Exchange Act Schedule 13D (or any comparable or successor report);

(ii) which that Person or any of that Person's Affiliates or Associates, directly or indirectly, has the right or obligation to acquire (whether that right or obligation is exercisable or effective immediately or only after the passage of time or the occurrence of an event) pursuant to any agreement, arrangement or understanding (whether or not in writing) or on the exercise of conversion rights, exchange rights, other rights, warrants or options, or otherwise; provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," securities tendered pursuant to a tender or exchange offer made by that Person or any of that Person's Affiliates or Associates until those tendered securities are accepted for purchase or exchange; or

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(iii) which are beneficially owned, directly or indirectly, by (A) any other Person (or any Affiliate or Associate thereof) with which the specified Person or any of the specified Person's Affiliates or Associates has any agreement, arrangement or understanding (whether or not in writing) for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy or consent as described in the proviso to subparagraph (i) of this definition) or disposing of any voting securities of the Company or (B) any group (as Exchange Act Rule 13d-5(b) uses that term) of which that specified Person is a member;

provided, however, that nothing in this definition will cause a Person engaged in business as an underwriter of securities to be the "Beneficial Owner" of, or to "beneficially own," any securities that Person acquires through its participation in good faith in a firm commitment underwriting (including, without limitation, securities acquired pursuant to stabilizing transactions to facilitate a public offering in accordance with Exchange Act Regulation M or to cover overallocments created in connection with a public offering) until the expiration of 40 days after the date of that acquisition. For purposes of this definition, "voting" a security includes voting, granting a proxy, acting by consent, making a request or demand relating to corporate action (including, without limitation, calling a stockholder meeting) or otherwise giving an authorization (within the meaning of Section 14(a) of the Exchange Act) in respect of that security.

"Change of Control" means the occurrence of any of the following events that occurs after the IPO Closing Date: (i) any Person becomes an Acquiring Person; (ii) at any time the then Continuing Directors cease to constitute a majority of the members of the Board; (iii) a merger of the Company with or into, or a sale by the Company of its properties and assets substantially as an entirety to, another Person occurs and, immediately after that occurrence, any Person, other than an Exempt Person, together with all Affiliates and Associates of that Person (other than Exempt

Persons), will be the Beneficial Owner of 15% or more of the total voting power of the then outstanding Voting Shares of the Person surviving that transaction (in the case of a merger or consolidation) or the Person acquiring those properties and assets substantially as an entirety unless that Person, together with all its Affiliates and Associates, was the Beneficial Owner of 15% or more of the shares of Common Stock outstanding prior to that transaction; (iv) the approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets; or (v) occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

"Common Stock" means (i) the common stock, par value \$.001 per share, of the Company and (ii) any other class of capital stock of the Company which is (A) except for less voting rights, identical to the common stock clause (i) of this definition describes and (B) convertible into that common stock on a share for share basis on the occurrence of a Change of Control.

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"Continuing Director" means at any time any individual who then (i) is a member of the Board and was a member of the Board as of the IPO Closing Date or whose nomination for his first election, or that first election, to the Board following that date was recommended or approved by a majority of the then Continuing Directors (acting separately or as a part of any action taken by the Board or any committee thereof) and (ii) is not an Acquiring Person, an Affiliate or Associate of an Acquiring Person or a nominee or representative of an Acquiring Person or of any such Affiliate or Associate.

"Corporate Status" describes the status of a natural person who is or was a director, officer, trustee, general partner, managing member, employee or agent of the Company or of any other Enterprise, provided that person is or was serving in that capacity at the request of the Company. For purposes of this Agreement, "serving at the request of the Company" includes any service by Indemnatee which imposes duties on, or involves services by, Indemnatee with respect to any employee benefit plan or its participants or beneficiaries.

"Court of Chancery" means the Court of Chancery of the State of Delaware.

"Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnatee hereunder.

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

"Exempt Person" means: (i) (A) the Company, any subsidiary of the Company, any employee benefit plan of the Company or of any subsidiary of the Company and (B) any Person organized, appointed or established by the Company for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of the Company or any subsidiary of the Company; and (ii) Indemnatee, any Affiliate or Associate of Indemnatee or any group (as Exchange Act Rule 13d-5(b) uses that term) of which Indemnatee or any Affiliate or Associate of Indemnatee is a member.

"Expenses" include all attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding and all interest or finance charges attributable to any thereof. Should any payments by the Company under this Agreement be determined to be subject to any federal, state or local income or excise tax, "Expenses" also will include such amounts as are necessary to place Indemnatee in the same after-tax position (after

giving effect to all applicable taxes) he would have been in had no such tax been determined to apply to those payments. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its

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equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

"Independent Counsel" means a law firm, or a member of a law firm, that or who is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company, its affiliates or Indemnitee in any matter material to any such party; or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" does not include at any time any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"IPO" means the first time a registration statement the Company has filed under the Securities Act of 1933, as amended, and respecting an underwritten primary offering by the Company of shares of Common Stock becomes effective under that Act and the Company issues and sells any of the shares registered by that registration statement.

"IPO Closing Date" means the date on which the Company first receives payment for the shares of Common Stock it sells in the IPO.

"Person" means any natural person, sole proprietorship, corporation, partnership of any kind having a separate legal status, limited liability company, business trust, unincorporated organization or association, mutual company, joint stock company, joint venture, estate, trust, union or employee organization or governmental authority.

"Proceeding" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, in which Indemnitee was, is or will be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action taken by him or of any action on his part while acting as director or officer of the Company, or by reason of the fact that he is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

"Voting Shares" means: (i) in the case of any corporation, stock of that corporation of the class or classes having general voting power under ordinary circumstances to elect a majority of that corporation's board of directors; and (ii) in the case of any other entity, equity interests of the class or classes having general voting power under ordinary circumstances equivalent to the Voting Shares of a corporation.

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Section 19. Modification and Waiver. No supplement to or modification or amendment of this Agreement will be binding unless executed in writing by both parties hereto. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provisions hereof (whether or not similar), nor will any such waiver constitute a continuing waiver.

Section 20. Notice by Indemnitee. Indemnitee agrees promptly to

notify the Company in writing on being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses hereunder; provided, however, a failure to give that notice will not deprive Indemnitee of his rights to indemnification and advancement of Expenses hereunder unless the Company is actually and materially prejudiced thereby.

Section 21. Notices. All notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered and received (i) if personally delivered or if delivered by telex, telegram, facsimile or courier service, when actually received by the party to whom the notice or communication is sent or (ii) if delivered by mail (whether actually received or not), at the close of business on the third business day in the city in which the Company's principal executive office is located next following the day when placed in the mail, postage prepaid, certified or registered, addressed to the appropriate party at the address of that party set forth below (or at such other address as that party may designate by written notice to the other party in accordance herewith):

(a) If to Indemnitee, to: Michael W. Harlan
12111 Pinerock Lane
Houston, Texas 77025

with a copy (which will not constitute notice for the purposes of this Agreement) to such legal counsel, if any, as the Indemnitee may designate in writing; and

(b) If to the Company, to: U.S. Concrete, Inc.
1300 Post Oak Blvd., Suite 1220
Houston, Texas 77056
Attention: President

Section 22. Contribution. To the fullest extent applicable law permits, if the indemnification this Agreement provides is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, will contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all the circumstances of that Proceeding in order to reflect: (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving rise to that

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Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 23. Governing Law; Submission to Jurisdiction. This Agreement and the legal relations among the parties will be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration Indemnitee commences pursuant to Section 10(a), the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement will be brought only in the Court of Chancery and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Court of Chancery for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Court of Chancery and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Court of Chancery has been brought in an improper or otherwise inconvenient forum.

Section 24. Miscellaneous. Use of one gender herein includes usage of each other gender where appropriate. This Agreement uses the words "herein," "hereof" and words of similar import to refer to this Agreement as a whole and not to any provision of this Agreement, and the word "Section" refers to a Section of this Agreement, unless otherwise specified.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

ATTEST: U.S. CONCRETE, INC.

By: /s/ Michael W. Harlan

Print Name: Michael W Harlan

By: /s/ Eugene P. Martineau

Eugene P. Martineau

President and Chief Executive Officer

ATTEST: INDEMNITEE:

By: /s/ Eugene P. Martineau

Print Name: Eugene P. Martineau

/s/ Michael W. Harlan

Michael W. Harlan

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AMENDED AND RESTATED INDEMNIFICATION AGREEMENT

THIS AMENDED AND RESTATED INDEMNIFICATION AGREEMENT (this "Agreement") is made as of August 17, 2000 by and between U.S. Concrete, Inc., a Delaware corporation (the "Company"), and Eugene P. Martineau ("Indemnitee"). This Agreement amends and restates in its entirety the Indemnification Agreement, dated as of May 28, 1999, between the Company and Indemnitee.

PRELIMINARY STATEMENT

Highly competent persons have become more reluctant to serve corporations as directors or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of corporations.

The Board of Directors of the Company (the "Board") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of that insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Board believes that, given current market conditions and trends, that insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises increasingly are being subjected to expensive and time-consuming litigation relating to, among other matters, matters that traditionally would have been brought only against the corporation or business enterprise itself. The uncertainties relating to liability insurance and to indemnification have increased the difficulty of attracting and retaining those persons, and the Board has determined that (i) this increased difficulty is detrimental to the best interests of the Company's stockholders and that the Company should act to assure those persons that there will be increased certainty of such protection in the future and (ii) it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify those persons to the fullest extent applicable law permits so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified.

The Bylaws of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the Delaware General Corporation Law ("DGCL"). The Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification.

This Agreement is a supplement to and in furtherance of the Bylaws of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

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The Indemnitee does not regard the protection available under the Company's Bylaws and insurance as adequate in the present circumstances, and may not be willing to serve as an officer or director without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he be so indemnified.

NOW, THEREFORE, in consideration of the premises and the covenants herein, the parties to this Agreement agree as follows:

Section 1. Services by Indemnitee. Indemnitee agrees to serve as a director and/or officer of the Company and, as mutually agreed by Indemnitee and the Company, as a director, officer, trustee, general partner, managing member, employee, agent or fiduciary of other corporations, limited liability companies, partnerships, joint ventures, trusts or other enterprises (including, without limitation, employee benefit plans) (each, an "Enterprise"). Indemnitee may at any time and for any reason resign from any such position (subject to any other contractual obligation or any obligation applicable law imposes), in which event the Company will have no obligation under this Agreement to continue Indemnitee in that position. This Agreement is not and is not to be construed as an employment contract between the Company (or any of its subsidiaries) and Indemnitee. Indemnitee specifically acknowledges that Indemnitee's employment with the Company (or any of its subsidiaries), if any, is at will, and the Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Company (or any of its subsidiaries), other applicable formal severance policies duly adopted by the Board or, with respect to service as a director of the Company, by the Company's Certificate of Incorporation, Bylaws and the DGCL. The foregoing notwithstanding, subject to Section 12, this Agreement will continue in force after Indemnitee has ceased to serve as an officer or director of the Company and no longer serves at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise.

Section 2. Indemnification--General. The Company will indemnify, and advance Expenses (as hereinafter defined) to, Indemnitee (i) as this Agreement permits and (ii) (subject to the provisions hereof) to the fullest extent applicable law in effect on the date hereof and as amended from time to time permits. The rights the preceding sentence provide to Indemnitee will include, but will not be limited to, the rights the other Sections hereof set forth.

Section 3. Proceedings Other Than by or in the Right of the Company. Indemnitee will be entitled to the rights of indemnification this Section 3 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant in any threatened, pending or completed Proceeding (as hereinafter defined), other than a Proceeding by or in the right of the Company. Pursuant to this Section 3, the Company will indemnify Indemnitee against, and will hold Indemnitee harmless from and in respect of, all Expenses, judgments, penalties, fines (including excise taxes) and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of those Expenses, judgments, fines, penalties or amounts paid in settlement) actually and reasonably incurred by him or on his behalf in connection with that Proceeding or any claim, issue or matter therein, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and,

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with respect to any criminal Proceeding, had no reasonable cause to believe his conduct was unlawful.

Section 4. Proceedings by or in the Right of the Company. Indemnitee will be entitled to the rights of indemnification this Section 4 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant (as a witness or otherwise) in any threatened, pending or completed Proceeding brought by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, the Company will indemnify Indemnitee against, and will hold Indemnitee harmless from and in respect of, all Expenses actually and reasonably incurred by him or on his behalf in connection with that Proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of

the Company; provided, however, that no indemnification against those Expenses will be made in respect of any claim, issue or matter in that Proceeding as to which Indemnatee has been adjudged to be liable to the Company unless and to the extent that the Court of Chancery, or the court in which that Proceeding has been brought or is pending, determines that despite the adjudication of liability but in view of all the circumstances of the case, Indemnatee is fairly and reasonably entitled to indemnification.

Section 5. Indemnification for Expenses of a Party Who Is Wholly or Partly Successful. Notwithstanding any other provision hereof, to the extent that Indemnatee is, by reason of his Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in defense of any Proceeding, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnatee is not wholly successful in defense of any Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in that Proceeding, the Company will indemnify Indemnatee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in any Proceeding by dismissal, with or without prejudice, will be deemed to be a successful result as to that claim, issue or matter.

Section 6. Indemnification for Expenses as a Witness. Notwithstanding any other provision hereof, to the extent that Indemnatee is, by reason of his Corporate Status, a witness in any Proceeding to which Indemnatee is not a party, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

Section 7. Advancement of Expenses. The Company will advance all reasonable Expenses incurred by or on behalf of Indemnatee in connection with any Proceeding within 10 days after the Company receives a statement or statements from Indemnatee requesting such advance or advances from time to time, whether prior to or after final disposition of that Proceeding. Each such statement must reasonably evidence the Expenses incurred by or on behalf of Indemnatee and include or be preceded or accompanied by an undertaking by or on behalf of Indemnatee to repay any Expenses advanced if it ultimately is determined that Indemnatee is not entitled to be indemnified by the Company against those Expenses. The Company will accept any such undertaking without reference to the financial ability of Indemnatee to make repayment, and without regard to Indemnatee's ultimate entitlement to indemnification under other provisions of this Agreement.

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Section 8. Procedure for Determination of Entitlement to Indemnification. (a) Within sixty (60) days after the actual receipt by Indemnatee of notice that he or she is a party to or a participant (as a witness or otherwise) in any Proceeding, Indemnatee shall submit to the Company a written notice identifying the Proceeding. The omission by the Indemnatee to notify the Company will not relieve the Company from any liability which it may have to Indemnatee (i) otherwise than under this Agreement, and (ii) under this Agreement only to the extent the Company can establish that such omission to notify resulted in actual prejudice to the Company.

(b) Indemnatee shall thereafter deliver to the Company a written application to indemnify Indemnatee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnatee deems appropriate in his or her sole discretion. Following such a written application for indemnification by Indemnatee, the Indemnatee's entitlement to indemnification shall be determined according to Section 8(c) of this Agreement.

(c) On written request by Indemnatee for indemnification pursuant to Section 8(b), a determination, if applicable law requires, with respect to Indemnatee's entitlement thereto will be made in the specific case: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, or (ii) if so requested by the Indemnatee in his or her sole discretion by an Independent Counsel in a written opinion to the Board, a copy of which will be delivered to Indemnatee. If it is so determined that Indemnatee is entitled to indemnification hereunder, the Company will: (i) within 10 days after that determination pay to Indemnatee all amounts theretofore incurred by or on behalf of Indemnatee in respect of which

Indemnitee is entitled to that indemnification by reason of that determination; and (ii) thereafter on written request by Indemnitee, pay to Indemnitee within 10 days after that request such additional amounts theretofore incurred by or on behalf of Indemnitee in respect of which Indemnitee is entitled to that indemnification by reason of that determination. Indemnitee will cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification under this Agreement, including providing to such person, persons or entity on reasonable advance request any documentation or information which is (i) not privileged or otherwise protected from disclosure, (ii) reasonably available to Indemnitee and (iii) reasonably necessary to that determination. The Company will bear all costs and expenses (including attorneys' fees and disbursements) Indemnitee incurs in so cooperating (irrespective of the determination as to Indemnitee's entitlement to indemnification) and hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(d) If an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c), the Independent Counsel will be selected as this Section 8(d) provides. If a Change of Control has not occurred within two years prior to the date of Indemnitee's written request for indemnification pursuant to Section 8(a), the Board will select the Independent Counsel, and the Company will give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change of Control has occurred within two years prior to the date of that written request, Indemnitee will select the Independent Counsel (unless Indemnitee requests that the Board make the selection, in which event the preceding sentence will apply), and Indemnitee will give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within 10 days after the written notice of selection has been given, deliver to the Company or

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to Indemnitee, as the case may be, a written objection to the selection; provided, however, that any such objection may be asserted only on the ground that the Independent Counsel so selected is not an "Independent Counsel" as Section 17 defines that term, and the objection must set forth with particularity the factual basis for that assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If any such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until that objection is withdrawn or a court of competent jurisdiction has determined that objection is without merit. If (i) an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c) and (ii) within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 8(a), no Independent Counsel has been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery or other court of competent jurisdiction for resolution of any objection that has been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the petitioned court or by such other person as the petitioned court designates, and the person with respect to whom all objections are so resolved or the person so appointed will act as the Independent Counsel under Section 8(c). The Company will pay any and all reasonable fees and expenses the Independent Counsel incurs in connection with acting pursuant to Section 8(c), and the Company will pay all reasonable fees and expenses incident to the procedures this Section 8(d) sets forth, regardless of the manner in which the Independent Counsel is selected or appointed. If (i) the Independent Counsel selected or appointed pursuant to this Section 8(d) does not make any determination respecting Indemnitee's entitlement to indemnification hereunder within 45 days after the Company receives a written request therefor and (ii) any judicial proceeding or arbitration pursuant to Section 10(a) is then commenced, that Independent Counsel will be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 9. Presumptions and Effect of Certain Proceedings. (a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making that determination must presume that Indemnitee is entitled to indemnification hereunder if Indemnitee has submitted a request for indemnification in accordance with Section 8(a), and the Company will have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by its

directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnatee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnatee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnatee has not met the applicable standard of conduct.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or on a plea of nolo contendere or its equivalent, will not (except as this Agreement otherwise expressly provides) of itself adversely affect the right of Indemnatee to indemnification hereunder or create a presumption that Indemnatee did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the

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Company or, with respect to any criminal Proceeding, that Indemnatee had reasonable cause to believe that his conduct was unlawful.

(c) Any action Indemnatee takes or omits to take in connection with any employee benefit plan will, if taken or omitted in good faith by Indemnatee and in a manner Indemnatee reasonably believed to be in the interest of the participants in or beneficiaries of that plan, be deemed to have been taken or omitted in a manner "not opposed to the best interests of the Company" for all purposes hereof.

(d) Reliance as Safe Harbor. For purposes of any determination of good faith, Indemnatee shall be deemed to have acted in good faith if Indemnatee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnatee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise. The provisions of this Section 9(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnatee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

(e) Actions of Others. The knowledge and/or actions, or failure to act, of any other director, trustee, partner, managing member, fiduciary, officer, agent or employee of the Enterprise shall not be imputed to Indemnatee for purposes of determining the right to indemnification under this Agreement.

Section 10. Remedies of Indemnatee. (a) In the event that (i) a determination is made pursuant to Section 8 that Indemnatee is not entitled to indemnification hereunder, (ii) advancement of Expenses is not timely made pursuant to Section 7, (iii) no determination as to Indemnatee's entitlement to indemnification shall have been made pursuant to Section 8(c) of this Agreement hereunder, or that determination shall not have been made within 45 days after receipt by the Company of the request for that indemnification, (iv) payment of indemnification is not made pursuant to Section 5 or 6 within 10 days after receipt by the Company of a written request therefor or (v) payment of indemnification pursuant to Section 8(c) is not made timely, Indemnatee will be entitled to an adjudication from the Court of Chancery of his entitlement to that indemnification or advancement of Expenses. Alternatively, Indemnatee, at his option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnatee must commence any such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnatee first has the right to commence that proceeding pursuant to this Section 10(a); provided, however, that this sentence will not apply in respect of a proceeding brought by Indemnatee to enforce his rights under Section 5.

(b) If a determination has been made pursuant to Section 8(c) that Indemnatee is not entitled to indemnification hereunder, any judicial proceeding or arbitration commenced pursuant to this Section 10 will be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnatee will not be prejudiced by reason of that adverse determination. In any judicial

proceeding or arbitration commenced pursuant to this Section 10, the Company will have the burden of proving that Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be and the Company may not refer to or introduce into evidence any determination pursuant to Section 8(c) of this Agreement adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 10, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 7 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(c) If a determination has been made pursuant to Section 8(c) that Indemnitee is entitled to indemnification hereunder, the Company will be bound by that determination in any judicial proceeding or arbitration commenced pursuant to this Section 10, absent (i) a misstatement by Indemnitee of a material fact, or an omission by Indemnitee of a material fact necessary to make Indemnitee's statements not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) If Indemnitee, pursuant to this Section 10, seeks a judicial adjudication of or an award in arbitration to enforce his rights under, or to recover damages for breach of, this Agreement, Indemnitee will be entitled to recover from the Company, and will be indemnified by the Company against, any and all expenses (of the types described in the definition of Expenses in Section 18) actually and reasonably incurred by him in that judicial adjudication or arbitration, but only if he prevails therein. If it is determined in that judicial adjudication or arbitration that Indemnitee is entitled to receive part of, but not all, the indemnification or advancement of expenses sought, the Expenses incurred by Indemnitee in connection with that judicial adjudication or arbitration will be appropriately prorated between those in respect of which this Section 10(d) entitles Indemnitee to indemnification and those Indemnitee must bear.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 10 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(f) The Company shall indemnify Indemnitee to the fullest extent permitted by law against all Expenses and, if requested by Indemnitee, shall (within ten (10) days after the Company's receipt of such written request) advance such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any judicial proceeding or arbitration brought by Indemnitee for (i) indemnification or advances of Expenses by the Company under this Agreement or any other agreement or provision of the Company's Certificate of Incorporation or Bylaws now or hereafter in effect or (ii) recovery or advances under any insurance policy maintained by any person for the benefit of Indemnitee, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advance or insurance recovery, as the case may be.

Section 11. Non-exclusivity; Survival of Rights; Insurance; Subrogation. (a) The rights to indemnification and advancement of Expenses this Agreement provides are not and will not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under

applicable law, the Company's Certificate of Incorporation, the Company's Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or termination of this Agreement or any provision hereof will limit or restrict any right of Indemnitee hereunder in respect of any action Indemnitee has taken or omitted in his Corporate Status prior to that amendment, alteration or termination. To the extent that a change in Delaware law (whether by statute or judicial decision) permits greater indemnification by agreement than would be afforded currently under this Agreement, it is the intent and agreement of the parties hereto that Indemnitee will enjoy by this Agreement the greater benefits that change affords. No right or remedy herein conferred is intended to be exclusive of any other right or

remedy, and every other right and remedy shall 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 right or remedy.

(b) If the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managing members, employees, agents or fiduciaries of the Company or of any other Enterprise that any such person serves at the request of the Company, Indemnitee will be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, managing member, employee, agent or fiduciary under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) The Company will not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or for which advancement is provided hereunder) hereunder if and to the extent that Indemnitee has otherwise actually received that payment or obtained the entire benefit therefrom under any insurance policy, contract, agreement or otherwise.

(d) If the Company makes any payment hereunder, it will be subrogated to the extent of that payment to all the rights of recovery of Indemnitee, who will execute all papers required and take all action necessary to secure those rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce those rights.

(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee with respect to Indemnitee's service at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise will be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from that other Enterprise.

Section 12. Duration of Agreement. This Agreement will continue until and terminate on the later of: (i) 10 years after the date that Indemnitee has ceased to serve as a director or officer of the Company or as a director, officer, trustee, partner, managing partner, employee,

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agent or fiduciary of any other Enterprise that Indemnitee served on behalf of the Company at the request of the Company; or (ii) one year after the final termination of any Proceeding (including any rights of appeal thereto) then pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnitee pursuant to Section 10 relating thereto including any rights of appeal of any Section 10 Proceeding. This Agreement will be binding on the Company and its successors and assigns and will inure to the benefit of Indemnitee and his spouse (if Indemnitee resides in Texas or another community property state), heirs, executors and administrators.

Section 13. Severability. If any provision or provisions of this Agreement is or are invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions hereof (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will not in any way be affected or impaired thereby; (ii) such provision or provisions will be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (iii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will be construed so as to give effect to the intent manifested thereby.

Section 14. Exception to Right of Indemnification or Advancement of Expenses. Notwithstanding any provision in this Agreement, the Company shall not

be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnitee:

(a) for which payment has actually been received by or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount actually received under any insurance policy or other indemnity provision; or

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law; or

(c) except as otherwise provided in Sections 10(d) - (f) hereof, prior to a Change in Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board of Directors of the Company authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

Section 15. Enforcement and Binding Effect.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve

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as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

Section 16. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed to be an original but all of which together will constitute one and the same agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 17. Headings. The headings of the Sections hereof are inserted for convenience only and do not and will not be deemed to constitute part of this Agreement or to affect the construction thereof.

Section 18. Definitions. For purposes of this Agreement:

"Acquiring Person" means any Person who or which, together with all its Affiliates and Associates, is or are the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding, but does not include any Exempt Person; provided, however, that a Person will not be or become an Acquiring Person if that Person, together with its Affiliates and Associates, becomes the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding solely as a result of a reduction in the number of shares of Common Stock outstanding which results from the Company's direct or indirect repurchase of Common Stock, unless and until such time as that Person or any Affiliate or Associate of that Person purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person, unless, in either such case, that Person, together with all its Affiliates and Associates, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

Notwithstanding anything in this definition of "Acquiring Person" to the contrary, so long as Main Street Merchant Partners II, L.P., a Delaware limited partnership ("Main Street"), together with all Affiliates and

Associates thereof, remains the Beneficial Owner of 15% or more of the outstanding shares of Common Stock, Main Street and any Affiliate or Associate thereof will not be or become an Acquiring Person unless and until that Person, together with all Affiliates and Associates thereof, purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person

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unless, in either such case, that Person, together with all Affiliates and Associates of that Person, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

"Affiliate" has the meaning Exchange Act Rule 12b-2 specifies.

"Associate" means, with reference to any Person, (i) any corporation, firm, partnership, limited liability company, association, unincorporated organization or other entity (other than the Company or a subsidiary of the Company) of which that Person is an officer or general partner (or officer or general partner of a general partner) or is, directly or indirectly, the Beneficial Owner of 10% or more of any class of its equity securities or interests, (ii) any trust or other estate in which that Person has a substantial beneficial interest or for or of which that Person serves as trustee or in a similar fiduciary capacity and (iii) any relative or spouse of that Person, or any relative of that spouse, who has the same home as that Person.

A specified Person is deemed the "Beneficial Owner" of, and is deemed to "beneficially own," any securities:

(i) of which that Person or any of that Person's Affiliates or Associates, directly or indirectly, is the "beneficial owner" (as determined pursuant to Exchange Act Rule 13d-3) or otherwise has the right to vote or dispose of, including pursuant to any agreement, arrangement or understanding (whether or not in writing); provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," any security under this subparagraph (i) as a result of an agreement, arrangement or understanding to vote that security if that agreement, arrangement or understanding: (A) arises solely from a revocable proxy or consent given in response to a public (that is, not including a solicitation exempted by Exchange Act Rule 14a-2(b)(2)) proxy or consent solicitation made pursuant to, and in accordance with, the applicable provisions of the Exchange Act; and (B) is not then reportable by that Person on Exchange Act Schedule 13D (or any comparable or successor report);

(ii) which that Person or any of that Person's Affiliates or Associates, directly or indirectly, has the right or obligation to acquire (whether that right or obligation is exercisable or effective immediately or only after the passage of time or the occurrence of an event) pursuant to any agreement, arrangement or understanding (whether or not in writing) or on the exercise of conversion rights, exchange rights, other rights, warrants or options, or otherwise; provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," securities tendered pursuant to a tender or exchange offer made by that Person or any of that Person's Affiliates or Associates until those tendered securities are accepted for purchase or exchange; or

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(iii) which are beneficially owned, directly or indirectly, by (A) any other Person (or any Affiliate or Associate thereof) with which the specified Person or any of the specified Person's Affiliates or Associates has any agreement, arrangement or understanding (whether or not in writing) for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy or consent as described in the proviso to subparagraph (i) of this definition) or disposing of any voting securities of the Company or (B) any group (as Exchange Act

Rule 13d-5(b) uses that term) of which that specified Person is a member;

provided, however, that nothing in this definition will cause a Person engaged in business as an underwriter of securities to be the "Beneficial Owner" of, or to "beneficially own," any securities that Person acquires through its participation in good faith in a firm commitment underwriting (including, without limitation, securities acquired pursuant to stabilizing transactions to facilitate a public offering in accordance with Exchange Act Regulation M or to cover overallocments created in connection with a public offering) until the expiration of 40 days after the date of that acquisition. For purposes of this definition, "voting" a security includes voting, granting a proxy, acting by consent, making a request or demand relating to corporate action (including, without limitation, calling a stockholder meeting) or otherwise giving an authorization (within the meaning of Section 14(a) of the Exchange Act) in respect of that security.

"Change of Control" means the occurrence of any of the following events that occurs after the IPO Closing Date: (i) any Person becomes an Acquiring Person; (ii) at any time the then Continuing Directors cease to constitute a majority of the members of the Board; (iii) a merger of the Company with or into, or a sale by the Company of its properties and assets substantially as an entirety to, another Person occurs and, immediately after that occurrence, any Person, other than an Exempt Person, together with all Affiliates and Associates of that Person (other than Exempt Persons), will be the Beneficial Owner of 15% or more of the total voting power of the then outstanding Voting Shares of the Person surviving that transaction (in the case of a merger or consolidation) or the Person acquiring those properties and assets substantially as an entirety unless that Person, together with all its Affiliates and Associates, was the Beneficial Owner of 15% or more of the shares of Common Stock outstanding prior to that transaction; (iv) the approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets; or (v) occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

"Common Stock" means (i) the common stock, par value \$.001 per share, of the Company and (ii) any other class of capital stock of the Company which is (A) except for less voting rights, identical to the common stock clause (i) of this definition describes and (B) convertible into that common stock on a share for share basis on the occurrence of a Change of Control.

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"Continuing Director" means at any time any individual who then (i) is a member of the Board and was a member of the Board as of the IPO Closing Date or whose nomination for his first election, or that first election, to the Board following that date was recommended or approved by a majority of the then Continuing Directors (acting separately or as a part of any action taken by the Board or any committee thereof) and (ii) is not an Acquiring Person, an Affiliate or Associate of an Acquiring Person or a nominee or representative of an Acquiring Person or of any such Affiliate or Associate.

"Corporate Status" describes the status of a natural person who is or was a director, officer, trustee, general partner, managing member, employee or agent of the Company or of any other Enterprise, provided that person is or was serving in that capacity at the request of the Company. For purposes of this Agreement, "serving at the request of the Company" includes any service by Indemnitee which imposes duties on, or involves services by, Indemnitee with respect to any employee benefit plan or its participants or beneficiaries.

"Court of Chancery" means the Court of Chancery of the State of Delaware.

"Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification

is sought by Indemnitee hereunder.

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

"Exempt Person" means: (i) (A) the Company, any subsidiary of the Company, any employee benefit plan of the Company or of any subsidiary of the Company and (B) any Person organized, appointed or established by the Company for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of the Company or any subsidiary of the Company; and (ii) Indemnitee, any Affiliate or Associate of Indemnitee or any group (as Exchange Act Rule 13d-5(b) uses that term) of which Indemnitee or any Affiliate or Associate of Indemnitee is a member.

"Expenses" include all attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding and all interest or finance charges attributable to any thereof. Should any payments by the Company under this Agreement be determined to be subject to any federal, state or local income or excise tax, "Expenses" also will include such amounts as are necessary to place Indemnitee in the same after-tax position (after giving effect to all applicable taxes) he would have been in had no such tax been determined to apply to those payments. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its

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equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

"Independent Counsel" means a law firm, or a member of a law firm, that or who is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company, its affiliates or Indemnitee in any matter material to any such party; or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" does not include at any time any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"IPO" means the first time a registration statement the Company has filed under the Securities Act of 1933, as amended, and respecting an underwritten primary offering by the Company of shares of Common Stock becomes effective under that Act and the Company issues and sells any of the shares registered by that registration statement.

"IPO Closing Date" means the date on which the Company first receives payment for the shares of Common Stock it sells in the IPO.

"Person" means any natural person, sole proprietorship, corporation, partnership of any kind having a separate legal status, limited liability company, business trust, unincorporated organization or association, mutual company, joint stock company, joint venture, estate, trust, union or employee organization or governmental authority.

"Proceeding" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, in which Indemnitee was, is or will be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action taken by him or of any action on his part while acting as director or officer of the Company, or by reason of the fact that he is or was serving at the request of the

Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

"Voting Shares" means: (i) in the case of any corporation, stock of that corporation of the class or classes having general voting power under ordinary circumstances to elect a majority of that corporation's board of directors; and (ii) in the case of any other entity, equity interests of the class or classes having general voting power under ordinary circumstances equivalent to the Voting Shares of a corporation.

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Section 19. Modification and Waiver. No supplement to or modification or amendment of this Agreement will be binding unless executed in writing by both parties hereto. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provisions hereof (whether or not similar), nor will any such waiver constitute a continuing waiver.

Section 20. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing on being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses hereunder; provided, however, a failure to give that notice will not deprive Indemnitee of his rights to indemnification and advancement of Expenses hereunder unless the Company is actually and materially prejudiced thereby.

Section 21. Notices. All notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered and received (i) if personally delivered or if delivered by telex, telegram, facsimile or courier service, when actually received by the party to whom the notice or communication is sent or (ii) if delivered by mail (whether actually received or not), at the close of business on the third business day in the city in which the Company's principal executive office is located next following the day when placed in the mail, postage prepaid, certified or registered, addressed to the appropriate party at the address of that party set forth below (or at such other address as that party may designate by written notice to the other party in accordance herewith):

(a) If to Indemnitee, to: Eugene P. Martineau
3006 Bonnebridge Way Blvd.
Houston, Texas 77082

with a copy (which will not constitute notice for the purposes of this Agreement) to such legal counsel, if any, as the Indemnitee may designate in writing; and

(b) If to the Company, to: U.S. Concrete, Inc.
1300 Post Oak Blvd., Suite 1220
Houston, Texas 77056
Attention: President

Section 22. Contribution. To the fullest extent applicable law permits, if the indemnification this Agreement provides is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, will contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all the circumstances of that Proceeding in order to reflect: (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving rise to that

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Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 23. Governing Law; Submission to Jurisdiction. This

Agreement and the legal relations among the parties will be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration Indemnatee commences pursuant to Section 10(a), the Company and Indemnatee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement will be brought only in the Court of Chancery and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Court of Chancery for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Court of Chancery and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Court of Chancery has been brought in an improper or otherwise inconvenient forum.

Section 24. Miscellaneous. Use of one gender herein includes usage of each other gender where appropriate. This Agreement uses the words "herein," "hereof" and words of similar import to refer to this Agreement as a whole and not to any provision of this Agreement, and the word "Section" refers to a Section of this Agreement, unless otherwise specified.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

ATTEST: U.S. CONCRETE, INC.

By: /s/ Eugene P. Martineau By: /s/ Michael W. Harlan

Print Name: Eugene P. Martineau Michael W. Harlan
----- Senior Vice President

ATTEST: INDEMNITEE:

By: /s/ Michael W. Harlan /s/ Eugene P. Martineau

Print Name: Michael W. Harlan Eugene P. Martineau

AMENDED AND RESTATED INDEMNIFICATION AGREEMENT

THIS AMENDED AND RESTATED INDEMNIFICATION AGREEMENT (this "Agreement") is made as of August 17, 2000 by and between U.S. Concrete, Inc., a Delaware corporation (the "Company"), and Michael D. Mitschele ("Indemnatee"). This Agreement amends and restates in its entirety the Indemnification Agreement, dated as of May 28, 1999, between the Company and Indemnatee.

PRELIMINARY STATEMENT

Highly competent persons have become more reluctant to serve corporations as directors or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of corporations.

The Board of Directors of the Company (the "Board") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of that insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Board believes that, given current market conditions and trends, that insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises increasingly are being subjected to expensive and time-consuming litigation relating to, among other matters, matters that traditionally would have been brought only against the corporation or business enterprise itself. The uncertainties relating to liability insurance and to indemnification have increased the difficulty of attracting and retaining those persons, and the

Board has determined that (i) this increased difficulty is detrimental to the best interests of the Company's stockholders and that the Company should act to assure those persons that there will be increased certainty of such protection in the future and (ii) it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify those persons to the fullest extent applicable law permits so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified.

The Bylaws of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the Delaware General Corporation Law ("DGCL"). The Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification.

This Agreement is a supplement to and in furtherance of the Bylaws of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

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The Indemnitee does not regard the protection available under the Company's Bylaws and insurance as adequate in the present circumstances, and may not be willing to serve as an officer or director without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he be so indemnified.

NOW, THEREFORE, in consideration of the premises and the covenants herein, the parties to this Agreement agree as follows:

Section 1. Services by Indemnitee. Indemnitee agrees to serve as a director and/or officer of the Company and, as mutually agreed by Indemnitee and the Company, as a director, officer, trustee, general partner, managing member, employee, agent or fiduciary of other corporations, limited liability companies, partnerships, joint ventures, trusts or other enterprises (including, without limitation, employee benefit plans) (each, an "Enterprise"). Indemnitee may at any time and for any reason resign from any such position (subject to any other contractual obligation or any obligation applicable law imposes), in which event the Company will have no obligation under this Agreement to continue Indemnitee in that position. This Agreement is not and is not to be construed as an employment contract between the Company (or any of its subsidiaries) and Indemnitee. Indemnitee specifically acknowledges that Indemnitee's employment with the Company (or any of its subsidiaries), if any, is at will, and the Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Company (or any of its subsidiaries), other applicable formal severance policies duly adopted by the Board or, with respect to service as a director of the Company, by the Company's Certificate of Incorporation, Bylaws and the DGCL. The foregoing notwithstanding, subject to Section 12, this Agreement will continue in force after Indemnitee has ceased to serve as an officer or director of the Company and no longer serves at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise.

Section 2. Indemnification--General. The Company will indemnify, and advance Expenses (as hereinafter defined) to, Indemnitee (i) as this Agreement permits and (ii) (subject to the provisions hereof) to the fullest extent applicable law in effect on the date hereof and as amended from time to time permits. The rights the preceding sentence provide to Indemnitee will include, but will not be limited to, the rights the other Sections hereof set forth.

Section 3. Proceedings Other Than by or in the Right of the Company. Indemnitee will be entitled to the rights of indemnification this Section 3 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant in any threatened, pending or completed Proceeding (as hereinafter defined), other than a Proceeding by or in the right of the Company. Pursuant to this Section 3, the Company will indemnify Indemnitee against, and will hold Indemnitee harmless from and in respect of, all Expenses, judgments, penalties, fines (including excise taxes) and amounts paid in settlement (including all interest, assessments and other charges paid

or payable in connection with or in respect of those Expenses, judgments, fines, penalties or amounts paid in settlement) actually and reasonably incurred by him or on his behalf in connection with that Proceeding or any claim, issue or matter therein, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and,

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with respect to any criminal Proceeding, had no reasonable cause to believe his conduct was unlawful.

Section 4. Proceedings by or in the Right of the Company. Indemnatee will be entitled to the rights of indemnification this Section 4 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant (as a witness or otherwise) in any threatened, pending or completed Proceeding brought by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, the Company will indemnify Indemnatee against, and will hold Indemnatee harmless from and in respect of, all Expenses actually and reasonably incurred by him or on his behalf in connection with that Proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that no indemnification against those Expenses will be made in respect of any claim, issue or matter in that Proceeding as to which Indemnatee has been adjudged to be liable to the Company unless and to the extent that the Court of Chancery, or the court in which that Proceeding has been brought or is pending, determines that despite the adjudication of liability but in view of all the circumstances of the case, Indemnatee is fairly and reasonably entitled to indemnification.

Section 5. Indemnification for Expenses of a Party Who Is Wholly or Partly Successful. Notwithstanding any other provision hereof, to the extent that Indemnatee is, by reason of his Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in defense of any Proceeding, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnatee is not wholly successful in defense of any Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in that Proceeding, the Company will indemnify Indemnatee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in any Proceeding by dismissal, with or without prejudice, will be deemed to be a successful result as to that claim, issue or matter.

Section 6. Indemnification for Expenses as a Witness. Notwithstanding any other provision hereof, to the extent that Indemnatee is, by reason of his Corporate Status, a witness in any Proceeding to which Indemnatee is not a party, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

Section 7. Advancement of Expenses. The Company will advance all reasonable Expenses incurred by or on behalf of Indemnatee in connection with any Proceeding within 10 days after the Company receives a statement or statements from Indemnatee requesting such advance or advances from time to time, whether prior to or after final disposition of that Proceeding. Each such statement must reasonably evidence the Expenses incurred by or on behalf of Indemnatee and include or be preceded or accompanied by an undertaking by or on behalf of Indemnatee to repay any Expenses advanced if it ultimately is determined that Indemnatee is not entitled to be indemnified by the Company against those Expenses. The Company will accept any such undertaking without reference to the financial ability of Indemnatee to make repayment, and without regard to Indemnatee's ultimate entitlement to indemnification under other provisions of this Agreement.

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Section 8. Procedure for Determination of Entitlement to Indemnification. (a) Within sixty (60) days after the actual receipt by Indemnatee of notice that he or she is a party to or a participant (as a witness or otherwise) in any Proceeding, Indemnatee shall submit to the Company a written notice identifying the Proceeding. The omission by the Indemnatee to notify the Company will not relieve the Company from any liability which it may

have to Indemnitee (i) otherwise than under this Agreement, and (ii) under this Agreement only to the extent the Company can establish that such omission to notify resulted in actual prejudice to the Company.

(b) Indemnitee shall thereafter deliver to the Company a written application to indemnify Indemnitee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnitee deems appropriate in his or her sole discretion. Following such a written application for indemnification by Indemnitee, the Indemnitee's entitlement to indemnification shall be determined according to Section 8(c) of this Agreement.

(c) On written request by Indemnitee for indemnification pursuant to Section 8(b), a determination, if applicable law requires, with respect to Indemnitee's entitlement thereto will be made in the specific case: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, or (ii) if so requested by the Indemnitee in his or her sole discretion by an Independent Counsel in a written opinion to the Board, a copy of which will be delivered to Indemnitee. If it is so determined that Indemnitee is entitled to indemnification hereunder, the Company will: (i) within 10 days after that determination pay to Indemnitee all amounts theretofore incurred by or on behalf of Indemnitee in respect of which Indemnitee is entitled to that indemnification by reason of that determination; and (ii) thereafter on written request by Indemnitee, pay to Indemnitee within 10 days after that request such additional amounts theretofore incurred by or on behalf of Indemnitee in respect of which Indemnitee is entitled to that indemnification by reason of that determination. Indemnitee will cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification under this Agreement, including providing to such person, persons or entity on reasonable advance request any documentation or information which is (i) not privileged or otherwise protected from disclosure, (ii) reasonably available to Indemnitee and (iii) reasonably necessary to that determination. The Company will bear all costs and expenses (including attorneys' fees and disbursements) Indemnitee incurs in so cooperating (irrespective of the determination as to Indemnitee's entitlement to indemnification) and hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(d) If an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c), the Independent Counsel will be selected as this Section 8(d) provides. If a Change of Control has not occurred within two years prior to the date of Indemnitee's written request for indemnification pursuant to Section 8(a), the Board will select the Independent Counsel, and the Company will give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change of Control has occurred within two years prior to the date of that written request, Indemnitee will select the Independent Counsel (unless Indemnitee requests that the Board make the selection, in which event the preceding sentence will apply), and Indemnitee will give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within 10 days after the written notice of selection has been given, deliver to the Company or

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to Indemnitee, as the case may be, a written objection to the selection; provided, however, that any such objection may be asserted only on the ground that the Independent Counsel so selected is not an "Independent Counsel" as Section 17 defines that term, and the objection must set forth with particularity the factual basis for that assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If any such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until that objection is withdrawn or a court of competent jurisdiction has determined that objection is without merit. If (i) an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c) and (ii) within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 8(a), no Independent Counsel has been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery or other court of competent jurisdiction for resolution of any objection that has been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the petitioned court or by such other person as the petitioned court designates, and the person with respect to whom all objections are so resolved

or the person so appointed will act as the Independent Counsel under Section 8(c). The Company will pay any and all reasonable fees and expenses the Independent Counsel incurs in connection with acting pursuant to Section 8(c), and the Company will pay all reasonable fees and expenses incident to the procedures this Section 8(d) sets forth, regardless of the manner in which the Independent Counsel is selected or appointed. If (i) the Independent Counsel selected or appointed pursuant to this Section 8(d) does not make any determination respecting Indemnatee's entitlement to indemnification hereunder within 45 days after the Company receives a written request therefor and (ii) any judicial proceeding or arbitration pursuant to Section 10(a) is then commenced, that Independent Counsel will be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 9. Presumptions and Effect of Certain Proceedings. (a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making that determination must presume that Indemnatee is entitled to indemnification hereunder if Indemnatee has submitted a request for indemnification in accordance with Section 8(a), and the Company will have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnatee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnatee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnatee has not met the applicable standard of conduct.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or on a plea of nolo contendere or its equivalent, will not (except as this Agreement otherwise expressly provides) of itself adversely affect the right of Indemnatee to indemnification hereunder or create a presumption that Indemnatee did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the

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Company or, with respect to any criminal Proceeding, that Indemnatee had reasonable cause to believe that his conduct was unlawful.

(c) Any action Indemnatee takes or omits to take in connection with any employee benefit plan will, if taken or omitted in good faith by Indemnatee and in a manner Indemnatee reasonably believed to be in the interest of the participants in or beneficiaries of that plan, be deemed to have been taken or omitted in a manner "not opposed to the best interests of the Company" for all purposes hereof.

(d) Reliance as Safe Harbor. For purposes of any determination of

good faith, Indemnatee shall be deemed to have acted in good faith if Indemnatee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnatee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise. The provisions of this Section 9(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnatee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

(e) Actions of Others. The knowledge and/or actions, or failure to

act, of any other director, trustee, partner, managing member, fiduciary, officer, agent or employee of the Enterprise shall not be imputed to Indemnatee for purposes of determining the right to indemnification under this Agreement.

Section 10. Remedies of Indemnatee. (a) In the event that (i) a determination is made pursuant to Section 8 that Indemnatee is not entitled to indemnification hereunder, (ii) advancement of Expenses is not timely made pursuant to Section 7, (iii) no determination as to Indemnatee's entitlement to

indemnification shall have been made pursuant to Section 8(c) of this Agreement hereunder, or that determination shall not have been made within 45 days after receipt by the Company of the request for that indemnification, (iv) payment of indemnification is not made pursuant to Section 5 or 6 within 10 days after receipt by the Company of a written request therefor or (v) payment of indemnification pursuant to Section 8(c) is not made timely, Indemnatee will be entitled to an adjudication from the Court of Chancery of his entitlement to that indemnification or advancement of Expenses. Alternatively, Indemnatee, at his option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnatee must commence any such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnatee first has the right to commence that proceeding pursuant to this Section 10(a); provided, however, that this sentence will not apply in respect of a proceeding brought by Indemnatee to enforce his rights under Section 5.

(b) If a determination has been made pursuant to Section 8(c) that Indemnatee is not entitled to indemnification hereunder, any judicial proceeding or arbitration commenced pursuant to this Section 10 will be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnatee will not be prejudiced by reason of that adverse determination. In any judicial

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proceeding or arbitration commenced pursuant to this Section 10, the Company will have the burden of proving that Indemnatee is not entitled to indemnification or advancement of Expenses, as the case may be and the Company may not refer to or introduce into evidence any determination pursuant to Section 8(c) of this Agreement adverse to Indemnatee for any purpose. If Indemnatee commences a judicial proceeding or arbitration pursuant to this Section 10, Indemnatee shall not be required to reimburse the Company for any advances pursuant to Section 7 until a final determination is made with respect to Indemnatee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(c) If a determination has been made pursuant to Section 8(c) that Indemnatee is entitled to indemnification hereunder, the Company will be bound by that determination in any judicial proceeding or arbitration commenced pursuant to this Section 10, absent (i) a misstatement by Indemnatee of a material fact, or an omission by Indemnatee of a material fact necessary to make Indemnatee's statements not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) If Indemnatee, pursuant to this Section 10, seeks a judicial adjudication of or an award in arbitration to enforce his rights under, or to recover damages for breach of, this Agreement, Indemnatee will be entitled to recover from the Company, and will be indemnified by the Company against, any and all expenses (of the types described in the definition of Expenses in Section 18) actually and reasonably incurred by him in that judicial adjudication or arbitration, but only if he prevails therein. If it is determined in that judicial adjudication or arbitration that Indemnatee is entitled to receive part of, but not all, the indemnification or advancement of expenses sought, the Expenses incurred by Indemnatee in connection with that judicial adjudication or arbitration will be appropriately prorated between those in respect of which this Section 10(d) entitles Indemnatee to indemnification and those Indemnatee must bear.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 10 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(f) The Company shall indemnify Indemnatee to the fullest extent permitted by law against all Expenses and, if requested by Indemnatee, shall (within ten (10) days after the Company's receipt of such written request) advance such Expenses to Indemnatee, which are incurred by Indemnatee in connection with any judicial proceeding or arbitration brought by Indemnatee for (i) indemnification or advances of Expenses by the Company under this Agreement or any other agreement or provision of the Company's Certificate of Incorporation or Bylaws now or hereafter in effect or (ii) recovery or advances under any insurance policy maintained by any person for the benefit of

Indemnitee, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advance or insurance recovery, as the case may be.

Section 11. Non-exclusivity; Survival of Rights; Insurance; Subrogation. (a) The rights to indemnification and advancement of Expenses this Agreement provides are not and will not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under

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applicable law, the Company's Certificate of Incorporation, the Company's Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or termination of this Agreement or any provision hereof will limit or restrict any right of Indemnitee hereunder in respect of any action Indemnitee has taken or omitted in his Corporate Status prior to that amendment, alteration or termination. To the extent that a change in Delaware law (whether by statute or judicial decision) permits greater indemnification by agreement than would be afforded currently under this Agreement, it is the intent and agreement of the parties hereto that Indemnitee will enjoy by this Agreement the greater benefits that change affords. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall 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 right or remedy.

(b) If the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managing members, employees, agents or fiduciaries of the Company or of any other Enterprise that any such person serves at the request of the Company, Indemnitee will be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, managing member, employee, agent or fiduciary under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) The Company will not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or for which advancement is provided hereunder) hereunder if and to the extent that Indemnitee has otherwise actually received that payment or obtained the entire benefit therefrom under any insurance policy, contract, agreement or otherwise.

(d) If the Company makes any payment hereunder, it will be subrogated to the extent of that payment to all the rights of recovery of Indemnitee, who will execute all papers required and take all action necessary to secure those rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce those rights.

(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee with respect to Indemnitee's service at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise will be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from that other Enterprise.

Section 12. Duration of Agreement. This Agreement will continue until and terminate on the later of: (i) 10 years after the date that Indemnitee has ceased to serve as a director or officer of the Company or as a director, officer, trustee, partner, managing partner, employee,

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agent or fiduciary of any other Enterprise that Indemnitee served on behalf of the Company at the request of the Company; or (ii) one year after the final termination of any Proceeding (including any rights of appeal thereto) then

pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnitee pursuant to Section 10 relating thereto including any rights of appeal of any Section 10 Proceeding. This Agreement will be binding on the Company and its successors and assigns and will inure to the benefit of Indemnitee and his spouse (if Indemnitee resides in Texas or another community property state), heirs, executors and administrators.

Section 13. Severability. If any provision or provisions of this Agreement is or are invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions hereof (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will not in any way be affected or impaired thereby; (ii) such provision or provisions will be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (iii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will be construed so as to give effect to the intent manifested thereby.

Section 14. Exception to Right of Indemnification or Advancement of Expenses. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnitee:

(a) for which payment has actually been received by or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount actually received under any insurance policy or other indemnity provision; or

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law; or

(c) except as otherwise provided in Sections 10(d) - (f) hereof, prior to a Change in Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board of Directors of the Company authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

Section 15. Enforcement and Binding Effect.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve

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as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

Section 16. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed to be an original but all of which together will constitute one and the same agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 17. Headings. The headings of the Sections hereof are inserted for convenience only and do not and will not be deemed to constitute part of this Agreement or to affect the construction thereof.

Section 18. Definitions. For purposes of this Agreement:

"Acquiring Person" means any Person who or which, together with all its Affiliates and Associates, is or are the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding, but does not include any Exempt Person; provided, however, that a Person will not be or become an Acquiring Person if that Person, together with its Affiliates and Associates, becomes the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding solely as a result of a reduction in the number of shares of Common Stock outstanding which results from the Company's direct or indirect repurchase of Common Stock, unless and until such time as that Person or any Affiliate or Associate of that Person purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person, unless, in either such case, that Person, together with all its Affiliates and Associates, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

Notwithstanding anything in this definition of "Acquiring Person" to the contrary, so long as Main Street Merchant Partners II, L.P., a Delaware limited partnership ("Main Street"), together with all Affiliates and Associates thereof, remains the Beneficial Owner of 15% or more of the outstanding shares of Common Stock, Main Street and any Affiliate or Associate thereof will not be or become an Acquiring Person unless and until that Person, together with all Affiliates and Associates thereof, purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person

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unless, in either such case, that Person, together with all Affiliates and Associates of that Person, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

"Affiliate" has the meaning Exchange Act Rule 12b-2 specifies.

"Associate" means, with reference to any Person, (i) any corporation, firm, partnership, limited liability company, association, unincorporated organization or other entity (other than the Company or a subsidiary of the Company) of which that Person is an officer or general partner (or officer or general partner of a general partner) or is, directly or indirectly, the Beneficial Owner of 10% or more of any class of its equity securities or interests, (ii) any trust or other estate in which that Person has a substantial beneficial interest or for or of which that Person serves as trustee or in a similar fiduciary capacity and (iii) any relative or spouse of that Person, or any relative of that spouse, who has the same home as that Person.

A specified Person is deemed the "Beneficial Owner" of, and is deemed to "beneficially own," any securities:

(i) of which that Person or any of that Person's Affiliates or Associates, directly or indirectly, is the "beneficial owner" (as determined pursuant to Exchange Act Rule 13d-3) or otherwise has the right to vote or dispose of, including pursuant to any agreement, arrangement or understanding (whether or not in writing); provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," any security under this subparagraph (i) as a result of an agreement, arrangement or understanding to vote that security if that agreement, arrangement or understanding: (A) arises solely from a revocable proxy or consent given in response to a public (that is, not including a solicitation exempted by Exchange Act Rule 14a-2(b)(2)) proxy or consent solicitation made pursuant to, and in accordance with, the applicable provisions of the Exchange Act; and (B) is not then reportable by that Person on Exchange Act Schedule 13D (or any comparable or successor report);

(ii) which that Person or any of that Person's Affiliates or Associates, directly or indirectly, has the right or obligation to acquire (whether that right or obligation is exercisable or effective immediately or only after the passage of time or the occurrence of an event) pursuant to any agreement, arrangement or understanding (whether or not in writing) or on the exercise of conversion rights, exchange rights, other rights, warrants or options, or otherwise; provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," securities tendered pursuant to a tender or exchange offer made by that Person or any of that Person's Affiliates or Associates until those tendered securities are accepted for purchase or exchange; or

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(iii) which are beneficially owned, directly or indirectly, by (A) any other Person (or any Affiliate or Associate thereof) with which the specified Person or any of the specified Person's Affiliates or Associates has any agreement, arrangement or understanding (whether or not in writing) for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy or consent as described in the proviso to subparagraph (i) of this definition) or disposing of any voting securities of the Company or (B) any group (as Exchange Act Rule 13d-5(b) uses that term) of which that specified Person is a member;

provided, however, that nothing in this definition will cause a Person engaged in business as an underwriter of securities to be the "Beneficial Owner" of, or to "beneficially own," any securities that Person acquires through its participation in good faith in a firm commitment underwriting (including, without limitation, securities acquired pursuant to stabilizing transactions to facilitate a public offering in accordance with Exchange Act Regulation M or to cover overallotments created in connection with a public offering) until the expiration of 40 days after the date of that acquisition. For purposes of this definition, "voting" a security includes voting, granting a proxy, acting by consent, making a request or demand relating to corporate action (including, without limitation, calling a stockholder meeting) or otherwise giving an authorization (within the meaning of Section 14(a) of the Exchange Act) in respect of that security.

"Change of Control" means the occurrence of any of the following events that occurs after the IPO Closing Date: (i) any Person becomes an Acquiring Person; (ii) at any time the then Continuing Directors cease to constitute a majority of the members of the Board; (iii) a merger of the Company with or into, or a sale by the Company of its properties and assets substantially as an entirety to, another Person occurs and, immediately after that occurrence, any Person, other than an Exempt Person, together with all Affiliates and Associates of that Person (other than Exempt Persons), will be the Beneficial Owner of 15% or more of the total voting power of the then outstanding Voting Shares of the Person surviving that transaction (in the case of a merger or consolidation) or the Person acquiring those properties and assets substantially as an entirety unless that Person, together with all its Affiliates and Associates, was the Beneficial Owner of 15% or more of the shares of Common Stock outstanding prior to that transaction; (iv) the approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets; or (v) occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

"Common Stock" means (i) the common stock, par value \$.001 per share, of the Company and (ii) any other class of capital stock of the Company which is (A) except for less voting rights, identical to the common stock clause (i) of this definition describes and (B) convertible into that common stock on a share for share basis on the occurrence of a Change of Control.

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"Continuing Director" means at any time any individual who then (i) is a member of the Board and was a member of the Board as of the IPO Closing Date or whose nomination for his first election, or that first election, to the Board following that date was recommended or approved by a majority of the then Continuing Directors (acting separately or as a part of any action taken by the Board or any committee thereof) and (ii) is not an Acquiring Person, an Affiliate or Associate of an Acquiring Person or a nominee or representative of an Acquiring Person or of any such Affiliate or Associate.

"Corporate Status" describes the status of a natural person who is or was a director, officer, trustee, general partner, managing member, employee or agent of the Company or of any other Enterprise, provided that person is or was serving in that capacity at the request of the Company. For purposes of this Agreement, "serving at the request of the Company" includes any service by Indemnitee which imposes duties on, or involves services by, Indemnitee with respect to any employee benefit plan or its participants or beneficiaries.

"Court of Chancery" means the Court of Chancery of the State of Delaware.

"Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee hereunder.

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

"Exempt Person" means: (i) (A) the Company, any subsidiary of the Company, any employee benefit plan of the Company or of any subsidiary of the Company and (B) any Person organized, appointed or established by the Company for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of the Company or any subsidiary of the Company; and (ii) Indemnitee, any Affiliate or Associate of Indemnitee or any group (as Exchange Act Rule 13d-5(b) uses that term) of which Indemnitee or any Affiliate or Associate of Indemnitee is a member.

"Expenses" include all attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding and all interest or finance charges attributable to any thereof. Should any payments by the Company under this Agreement be determined to be subject to any federal, state or local income or excise tax, "Expenses" also will include such amounts as are necessary to place Indemnitee in the same after-tax position (after giving effect to all applicable taxes) he would have been in had no such tax been determined to apply to those payments. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its

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equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

"Independent Counsel" means a law firm, or a member of a law firm, that or who is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company, its affiliates or Indemnitee in any matter material to any such party; or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" does not include at any time any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"IPO" means the first time a registration statement the Company has

filed under the Securities Act of 1933, as amended, and respecting an underwritten primary offering by the Company of shares of Common Stock becomes effective under that Act and the Company issues and sells any of the shares registered by that registration statement.

"IPO Closing Date" means the date on which the Company first receives payment for the shares of Common Stock it sells in the IPO.

"Person" means any natural person, sole proprietorship, corporation, partnership of any kind having a separate legal status, limited liability company, business trust, unincorporated organization or association, mutual company, joint stock company, joint venture, estate, trust, union or employee organization or governmental authority.

"Proceeding" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, in which Indemnitee was, is or will be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action taken by him or of any action on his part while acting as director or officer of the Company, or by reason of the fact that he is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

"Voting Shares" means: (i) in the case of any corporation, stock of that corporation of the class or classes having general voting power under ordinary circumstances to elect a majority of that corporation's board of directors; and (ii) in the case of any other entity, equity interests of the class or classes having general voting power under ordinary circumstances equivalent to the Voting Shares of a corporation.

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Section 19. Modification and Waiver. No supplement to or modification or amendment of this Agreement will be binding unless executed in writing by both parties hereto. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provisions hereof (whether or not similar), nor will any such waiver constitute a continuing waiver.

Section 20. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing on being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses hereunder; provided, however, a failure to give that notice will not deprive Indemnitee of his rights to indemnification and advancement of Expenses hereunder unless the Company is actually and materially prejudiced thereby.

Section 21. Notices. All notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered and received (i) if personally delivered or if delivered by telex, telegram, facsimile or courier service, when actually received by the party to whom the notice or communication is sent or (ii) if delivered by mail (whether actually received or not), at the close of business on the third business day in the city in which the Company's principal executive office is located next following the day when placed in the mail, postage prepaid, certified or registered, addressed to the appropriate party at the address of that party set forth below (or at such other address as that party may designate by written notice to the other party in accordance herewith):

(a) If to Indemnitee, to: Michael D. Mitschele
89 Eagle Rock Avenue
Roseland, New Jersey 07068

with a copy (which will not constitute notice for the purposes of this Agreement) to such legal counsel, if any, as the Indemnitee may designate in writing; and

dated as of May 28, 1999, between the Company and Indemnitee.

PRELIMINARY STATEMENT

Highly competent persons have become more reluctant to serve corporations as directors or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of corporations.

The Board of Directors of the Company (the "Board") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of that insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Board believes that, given current market conditions and trends, that insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises increasingly are being subjected to expensive and time-consuming litigation relating to, among other matters, matters that traditionally would have been brought only against the corporation or business enterprise itself. The uncertainties relating to liability insurance and to indemnification have increased the difficulty of attracting and retaining those persons, and the Board has determined that (i) this increased difficulty is detrimental to the best interests of the Company's stockholders and that the Company should act to assure those persons that there will be increased certainty of such protection in the future and (ii) it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify those persons to the fullest extent applicable law permits so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified.

The Bylaws of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the Delaware General Corporation Law ("DGCL"). The Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification.

This Agreement is a supplement to and in furtherance of the Bylaws of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

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The Indemnitee does not regard the protection available under the Company's Bylaws and insurance as adequate in the present circumstances, and may not be willing to serve as an officer or director without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he be so indemnified.

NOW, THEREFORE, in consideration of the premises and the covenants herein, the parties to this Agreement agree as follows:

Section 1. Services by Indemnitee. Indemnitee agrees to serve as a director and/or officer of the Company and, as mutually agreed by Indemnitee and the Company, as a director, officer, trustee, general partner, managing member, employee, agent or fiduciary of other corporations, limited liability companies, partnerships, joint ventures, trusts or other enterprises (including, without limitation, employee benefit plans) (each, an "Enterprise"). Indemnitee may at any time and for any reason resign from any such position (subject to any other contractual obligation or any obligation applicable law imposes), in which event the Company will have no obligation under this Agreement to continue Indemnitee in that position. This Agreement is not and is not to be construed as an employment contract between the Company (or any of its subsidiaries) and Indemnitee. Indemnitee specifically acknowledges that Indemnitee's employment with the Company (or any of its subsidiaries), if any, is at will, and the Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Company (or any of its subsidiaries), other applicable formal

severance policies duly adopted by the Board or, with respect to service as a director of the Company, by the Company's Certificate of Incorporation, Bylaws and the DGCL. The foregoing notwithstanding, subject to Section 12, this Agreement will continue in force after Indemnatee has ceased to serve as an officer or director of the Company and no longer serves at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise.

Section 2. Indemnification--General. The Company will indemnify, and advance Expenses (as hereinafter defined) to, Indemnatee (i) as this Agreement permits and (ii) (subject to the provisions hereof) to the fullest extent applicable law in effect on the date hereof and as amended from time to time permits. The rights the preceding sentence provide to Indemnatee will include, but will not be limited to, the rights the other Sections hereof set forth.

Section 3. Proceedings Other Than by or in the Right of the Company. Indemnatee will be entitled to the rights of indemnification this Section 3 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant in any threatened, pending or completed Proceeding (as hereinafter defined), other than a Proceeding by or in the right of the Company. Pursuant to this Section 3, the Company will indemnify Indemnatee against, and will hold Indemnatee harmless from and in respect of, all Expenses, judgments, penalties, fines (including excise taxes) and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of those Expenses, judgments, fines, penalties or amounts paid in settlement) actually and reasonably incurred by him or on his behalf in connection with that Proceeding or any claim, issue or matter therein, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and,

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with respect to any criminal Proceeding, had no reasonable cause to believe his conduct was unlawful.

Section 4. Proceedings by or in the Right of the Company. Indemnatee will be entitled to the rights of indemnification this Section 4 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant (as a witness or otherwise) in any threatened, pending or completed Proceeding brought by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, the Company will indemnify Indemnatee against, and will hold Indemnatee harmless from and in respect of, all Expenses actually and reasonably incurred by him or on his behalf in connection with that Proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that no indemnification against those Expenses will be made in respect of any claim, issue or matter in that Proceeding as to which Indemnatee has been adjudged to be liable to the Company unless and to the extent that the Court of Chancery, or the court in which that Proceeding has been brought or is pending, determines that despite the adjudication of liability but in view of all the circumstances of the case, Indemnatee is fairly and reasonably entitled to indemnification.

Section 5. Indemnification for Expenses of a Party Who Is Wholly or Partly Successful. Notwithstanding any other provision hereof, to the extent that Indemnatee is, by reason of his Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in defense of any Proceeding, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnatee is not wholly successful in defense of any Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in that Proceeding, the Company will indemnify Indemnatee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in any Proceeding by dismissal, with or without prejudice, will be deemed to be a successful result as to that claim, issue or matter.

Section 6. Indemnification for Expenses as a Witness. Notwithstanding any other provision hereof, to the extent that Indemnatee is, by reason of his Corporate Status, a witness in any Proceeding to which Indemnatee is not a party, the Company will indemnify him against all Expenses actually and

reasonably incurred by him or on his behalf in connection therewith.

Section 7. Advancement of Expenses. The Company will advance all reasonable Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding within 10 days after the Company receives a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of that Proceeding. Each such statement must reasonably evidence the Expenses incurred by or on behalf of Indemnitee and include or be preceded or accompanied by an undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it ultimately is determined that Indemnitee is not entitled to be indemnified by the Company against those Expenses. The Company will accept any such undertaking without reference to the financial ability of Indemnitee to make repayment, and without regard to Indemnitee's ultimate entitlement to indemnification under other provisions of this Agreement.

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Section 8. Procedure for Determination of Entitlement to Indemnification. (a) Within sixty (60) days after the actual receipt by Indemnitee of notice that he or she is a party to or a participant (as a witness or otherwise) in any Proceeding, Indemnitee shall submit to the Company a written notice identifying the Proceeding. The omission by the Indemnitee to notify the Company will not relieve the Company from any liability which it may have to Indemnitee (i) otherwise than under this Agreement, and (ii) under this Agreement only to the extent the Company can establish that such omission to notify resulted in actual prejudice to the Company.

(b) Indemnitee shall thereafter deliver to the Company a written application to indemnify Indemnitee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnitee deems appropriate in his or her sole discretion. Following such a written application for indemnification by Indemnitee, the Indemnitee's entitlement to indemnification shall be determined according to Section 8(c) of this Agreement.

(c) On written request by Indemnitee for indemnification pursuant to Section 8(b), a determination, if applicable law requires, with respect to Indemnitee's entitlement thereto will be made in the specific case: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, or (ii) if so requested by the Indemnitee in his or her sole discretion by an Independent Counsel in a written opinion to the Board, a copy of which will be delivered to Indemnitee. If it is so determined that Indemnitee is entitled to indemnification hereunder, the Company will: (i) within 10 days after that determination pay to Indemnitee all amounts theretofore incurred by or on behalf of Indemnitee in respect of which Indemnitee is entitled to that indemnification by reason of that determination; and (ii) thereafter on written request by Indemnitee, pay to Indemnitee within 10 days after that request such additional amounts theretofore incurred by or on behalf of Indemnitee in respect of which Indemnitee is entitled to that indemnification by reason of that determination. Indemnitee will cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification under this Agreement, including providing to such person, persons or entity on reasonable advance request any documentation or information which is (i) not privileged or otherwise protected from disclosure, (ii) reasonably available to Indemnitee and (iii) reasonably necessary to that determination. The Company will bear all costs and expenses (including attorneys' fees and disbursements) Indemnitee incurs in so cooperating (irrespective of the determination as to Indemnitee's entitlement to indemnification) and hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(d) If an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c), the Independent Counsel will be selected as this Section 8(d) provides. If a Change of Control has not occurred within two years prior to the date of Indemnitee's written request for indemnification pursuant to Section 8(a), the Board will select the Independent Counsel, and the Company will give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change of Control has occurred within two years prior to the date of that written request, Indemnitee will select the Independent Counsel (unless Indemnitee requests that the Board make the selection, in which event the preceding sentence will apply), and Indemnitee will give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the

Company, as the case may be, may, within 10 days after the written notice of selection has been given, deliver to the Company or

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to Indemnitee, as the case may be, a written objection to the selection; provided, however, that any such objection may be asserted only on the ground that the Independent Counsel so selected is not an "Independent Counsel" as Section 17 defines that term, and the objection must set forth with particularity the factual basis for that assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If any such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until that objection is withdrawn or a court of competent jurisdiction has determined that objection is without merit. If (i) an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c) and (ii) within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 8(a), no Independent Counsel has been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery or other court of competent jurisdiction for resolution of any objection that has been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the petitioned court or by such other person as the petitioned court designates, and the person with respect to whom all objections are so resolved or the person so appointed will act as the Independent Counsel under Section 8(c). The Company will pay any and all reasonable fees and expenses the Independent Counsel incurs in connection with acting pursuant to Section 8(c), and the Company will pay all reasonable fees and expenses incident to the procedures this Section 8(d) sets forth, regardless of the manner in which the Independent Counsel is selected or appointed. If (i) the Independent Counsel selected or appointed pursuant to this Section 8(d) does not make any determination respecting Indemnitee's entitlement to indemnification hereunder within 45 days after the Company receives a written request therefor and (ii) any judicial proceeding or arbitration pursuant to Section 10(a) is then commenced, that Independent Counsel will be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 9. Presumptions and Effect of Certain Proceedings. (a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making that determination must presume that Indemnitee is entitled to indemnification hereunder if Indemnitee has submitted a request for indemnification in accordance with Section 8(a), and the Company will have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or on a plea of nolo contendere or its equivalent, will not (except as this Agreement otherwise expressly provides) of itself adversely affect the right of Indemnitee to indemnification hereunder or create a presumption that Indemnitee did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the

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Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his conduct was unlawful.

(c) Any action Indemnitee takes or omits to take in connection with any employee benefit plan will, if taken or omitted in good faith by Indemnitee and in a manner Indemnitee reasonably believed to be in the interest of the participants in or beneficiaries of that plan, be deemed to have been taken or omitted in a manner "not opposed to the best interests of the Company" for all purposes hereof.

(d) Reliance as Safe Harbor. For purposes of any determination of

good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise. The provisions of this Section 9(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

(e) Actions of Others. The knowledge and/or actions, or failure to

act, of any other director, trustee, partner, managing member, fiduciary, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 10. Remedies of Indemnitee. (a) In the event that (i) a determination is made pursuant to Section 8 that Indemnitee is not entitled to indemnification hereunder, (ii) advancement of Expenses is not timely made pursuant to Section 7, (iii) no determination as to Indemnitee's entitlement to indemnification shall have been made pursuant to Section 8(c) of this Agreement hereunder, or that determination shall not have been made within 45 days after receipt by the Company of the request for that indemnification, (iv) payment of indemnification is not made pursuant to Section 5 or 6 within 10 days after receipt by the Company of a written request therefor or (v) payment of indemnification pursuant to Section 8(c) is not made timely, Indemnitee will be entitled to an adjudication from the Court of Chancery of his entitlement to that indemnification or advancement of Expenses. Alternatively, Indemnitee, at his option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee must commence any such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence that proceeding pursuant to this Section 10(a); provided, however, that this sentence will not apply in respect of a proceeding brought by Indemnitee to enforce his rights under Section 5.

(b) If a determination has been made pursuant to Section 8(c) that Indemnitee is not entitled to indemnification hereunder, any judicial proceeding or arbitration commenced pursuant to this Section 10 will be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee will not be prejudiced by reason of that adverse determination. In any judicial

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proceeding or arbitration commenced pursuant to this Section 10, the Company will have the burden of proving that Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be and the Company may not refer to or introduce into evidence any determination pursuant to Section 8(c) of this Agreement adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 10, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 7 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(c) If a determination has been made pursuant to Section 8(c) that Indemnitee is entitled to indemnification hereunder, the Company will be bound by that determination in any judicial proceeding or arbitration commenced pursuant to this Section 10, absent (i) a misstatement by Indemnitee of a material fact, or an omission by Indemnitee of a material fact necessary to make Indemnitee's statements not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) If Indemnitee, pursuant to this Section 10, seeks a judicial adjudication of or an award in arbitration to enforce his rights under, or to recover damages for breach of, this Agreement, Indemnitee will be entitled to recover from the Company, and will be indemnified by the Company against, any

and all expenses (of the types described in the definition of Expenses in Section 18) actually and reasonably incurred by him in that judicial adjudication or arbitration, but only if he prevails therein. If it is determined in that judicial adjudication or arbitration that Indemnatee is entitled to receive part of, but not all, the indemnification or advancement of expenses sought, the Expenses incurred by Indemnatee in connection with that judicial adjudication or arbitration will be appropriately prorated between those in respect of which this Section 10(d) entitles Indemnatee to indemnification and those Indemnatee must bear.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 10 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(f) The Company shall indemnify Indemnatee to the fullest extent permitted by law against all Expenses and, if requested by Indemnatee, shall (within ten (10) days after the Company's receipt of such written request) advance such Expenses to Indemnatee, which are incurred by Indemnatee in connection with any judicial proceeding or arbitration brought by Indemnatee for (i) indemnification or advances of Expenses by the Company under this Agreement or any other agreement or provision of the Company's Certificate of Incorporation or Bylaws now or hereafter in effect or (ii) recovery or advances under any insurance policy maintained by any person for the benefit of Indemnatee, regardless of whether Indemnatee ultimately is determined to be entitled to such indemnification, advance or insurance recovery, as the case may be.

Section 11. Non-exclusivity; Survival of Rights; Insurance; Subrogation. (a) The rights to indemnification and advancement of Expenses this Agreement provides are not and will not be deemed exclusive of any other rights to which Indemnatee may at any time be entitled under

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applicable law, the Company's Certificate of Incorporation, the Company's Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or termination of this Agreement or any provision hereof will limit or restrict any right of Indemnatee hereunder in respect of any action Indemnatee has taken or omitted in his Corporate Status prior to that amendment, alteration or termination. To the extent that a change in Delaware law (whether by statute or judicial decision) permits greater indemnification by agreement than would be afforded currently under this Agreement, it is the intent and agreement of the parties hereto that Indemnatee will enjoy by this Agreement the greater benefits that change affords. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall 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 right or remedy.

(b) If the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managing members, employees, agents or fiduciaries of the Company or of any other Enterprise that any such person serves at the request of the Company, Indemnatee will be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, managing member, employee, agent or fiduciary under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding as to which Indemnatee is a party or a participant (as a witness or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnatee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) The Company will not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or for which advancement is provided hereunder) hereunder if and to the extent that Indemnatee has otherwise actually received that payment or obtained the entire benefit therefrom under any

insurance policy, contract, agreement or otherwise.

(d) If the Company makes any payment hereunder, it will be subrogated to the extent of that payment to all the rights of recovery of Indemnitee, who will execute all papers required and take all action necessary to secure those rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce those rights.

(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee with respect to Indemnitee's service at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise will be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from that other Enterprise.

Section 12. Duration of Agreement. This Agreement will continue until and terminate on the later of: (i) 10 years after the date that Indemnitee has ceased to serve as a director or officer of the Company or as a director, officer, trustee, partner, managing partner, employee,

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agent or fiduciary of any other Enterprise that Indemnitee served on behalf of the Company at the request of the Company; or (ii) one year after the final termination of any Proceeding (including any rights of appeal thereto) then pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnitee pursuant to Section 10 relating thereto including any rights of appeal of any Section 10 Proceeding. This Agreement will be binding on the Company and its successors and assigns and will inure to the benefit of Indemnitee and his spouse (if Indemnitee resides in Texas or another community property state), heirs, executors and administrators.

Section 13. Severability. If any provision or provisions of this Agreement is or are invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions hereof (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will not in any way be affected or impaired thereby; (ii) such provision or provisions will be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (iii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will be construed so as to give effect to the intent manifested thereby.

Section 14. Exception to Right of Indemnification or Advancement of Expenses. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnitee:

(a) for which payment has actually been received by or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount actually received under any insurance policy or other indemnity provision; or

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law; or

(c) except as otherwise provided in Sections 10(d) - (f) hereof, prior to a Change in Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board of Directors of the Company authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

Section 15. Enforcement and Binding Effect.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to

as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

Section 16. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed to be an original but all of which together will constitute one and the same agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 17. Headings. The headings of the Sections hereof are inserted for convenience only and do not and will not be deemed to constitute part of this Agreement or to affect the construction thereof.

Section 18. Definitions. For purposes of this Agreement:

"Acquiring Person" means any Person who or which, together with all its Affiliates and Associates, is or are the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding, but does not include any Exempt Person; provided, however, that a Person will not be or become an Acquiring Person if that Person, together with its Affiliates and Associates, becomes the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding solely as a result of a reduction in the number of shares of Common Stock outstanding which results from the Company's direct or indirect repurchase of Common Stock, unless and until such time as that Person or any Affiliate or Associate of that Person purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person, unless, in either such case, that Person, together with all its Affiliates and Associates, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

Notwithstanding anything in this definition of "Acquiring Person" to the contrary, so long as Main Street Merchant Partners II, L.P., a Delaware limited partnership ("Main Street"), together with all Affiliates and Associates thereof, remains the Beneficial Owner of 15% or more of the outstanding shares of Common Stock, Main Street and any Affiliate or Associate thereof will not be or become an Acquiring Person unless and until that Person, together with all Affiliates and Associates thereof, purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person

unless, in either such case, that Person, together with all Affiliates and Associates of that Person, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

"Affiliate" has the meaning Exchange Act Rule 12b-2 specifies.

"Associate" means, with reference to any Person, (i) any corporation, firm, partnership, limited liability company, association, unincorporated organization or other entity (other than the Company or a subsidiary of the Company) of which that Person is an officer or general partner (or officer or general partner of a general partner) or is, directly or indirectly, the Beneficial Owner of 10% or more of any class of its equity securities or

interests, (ii) any trust or other estate in which that Person has a substantial beneficial interest or for or of which that Person serves as trustee or in a similar fiduciary capacity and (iii) any relative or spouse of that Person, or any relative of that spouse, who has the same home as that Person.

A specified Person is deemed the "Beneficial Owner" of, and is deemed to "beneficially own," any securities:

(i) of which that Person or any of that Person's Affiliates or Associates, directly or indirectly, is the "beneficial owner" (as determined pursuant to Exchange Act Rule 13d-3) or otherwise has the right to vote or dispose of, including pursuant to any agreement, arrangement or understanding (whether or not in writing); provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," any security under this subparagraph (i) as a result of an agreement, arrangement or understanding to vote that security if that agreement, arrangement or understanding: (A) arises solely from a revocable proxy or consent given in response to a public (that is, not including a solicitation exempted by Exchange Act Rule 14a-2(b)(2)) proxy or consent solicitation made pursuant to, and in accordance with, the applicable provisions of the Exchange Act; and (B) is not then reportable by that Person on Exchange Act Schedule 13D (or any comparable or successor report);

(ii) which that Person or any of that Person's Affiliates or Associates, directly or indirectly, has the right or obligation to acquire (whether that right or obligation is exercisable or effective immediately or only after the passage of time or the occurrence of an event) pursuant to any agreement, arrangement or understanding (whether or not in writing) or on the exercise of conversion rights, exchange rights, other rights, warrants or options, or otherwise; provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," securities tendered pursuant to a tender or exchange offer made by that Person or any of that Person's Affiliates or Associates until those tendered securities are accepted for purchase or exchange; or

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(iii) which are beneficially owned, directly or indirectly, by (A) any other Person (or any Affiliate or Associate thereof) with which the specified Person or any of the specified Person's Affiliates or Associates has any agreement, arrangement or understanding (whether or not in writing) for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy or consent as described in the proviso to subparagraph (i) of this definition) or disposing of any voting securities of the Company or (B) any group (as Exchange Act Rule 13d-5(b) uses that term) of which that specified Person is a member;

provided, however, that nothing in this definition will cause a Person engaged in business as an underwriter of securities to be the "Beneficial Owner" of, or to "beneficially own," any securities that Person acquires through its participation in good faith in a firm commitment underwriting (including, without limitation, securities acquired pursuant to stabilizing transactions to facilitate a public offering in accordance with Exchange Act Regulation M or to cover overallocments created in connection with a public offering) until the expiration of 40 days after the date of that acquisition. For purposes of this definition, "voting" a security includes voting, granting a proxy, acting by consent, making a request or demand relating to corporate action (including, without limitation, calling a stockholder meeting) or otherwise giving an authorization (within the meaning of Section 14(a) of the Exchange Act) in respect of that security.

"Change of Control" means the occurrence of any of the following events that occurs after the IPO Closing Date: (i) any Person becomes an Acquiring Person; (ii) at any time the then Continuing Directors cease to constitute a majority of the members of the Board; (iii) a merger of the Company with or into, or a sale by the Company of its properties and assets substantially as an entirety to, another Person occurs and, immediately after that occurrence, any Person, other than an Exempt Person, together with all Affiliates and Associates of that Person (other than Exempt Persons), will be the Beneficial Owner of 15% or more of the total voting

power of the then outstanding Voting Shares of the Person surviving that transaction (in the case of a merger or consolidation) or the Person acquiring those properties and assets substantially as an entirety unless that Person, together with all its Affiliates and Associates, was the Beneficial Owner of 15% or more of the shares of Common Stock outstanding prior to that transaction; (iv) the approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets; or (v) occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

"Common Stock" means (i) the common stock, par value \$.001 per share, of the Company and (ii) any other class of capital stock of the Company which is (A) except for less voting rights, identical to the common stock clause (i) of this definition describes and (B) convertible into that common stock on a share for share basis on the occurrence of a Change of Control.

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"Continuing Director" means at any time any individual who then (i) is a member of the Board and was a member of the Board as of the IPO Closing Date or whose nomination for his first election, or that first election, to the Board following that date was recommended or approved by a majority of the then Continuing Directors (acting separately or as a part of any action taken by the Board or any committee thereof) and (ii) is not an Acquiring Person, an Affiliate or Associate of an Acquiring Person or a nominee or representative of an Acquiring Person or of any such Affiliate or Associate.

"Corporate Status" describes the status of a natural person who is or was a director, officer, trustee, general partner, managing member, employee or agent of the Company or of any other Enterprise, provided that person is or was serving in that capacity at the request of the Company. For purposes of this Agreement, "serving at the request of the Company" includes any service by Indemnitee which imposes duties on, or involves services by, Indemnitee with respect to any employee benefit plan or its participants or beneficiaries.

"Court of Chancery" means the Court of Chancery of the State of Delaware.

"Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee hereunder.

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

"Exempt Person" means: (i) (A) the Company, any subsidiary of the Company, any employee benefit plan of the Company or of any subsidiary of the Company and (B) any Person organized, appointed or established by the Company for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of the Company or any subsidiary of the Company; and (ii) Indemnitee, any Affiliate or Associate of Indemnitee or any group (as Exchange Act Rule 13d-5(b) uses that term) of which Indemnitee or any Affiliate or Associate of Indemnitee is a member.

"Expenses" include all attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding and all interest or finance charges attributable to any thereof. Should any payments by the Company under this Agreement be determined to be subject to any federal, state or local income or excise tax, "Expenses" also will include such amounts as are necessary to place Indemnitee in the same after-tax position (after giving effect to all applicable taxes) he would have been in had no such

tax been determined to apply to those payments. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its

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equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

"Independent Counsel" means a law firm, or a member of a law firm, that or who is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company, its affiliates or Indemnitee in any matter material to any such party; or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" does not include at any time any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"IPO" means the first time a registration statement the Company has filed under the Securities Act of 1933, as amended, and respecting an underwritten primary offering by the Company of shares of Common Stock becomes effective under that Act and the Company issues and sells any of the shares registered by that registration statement.

"IPO Closing Date" means the date on which the Company first receives payment for the shares of Common Stock it sells in the IPO.

"Person" means any natural person, sole proprietorship, corporation, partnership of any kind having a separate legal status, limited liability company, business trust, unincorporated organization or association, mutual company, joint stock company, joint venture, estate, trust, union or employee organization or governmental authority.

"Proceeding" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, in which Indemnitee was, is or will be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action taken by him or of any action on his part while acting as director or officer of the Company, or by reason of the fact that he is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

"Voting Shares" means: (i) in the case of any corporation, stock of that corporation of the class or classes having general voting power under ordinary circumstances to elect a majority of that corporation's board of directors; and (ii) in the case of any other entity, equity interests of the class or classes having general voting power under ordinary circumstances equivalent to the Voting Shares of a corporation.

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Section 19. Modification and Waiver. No supplement to or modification or amendment of this Agreement will be binding unless executed in writing by both parties hereto. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provisions hereof (whether or not similar), nor will any such waiver constitute a continuing waiver.

Section 20. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing on being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any

Proceeding or matter which may be subject to indemnification or advancement of Expenses hereunder; provided, however, a failure to give that notice will not deprive Indemnitee of his rights to indemnification and advancement of Expenses hereunder unless the Company is actually and materially prejudiced thereby.

Section 21. Notices. All notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered and received (i) if personally delivered or if delivered by telex, telegram, facsimile or courier service, when actually received by the party to whom the notice or communication is sent or (ii) if delivered by mail (whether actually received or not), at the close of business on the third business day in the city in which the Company's principal executive office is located next following the day when placed in the mail, postage prepaid, certified or registered, addressed to the appropriate party at the address of that party set forth below (or at such other address as that party may designate by written notice to the other party in accordance herewith):

(a) If to Indemnitee, to: Murray S. Simpson
5809 Devonshire Drive
Bethesda, Maryland 20816

with a copy (which will not constitute notice for the purposes of this Agreement) to such legal counsel, if any, as the Indemnitee may designate in writing; and

(b) If to the Company, to: U.S. Concrete, Inc.
1300 Post Oak Blvd., Suite 1220
Houston, Texas 77056
Attention: President

Section 22. Contribution. To the fullest extent applicable law permits, if the indemnification this Agreement provides is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, will contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all the circumstances of that Proceeding in order to reflect: (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving rise to that

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Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 23. Governing Law; Submission to Jurisdiction. This Agreement and the legal relations among the parties will be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration Indemnitee commences pursuant to Section 10(a), the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement will be brought only in the Court of Chancery and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Court of Chancery for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Court of Chancery and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Court of Chancery has been brought in an improper or otherwise inconvenient forum.

Section 24. Miscellaneous. Use of one gender herein includes usage of each other gender where appropriate. This Agreement uses the words "herein," "hereof" and words of similar import to refer to this Agreement as a whole and not to any provision of this Agreement, and the word "Section" refers to a Section of this Agreement, unless otherwise specified.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

ATTEST:

U.S. CONCRETE, INC.

By: /s/ Murray S. Simpson

Print Name: Murray S. Simpson

By: /s/ Eugene P. Martineau

Eugene P. Martineau

President and Chief Executive Officer

ATTEST:

INDEMNITEE:

By: /s/ Eugene P. Martineau

Print Name: Eugene P. Martineau

/s/ Murray S. Simpson

Murray S. Simpson

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AMENDED AND RESTATED INDEMNIFICATION AGREEMENT

THIS AMENDED AND RESTATED INDEMNIFICATION AGREEMENT (this "Agreement") is made as of August 17, 2000 by and between U.S. Concrete, Inc., a Delaware corporation (the "Company"), and Neil J. Vannucci ("Indemnitee"). This Agreement amends and restates in its entirety the Indemnification Agreement, dated as of May 28, 1999, between the Company and Indemnitee.

PRELIMINARY STATEMENT

Highly competent persons have become more reluctant to serve corporations as directors or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of corporations.

The Board of Directors of the Company (the "Board") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of that insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Board believes that, given current market conditions and trends, that insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises increasingly are being subjected to expensive and time-consuming litigation relating to, among other matters, matters that traditionally would have been brought only against the corporation or business enterprise itself. The uncertainties relating to liability insurance and to indemnification have increased the difficulty of attracting and retaining those persons, and the Board has determined that (i) this increased difficulty is detrimental to the best interests of the Company's stockholders and that the Company should act to assure those persons that there will be increased certainty of such protection in the future and (ii) it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify those persons to the fullest extent applicable law permits so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified.

The Bylaws of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the Delaware General Corporation Law ("DGCL"). The Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification.

This Agreement is a supplement to and in furtherance of the Bylaws of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

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The Indemnitee does not regard the protection available under the Company's Bylaws and insurance as adequate in the present circumstances, and may

not be willing to serve as an officer or director without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he be so indemnified.

NOW, THEREFORE, in consideration of the premises and the covenants herein, the parties to this Agreement agree as follows:

Section 1. Services by Indemnitee. Indemnitee agrees to serve as a director and/or officer of the Company and, as mutually agreed by Indemnitee and the Company, as a director, officer, trustee, general partner, managing member, employee, agent or fiduciary of other corporations, limited liability companies, partnerships, joint ventures, trusts or other enterprises (including, without limitation, employee benefit plans) (each, an "Enterprise"). Indemnitee may at any time and for any reason resign from any such position (subject to any other contractual obligation or any obligation applicable law imposes), in which event the Company will have no obligation under this Agreement to continue Indemnitee in that position. This Agreement is not and is not to be construed as an employment contract between the Company (or any of its subsidiaries) and Indemnitee. Indemnitee specifically acknowledges that Indemnitee's employment with the Company (or any of its subsidiaries), if any, is at will, and the Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Company (or any of its subsidiaries), other applicable formal severance policies duly adopted by the Board or, with respect to service as a director of the Company, by the Company's Certificate of Incorporation, Bylaws and the DGCL. The foregoing notwithstanding, subject to Section 12, this Agreement will continue in force after Indemnitee has ceased to serve as an officer or director of the Company and no longer serves at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise.

Section 2. Indemnification--General. The Company will indemnify, and advance Expenses (as hereinafter defined) to, Indemnitee (i) as this Agreement permits and (ii) (subject to the provisions hereof) to the fullest extent applicable law in effect on the date hereof and as amended from time to time permits. The rights the preceding sentence provide to Indemnitee will include, but will not be limited to, the rights the other Sections hereof set forth.

Section 3. Proceedings Other Than by or in the Right of the Company. Indemnitee will be entitled to the rights of indemnification this Section 3 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant in any threatened, pending or completed Proceeding (as hereinafter defined), other than a Proceeding by or in the right of the Company. Pursuant to this Section 3, the Company will indemnify Indemnitee against, and will hold Indemnitee harmless from and in respect of, all Expenses, judgments, penalties, fines (including excise taxes) and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of those Expenses, judgments, fines, penalties or amounts paid in settlement) actually and reasonably incurred by him or on his behalf in connection with that Proceeding or any claim, issue or matter therein, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and,

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with respect to any criminal Proceeding, had no reasonable cause to believe his conduct was unlawful.

Section 4. Proceedings by or in the Right of the Company. Indemnitee will be entitled to the rights of indemnification this Section 4 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant (as a witness or otherwise) in any threatened, pending or completed Proceeding brought by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, the Company will indemnify Indemnitee against, and will hold Indemnitee harmless from and in respect of, all Expenses actually and reasonably incurred by him or on his behalf in connection with that Proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that no indemnification against those Expenses will be made in respect of any claim, issue or matter in that Proceeding as to which Indemnitee has been adjudged to be liable to the Company unless and to the extent that the Court of Chancery, or the court in which that Proceeding has

been brought or is pending, determines that despite the adjudication of liability but in view of all the circumstances of the case, Indemnatee is fairly and reasonably entitled to indemnification.

Section 5. Indemnification for Expenses of a Party Who Is Wholly or Partly Successful. Notwithstanding any other provision hereof, to the extent that Indemnatee is, by reason of his Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in defense of any Proceeding, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnatee is not wholly successful in defense of any Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in that Proceeding, the Company will indemnify Indemnatee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in any Proceeding by dismissal, with or without prejudice, will be deemed to be a successful result as to that claim, issue or matter.

Section 6. Indemnification for Expenses as a Witness. Notwithstanding any other provision hereof, to the extent that Indemnatee is, by reason of his Corporate Status, a witness in any Proceeding to which Indemnatee is not a party, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

Section 7. Advancement of Expenses. The Company will advance all reasonable Expenses incurred by or on behalf of Indemnatee in connection with any Proceeding within 10 days after the Company receives a statement or statements from Indemnatee requesting such advance or advances from time to time, whether prior to or after final disposition of that Proceeding. Each such statement must reasonably evidence the Expenses incurred by or on behalf of Indemnatee and include or be preceded or accompanied by an undertaking by or on behalf of Indemnatee to repay any Expenses advanced if it ultimately is determined that Indemnatee is not entitled to be indemnified by the Company against those Expenses. The Company will accept any such undertaking without reference to the financial ability of Indemnatee to make repayment, and without regard to Indemnatee's ultimate entitlement to indemnification under other provisions of this Agreement.

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Section 8. Procedure for Determination of Entitlement to Indemnification. (a) Within sixty (60) days after the actual receipt by Indemnatee of notice that he or she is a party to or a participant (as a witness or otherwise) in any Proceeding, Indemnatee shall submit to the Company a written notice identifying the Proceeding. The omission by the Indemnatee to notify the Company will not relieve the Company from any liability which it may have to Indemnatee (i) otherwise than under this Agreement, and (ii) under this Agreement only to the extent the Company can establish that such omission to notify resulted in actual prejudice to the Company.

(b) Indemnatee shall thereafter deliver to the Company a written application to indemnify Indemnatee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnatee deems appropriate in his or her sole discretion. Following such a written application for indemnification by Indemnatee, the Indemnatee's entitlement to indemnification shall be determined according to Section 8(c) of this Agreement.

(c) On written request by Indemnatee for indemnification pursuant to Section 8(b), a determination, if applicable law requires, with respect to Indemnatee's entitlement thereto will be made in the specific case: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, or (ii) if so requested by the Indemnatee in his or her sole discretion by an Independent Counsel in a written opinion to the Board, a copy of which will be delivered to Indemnatee. If it is so determined that Indemnatee is entitled to indemnification hereunder, the Company will: (i) within 10 days after that determination pay to Indemnatee all amounts theretofore incurred by or on behalf of Indemnatee in respect of which Indemnatee is entitled to that indemnification by reason of that determination; and (ii) thereafter on written request by Indemnatee, pay to Indemnatee within 10 days after that request such additional amounts theretofore incurred by or on behalf of Indemnatee in respect of which Indemnatee is entitled to that

indemnification by reason of that determination. Indemnitee will cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification under this Agreement, including providing to such person, persons or entity on reasonable advance request any documentation or information which is (i) not privileged or otherwise protected from disclosure, (ii) reasonably available to Indemnitee and (iii) reasonably necessary to that determination. The Company will bear all costs and expenses (including attorneys' fees and disbursements) Indemnitee incurs in so cooperating (irrespective of the determination as to Indemnitee's entitlement to indemnification) and hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(d) If an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c), the Independent Counsel will be selected as this Section 8(d) provides. If a Change of Control has not occurred within two years prior to the date of Indemnitee's written request for indemnification pursuant to Section 8(a), the Board will select the Independent Counsel, and the Company will give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change of Control has occurred within two years prior to the date of that written request, Indemnitee will select the Independent Counsel (unless Indemnitee requests that the Board make the selection, in which event the preceding sentence will apply), and Indemnitee will give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within 10 days after the written notice of selection has been given, deliver to the Company or

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to Indemnitee, as the case may be, a written objection to the selection; provided, however, that any such objection may be asserted only on the ground that the Independent Counsel so selected is not an "Independent Counsel" as Section 17 defines that term, and the objection must set forth with particularity the factual basis for that assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If any such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until that objection is withdrawn or a court of competent jurisdiction has determined that objection is without merit. If (i) an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c) and (ii) within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 8(a), no Independent Counsel has been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery or other court of competent jurisdiction for resolution of any objection that has been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the petitioned court or by such other person as the petitioned court designates, and the person with respect to whom all objections are so resolved or the person so appointed will act as the Independent Counsel under Section 8(c). The Company will pay any and all reasonable fees and expenses the Independent Counsel incurs in connection with acting pursuant to Section 8(c), and the Company will pay all reasonable fees and expenses incident to the procedures this Section 8(d) sets forth, regardless of the manner in which the Independent Counsel is selected or appointed. If (i) the Independent Counsel selected or appointed pursuant to this Section 8(d) does not make any determination respecting Indemnitee's entitlement to indemnification hereunder within 45 days after the Company receives a written request therefor and (ii) any judicial proceeding or arbitration pursuant to Section 10(a) is then commenced, that Independent Counsel will be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 9. Presumptions and Effect of Certain Proceedings. (a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making that determination must presume that Indemnitee is entitled to indemnification hereunder if Indemnitee has submitted a request for indemnification in accordance with Section 8(a), and the Company will have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by

its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or on a plea of nolo contendere or its equivalent, will not (except as this Agreement otherwise expressly provides) of itself adversely affect the right of Indemnitee to indemnification hereunder or create a presumption that Indemnitee did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the

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Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his conduct was unlawful.

(c) Any action Indemnitee takes or omits to take in connection with any employee benefit plan will, if taken or omitted in good faith by Indemnitee and in a manner Indemnitee reasonably believed to be in the interest of the participants in or beneficiaries of that plan, be deemed to have been taken or omitted in a manner "not opposed to the best interests of the Company" for all purposes hereof.

(d) Reliance as Safe Harbor. For purposes of any determination

of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise. The provisions of this Section 9(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

(e) Actions of Others. The knowledge and/or actions, or failure to

act, of any other director, trustee, partner, managing member, fiduciary, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 10. Remedies of Indemnitee. (a) In the event that (i) a determination is made pursuant to Section 8 that Indemnitee is not entitled to indemnification hereunder, (ii) advancement of Expenses is not timely made pursuant to Section 7, (iii) no determination as to Indemnitee's entitlement to indemnification shall have been made pursuant to Section 8(c) of this Agreement hereunder, or that determination shall not have been made within 45 days after receipt by the Company of the request for that indemnification, (iv) payment of indemnification is not made pursuant to Section 5 or 6 within 10 days after receipt by the Company of a written request therefor or (v) payment of indemnification pursuant to Section 8(c) is not made timely, Indemnitee will be entitled to an adjudication from the Court of Chancery of his entitlement to that indemnification or advancement of Expenses. Alternatively, Indemnitee, at his option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee must commence any such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence that proceeding pursuant to this Section 10(a); provided, however, that this sentence will not apply in respect of a proceeding brought by Indemnitee to enforce his rights under Section 5.

(b) If a determination has been made pursuant to Section 8(c) that Indemnitee is not entitled to indemnification hereunder, any judicial proceeding or arbitration commenced pursuant to this Section 10 will be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee will not be prejudiced by reason of that adverse determination. In any judicial

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proceeding or arbitration commenced pursuant to this Section 10, the Company will have the burden of proving that Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be and the Company may not refer to or introduce into evidence any determination pursuant to Section 8(c) of this Agreement adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 10, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 7 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(c) If a determination has been made pursuant to Section 8(c) that Indemnitee is entitled to indemnification hereunder, the Company will be bound by that determination in any judicial proceeding or arbitration commenced pursuant to this Section 10, absent (i) a misstatement by Indemnitee of a material fact, or an omission by Indemnitee of a material fact necessary to make Indemnitee's statements not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) If Indemnitee, pursuant to this Section 10, seeks a judicial adjudication of or an award in arbitration to enforce his rights under, or to recover damages for breach of, this Agreement, Indemnitee will be entitled to recover from the Company, and will be indemnified by the Company against, any and all expenses (of the types described in the definition of Expenses in Section 18) actually and reasonably incurred by him in that judicial adjudication or arbitration, but only if he prevails therein. If it is determined in that judicial adjudication or arbitration that Indemnitee is entitled to receive part of, but not all, the indemnification or advancement of expenses sought, the Expenses incurred by Indemnitee in connection with that judicial adjudication or arbitration will be appropriately prorated between those in respect of which this Section 10(d) entitles Indemnitee to indemnification and those Indemnitee must bear.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 10 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(f) The Company shall indemnify Indemnitee to the fullest extent permitted by law against all Expenses and, if requested by Indemnitee, shall (within ten (10) days after the Company's receipt of such written request) advance such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any judicial proceeding or arbitration brought by Indemnitee for (i) indemnification or advances of Expenses by the Company under this Agreement or any other agreement or provision of the Company's Certificate of Incorporation or Bylaws now or hereafter in effect or (ii) recovery or advances under any insurance policy maintained by any person for the benefit of Indemnitee, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advance or insurance recovery, as the case may be.

Section 11. Non-exclusivity; Survival of Rights; Insurance; Subrogation. (a) The rights to indemnification and advancement of Expenses this Agreement provides are not and will not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under

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applicable law, the Company's Certificate of Incorporation, the Company's Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or termination of this Agreement or any provision hereof will limit or restrict any right of Indemnitee hereunder in respect of any action Indemnitee has taken or omitted in his Corporate Status prior to that amendment, alteration or termination. To the extent that a change in Delaware law (whether by statute or judicial decision) permits greater indemnification by agreement than would be afforded currently under this Agreement, it is the intent and agreement of the parties hereto that Indemnitee will enjoy by this Agreement the greater benefits that change affords. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall 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 right or remedy.

(b) If the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managing members, employees, agents or fiduciaries of the Company or of any other Enterprise that any such person serves at the request of the Company, Indemnatee will be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, managing member, employee, agent or fiduciary under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding as to which Indemnatee is a party or a participant (as a witness or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnatee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) The Company will not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or for which advancement is provided hereunder) hereunder if and to the extent that Indemnatee has otherwise actually received that payment or obtained the entire benefit therefrom under any insurance policy, contract, agreement or otherwise.

(d) If the Company makes any payment hereunder, it will be subrogated to the extent of that payment to all the rights of recovery of Indemnatee, who will execute all papers required and take all action necessary to secure those rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce those rights.

(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnatee with respect to Indemnatee's service at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise will be reduced by any amount Indemnatee has actually received as indemnification or advancement of Expenses from that other Enterprise.

Section 12. Duration of Agreement. This Agreement will continue until and terminate on the later of: (i) 10 years after the date that Indemnatee has ceased to serve as a director or officer of the Company or as a director, officer, trustee, partner, managing partner, employee,

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agent or fiduciary of any other Enterprise that Indemnatee served on behalf of the Company at the request of the Company; or (ii) one year after the final termination of any Proceeding (including any rights of appeal thereto) then pending in respect of which Indemnatee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnatee pursuant to Section 10 relating thereto including any rights of appeal of any Section 10 Proceeding. This Agreement will be binding on the Company and its successors and assigns and will inure to the benefit of Indemnatee and his spouse (if Indemnatee resides in Texas or another community property state), heirs, executors and administrators.

Section 13. Severability. If any provision or provisions of this Agreement is or are invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions hereof (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will not in any way be affected or impaired thereby; (ii) such provision or provisions will be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (iii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will be construed so as to give effect to the intent manifested thereby.

Section 14. Exception to Right of Indemnification or Advancement of Expenses. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnatee:

(a) for which payment has actually been received by or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount actually received under any insurance policy or other indemnity provision; or

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law; or

(c) except as otherwise provided in Sections 10(d) - (f) hereof, prior to a Change in Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board of Directors of the Company authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

Section 15. Enforcement and Binding Effect.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve

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as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

Section 16. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed to be an original but all of which together will constitute one and the same agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 17. Headings. The headings of the Sections hereof are inserted for convenience only and do not and will not be deemed to constitute part of this Agreement or to affect the construction thereof.

Section 18. Definitions. For purposes of this Agreement:

"Acquiring Person" means any Person who or which, together with all its Affiliates and Associates, is or are the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding, but does not include any Exempt Person; provided, however, that a Person will not be or become an Acquiring Person if that Person, together with its Affiliates and Associates, becomes the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding solely as a result of a reduction in the number of shares of Common Stock outstanding which results from the Company's direct or indirect repurchase of Common Stock, unless and until such time as that Person or any Affiliate or Associate of that Person purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person, unless, in either such case, that Person, together with all its Affiliates and Associates, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

Notwithstanding anything in this definition of "Acquiring Person" to the contrary, so long as Main Street Merchant Partners II, L.P., a Delaware limited partnership ("Main Street"), together with all Affiliates and Associates thereof, remains the Beneficial Owner of 15% or more of the outstanding shares of Common Stock, Main Street and any Affiliate or

Associate thereof will not be or become an Acquiring Person unless and until that Person, together with all Affiliates and Associates thereof, purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person

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unless, in either such case, that Person, together with all Affiliates and Associates of that Person, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

"Affiliate" has the meaning Exchange Act Rule 12b-2 specifies.

"Associate" means, with reference to any Person, (i) any corporation, firm, partnership, limited liability company, association, unincorporated organization or other entity (other than the Company or a subsidiary of the Company) of which that Person is an officer or general partner (or officer or general partner of a general partner) or is, directly or indirectly, the Beneficial Owner of 10% or more of any class of its equity securities or interests, (ii) any trust or other estate in which that Person has a substantial beneficial interest or for or of which that Person serves as trustee or in a similar fiduciary capacity and (iii) any relative or spouse of that Person, or any relative of that spouse, who has the same home as that Person.

A specified Person is deemed the "Beneficial Owner" of, and is deemed to "beneficially own," any securities:

(i) of which that Person or any of that Person's Affiliates or Associates, directly or indirectly, is the "beneficial owner" (as determined pursuant to Exchange Act Rule 13d-3) or otherwise has the right to vote or dispose of, including pursuant to any agreement, arrangement or understanding (whether or not in writing); provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," any security under this subparagraph (i) as a result of an agreement, arrangement or understanding to vote that security if that agreement, arrangement or understanding: (A) arises solely from a revocable proxy or consent given in response to a public (that is, not including a solicitation exempted by Exchange Act Rule 14a-2(b)(2)) proxy or consent solicitation made pursuant to, and in accordance with, the applicable provisions of the Exchange Act; and (B) is not then reportable by that Person on Exchange Act Schedule 13D (or any comparable or successor report);

(ii) which that Person or any of that Person's Affiliates or Associates, directly or indirectly, has the right or obligation to acquire (whether that right or obligation is exercisable or effective immediately or only after the passage of time or the occurrence of an event) pursuant to any agreement, arrangement or understanding (whether or not in writing) or on the exercise of conversion rights, exchange rights, other rights, warrants or options, or otherwise; provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," securities tendered pursuant to a tender or exchange offer made by that Person or any of that Person's Affiliates or Associates until those tendered securities are accepted for purchase or exchange; or

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(iii) which are beneficially owned, directly or indirectly, by (A) any other Person (or any Affiliate or Associate thereof) with which the specified Person or any of the specified Person's Affiliates or Associates has any agreement, arrangement or understanding (whether or not in writing) for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy or consent as described in the proviso to subparagraph (i) of this definition) or disposing of any voting securities of the Company or (B) any group (as Exchange Act Rule 13d-5(b) uses that term) of which that specified Person is a member;

provided, however, that nothing in this definition will cause a Person engaged in business as an underwriter of securities to be the "Beneficial Owner" of, or to "beneficially own," any securities that Person acquires through its participation in good faith in a firm commitment underwriting (including, without limitation, securities acquired pursuant to stabilizing transactions to facilitate a public offering in accordance with Exchange Act Regulation M or to cover over-allotments created in connection with a public offering) until the expiration of 40 days after the date of that acquisition. For purposes of this definition, "voting" a security includes voting, granting a proxy, acting by consent, making a request or demand relating to corporate action (including, without limitation, calling a stockholder meeting) or otherwise giving an authorization (within the meaning of Section 14(a) of the Exchange Act) in respect of that security.

"Change of Control" means the occurrence of any of the following events that occurs after the IPO Closing Date: (i) any Person becomes an Acquiring Person; (ii) at any time the then Continuing Directors cease to constitute a majority of the members of the Board; (iii) a merger of the Company with or into, or a sale by the Company of its properties and assets substantially as an entirety to, another Person occurs and, immediately after that occurrence, any Person, other than an Exempt Person, together with all Affiliates and Associates of that Person (other than Exempt Persons), will be the Beneficial Owner of 15% or more of the total voting power of the then outstanding Voting Shares of the Person surviving that transaction (in the case of a merger or consolidation) or the Person acquiring those properties and assets substantially as an entirety unless that Person, together with all its Affiliates and Associates, was the Beneficial Owner of 15% or more of the shares of Common Stock outstanding prior to that transaction; (iv) the approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets; or (v) occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

"Common Stock" means (i) the common stock, par value \$.001 per share, of the Company and (ii) any other class of capital stock of the Company which is (A) except for less voting rights, identical to the common stock clause (i) of this definition describes and (B) convertible into that common stock on a share for share basis on the occurrence of a Change of Control.

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"Continuing Director" means at any time any individual who then (i) is a member of the Board and was a member of the Board as of the IPO Closing Date or whose nomination for his first election, or that first election, to the Board following that date was recommended or approved by a majority of the then Continuing Directors (acting separately or as a part of any action taken by the Board or any committee thereof) and (ii) is not an Acquiring Person, an Affiliate or Associate of an Acquiring Person or a nominee or representative of an Acquiring Person or of any such Affiliate or Associate.

"Corporate Status" describes the status of a natural person who is or was a director, officer, trustee, general partner, managing member, employee or agent of the Company or of any other Enterprise, provided that person is or was serving in that capacity at the request of the Company. For purposes of this Agreement, "serving at the request of the Company" includes any service by Indemnitee which imposes duties on, or involves services by, Indemnitee with respect to any employee benefit plan or its participants or beneficiaries.

"Court of Chancery" means the Court of Chancery of the State of Delaware.

"Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee hereunder.

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

"Exempt Person" means: (i) (A) the Company, any subsidiary of the Company, any employee benefit plan of the Company or of any subsidiary of the Company and (B) any Person organized, appointed or established by the Company for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of the Company or any subsidiary of the Company; and (ii) Indemnitee, any Affiliate or Associate of Indemnitee or any group (as Exchange Act Rule 13d-5(b) uses that term) of which Indemnitee or any Affiliate or Associate of Indemnitee is a member.

"Expenses" include all attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding and all interest or finance charges attributable to any thereof. Should any payments by the Company under this Agreement be determined to be subject to any federal, state or local income or excise tax, "Expenses" also will include such amounts as are necessary to place Indemnitee in the same after-tax position (after giving effect to all applicable taxes) he would have been in had no such tax been determined to apply to those payments. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its

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equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

"Independent Counsel" means a law firm, or a member of a law firm, that or who is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company, its affiliates or Indemnitee in any matter material to any such party; or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" does not include at any time any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"IPO" means the first time a registration statement the Company has filed under the Securities Act of 1933, as amended, and respecting an underwritten primary offering by the Company of shares of Common Stock becomes effective under that Act and the Company issues and sells any of the shares registered by that registration statement.

"IPO Closing Date" means the date on which the Company first receives payment for the shares of Common Stock it sells in the IPO.

"Person" means any natural person, sole proprietorship, corporation, partnership of any kind having a separate legal status, limited liability company, business trust, unincorporated organization or association, mutual company, joint stock company, joint venture, estate, trust, union or employee organization or governmental authority.

"Proceeding" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, in which Indemnitee was, is or will be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action taken by him or of any action on his part while acting as director or officer of the Company, or by reason of the fact that he is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether

or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

"Voting Shares" means: (i) in the case of any corporation, stock of that corporation of the class or classes having general voting power under ordinary circumstances to elect a majority of that corporation's board of directors; and (ii) in the case of any other entity, equity interests of the class or classes having general voting power under ordinary circumstances equivalent to the Voting Shares of a corporation.

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Section 19. Modification and Waiver. No supplement to or modification or amendment of this Agreement will be binding unless executed in writing by both parties hereto. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provisions hereof (whether or not similar), nor will any such waiver constitute a continuing waiver.

Section 20. Notice by Indemnatee. Indemnatee agrees promptly to notify the Company in writing on being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses hereunder; provided, however, a failure to give that notice will not deprive Indemnatee of his rights to indemnification and advancement of Expenses hereunder unless the Company is actually and materially prejudiced thereby.

Section 21. Notices. All notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered and received (i) if personally delivered or if delivered by telex, telegram, facsimile or courier service, when actually received by the party to whom the notice or communication is sent or (ii) if delivered by mail (whether actually received or not), at the close of business on the third business day in the city in which the Company's principal executive office is located next following the day when placed in the mail, postage prepaid, certified or registered, addressed to the appropriate party at the address of that party set forth below (or at such other address as that party may designate by written notice to the other party in accordance herewith):

(a) If to Indemnatee, to: Neil J. Vannucci
1981 Eucalyptus Ave.
San Carlos, California 94070

with a copy (which will not constitute notice for the purposes of this Agreement) to such legal counsel, if any, as the Indemnatee may designate in writing; and

(b) If to the Company, to: U.S. Concrete, Inc.
1300 Post Oak Blvd., Suite 1220
Houston, Texas 77056
Attention: President

Section 22. Contribution. To the fullest extent applicable law permits, if the indemnification this Agreement provides is unavailable to Indemnatee for any reason whatsoever, the Company, in lieu of indemnifying Indemnatee, will contribute to the amount incurred by Indemnatee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all the circumstances of that Proceeding in order to reflect: (i) the relative benefits received by the Company and Indemnatee as a result of the event(s) and/or transaction(s) giving rise to that

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Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnatee in connection with such event(s) and/or transaction(s).

Section 23. Governing Law; Submission to Jurisdiction. This Agreement and the legal relations among the parties will be governed by, and construed and enforced in accordance with, the laws of the State of Delaware,

without regard to its conflict of laws rules. Except with respect to any arbitration Indemnitee commences pursuant to Section 10(a), the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement will be brought only in the Court of Chancery and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Court of Chancery for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Court of Chancery and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Court of Chancery has been brought in an improper or otherwise inconvenient forum.

Section 24. Miscellaneous. Use of one gender herein includes usage of each other gender where appropriate. This Agreement uses the words "herein," "hereof" and words of similar import to refer to this Agreement as a whole and not to any provision of this Agreement, and the word "Section" refers to a Section of this Agreement, unless otherwise specified.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

ATTEST: U.S. CONCRETE, INC.

By: /s/ Neil J. Vannucci By: /s/ Eugene P. Martineau

Print Name: Neil J. Vannucci Eugene P. Martineau

President and Chief Executive Officer

ATTEST: INDEMNITEE:

By: /s/ Eugene P. Martineau /s/ Neil J. Vannucci

Print Name: Eugene P. Martineau Neil J. Vannucci

AMENDED AND RESTATED INDEMNIFICATION AGREEMENT

THIS AMENDED AND RESTATED INDEMNIFICATION AGREEMENT (this "Agreement") is made as of August 17, 2000 by and between U.S. Concrete, Inc., a Delaware corporation (the "Company"), and Robert S. Walker ("Indemnitee"). This Agreement amends and restates in its entirety the Indemnification Agreement, dated as of May 28, 1999, between the Company and Indemnitee.

PRELIMINARY STATEMENT

Highly competent persons have become more reluctant to serve corporations as directors or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of corporations.

The Board of Directors of the Company (the "Board") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of that insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Board believes that, given current market conditions and trends, that insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises increasingly are being subjected to expensive and time-consuming litigation relating to, among other matters, matters that traditionally would have been brought only against the corporation or business enterprise itself. The uncertainties relating to liability insurance and to indemnification have increased the difficulty of attracting and retaining those persons, and the Board has determined that (i) this increased difficulty is detrimental to the best interests of the Company's stockholders and that the Company should act to

assure those persons that there will be increased certainty of such protection in the future and (ii) it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify those persons to the fullest extent applicable law permits so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified.

The Bylaws of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the Delaware General Corporation Law ("DGCL"). The Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification.

This Agreement is a supplement to and in furtherance of the Bylaws of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

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The Indemnitee does not regard the protection available under the Company's Bylaws and insurance as adequate in the present circumstances, and may not be willing to serve as an officer or director without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he be so indemnified.

NOW, THEREFORE, in consideration of the premises and the covenants herein, the parties to this Agreement agree as follows:

Section 1. Services by Indemnitee. Indemnitee agrees to serve as a director and/or officer of the Company and, as mutually agreed by Indemnitee and the Company, as a director, officer, trustee, general partner, managing member, employee, agent or fiduciary of other corporations, limited liability companies, partnerships, joint ventures, trusts or other enterprises (including, without limitation, employee benefit plans) (each, an "Enterprise"). Indemnitee may at any time and for any reason resign from any such position (subject to any other contractual obligation or any obligation applicable law imposes), in which event the Company will have no obligation under this Agreement to continue Indemnitee in that position. This Agreement is not and is not to be construed as an employment contract between the Company (or any of its subsidiaries) and Indemnitee. Indemnitee specifically acknowledges that Indemnitee's employment with the Company (or any of its subsidiaries), if any, is at will, and the Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Company (or any of its subsidiaries), other applicable formal severance policies duly adopted by the Board or, with respect to service as a director of the Company, by the Company's Certificate of Incorporation, Bylaws and the DGCL. The foregoing notwithstanding, subject to Section 12, this Agreement will continue in force after Indemnitee has ceased to serve as an officer or director of the Company and no longer serves at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise.

Section 2. Indemnification--General. The Company will indemnify, and advance Expenses (as hereinafter defined) to, Indemnitee (i) as this Agreement permits and (ii) (subject to the provisions hereof) to the fullest extent applicable law in effect on the date hereof and as amended from time to time permits. The rights the preceding sentence provide to Indemnitee will include, but will not be limited to, the rights the other Sections hereof set forth.

Section 3. Proceedings Other Than by or in the Right of the Company. Indemnitee will be entitled to the rights of indemnification this Section 3 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant in any threatened, pending or completed Proceeding (as hereinafter defined), other than a Proceeding by or in the right of the Company. Pursuant to this Section 3, the Company will indemnify Indemnitee against, and will hold Indemnitee harmless from and in respect of, all Expenses, judgments, penalties, fines (including excise taxes) and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of those Expenses, judgments, fines, penalties or amounts paid in settlement) actually and

reasonably incurred by him or on his behalf in connection with that Proceeding or any claim, issue or matter therein, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and,

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with respect to any criminal Proceeding, had no reasonable cause to believe his conduct was unlawful.

Section 4. Proceedings by or in the Right of the Company. Indemnatee will be entitled to the rights of indemnification this Section 4 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant (as a witness or otherwise) in any threatened, pending or completed Proceeding brought by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, the Company will indemnify Indemnatee against, and will hold Indemnatee harmless from and in respect of, all Expenses actually and reasonably incurred by him or on his behalf in connection with that Proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that no indemnification against those Expenses will be made in respect of any claim, issue or matter in that Proceeding as to which Indemnatee has been adjudged to be liable to the Company unless and to the extent that the Court of Chancery, or the court in which that Proceeding has been brought or is pending, determines that despite the adjudication of liability but in view of all the circumstances of the case, Indemnatee is fairly and reasonably entitled to indemnification.

Section 5. Indemnification for Expenses of a Party Who Is Wholly or Partly Successful. Notwithstanding any other provision hereof, to the extent that Indemnatee is, by reason of his Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in defense of any Proceeding, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnatee is not wholly successful in defense of any Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in that Proceeding, the Company will indemnify Indemnatee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in any Proceeding by dismissal, with or without prejudice, will be deemed to be a successful result as to that claim, issue or matter.

Section 6. Indemnification for Expenses as a Witness. Notwithstanding any other provision hereof, to the extent that Indemnatee is, by reason of his Corporate Status, a witness in any Proceeding to which Indemnatee is not a party, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

Section 7. Advancement of Expenses. The Company will advance all reasonable Expenses incurred by or on behalf of Indemnatee in connection with any Proceeding within 10 days after the Company receives a statement or statements from Indemnatee requesting such advance or advances from time to time, whether prior to or after final disposition of that Proceeding. Each such statement must reasonably evidence the Expenses incurred by or on behalf of Indemnatee and include or be preceded or accompanied by an undertaking by or on behalf of Indemnatee to repay any Expenses advanced if it ultimately is determined that Indemnatee is not entitled to be indemnified by the Company against those Expenses. The Company will accept any such undertaking without reference to the financial ability of Indemnatee to make repayment, and without regard to Indemnatee's ultimate entitlement to indemnification under other provisions of this Agreement.

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Section 8. Procedure for Determination of Entitlement to Indemnification. (a) Within sixty (60) days after the actual receipt by Indemnatee of notice that he or she is a party to or a participant (as a witness or otherwise) in any Proceeding, Indemnatee shall submit to the Company a written notice identifying the Proceeding. The omission by the Indemnatee to notify the Company will not relieve the Company from any liability which it may have to Indemnatee (i) otherwise than under this Agreement, and (ii) under this

Agreement only to the extent the Company can establish that such omission to notify resulted in actual prejudice to the Company.

(b) Indemnitee shall thereafter deliver to the Company a written application to indemnify Indemnitee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnitee deems appropriate in his or her sole discretion. Following such a written application for indemnification by Indemnitee, the Indemnitee's entitlement to indemnification shall be determined according to Section 8(c) of this Agreement.

(c) On written request by Indemnitee for indemnification pursuant to Section 8(b), a determination, if applicable law requires, with respect to Indemnitee's entitlement thereto will be made in the specific case: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, or (ii) if so requested by the Indemnitee in his or her sole discretion by an Independent Counsel in a written opinion to the Board, a copy of which will be delivered to Indemnitee. If it is so determined that Indemnitee is entitled to indemnification hereunder, the Company will: (i) within 10 days after that determination pay to Indemnitee all amounts theretofore incurred by or on behalf of Indemnitee in respect of which Indemnitee is entitled to that indemnification by reason of that determination; and (ii) thereafter on written request by Indemnitee, pay to Indemnitee within 10 days after that request such additional amounts theretofore incurred by or on behalf of Indemnitee in respect of which Indemnitee is entitled to that indemnification by reason of that determination. Indemnitee will cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification under this Agreement, including providing to such person, persons or entity on reasonable advance request any documentation or information which is (i) not privileged or otherwise protected from disclosure, (ii) reasonably available to Indemnitee and (iii) reasonably necessary to that determination. The Company will bear all costs and expenses (including attorneys' fees and disbursements) Indemnitee incurs in so cooperating (irrespective of the determination as to Indemnitee's entitlement to indemnification) and hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(d) If an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c), the Independent Counsel will be selected as this Section 8(d) provides. If a Change of Control has not occurred within two years prior to the date of Indemnitee's written request for indemnification pursuant to Section 8(a), the Board will select the Independent Counsel, and the Company will give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change of Control has occurred within two years prior to the date of that written request, Indemnitee will select the Independent Counsel (unless Indemnitee requests that the Board make the selection, in which event the preceding sentence will apply), and Indemnitee will give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within 10 days after the written notice of selection has been given, deliver to the Company or

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to Indemnitee, as the case may be, a written objection to the selection; provided, however, that any such objection may be asserted only on the ground that the Independent Counsel so selected is not an "Independent Counsel" as Section 17 defines that term, and the objection must set forth with particularity the factual basis for that assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If any such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until that objection is withdrawn or a court of competent jurisdiction has determined that objection is without merit. If (i) an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c) and (ii) within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 8(a), no Independent Counsel has been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery or other court of competent jurisdiction for resolution of any objection that has been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the petitioned court or by such other person as the petitioned court designates, and the person with respect to whom all objections are so resolved or the person so appointed will act as the Independent Counsel under Section

8(c). The Company will pay any and all reasonable fees and expenses the Independent Counsel incurs in connection with acting pursuant to Section 8(c), and the Company will pay all reasonable fees and expenses incident to the procedures this Section 8(d) sets forth, regardless of the manner in which the Independent Counsel is selected or appointed. If (i) the Independent Counsel selected or appointed pursuant to this Section 8(d) does not make any determination respecting Indemnitee's entitlement to indemnification hereunder within 45 days after the Company receives a written request therefor and (ii) any judicial proceeding or arbitration pursuant to Section 10(a) is then commenced, that Independent Counsel will be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 9. Presumptions and Effect of Certain Proceedings. (a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making that determination must presume that Indemnitee is entitled to indemnification hereunder if Indemnitee has submitted a request for indemnification in accordance with Section 8(a), and the Company will have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or on a plea of nolo contendere or its equivalent, will not (except as this Agreement otherwise expressly provides) of itself adversely affect the right of Indemnitee to indemnification hereunder or create a presumption that Indemnitee did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the

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Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his conduct was unlawful.

(c) Any action Indemnitee takes or omits to take in connection with any employee benefit plan will, if taken or omitted in good faith by Indemnitee and in a manner Indemnitee reasonably believed to be in the interest of the participants in or beneficiaries of that plan, be deemed to have been taken or omitted in a manner "not opposed to the best interests of the Company" for all purposes hereof.

(d) Reliance as Safe Harbor. For purposes of any determination

of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise. The provisions of this Section 9(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

(e) Actions of Others. The knowledge and/or actions, or failure to

act, of any other director, trustee, partner, managing member, fiduciary, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 10. Remedies of Indemnitee. (a) In the event that (i) a determination is made pursuant to Section 8 that Indemnitee is not entitled to indemnification hereunder, (ii) advancement of Expenses is not timely made pursuant to Section 7, (iii) no determination as to Indemnitee's entitlement to indemnification shall have been made pursuant to Section 8(c) of this Agreement

hereunder, or that determination shall not have been made within 45 days after receipt by the Company of the request for that indemnification, (iv) payment of indemnification is not made pursuant to Section 5 or 6 within 10 days after receipt by the Company of a written request therefor or (v) payment of indemnification pursuant to Section 8(c) is not made timely, Indemnitee will be entitled to an adjudication from the Court of Chancery of his entitlement to that indemnification or advancement of Expenses. Alternatively, Indemnitee, at his option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee must commence any such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence that proceeding pursuant to this Section 10(a); provided, however, that this sentence will not apply in respect of a proceeding brought by Indemnitee to enforce his rights under Section 5.

(b) If a determination has been made pursuant to Section 8(c) that Indemnitee is not entitled to indemnification hereunder, any judicial proceeding or arbitration commenced pursuant to this Section 10 will be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee will not be prejudiced by reason of that adverse determination. In any judicial

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proceeding or arbitration commenced pursuant to this Section 10, the Company will have the burden of proving that Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be and the Company may not refer to or introduce into evidence any determination pursuant to Section 8(c) of this Agreement adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 10, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 7 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(c) If a determination has been made pursuant to Section 8(c) that Indemnitee is entitled to indemnification hereunder, the Company will be bound by that determination in any judicial proceeding or arbitration commenced pursuant to this Section 10, absent (i) a misstatement by Indemnitee of a material fact, or an omission by Indemnitee of a material fact necessary to make Indemnitee's statements not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) If Indemnitee, pursuant to this Section 10, seeks a judicial adjudication of or an award in arbitration to enforce his rights under, or to recover damages for breach of, this Agreement, Indemnitee will be entitled to recover from the Company, and will be indemnified by the Company against, any and all expenses (of the types described in the definition of Expenses in Section 18) actually and reasonably incurred by him in that judicial adjudication or arbitration, but only if he prevails therein. If it is determined in that judicial adjudication or arbitration that Indemnitee is entitled to receive part of, but not all, the indemnification or advancement of expenses sought, the Expenses incurred by Indemnitee in connection with that judicial adjudication or arbitration will be appropriately prorated between those in respect of which this Section 10(d) entitles Indemnitee to indemnification and those Indemnitee must bear.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 10 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(f) The Company shall indemnify Indemnitee to the fullest extent permitted by law against all Expenses and, if requested by Indemnitee, shall (within ten (10) days after the Company's receipt of such written request) advance such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any judicial proceeding or arbitration brought by Indemnitee for (i) indemnification or advances of Expenses by the Company under this Agreement or any other agreement or provision of the Company's Certificate of Incorporation or Bylaws now or hereafter in effect or (ii) recovery or advances under any insurance policy maintained by any person for the benefit of Indemnitee, regardless of whether Indemnitee ultimately is determined to be

entitled to such indemnification, advance or insurance recovery, as the case may be.

Section 11. Non-exclusivity; Survival of Rights; Insurance; Subrogation. (a) The rights to indemnification and advancement of Expenses this Agreement provides are not and will not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under

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applicable law, the Company's Certificate of Incorporation, the Company's Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or termination of this Agreement or any provision hereof will limit or restrict any right of Indemnitee hereunder in respect of any action Indemnitee has taken or omitted in his Corporate Status prior to that amendment, alteration or termination. To the extent that a change in Delaware law (whether by statute or judicial decision) permits greater indemnification by agreement than would be afforded currently under this Agreement, it is the intent and agreement of the parties hereto that Indemnitee will enjoy by this Agreement the greater benefits that change affords. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall 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 right or remedy.

(b) If the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managing members, employees, agents or fiduciaries of the Company or of any other Enterprise that any such person serves at the request of the Company, Indemnitee will be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, managing member, employee, agent or fiduciary under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) The Company will not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or for which advancement is provided hereunder) hereunder if and to the extent that Indemnitee has otherwise actually received that payment or obtained the entire benefit therefrom under any insurance policy, contract, agreement or otherwise.

(d) If the Company makes any payment hereunder, it will be subrogated to the extent of that payment to all the rights of recovery of Indemnitee, who will execute all papers required and take all action necessary to secure those rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce those rights.

(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee with respect to Indemnitee's service at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise will be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from that other Enterprise.

Section 12. Duration of Agreement. This Agreement will continue until and terminate on the later of: (i) 10 years after the date that Indemnitee has ceased to serve as a director or officer of the Company or as a director, officer, trustee, partner, managing partner, employee,

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agent or fiduciary of any other Enterprise that Indemnitee served on behalf of the Company at the request of the Company; or (ii) one year after the final termination of any Proceeding (including any rights of appeal thereto) then pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnitee

pursuant to Section 10 relating thereto including any rights of appeal of any Section 10 Proceeding. This Agreement will be binding on the Company and its successors and assigns and will inure to the benefit of Indemnitee and his spouse (if Indemnitee resides in Texas or another community property state), heirs, executors and administrators.

Section 13. Severability. If any provision or provisions of this Agreement is or are invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions hereof (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will not in any way be affected or impaired thereby; (ii) such provision or provisions will be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (iii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will be construed so as to give effect to the intent manifested thereby.

Section 14. Exception to Right of Indemnification or Advancement of Expenses. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnitee:

(a) for which payment has actually been received by or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount actually received under any insurance policy or other indemnity provision; or

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law; or

(c) except as otherwise provided in Sections 10(d) - (f) hereof, prior to a Change in Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board of Directors of the Company authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

Section 15. Enforcement and Binding Effect.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve

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as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

Section 16. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed to be an original but all of which together will constitute one and the same agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 17. Headings. The headings of the Sections hereof are inserted for convenience only and do not and will not be deemed to constitute part of this Agreement or to affect the construction thereof.

Section 18. Definitions. For purposes of this Agreement:

"Acquiring Person" means any Person who or which, together with all its Affiliates and Associates, is or are the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding, but does not include any Exempt Person; provided, however, that a Person will not be or become an Acquiring Person if that Person, together with its Affiliates and Associates, becomes the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding solely as a result of a reduction in the number of shares of Common Stock outstanding which results from the Company's direct or indirect repurchase of Common Stock, unless and until such time as that Person or any Affiliate or Associate of that Person purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person, unless, in either such case, that Person, together with all its Affiliates and Associates, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

Notwithstanding anything in this definition of "Acquiring Person" to the contrary, so long as Main Street Merchant Partners II, L.P., a Delaware limited partnership ("Main Street"), together with all Affiliates and Associates thereof, remains the Beneficial Owner of 15% or more of the outstanding shares of Common Stock, Main Street and any Affiliate or Associate thereof will not be or become an Acquiring Person unless and until that Person, together with all Affiliates and Associates thereof, purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person

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unless, in either such case, that Person, together with all Affiliates and Associates of that Person, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

"Affiliate" has the meaning Exchange Act Rule 12b-2 specifies.

"Associate" means, with reference to any Person, (i) any corporation, firm, partnership, limited liability company, association, unincorporated organization or other entity (other than the Company or a subsidiary of the Company) of which that Person is an officer or general partner (or officer or general partner of a general partner) or is, directly or indirectly, the Beneficial Owner of 10% or more of any class of its equity securities or interests, (ii) any trust or other estate in which that Person has a substantial beneficial interest or for or of which that Person serves as trustee or in a similar fiduciary capacity and (iii) any relative or spouse of that Person, or any relative of that spouse, who has the same home as that Person.

A specified Person is deemed the "Beneficial Owner" of, and is deemed to "beneficially own," any securities:

(i) of which that Person or any of that Person's Affiliates or Associates, directly or indirectly, is the "beneficial owner" (as determined pursuant to Exchange Act Rule 13d-3) or otherwise has the right to vote or dispose of, including pursuant to any agreement, arrangement or understanding (whether or not in writing); provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," any security under this subparagraph (i) as a result of an agreement, arrangement or understanding to vote that security if that agreement, arrangement or understanding: (A) arises solely from a revocable proxy or consent given in response to a public (that is, not including a solicitation exempted by Exchange Act Rule 14a-2(b)(2)) proxy or consent solicitation made pursuant to, and in accordance with, the applicable provisions of the Exchange Act; and (B) is not then reportable by that Person on Exchange Act Schedule 13D (or any comparable or successor report);

(ii) which that Person or any of that Person's Affiliates or Associates, directly or indirectly, has the right or obligation to

acquire (whether that right or obligation is exercisable or effective immediately or only after the passage of time or the occurrence of an event) pursuant to any agreement, arrangement or understanding (whether or not in writing) or on the exercise of conversion rights, exchange rights, other rights, warrants or options, or otherwise; provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," securities tendered pursuant to a tender or exchange offer made by that Person or any of that Person's Affiliates or Associates until those tendered securities are accepted for purchase or exchange; or

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(iii) which are beneficially owned, directly or indirectly, by (A) any other Person (or any Affiliate or Associate thereof) with which the specified Person or any of the specified Person's Affiliates or Associates has any agreement, arrangement or understanding (whether or not in writing) for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy or consent as described in the proviso to subparagraph (i) of this definition) or disposing of any voting securities of the Company or (B) any group (as Exchange Act Rule 13d-5(b) uses that term) of which that specified Person is a member;

provided, however, that nothing in this definition will cause a Person engaged in business as an underwriter of securities to be the "Beneficial Owner" of, or to "beneficially own," any securities that Person acquires through its participation in good faith in a firm commitment underwriting (including, without limitation, securities acquired pursuant to stabilizing transactions to facilitate a public offering in accordance with Exchange Act Regulation M or to cover overallocments created in connection with a public offering) until the expiration of 40 days after the date of that acquisition. For purposes of this definition, "voting" a security includes voting, granting a proxy, acting by consent, making a request or demand relating to corporate action (including, without limitation, calling a stockholder meeting) or otherwise giving an authorization (within the meaning of Section 14(a) of the Exchange Act) in respect of that security.

"Change of Control" means the occurrence of any of the following events that occurs after the IPO Closing Date: (i) any Person becomes an Acquiring Person; (ii) at any time the then Continuing Directors cease to constitute a majority of the members of the Board; (iii) a merger of the Company with or into, or a sale by the Company of its properties and assets substantially as an entirety to, another Person occurs and, immediately after that occurrence, any Person, other than an Exempt Person, together with all Affiliates and Associates of that Person (other than Exempt Persons), will be the Beneficial Owner of 15% or more of the total voting power of the then outstanding Voting Shares of the Person surviving that transaction (in the case of a merger or consolidation) or the Person acquiring those properties and assets substantially as an entirety unless that Person, together with all its Affiliates and Associates, was the Beneficial Owner of 15% or more of the shares of Common Stock outstanding prior to that transaction; (iv) the approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets; or (v) occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

"Common Stock" means (i) the common stock, par value \$.001 per share, of the Company and (ii) any other class of capital stock of the Company which is (A) except for less voting rights, identical to the common stock clause (i) of this definition describes and (B) convertible into that common stock on a share for share basis on the occurrence of a Change of Control.

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"Continuing Director" means at any time any individual who then (i) is a member of the Board and was a member of the Board as of the IPO Closing

Date or whose nomination for his first election, or that first election, to the Board following that date was recommended or approved by a majority of the then Continuing Directors (acting separately or as a part of any action taken by the Board or any committee thereof) and (ii) is not an Acquiring Person, an Affiliate or Associate of an Acquiring Person or a nominee or representative of an Acquiring Person or of any such Affiliate or Associate.

"Corporate Status" describes the status of a natural person who is or was a director, officer, trustee, general partner, managing member, employee or agent of the Company or of any other Enterprise, provided that person is or was serving in that capacity at the request of the Company. For purposes of this Agreement, "serving at the request of the Company" includes any service by Indemnitee which imposes duties on, or involves services by, Indemnitee with respect to any employee benefit plan or its participants or beneficiaries.

"Court of Chancery" means the Court of Chancery of the State of Delaware.

"Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee hereunder.

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

"Exempt Person" means: (i) (A) the Company, any subsidiary of the Company, any employee benefit plan of the Company or of any subsidiary of the Company and (B) any Person organized, appointed or established by the Company for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of the Company or any subsidiary of the Company; and (ii) Indemnitee, any Affiliate or Associate of Indemnitee or any group (as Exchange Act Rule 13d-5(b) uses that term) of which Indemnitee or any Affiliate or Associate of Indemnitee is a member.

"Expenses" include all attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding and all interest or finance charges attributable to any thereof. Should any payments by the Company under this Agreement be determined to be subject to any federal, state or local income or excise tax, "Expenses" also will include such amounts as are necessary to place Indemnitee in the same after-tax position (after giving effect to all applicable taxes) he would have been in had no such tax been determined to apply to those payments. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its

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equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

"Independent Counsel" means a law firm, or a member of a law firm, that or who is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company, its affiliates or Indemnitee in any matter material to any such party; or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" does not include at any time any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"IPO" means the first time a registration statement the Company has filed under the Securities Act of 1933, as amended, and respecting an underwritten primary offering by the Company of shares of Common Stock

becomes effective under that Act and the Company issues and sells any of the shares registered by that registration statement.

"IPO Closing Date" means the date on which the Company first receives payment for the shares of Common Stock it sells in the IPO.

"Person" means any natural person, sole proprietorship, corporation, partnership of any kind having a separate legal status, limited liability company, business trust, unincorporated organization or association, mutual company, joint stock company, joint venture, estate, trust, union or employee organization or governmental authority.

"Proceeding" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, in which Indemnitee was, is or will be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action taken by him or of any action on his part while acting as director or officer of the Company, or by reason of the fact that he is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

"Voting Shares" means: (i) in the case of any corporation, stock of that corporation of the class or classes having general voting power under ordinary circumstances to elect a majority of that corporation's board of directors; and (ii) in the case of any other entity, equity interests of the class or classes having general voting power under ordinary circumstances equivalent to the Voting Shares of a corporation.

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Section 19. Modification and Waiver. No supplement to or modification or amendment of this Agreement will be binding unless executed in writing by both parties hereto. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provisions hereof (whether or not similar), nor will any such waiver constitute a continuing waiver.

Section 20. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing on being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses hereunder; provided, however, a failure to give that notice will not deprive Indemnitee of his rights to indemnification and advancement of Expenses hereunder unless the Company is actually and materially prejudiced thereby.

Section 21. Notices. All notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered and received (i) if personally delivered or if delivered by telex, telegram, facsimile or courier service, when actually received by the party to whom the notice or communication is sent or (ii) if delivered by mail (whether actually received or not), at the close of business on the third business day in the city in which the Company's principal executive office is located next following the day when placed in the mail, postage prepaid, certified or registered, addressed to the appropriate party at the address of that party set forth below (or at such other address as that party may designate by written notice to the other party in accordance herewith):

(a) If to Indemnitee, to: Robert S. Walker
86 Red Birch Court
Danville, California 94506

with a copy (which will not constitute notice for the purposes of this Agreement) to such legal counsel, if any, as the Indemnitee may designate in writing; and

(b) If to the Company, to: U.S. Concrete, Inc.
1300 Post Oak Blvd., Suite 1220

Houston, Texas 77056
Attention: President

Section 22. Contribution. To the fullest extent applicable law permits, if the indemnification this Agreement provides is unavailable to Indemnatee for any reason whatsoever, the Company, in lieu of indemnifying Indemnatee, will contribute to the amount incurred by Indemnatee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all the circumstances of that Proceeding in order to reflect: (i) the relative benefits received by the Company and Indemnatee as a result of the event(s) and/or transaction(s) giving rise to that

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Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnatee in connection with such event(s) and/or transaction(s).

Section 23. Governing Law; Submission to Jurisdiction. This Agreement and the legal relations among the parties will be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration Indemnatee commences pursuant to Section 10(a), the Company and Indemnatee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement will be brought only in the Court of Chancery and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Court of Chancery for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Court of Chancery and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Court of Chancery has been brought in an improper or otherwise inconvenient forum.

Section 24. Miscellaneous. Use of one gender herein includes usage of each other gender where appropriate. This Agreement uses the words "herein," "hereof" and words of similar import to refer to this Agreement as a whole and not to any provision of this Agreement, and the word "Section" refers to a Section of this Agreement, unless otherwise specified.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

ATTEST: U.S. CONCRETE, INC.

By: /s/ Robert S. Walker By: /s/ Eugene P. Martineau

Print Name: Robert S. Walker Eugene P. Martineau

President and Chief Executive Officer

ATTEST: INDEMNITEE:

By: /s/ Eugene P. Martineau /s/ Robert S. Walker

Print Name: Eugene P. Martineau Robert S. Walker

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AMENDED AND RESTATED INDEMNIFICATION AGREEMENT

THIS AMENDED AND RESTATED INDEMNIFICATION AGREEMENT (this "Agreement") is made as of August 17, 2000 by and between U.S. Concrete, Inc., a Delaware corporation (the "Company"), and Donald Wayne ("Indemnatee"). This Agreement amends and restates in its entirety the Indemnification Agreement, dated as of May 28, 1999, between the Company and Indemnatee.

PRELIMINARY STATEMENT

Highly competent persons have become more reluctant to serve corporations as directors or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of corporations.

The Board of Directors of the Company (the "Board") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of that insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Board believes that, given current market conditions and trends, that insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises increasingly are being subjected to expensive and time-consuming litigation relating to, among other matters, matters that traditionally would have been brought only against the corporation or business enterprise itself. The uncertainties relating to liability insurance and to indemnification have increased the difficulty of attracting and retaining those persons, and the Board has determined that (i) this increased difficulty is detrimental to the best interests of the Company's stockholders and that the Company should act to assure those persons that there will be increased certainty of such protection in the future and (ii) it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify those persons to the fullest extent applicable law permits so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified.

The Bylaws of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the Delaware General Corporation Law ("DGCL"). The Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification.

This Agreement is a supplement to and in furtherance of the Bylaws of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

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The Indemnitee does not regard the protection available under the Company's Bylaws and insurance as adequate in the present circumstances, and may not be willing to serve as an officer or director without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he be so indemnified.

NOW, THEREFORE, in consideration of the premises and the covenants herein, the parties to this Agreement agree as follows:

Section 1. Services by Indemnitee. Indemnitee agrees to serve as a director and/or officer of the Company and, as mutually agreed by Indemnitee and the Company, as a director, officer, trustee, general partner, managing member, employee, agent or fiduciary of other corporations, limited liability companies, partnerships, joint ventures, trusts or other enterprises (including, without limitation, employee benefit plans) (each, an "Enterprise"). Indemnitee may at any time and for any reason resign from any such position (subject to any other contractual obligation or any obligation applicable law imposes), in which event the Company will have no obligation under this Agreement to continue Indemnitee in that position. This Agreement is not and is not to be construed as an employment contract between the Company (or any of its subsidiaries) and Indemnitee. Indemnitee specifically acknowledges that Indemnitee's employment with the Company (or any of its subsidiaries), if any, is at will, and the Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Company (or any of its subsidiaries), other applicable formal severance policies duly adopted by the Board or, with respect to service as a director of the Company, by the Company's Certificate of Incorporation, Bylaws and the DGCL. The foregoing notwithstanding, subject to Section 12, this

Agreement will continue in force after Indemnitee has ceased to serve as an officer or director of the Company and no longer serves at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise.

Section 2. Indemnification--General. The Company will indemnify, and advance Expenses (as hereinafter defined) to, Indemnitee (i) as this Agreement permits and (ii) (subject to the provisions hereof) to the fullest extent applicable law in effect on the date hereof and as amended from time to time permits. The rights the preceding sentence provide to Indemnitee will include, but will not be limited to, the rights the other Sections hereof set forth.

Section 3. Proceedings Other Than by or in the Right of the Company. Indemnitee will be entitled to the rights of indemnification this Section 3 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant in any threatened, pending or completed Proceeding (as hereinafter defined), other than a Proceeding by or in the right of the Company. Pursuant to this Section 3, the Company will indemnify Indemnitee against, and will hold Indemnitee harmless from and in respect of, all Expenses, judgments, penalties, fines (including excise taxes) and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of those Expenses, judgments, fines, penalties or amounts paid in settlement) actually and reasonably incurred by him or on his behalf in connection with that Proceeding or any claim, issue or matter therein, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and,

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with respect to any criminal Proceeding, had no reasonable cause to believe his conduct was unlawful.

Section 4. Proceedings by or in the Right of the Company. Indemnitee will be entitled to the rights of indemnification this Section 4 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant (as a witness or otherwise) in any threatened, pending or completed Proceeding brought by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, the Company will indemnify Indemnitee against, and will hold Indemnitee harmless from and in respect of, all Expenses actually and reasonably incurred by him or on his behalf in connection with that Proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that no indemnification against those Expenses will be made in respect of any claim, issue or matter in that Proceeding as to which Indemnitee has been adjudged to be liable to the Company unless and to the extent that the Court of Chancery, or the court in which that Proceeding has been brought or is pending, determines that despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification.

Section 5. Indemnification for Expenses of a Party Who Is Wholly or Partly Successful. Notwithstanding any other provision hereof, to the extent that Indemnitee is, by reason of his Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in defense of any Proceeding, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is not wholly successful in defense of any Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in that Proceeding, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in any Proceeding by dismissal, with or without prejudice, will be deemed to be a successful result as to that claim, issue or matter.

Section 6. Indemnification for Expenses as a Witness. Notwithstanding any other provision hereof, to the extent that Indemnitee is, by reason of his Corporate Status, a witness in any Proceeding to which Indemnitee is not a party, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

Section 7. Advancement of Expenses. The Company will advance all reasonable Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding within 10 days after the Company receives a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of that Proceeding. Each such statement must reasonably evidence the Expenses incurred by or on behalf of Indemnitee and include or be preceded or accompanied by an undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it ultimately is determined that Indemnitee is not entitled to be indemnified by the Company against those Expenses. The Company will accept any such undertaking without reference to the financial ability of Indemnitee to make repayment, and without regard to Indemnitee's ultimate entitlement to indemnification under other provisions of this Agreement.

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Section 8. Procedure for Determination of Entitlement to Indemnification. (a) Within sixty (60) days after the actual receipt by Indemnitee of notice that he or she is a party to or a participant (as a witness or otherwise) in any Proceeding, Indemnitee shall submit to the Company a written notice identifying the Proceeding. The omission by the Indemnitee to notify the Company will not relieve the Company from any liability which it may have to Indemnitee (i) otherwise than under this Agreement, and (ii) under this Agreement only to the extent the Company can establish that such omission to notify resulted in actual prejudice to the Company.

(b) Indemnitee shall thereafter deliver to the Company a written application to indemnify Indemnitee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnitee deems appropriate in his or her sole discretion. Following such a written application for indemnification by Indemnitee, the Indemnitee's entitlement to indemnification shall be determined according to Section 8(c) of this Agreement.

(c) On written request by Indemnitee for indemnification pursuant to Section 8(b), a determination, if applicable law requires, with respect to Indemnitee's entitlement thereto will be made in the specific case: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, or (ii) if so requested by the Indemnitee in his or her sole discretion by an Independent Counsel in a written opinion to the Board, a copy of which will be delivered to Indemnitee. If it is so determined that Indemnitee is entitled to indemnification hereunder, the Company will: (i) within 10 days after that determination pay to Indemnitee all amounts theretofore incurred by or on behalf of Indemnitee in respect of which Indemnitee is entitled to that indemnification by reason of that determination; and (ii) thereafter on written request by Indemnitee, pay to Indemnitee within 10 days after that request such additional amounts theretofore incurred by or on behalf of Indemnitee in respect of which Indemnitee is entitled to that indemnification by reason of that determination. Indemnitee will cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification under this Agreement, including providing to such person, persons or entity on reasonable advance request any documentation or information which is (i) not privileged or otherwise protected from disclosure, (ii) reasonably available to Indemnitee and (iii) reasonably necessary to that determination. The Company will bear all costs and expenses (including attorneys' fees and disbursements) Indemnitee incurs in so cooperating (irrespective of the determination as to Indemnitee's entitlement to indemnification) and hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(d) If an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c), the Independent Counsel will be selected as this Section 8(d) provides. If a Change of Control has not occurred within two years prior to the date of Indemnitee's written request for indemnification pursuant to Section 8(a), the Board will select the Independent Counsel, and the Company will give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change of Control has occurred within two years prior to the date of that written request, Indemnitee will select the Independent Counsel (unless Indemnitee requests that the Board make the selection, in which event the preceding sentence will apply), and Indemnitee will give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within 10 days after the written notice of selection has been given, deliver to the Company or

to Indemnitee, as the case may be, a written objection to the selection; provided, however, that any such objection may be asserted only on the ground that the Independent Counsel so selected is not an "Independent Counsel" as Section 17 defines that term, and the objection must set forth with particularity the factual basis for that assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If any such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until that objection is withdrawn or a court of competent jurisdiction has determined that objection is without merit. If (i) an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c) and (ii) within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 8(a), no Independent Counsel has been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery or other court of competent jurisdiction for resolution of any objection that has been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the petitioned court or by such other person as the petitioned court designates, and the person with respect to whom all objections are so resolved or the person so appointed will act as the Independent Counsel under Section 8(c). The Company will pay any and all reasonable fees and expenses the Independent Counsel incurs in connection with acting pursuant to Section 8(c), and the Company will pay all reasonable fees and expenses incident to the procedures this Section 8(d) sets forth, regardless of the manner in which the Independent Counsel is selected or appointed. If (i) the Independent Counsel selected or appointed pursuant to this Section 8(d) does not make any determination respecting Indemnitee's entitlement to indemnification hereunder within 45 days after the Company receives a written request therefor and (ii) any judicial proceeding or arbitration pursuant to Section 10(a) is then commenced, that Independent Counsel will be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 9. Presumptions and Effect of Certain Proceedings. (a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making that determination must presume that Indemnitee is entitled to indemnification hereunder if Indemnitee has submitted a request for indemnification in accordance with Section 8(a), and the Company will have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or on a plea of nolo contendere or its equivalent, will not (except as this Agreement otherwise expressly provides) of itself adversely affect the right of Indemnitee to indemnification hereunder or create a presumption that Indemnitee did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the

Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his conduct was unlawful.

(c) Any action Indemnitee takes or omits to take in connection with any employee benefit plan will, if taken or omitted in good faith by Indemnitee and in a manner Indemnitee reasonably believed to be in the interest of the participants in or beneficiaries of that plan, be deemed to have been taken or omitted in a manner "not opposed to the best interests of the Company" for all purposes hereof.

(d) Reliance as Safe Harbor. For purposes of any determination

of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise. The provisions of this Section 9(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

(e) Actions of Others. The knowledge and/or actions, or failure to -----
act, of any other director, trustee, partner, managing member, fiduciary, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 10. Remedies of Indemnitee. (a) In the event that (i) a determination is made pursuant to Section 8 that Indemnitee is not entitled to indemnification hereunder, (ii) advancement of Expenses is not timely made pursuant to Section 7, (iii) no determination as to Indemnitee's entitlement to indemnification shall have been made pursuant to Section 8(c) of this Agreement hereunder, or that determination shall not have been made within 45 days after receipt by the Company of the request for that indemnification, (iv) payment of indemnification is not made pursuant to Section 5 or 6 within 10 days after receipt by the Company of a written request therefor or (v) payment of indemnification pursuant to Section 8(c) is not made timely, Indemnitee will be entitled to an adjudication from the Court of Chancery of his entitlement to that indemnification or advancement of Expenses. Alternatively, Indemnitee, at his option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee must commence any such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence that proceeding pursuant to this Section 10(a); provided, however, that this sentence will not apply in respect of a proceeding brought by Indemnitee to enforce his rights under Section 5.

(b) If a determination has been made pursuant to Section 8(c) that Indemnitee is not entitled to indemnification hereunder, any judicial proceeding or arbitration commenced pursuant to this Section 10 will be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee will not be prejudiced by reason of that adverse determination. In any judicial

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proceeding or arbitration commenced pursuant to this Section 10, the Company will have the burden of proving that Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be and the Company may not refer to or introduce into evidence any determination pursuant to Section 8(c) of this Agreement adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 10, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 7 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(c) If a determination has been made pursuant to Section 8(c) that Indemnitee is entitled to indemnification hereunder, the Company will be bound by that determination in any judicial proceeding or arbitration commenced pursuant to this Section 10, absent (i) a misstatement by Indemnitee of a material fact, or an omission by Indemnitee of a material fact necessary to make Indemnitee's statements not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) If Indemnitee, pursuant to this Section 10, seeks a judicial adjudication of or an award in arbitration to enforce his rights under, or to recover damages for breach of, this Agreement, Indemnitee will be entitled to recover from the Company, and will be indemnified by the Company against, any and all expenses (of the types described in the definition of Expenses in Section 18) actually and reasonably incurred by him in that judicial

adjudication or arbitration, but only if he prevails therein. If it is determined in that judicial adjudication or arbitration that Indemnatee is entitled to receive part of, but not all, the indemnification or advancement of expenses sought, the Expenses incurred by Indemnatee in connection with that judicial adjudication or arbitration will be appropriately prorated between those in respect of which this Section 10(d) entitles Indemnatee to indemnification and those Indemnatee must bear.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 10 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(f) The Company shall indemnify Indemnatee to the fullest extent permitted by law against all Expenses and, if requested by Indemnatee, shall (within ten (10) days after the Company's receipt of such written request) advance such Expenses to Indemnatee, which are incurred by Indemnatee in connection with any judicial proceeding or arbitration brought by Indemnatee for (i) indemnification or advances of Expenses by the Company under this Agreement or any other agreement or provision of the Company's Certificate of Incorporation or Bylaws now or hereafter in effect or (ii) recovery or advances under any insurance policy maintained by any person for the benefit of Indemnatee, regardless of whether Indemnatee ultimately is determined to be entitled to such indemnification, advance or insurance recovery, as the case may be.

Section 11. Non-exclusivity; Survival of Rights; Insurance; Subrogation. (a) The rights to indemnification and advancement of Expenses this Agreement provides are not and will not be deemed exclusive of any other rights to which Indemnatee may at any time be entitled under

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applicable law, the Company's Certificate of Incorporation, the Company's Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or termination of this Agreement or any provision hereof will limit or restrict any right of Indemnatee hereunder in respect of any action Indemnatee has taken or omitted in his Corporate Status prior to that amendment, alteration or termination. To the extent that a change in Delaware law (whether by statute or judicial decision) permits greater indemnification by agreement than would be afforded currently under this Agreement, it is the intent and agreement of the parties hereto that Indemnatee will enjoy by this Agreement the greater benefits that change affords. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall 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 right or remedy.

(b) If the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managing members, employees, agents or fiduciaries of the Company or of any other Enterprise that any such person serves at the request of the Company, Indemnatee will be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, managing member, employee, agent or fiduciary under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding as to which Indemnatee is a party or a participant (as a witness or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnatee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) The Company will not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or for which advancement is provided hereunder) hereunder if and to the extent that Indemnatee has otherwise actually received that payment or obtained the entire benefit therefrom under any insurance policy, contract, agreement or otherwise.

(d) If the Company makes any payment hereunder, it will be subrogated

to the extent of that payment to all the rights of recovery of Indemnitee, who will execute all papers required and take all action necessary to secure those rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce those rights.

(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee with respect to Indemnitee's service at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise will be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from that other Enterprise.

Section 12. Duration of Agreement. This Agreement will continue until and terminate on the later of: (i) 10 years after the date that Indemnitee has ceased to serve as a director or officer of the Company or as a director, officer, trustee, partner, managing partner, employee,

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agent or fiduciary of any other Enterprise that Indemnitee served on behalf of the Company at the request of the Company; or (ii) one year after the final termination of any Proceeding (including any rights of appeal thereto) then pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnitee pursuant to Section 10 relating thereto including any rights of appeal of any Section 10 Proceeding. This Agreement will be binding on the Company and its successors and assigns and will inure to the benefit of Indemnitee and his spouse (if Indemnitee resides in Texas or another community property state), heirs, executors and administrators.

Section 13. Severability. If any provision or provisions of this Agreement is or are invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions hereof (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will not in any way be affected or impaired thereby; (ii) such provision or provisions will be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (iii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will be construed so as to give effect to the intent manifested thereby.

Section 14. Exception to Right of Indemnification or Advancement of Expenses. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnitee:

(a) for which payment has actually been received by or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount actually received under any insurance policy or other indemnity provision; or

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law; or

(c) except as otherwise provided in Sections 10(d) - (f) hereof, prior to a Change in Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board of Directors of the Company authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

Section 15. Enforcement and Binding Effect.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve

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as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

Section 16. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed to be an original but all of which together will constitute one and the same agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 17. Headings. The headings of the Sections hereof are inserted for convenience only and do not and will not be deemed to constitute part of this Agreement or to affect the construction thereof.

Section 18. Definitions. For purposes of this Agreement:

"Acquiring Person" means any Person who or which, together with all its Affiliates and Associates, is or are the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding, but does not include any Exempt Person; provided, however, that a Person will not be or become an Acquiring Person if that Person, together with its Affiliates and Associates, becomes the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding solely as a result of a reduction in the number of shares of Common Stock outstanding which results from the Company's direct or indirect repurchase of Common Stock, unless and until such time as that Person or any Affiliate or Associate of that Person purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person, unless, in either such case, that Person, together with all its Affiliates and Associates, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

Notwithstanding anything in this definition of "Acquiring Person" to the contrary, so long as Main Street Merchant Partners II, L.P., a Delaware limited partnership ("Main Street"), together with all Affiliates and Associates thereof, remains the Beneficial Owner of 15% or more of the outstanding shares of Common Stock, Main Street and any Affiliate or Associate thereof will not be or become an Acquiring Person unless and until that Person, together with all Affiliates and Associates thereof, purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person

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unless, in either such case, that Person, together with all Affiliates and Associates of that Person, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

"Affiliate" has the meaning Exchange Act Rule 12b-2 specifies.

"Associate" means, with reference to any Person, (i) any corporation, firm, partnership, limited liability company, association, unincorporated organization or other entity (other than the Company or a subsidiary of the Company) of which that Person is an officer or general partner (or officer or general partner of a general partner) or is, directly or indirectly, the Beneficial Owner of 10% or more of any class of its equity securities or interests, (ii) any trust or other estate in which that Person has a substantial beneficial interest or for or of which that Person serves as trustee or in a similar fiduciary capacity and (iii) any relative or spouse of that Person, or any relative of that spouse, who has the same home as

that Person.

A specified Person is deemed the "Beneficial Owner" of, and is deemed to "beneficially own," any securities:

(i) of which that Person or any of that Person's Affiliates or Associates, directly or indirectly, is the "beneficial owner" (as determined pursuant to Exchange Act Rule 13d-3) or otherwise has the right to vote or dispose of, including pursuant to any agreement, arrangement or understanding (whether or not in writing); provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," any security under this subparagraph (i) as a result of an agreement, arrangement or understanding to vote that security if that agreement, arrangement or understanding: (A) arises solely from a revocable proxy or consent given in response to a public (that is, not including a solicitation exempted by Exchange Act Rule 14a-2(b)(2)) proxy or consent solicitation made pursuant to, and in accordance with, the applicable provisions of the Exchange Act; and (B) is not then reportable by that Person on Exchange Act Schedule 13D (or any comparable or successor report);

(ii) which that Person or any of that Person's Affiliates or Associates, directly or indirectly, has the right or obligation to acquire (whether that right or obligation is exercisable or effective immediately or only after the passage of time or the occurrence of an event) pursuant to any agreement, arrangement or understanding (whether or not in writing) or on the exercise of conversion rights, exchange rights, other rights, warrants or options, or otherwise; provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," securities tendered pursuant to a tender or exchange offer made by that Person or any of that Person's Affiliates or Associates until those tendered securities are accepted for purchase or exchange; or

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(iii) which are beneficially owned, directly or indirectly, by (A) any other Person (or any Affiliate or Associate thereof) with which the specified Person or any of the specified Person's Affiliates or Associates has any agreement, arrangement or understanding (whether or not in writing) for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy or consent as described in the proviso to subparagraph (i) of this definition) or disposing of any voting securities of the Company or (B) any group (as Exchange Act Rule 13d-5(b) uses that term) of which that specified Person is a member;

provided, however, that nothing in this definition will cause a Person engaged in business as an underwriter of securities to be the "Beneficial Owner" of, or to "beneficially own," any securities that Person acquires through its participation in good faith in a firm commitment underwriting (including, without limitation, securities acquired pursuant to stabilizing transactions to facilitate a public offering in accordance with Exchange Act Regulation M or to cover overallocments created in connection with a public offering) until the expiration of 40 days after the date of that acquisition. For purposes of this definition, "voting" a security includes voting, granting a proxy, acting by consent, making a request or demand relating to corporate action (including, without limitation, calling a stockholder meeting) or otherwise giving an authorization (within the meaning of Section 14(a) of the Exchange Act) in respect of that security.

"Change of Control" means the occurrence of any of the following events that occurs after the IPO Closing Date: (i) any Person becomes an Acquiring Person; (ii) at any time the then Continuing Directors cease to constitute a majority of the members of the Board; (iii) a merger of the Company with or into, or a sale by the Company of its properties and assets substantially as an entirety to, another Person occurs and, immediately after that occurrence, any Person, other than an Exempt Person, together with all Affiliates and Associates of that Person (other than Exempt Persons), will be the Beneficial Owner of 15% or more of the total voting power of the then outstanding Voting Shares of the Person surviving that transaction (in the case of a merger or consolidation) or the Person acquiring those properties and assets substantially as an entirety unless that Person, together with all its Affiliates and Associates, was the

Beneficial Owner of 15% or more of the shares of Common Stock outstanding prior to that transaction; (iv) the approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets; or (v) occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

"Common Stock" means (i) the common stock, par value \$.001 per share, of the Company and (ii) any other class of capital stock of the Company which is (A) except for less voting rights, identical to the common stock clause (i) of this definition describes and (B) convertible into that common stock on a share for share basis on the occurrence of a Change of Control.

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"Continuing Director" means at any time any individual who then (i) is a member of the Board and was a member of the Board as of the IPO Closing Date or whose nomination for his first election, or that first election, to the Board following that date was recommended or approved by a majority of the then Continuing Directors (acting separately or as a part of any action taken by the Board or any committee thereof) and (ii) is not an Acquiring Person, an Affiliate or Associate of an Acquiring Person or a nominee or representative of an Acquiring Person or of any such Affiliate or Associate.

"Corporate Status" describes the status of a natural person who is or was a director, officer, trustee, general partner, managing member, employee or agent of the Company or of any other Enterprise, provided that person is or was serving in that capacity at the request of the Company. For purposes of this Agreement, "serving at the request of the Company" includes any service by Indemnatee which imposes duties on, or involves services by, Indemnatee with respect to any employee benefit plan or its participants or beneficiaries.

"Court of Chancery" means the Court of Chancery of the State of Delaware.

"Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnatee hereunder.

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

"Exempt Person" means: (i) (A) the Company, any subsidiary of the Company, any employee benefit plan of the Company or of any subsidiary of the Company and (B) any Person organized, appointed or established by the Company for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of the Company or any subsidiary of the Company; and (ii) Indemnatee, any Affiliate or Associate of Indemnatee or any group (as Exchange Act Rule 13d-5(b) uses that term) of which Indemnatee or any Affiliate or Associate of Indemnatee is a member.

"Expenses" include all attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding and all interest or finance charges attributable to any thereof. Should any payments by the Company under this Agreement be determined to be subject to any federal, state or local income or excise tax, "Expenses" also will include such amounts as are necessary to place Indemnatee in the same after-tax position (after giving effect to all applicable taxes) he would have been in had no such tax been determined to apply to those payments. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal

equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnatee or the amount of judgments or fines against Indemnatee.

"Independent Counsel" means a law firm, or a member of a law firm, that or who is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company, its affiliates or Indemnatee in any matter material to any such party; or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" does not include at any time any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnatee in an action to determine Indemnatee's rights under this Agreement.

"IPO" means the first time a registration statement the Company has filed under the Securities Act of 1933, as amended, and respecting an underwritten primary offering by the Company of shares of Common Stock becomes effective under that Act and the Company issues and sells any of the shares registered by that registration statement.

"IPO Closing Date" means the date on which the Company first receives payment for the shares of Common Stock it sells in the IPO.

"Person" means any natural person, sole proprietorship, corporation, partnership of any kind having a separate legal status, limited liability company, business trust, unincorporated organization or association, mutual company, joint stock company, joint venture, estate, trust, union or employee organization or governmental authority.

"Proceeding" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, in which Indemnatee was, is or will be involved as a party or otherwise by reason of the fact that Indemnatee is or was a director or officer of the Company, by reason of any action taken by him or of any action on his part while acting as director or officer of the Company, or by reason of the fact that he is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

"Voting Shares" means: (i) in the case of any corporation, stock of that corporation of the class or classes having general voting power under ordinary circumstances to elect a majority of that corporation's board of directors; and (ii) in the case of any other entity, equity interests of the class or classes having general voting power under ordinary circumstances equivalent to the Voting Shares of a corporation.

Section 19. Modification and Waiver. No supplement to or modification or amendment of this Agreement will be binding unless executed in writing by both parties hereto. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provisions hereof (whether or not similar), nor will any such waiver constitute a continuing waiver.

Section 20. Notice by Indemnatee. Indemnatee agrees promptly to notify the Company in writing on being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses hereunder; provided, however, a failure to give that notice will not deprive Indemnatee of his rights to indemnification and advancement of Expenses hereunder unless the Company is actually and materially prejudiced thereby.

Section 21. Notices. All notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered and received (i) if personally delivered or if delivered by telex, telegram, facsimile or courier service, when actually received by the party to whom the notice or communication is sent or (ii) if delivered by mail (whether actually received or not), at the close of business on the third business day in the city in which the Company's principal executive office is located next following the day when placed in the mail, postage prepaid, certified or registered, addressed to the appropriate party at the address of that party set forth below (or at such other address as that party may designate by written notice to the other party in accordance herewith):

(a) If to Indemnitee, to: Donald Wayne
3859 Tartan Lane
Houston, Texas 77025

with a copy (which will not constitute notice for the purposes of this Agreement) to such legal counsel, if any, as the Indemnitee may designate in writing; and

(b) If to the Company, to: U.S. Concrete, Inc.
1300 Post Oak Blvd., Suite 1220
Houston, Texas 77056
Attention: President

Section 22. Contribution. To the fullest extent applicable law permits, if the indemnification this Agreement provides is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, will contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all the circumstances of that Proceeding in order to reflect: (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving rise to that

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Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 23. Governing Law; Submission to Jurisdiction. This Agreement and the legal relations among the parties will be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration Indemnitee commences pursuant to Section 10(a), the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement will be brought only in the Court of Chancery and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Court of Chancery for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Court of Chancery and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Court of Chancery has been brought in an improper or otherwise inconvenient forum.

Section 24. Miscellaneous. Use of one gender herein includes usage of each other gender where appropriate. This Agreement uses the words "herein," "hereof" and words of similar import to refer to this Agreement as a whole and not to any provision of this Agreement, and the word "Section" refers to a Section of this Agreement, unless otherwise specified.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

ATTEST: U.S. CONCRETE, INC.

By: /s/ Donald Wayne

By: /s/ Eugene P. Martineau

Print Name: Donald Wayne

Eugene P. Martineau

ATTEST:

INDEMNITEE:

By: /s/ Eugene P. Martineau

/s/ Donald Wayne

Print Name: Eugene P. Martineau

Donald Wayne

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AMENDED AND RESTATED INDEMNIFICATION AGREEMENT

THIS AMENDED AND RESTATED INDEMNIFICATION AGREEMENT (this "Agreement") is made as of August 17, 2000 by and between U.S. Concrete, Inc., a Delaware corporation (the "Company"), and Charles W. Sommer ("Indemnitee"). This Agreement amends and restates in its entirety the Indemnification Agreement, dated as of May 28, 1999, between the Company and Indemnitee.

PRELIMINARY STATEMENT

Highly competent persons have become more reluctant to serve corporations as directors or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of corporations.

The Board of Directors of the Company (the "Board") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of that insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Board believes that, given current market conditions and trends, that insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises increasingly are being subjected to expensive and time-consuming litigation relating to, among other matters, matters that traditionally would have been brought only against the corporation or business enterprise itself. The uncertainties relating to liability insurance and to indemnification have increased the difficulty of attracting and retaining those persons, and the Board has determined that (i) this increased difficulty is detrimental to the best interests of the Company's stockholders and that the Company should act to assure those persons that there will be increased certainty of such protection in the future and (ii) it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify those persons to the fullest extent applicable law permits so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified.

The Bylaws of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the Delaware General Corporation Law ("DGCL"). The Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification.

This Agreement is a supplement to and in furtherance of the Bylaws of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

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The Indemnitee does not regard the protection available under the Company's Bylaws and insurance as adequate in the present circumstances, and may not be willing to serve as an officer or director without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on

behalf of the Company on the condition that he be so indemnified.

NOW, THEREFORE, in consideration of the premises and the covenants herein, the parties to this Agreement agree as follows:

Section 1. Services by Indemnitee. Indemnitee agrees to serve as a director and/or officer of the Company and, as mutually agreed by Indemnitee and the Company, as a director, officer, trustee, general partner, managing member, employee, agent or fiduciary of other corporations, limited liability companies, partnerships, joint ventures, trusts or other enterprises (including, without limitation, employee benefit plans) (each, an "Enterprise"). Indemnitee may at any time and for any reason resign from any such position (subject to any other contractual obligation or any obligation applicable law imposes), in which event the Company will have no obligation under this Agreement to continue Indemnitee in that position. This Agreement is not and is not to be construed as an employment contract between the Company (or any of its subsidiaries) and Indemnitee. Indemnitee specifically acknowledges that Indemnitee's employment with the Company (or any of its subsidiaries), if any, is at will, and the Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Company (or any of its subsidiaries), other applicable formal severance policies duly adopted by the Board or, with respect to service as a director of the Company, by the Company's Certificate of Incorporation, Bylaws and the DGCL. The foregoing notwithstanding, subject to Section 12, this Agreement will continue in force after Indemnitee has ceased to serve as an officer or director of the Company and no longer serves at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise.

Section 2. Indemnification--General. The Company will indemnify, and advance Expenses (as hereinafter defined) to, Indemnitee (i) as this Agreement permits and (ii) (subject to the provisions hereof) to the fullest extent applicable law in effect on the date hereof and as amended from time to time permits. The rights the preceding sentence provide to Indemnitee will include, but will not be limited to, the rights the other Sections hereof set forth.

Section 3. Proceedings Other Than by or in the Right of the Company. Indemnitee will be entitled to the rights of indemnification this Section 3 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant in any threatened, pending or completed Proceeding (as hereinafter defined), other than a Proceeding by or in the right of the Company. Pursuant to this Section 3, the Company will indemnify Indemnitee against, and will hold Indemnitee harmless from and in respect of, all Expenses, judgments, penalties, fines (including excise taxes) and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of those Expenses, judgments, fines, penalties or amounts paid in settlement) actually and reasonably incurred by him or on his behalf in connection with that Proceeding or any claim, issue or matter therein, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and,

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with respect to any criminal Proceeding, had no reasonable cause to believe his conduct was unlawful.

Section 4. Proceedings by or in the Right of the Company. Indemnitee will be entitled to the rights of indemnification this Section 4 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant (as a witness or otherwise) in any threatened, pending or completed Proceeding brought by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, the Company will indemnify Indemnitee against, and will hold Indemnitee harmless from and in respect of, all Expenses actually and reasonably incurred by him or on his behalf in connection with that Proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that no indemnification against those Expenses will be made in respect of any claim, issue or matter in that Proceeding as to which Indemnitee has been adjudged to be liable to the Company unless and to the extent that the Court of Chancery, or the court in which that Proceeding has been brought or is pending, determines that despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly

and reasonably entitled to indemnification.

Section 5. Indemnification for Expenses of a Party Who Is Wholly or Partly Successful. Notwithstanding any other provision hereof, to the extent that Indemnitee is, by reason of his Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in defense of any Proceeding, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is not wholly successful in defense of any Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in that Proceeding, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in any Proceeding by dismissal, with or without prejudice, will be deemed to be a successful result as to that claim, issue or matter.

Section 6. Indemnification for Expenses as a Witness. Notwithstanding any other provision hereof, to the extent that Indemnitee is, by reason of his Corporate Status, a witness in any Proceeding to which Indemnitee is not a party, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

Section 7. Advancement of Expenses. The Company will advance all reasonable Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding within 10 days after the Company receives a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of that Proceeding. Each such statement must reasonably evidence the Expenses incurred by or on behalf of Indemnitee and include or be preceded or accompanied by an undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it ultimately is determined that Indemnitee is not entitled to be indemnified by the Company against those Expenses. The Company will accept any such undertaking without reference to the financial ability of Indemnitee to make repayment, and without regard to Indemnitee's ultimate entitlement to indemnification under other provisions of this Agreement.

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Section 8. Procedure for Determination of Entitlement to Indemnification. (a) Within sixty (60) days after the actual receipt by Indemnitee of notice that he or she is a party to or a participant (as a witness or otherwise) in any Proceeding, Indemnitee shall submit to the Company a written notice identifying the Proceeding. The omission by the Indemnitee to notify the Company will not relieve the Company from any liability which it may have to Indemnitee (i) otherwise than under this Agreement, and (ii) under this Agreement only to the extent the Company can establish that such omission to notify resulted in actual prejudice to the Company.

(b) Indemnitee shall thereafter deliver to the Company a written application to indemnify Indemnitee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnitee deems appropriate in his or her sole discretion. Following such a written application for indemnification by Indemnitee, the Indemnitee's entitlement to indemnification shall be determined according to Section 8(c) of this Agreement.

(c) On written request by Indemnitee for indemnification pursuant to Section 8(b), a determination, if applicable law requires, with respect to Indemnitee's entitlement thereto will be made in the specific case: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, or (ii) if so requested by the Indemnitee in his or her sole discretion by an Independent Counsel in a written opinion to the Board, a copy of which will be delivered to Indemnitee. If it is so determined that Indemnitee is entitled to indemnification hereunder, the Company will: (i) within 10 days after that determination pay to Indemnitee all amounts theretofore incurred by or on behalf of Indemnitee in respect of which Indemnitee is entitled to that indemnification by reason of that determination; and (ii) thereafter on written request by Indemnitee, pay to Indemnitee within 10 days after that request such additional amounts theretofore incurred by or on behalf of Indemnitee in respect of which Indemnitee is entitled to that indemnification by reason of that determination. Indemnitee will cooperate with the person, persons or entity making the determination with respect to

Indemnitee's entitlement to indemnification under this Agreement, including providing to such person, persons or entity on reasonable advance request any documentation or information which is (i) not privileged or otherwise protected from disclosure, (ii) reasonably available to Indemnitee and (iii) reasonably necessary to that determination. The Company will bear all costs and expenses (including attorneys' fees and disbursements) Indemnitee incurs in so cooperating (irrespective of the determination as to Indemnitee's entitlement to indemnification) and hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(d) If an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c), the Independent Counsel will be selected as this Section 8(d) provides. If a Change of Control has not occurred within two years prior to the date of Indemnitee's written request for indemnification pursuant to Section 8(a), the Board will select the Independent Counsel, and the Company will give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change of Control has occurred within two years prior to the date of that written request, Indemnitee will select the Independent Counsel (unless Indemnitee requests that the Board make the selection, in which event the preceding sentence will apply), and Indemnitee will give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within 10 days after the written notice of selection has been given, deliver to the Company or

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to Indemnitee, as the case may be, a written objection to the selection; provided, however, that any such objection may be asserted only on the ground that the Independent Counsel so selected is not an "Independent Counsel" as Section 17 defines that term, and the objection must set forth with particularity the factual basis for that assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If any such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until that objection is withdrawn or a court of competent jurisdiction has determined that objection is without merit. If (i) an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c) and (ii) within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 8(a), no Independent Counsel has been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery or other court of competent jurisdiction for resolution of any objection that has been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the petitioned court or by such other person as the petitioned court designates, and the person with respect to whom all objections are so resolved or the person so appointed will act as the Independent Counsel under Section 8(c). The Company will pay any and all reasonable fees and expenses the Independent Counsel incurs in connection with acting pursuant to Section 8(c), and the Company will pay all reasonable fees and expenses incident to the procedures this Section 8(d) sets forth, regardless of the manner in which the Independent Counsel is selected or appointed. If (i) the Independent Counsel selected or appointed pursuant to this Section 8(d) does not make any determination respecting Indemnitee's entitlement to indemnification hereunder within 45 days after the Company receives a written request therefor and (ii) any judicial proceeding or arbitration pursuant to Section 10(a) is then commenced, that Independent Counsel will be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 9. Presumptions and Effect of Certain Proceedings. (a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making that determination must presume that Indemnitee is entitled to indemnification hereunder if Indemnitee has submitted a request for indemnification in accordance with Section 8(a), and the Company will have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a

presumption that Indemnitee has not met the applicable standard of conduct.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or on a plea of nolo contendere or its equivalent, will not (except as this Agreement otherwise expressly provides) of itself adversely affect the right of Indemnitee to indemnification hereunder or create a presumption that Indemnitee did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the

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Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his conduct was unlawful.

(c) Any action Indemnitee takes or omits to take in connection with any employee benefit plan will, if taken or omitted in good faith by Indemnitee and in a manner Indemnitee reasonably believed to be in the interest of the participants in or beneficiaries of that plan, be deemed to have been taken or omitted in a manner "not opposed to the best interests of the Company" for all purposes hereof.

(d) Reliance as Safe Harbor. For purposes of any determination

of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise. The provisions of this Section 9(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

(e) Actions of Others. The knowledge and/or actions, or failure

to act, of any other director, trustee, partner, managing member, fiduciary, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 10. Remedies of Indemnitee. (a) In the event that (i) a determination is made pursuant to Section 8 that Indemnitee is not entitled to indemnification hereunder, (ii) advancement of Expenses is not timely made pursuant to Section 7, (iii) no determination as to Indemnitee's entitlement to indemnification shall have been made pursuant to Section 8(c) of this Agreement hereunder, or that determination shall not have been made within 45 days after receipt by the Company of the request for that indemnification, (iv) payment of indemnification is not made pursuant to Section 5 or 6 within 10 days after receipt by the Company of a written request therefor or (v) payment of indemnification pursuant to Section 8(c) is not made timely, Indemnitee will be entitled to an adjudication from the Court of Chancery of his entitlement to that indemnification or advancement of Expenses. Alternatively, Indemnitee, at his option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee must commence any such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence that proceeding pursuant to this Section 10(a); provided, however, that this sentence will not apply in respect of a proceeding brought by Indemnitee to enforce his rights under Section 5.

(b) If a determination has been made pursuant to Section 8(c) that Indemnitee is not entitled to indemnification hereunder, any judicial proceeding or arbitration commenced pursuant to this Section 10 will be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee will not be prejudiced by reason of that adverse determination. In any judicial

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proceeding or arbitration commenced pursuant to this Section 10, the Company will have the burden of proving that Indemnitee is not entitled to

indemnification or advancement of Expenses, as the case may be and the Company may not refer to or introduce into evidence any determination pursuant to Section 8(c) of this Agreement adverse to Indemnatee for any purpose. If Indemnatee commences a judicial proceeding or arbitration pursuant to this Section 10, Indemnatee shall not be required to reimburse the Company for any advances pursuant to Section 7 until a final determination is made with respect to Indemnatee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(c) If a determination has been made pursuant to Section 8(c) that Indemnatee is entitled to indemnification hereunder, the Company will be bound by that determination in any judicial proceeding or arbitration commenced pursuant to this Section 10, absent (i) a misstatement by Indemnatee of a material fact, or an omission by Indemnatee of a material fact necessary to make Indemnatee's statements not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) If Indemnatee, pursuant to this Section 10, seeks a judicial adjudication of or an award in arbitration to enforce his rights under, or to recover damages for breach of, this Agreement, Indemnatee will be entitled to recover from the Company, and will be indemnified by the Company against, any and all expenses (of the types described in the definition of Expenses in Section 18) actually and reasonably incurred by him in that judicial adjudication or arbitration, but only if he prevails therein. If it is determined in that judicial adjudication or arbitration that Indemnatee is entitled to receive part of, but not all, the indemnification or advancement of expenses sought, the Expenses incurred by Indemnatee in connection with that judicial adjudication or arbitration will be appropriately prorated between those in respect of which this Section 10(d) entitles Indemnatee to indemnification and those Indemnatee must bear.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 10 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(f) The Company shall indemnify Indemnatee to the fullest extent permitted by law against all Expenses and, if requested by Indemnatee, shall (within ten (10) days after the Company's receipt of such written request) advance such Expenses to Indemnatee, which are incurred by Indemnatee in connection with any judicial proceeding or arbitration brought by Indemnatee for (i) indemnification or advances of Expenses by the Company under this Agreement or any other agreement or provision of the Company's Certificate of Incorporation or Bylaws now or hereafter in effect or (ii) recovery or advances under any insurance policy maintained by any person for the benefit of Indemnatee, regardless of whether Indemnatee ultimately is determined to be entitled to such indemnification, advance or insurance recovery, as the case may be.

Section 11. Non-exclusivity; Survival of Rights; Insurance; Subrogation. (a) The rights to indemnification and advancement of Expenses this Agreement provides are not and will not be deemed exclusive of any other rights to which Indemnatee may at any time be entitled under

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applicable law, the Company's Certificate of Incorporation, the Company's Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or termination of this Agreement or any provision hereof will limit or restrict any right of Indemnatee hereunder in respect of any action Indemnatee has taken or omitted in his Corporate Status prior to that amendment, alteration or termination. To the extent that a change in Delaware law (whether by statute or judicial decision) permits greater indemnification by agreement than would be afforded currently under this Agreement, it is the intent and agreement of the parties hereto that Indemnatee will enjoy by this Agreement the greater benefits that change affords. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall 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 right or remedy.

(b) If the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managing members, employees, agents or fiduciaries of the Company or of any other Enterprise that any such person serves at the request of the Company, Indemnatee will be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, managing member, employee, agent or fiduciary under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding as to which Indemnatee is a party or a participant (as a witness or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnatee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) The Company will not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or for which advancement is provided hereunder) hereunder if and to the extent that Indemnatee has otherwise actually received that payment or obtained the entire benefit therefrom under any insurance policy, contract, agreement or otherwise.

(d) If the Company makes any payment hereunder, it will be subrogated to the extent of that payment to all the rights of recovery of Indemnatee, who will execute all papers required and take all action necessary to secure those rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce those rights.

(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnatee with respect to Indemnatee's service at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise will be reduced by any amount Indemnatee has actually received as indemnification or advancement of Expenses from that other Enterprise.

Section 12. Duration of Agreement. This Agreement will continue until and terminate on the later of: (i) 10 years after the date that Indemnatee has ceased to serve as a director or officer of the Company or as a director, officer, trustee, partner, managing partner, employee,

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agent or fiduciary of any other Enterprise that Indemnatee served on behalf of the Company at the request of the Company; or (ii) one year after the final termination of any Proceeding (including any rights of appeal thereto) then pending in respect of which Indemnatee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnatee pursuant to Section 10 relating thereto including any rights of appeal of any Section 10 Proceeding. This Agreement will be binding on the Company and its successors and assigns and will inure to the benefit of Indemnatee and his spouse (if Indemnatee resides in Texas or another community property state), heirs, executors and administrators.

Section 13. Severability. If any provision or provisions of this Agreement is or are invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions hereof (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will not in any way be affected or impaired thereby; (ii) such provision or provisions will be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (iii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will be construed so as to give effect to the intent manifested thereby.

Section 14. Exception to Right of Indemnification or Advancement of Expenses. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnatee:

(a) for which payment has actually been received by or on behalf of Indemnatee under any insurance policy or other indemnity provision, except with

respect to any excess beyond the amount actually received under any insurance policy or other indemnity provision; or

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law; or

(c) except as otherwise provided in Sections 10(d) - (f) hereof, prior to a Change in Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board of Directors of the Company authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

Section 15. Enforcement and Binding Effect.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve

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as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

Section 16. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed to be an original but all of which together will constitute one and the same agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 17. Headings. The headings of the Sections hereof are inserted for convenience only and do not and will not be deemed to constitute part of this Agreement or to affect the construction thereof.

Section 18. Definitions. For purposes of this Agreement:

"Acquiring Person" means any Person who or which, together with all its Affiliates and Associates, is or are the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding, but does not include any Exempt Person; provided, however, that a Person will not be or become an Acquiring Person if that Person, together with its Affiliates and Associates, becomes the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding solely as a result of a reduction in the number of shares of Common Stock outstanding which results from the Company's direct or indirect repurchase of Common Stock, unless and until such time as that Person or any Affiliate or Associate of that Person purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person, unless, in either such case, that Person, together with all its Affiliates and Associates, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

Notwithstanding anything in this definition of "Acquiring Person" to the contrary, so long as Main Street Merchant Partners II, L.P., a Delaware limited partnership ("Main Street"), together with all Affiliates and Associates thereof, remains the Beneficial Owner of 15% or more of the outstanding shares of Common Stock, Main Street and any Affiliate or Associate thereof will not be or become an Acquiring Person unless and until that Person, together with all Affiliates and Associates thereof, purchases or otherwise becomes the Beneficial Owner of additional shares of

Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person

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unless, in either such case, that Person, together with all Affiliates and Associates of that Person, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

"Affiliate" has the meaning Exchange Act Rule 12b-2 specifies.

"Associate" means, with reference to any Person, (i) any corporation, firm, partnership, limited liability company, association, unincorporated organization or other entity (other than the Company or a subsidiary of the Company) of which that Person is an officer or general partner (or officer or general partner of a general partner) or is, directly or indirectly, the Beneficial Owner of 10% or more of any class of its equity securities or interests, (ii) any trust or other estate in which that Person has a substantial beneficial interest or for or of which that Person serves as trustee or in a similar fiduciary capacity and (iii) any relative or spouse of that Person, or any relative of that spouse, who has the same home as that Person.

A specified Person is deemed the "Beneficial Owner" of, and is deemed to "beneficially own," any securities:

(i) of which that Person or any of that Person's Affiliates or Associates, directly or indirectly, is the "beneficial owner" (as determined pursuant to Exchange Act Rule 13d-3) or otherwise has the right to vote or dispose of, including pursuant to any agreement, arrangement or understanding (whether or not in writing); provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," any security under this subparagraph (i) as a result of an agreement, arrangement or understanding to vote that security if that agreement, arrangement or understanding: (A) arises solely from a revocable proxy or consent given in response to a public (that is, not including a solicitation exempted by Exchange Act Rule 14a-2(b)(2)) proxy or consent solicitation made pursuant to, and in accordance with, the applicable provisions of the Exchange Act; and (B) is not then reportable by that Person on Exchange Act Schedule 13D (or any comparable or successor report);

(ii) which that Person or any of that Person's Affiliates or Associates, directly or indirectly, has the right or obligation to acquire (whether that right or obligation is exercisable or effective immediately or only after the passage of time or the occurrence of an event) pursuant to any agreement, arrangement or understanding (whether or not in writing) or on the exercise of conversion rights, exchange rights, other rights, warrants or options, or otherwise; provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," securities tendered pursuant to a tender or exchange offer made by that Person or any of that Person's Affiliates or Associates until those tendered securities are accepted for purchase or exchange; or

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(iii) which are beneficially owned, directly or indirectly, by (A) any other Person (or any Affiliate or Associate thereof) with which the specified Person or any of the specified Person's Affiliates or Associates has any agreement, arrangement or understanding (whether or not in writing) for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy or consent as described in the proviso to subparagraph (i) of this definition) or disposing of any voting securities of the Company or (B) any group (as Exchange Act Rule 13d-5(b) uses that term) of which that specified Person is a member;

provided, however, that nothing in this definition will cause a Person engaged in business as an underwriter of securities to be the "Beneficial

Owner" of, or to "beneficially own," any securities that Person acquires through its participation in good faith in a firm commitment underwriting (including, without limitation, securities acquired pursuant to stabilizing transactions to facilitate a public offering in accordance with Exchange Act Regulation M or to cover overallocments created in connection with a public offering) until the expiration of 40 days after the date of that acquisition. For purposes of this definition, "voting" a security includes voting, granting a proxy, acting by consent, making a request or demand relating to corporate action (including, without limitation, calling a stockholder meeting) or otherwise giving an authorization (within the meaning of Section 14(a) of the Exchange Act) in respect of that security.

"Change of Control" means the occurrence of any of the following events that occurs after the IPO Closing Date: (i) any Person becomes an Acquiring Person; (ii) at any time the then Continuing Directors cease to constitute a majority of the members of the Board; (iii) a merger of the Company with or into, or a sale by the Company of its properties and assets substantially as an entirety to, another Person occurs and, immediately after that occurrence, any Person, other than an Exempt Person, together with all Affiliates and Associates of that Person (other than Exempt Persons), will be the Beneficial Owner of 15% or more of the total voting power of the then outstanding Voting Shares of the Person surviving that transaction (in the case of a merger or consolidation) or the Person acquiring those properties and assets substantially as an entirety unless that Person, together with all its Affiliates and Associates, was the Beneficial Owner of 15% or more of the shares of Common Stock outstanding prior to that transaction; (iv) the approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets; or (v) occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

"Common Stock" means (i) the common stock, par value \$.001 per share, of the Company and (ii) any other class of capital stock of the Company which is (A) except for less voting rights, identical to the common stock clause (i) of this definition describes and (B) convertible into that common stock on a share for share basis on the occurrence of a Change of Control.

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"Continuing Director" means at any time any individual who then (i) is a member of the Board and was a member of the Board as of the IPO Closing Date or whose nomination for his first election, or that first election, to the Board following that date was recommended or approved by a majority of the then Continuing Directors (acting separately or as a part of any action taken by the Board or any committee thereof) and (ii) is not an Acquiring Person, an Affiliate or Associate of an Acquiring Person or a nominee or representative of an Acquiring Person or of any such Affiliate or Associate.

"Corporate Status" describes the status of a natural person who is or was a director, officer, trustee, general partner, managing member, employee or agent of the Company or of any other Enterprise, provided that person is or was serving in that capacity at the request of the Company. For purposes of this Agreement, "serving at the request of the Company" includes any service by Indemnitee which imposes duties on, or involves services by, Indemnitee with respect to any employee benefit plan or its participants or beneficiaries.

"Court of Chancery" means the Court of Chancery of the State of Delaware.

"Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee hereunder.

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

"Exempt Person" means: (i) (A) the Company, any subsidiary of the

Company, any employee benefit plan of the Company or of any subsidiary of the Company and (B) any Person organized, appointed or established by the Company for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of the Company or any subsidiary of the Company; and (ii) Indemnitee, any Affiliate or Associate of Indemnitee or any group (as Exchange Act Rule 13d-5(b) uses that term) of which Indemnitee or any Affiliate or Associate of Indemnitee is a member.

"Expenses" include all attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding and all interest or finance charges attributable to any thereof. Should any payments by the Company under this Agreement be determined to be subject to any federal, state or local income or excise tax, "Expenses" also will include such amounts as are necessary to place Indemnitee in the same after-tax position (after giving effect to all applicable taxes) he would have been in had no such tax been determined to apply to those payments. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its

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equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

"Independent Counsel" means a law firm, or a member of a law firm, that or who is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company, its affiliates or Indemnitee in any matter material to any such party; or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" does not include at any time any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"IPO" means the first time a registration statement the Company has filed under the Securities Act of 1933, as amended, and respecting an underwritten primary offering by the Company of shares of Common Stock becomes effective under that Act and the Company issues and sells any of the shares registered by that registration statement.

"IPO Closing Date" means the date on which the Company first receives payment for the shares of Common Stock it sells in the IPO.

"Person" means any natural person, sole proprietorship, corporation, partnership of any kind having a separate legal status, limited liability company, business trust, unincorporated organization or association, mutual company, joint stock company, joint venture, estate, trust, union or employee organization or governmental authority.

"Proceeding" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, in which Indemnitee was, is or will be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action taken by him or of any action on his part while acting as director or officer of the Company, or by reason of the fact that he is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

"Voting Shares" means: (i) in the case of any corporation, stock of that corporation of the class or classes having general voting power under ordinary circumstances to elect a majority of that corporation's board of directors; and (ii) in the case of any other entity, equity interests of the class or classes having general voting power under ordinary circumstances equivalent to the Voting Shares of a corporation.

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Section 19. Modification and Waiver. No supplement to or modification or amendment of this Agreement will be binding unless executed in writing by both parties hereto. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provisions hereof (whether or not similar), nor will any such waiver constitute a continuing waiver.

Section 20. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing on being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses hereunder; provided, however, a failure to give that notice will not deprive Indemnitee of his rights to indemnification and advancement of Expenses hereunder unless the Company is actually and materially prejudiced thereby.

Section 21. Notices. All notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered and received (i) if personally delivered or if delivered by telex, telegram, facsimile or courier service, when actually received by the party to whom the notice or communication is sent or (ii) if delivered by mail (whether actually received or not), at the close of business on the third business day in the city in which the Company's principal executive office is located next following the day when placed in the mail, postage prepaid, certified or registered, addressed to the appropriate party at the address of that party set forth below (or at such other address as that party may designate by written notice to the other party in accordance herewith):

(a) If to Indemnitee, to: Charles W. Sommer
2108 Addison
Houston, Texas 77030

with a copy (which will not constitute notice for the purposes of this Agreement) to such legal counsel, if any, as the Indemnitee may designate in writing; and

(b) If to the Company, to: U.S. Concrete, Inc.
1300 Post Oak Blvd., Suite 1220
Houston, Texas 77056
Attention: President

Section 22. Contribution. To the fullest extent applicable law permits, if the indemnification this Agreement provides is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, will contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all the circumstances of that Proceeding in order to reflect: (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving rise to that

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Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 23. Governing Law; Submission to Jurisdiction. This Agreement and the legal relations among the parties will be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration Indemnitee commences pursuant to Section 10(a), the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or

proceeding arising out of or in connection with this Agreement will be brought only in the Court of Chancery and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Court of Chancery for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Court of Chancery and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Court of Chancery has been brought in an improper or otherwise inconvenient forum.

Section 24. Miscellaneous. Use of one gender herein includes usage of each other gender where appropriate. This Agreement uses the words "herein," "hereof" and words of similar import to refer to this Agreement as a whole and not to any provision of this Agreement, and the word "Section" refers to a Section of this Agreement, unless otherwise specified.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

ATTEST: U.S. CONCRETE, INC.

By: /s/ Charles W. Sommer By: /s/ Eugene P. Martineau

Print Name: Charles W. Sommer Eugene P. Martineau

President and Chief Executive Officer

ATTEST: INDEMNITEE:
By: /s/ Eugene P. Martineau /s/ Charles W. Sommer

Print Name: Eugene P. Martineau Charles W. Sommer

AMENDED AND RESTATED INDEMNIFICATION AGREEMENT

THIS AMENDED AND RESTATED INDEMNIFICATION AGREEMENT (this "Agreement") is made as of August 17, 2000 by and between U.S. Concrete, Inc., a Delaware corporation (the "Company"), and Terry Green ("Indemnitee"). This Agreement amends and restates in its entirety the Indemnification Agreement, dated as of May 28, 1999, between the Company and Indemnitee.

PRELIMINARY STATEMENT

Highly competent persons have become more reluctant to serve corporations as directors or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of corporations.

The Board of Directors of the Company (the "Board") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of that insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Board believes that, given current market conditions and trends, that insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises increasingly are being subjected to expensive and time-consuming litigation relating to, among other matters, matters that traditionally would have been brought only against the corporation or business enterprise itself. The uncertainties relating to liability insurance and to indemnification have increased the difficulty of attracting and retaining those persons, and the Board has determined that (i) this increased difficulty is detrimental to the best interests of the Company's stockholders and that the Company should act to assure those persons that there will be increased certainty of such protection in the future and (ii) it is reasonable, prudent and necessary for the Company

contractually to obligate itself to indemnify those persons to the fullest extent applicable law permits so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified.

The Bylaws of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the Delaware General Corporation Law ("DGCL"). The Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification.

This Agreement is a supplement to and in furtherance of the Bylaws of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

The Indemnitee does not regard the protection available under the Company's Bylaws and insurance as adequate in the present circumstances, and may not be willing to serve as an officer

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or director without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he be so indemnified.

NOW, THEREFORE, in consideration of the premises and the covenants herein, the parties to this Agreement agree as follows:

Section 1. Services by Indemnitee. Indemnitee agrees to serve as a director and/or officer of the Company and, as mutually agreed by Indemnitee and the Company, as a director, officer, trustee, general partner, managing member, employee, agent or fiduciary of other corporations, limited liability companies, partnerships, joint ventures, trusts or other enterprises (including, without limitation, employee benefit plans) (each, an "Enterprise"). Indemnitee may at any time and for any reason resign from any such position (subject to any other contractual obligation or any obligation applicable law imposes), in which event the Company will have no obligation under this Agreement to continue Indemnitee in that position. This Agreement is not and is not to be construed as an employment contract between the Company (or any of its subsidiaries) and Indemnitee. Indemnitee specifically acknowledges that Indemnitee's employment with the Company (or any of its subsidiaries), if any, is at will, and the Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Company (or any of its subsidiaries), other applicable formal severance policies duly adopted by the Board or, with respect to service as a director of the Company, by the Company's Certificate of Incorporation, Bylaws and the DGCL. The foregoing notwithstanding, subject to Section 12, this Agreement will continue in force after Indemnitee has ceased to serve as an officer or director of the Company and no longer serves at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise.

Section 2. Indemnification--General. The Company will indemnify, and advance Expenses (as hereinafter defined) to, Indemnitee (i) as this Agreement permits and (ii) (subject to the provisions hereof) to the fullest extent applicable law in effect on the date hereof and as amended from time to time permits. The rights the preceding sentence provide to Indemnitee will include, but will not be limited to, the rights the other Sections hereof set forth.

Section 3. Proceedings Other Than by or in the Right of the Company. Indemnitee will be entitled to the rights of indemnification this Section 3 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant in any threatened, pending or completed Proceeding (as hereinafter defined), other than a Proceeding by or in the right of the Company. Pursuant to this Section 3, the Company will indemnify Indemnitee against, and will hold Indemnitee harmless from and in respect of, all Expenses, judgments, penalties, fines (including excise taxes) and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of those Expenses, judgments, fines, penalties or amounts paid in settlement) actually and reasonably incurred by him or on his behalf in connection with that Proceeding or any claim, issue or

matter therein, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and, with respect to any criminal Proceeding, had no reasonable cause to believe his conduct was unlawful.

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Section 4. Proceedings by or in the Right of the Company. Indemnatee will be entitled to the rights of indemnification this Section 4 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant (as a witness or otherwise) in any threatened, pending or completed Proceeding brought by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, the Company will indemnify Indemnatee against, and will hold Indemnatee harmless from and in respect of, all Expenses actually and reasonably incurred by him or on his behalf in connection with that Proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that no indemnification against those Expenses will be made in respect of any claim, issue or matter in that Proceeding as to which Indemnatee has been adjudged to be liable to the Company unless and to the extent that the Court of Chancery, or the court in which that Proceeding has been brought or is pending, determines that despite the adjudication of liability but in view of all the circumstances of the case, Indemnatee is fairly and reasonably entitled to indemnification.

Section 5. Indemnification for Expenses of a Party Who Is Wholly or Partly Successful. Notwithstanding any other provision hereof, to the extent that Indemnatee is, by reason of his Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in defense of any Proceeding, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnatee is not wholly successful in defense of any Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in that Proceeding, the Company will indemnify Indemnatee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section 5 and without limitation, the termination of any claim, issue or matter in any Proceeding by dismissal, with or without prejudice, will be deemed to be a successful result as to that claim, issue or matter.

Section 6. Indemnification for Expenses as a Witness. Notwithstanding any other provision hereof, to the extent that Indemnatee is, by reason of his Corporate Status, a witness in any Proceeding to which Indemnatee is not a party, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

Section 7. Advancement of Expenses. The Company will advance all reasonable Expenses incurred by or on behalf of Indemnatee in connection with any Proceeding within 10 days after the Company receives a statement or statements from Indemnatee requesting such advance or advances from time to time, whether prior to or after final disposition of that Proceeding. Each such statement must reasonably evidence the Expenses incurred by or on behalf of Indemnatee and include or be preceded or accompanied by an undertaking by or on behalf of Indemnatee to repay any Expenses advanced if it ultimately is determined that Indemnatee is not entitled to be indemnified by the Company against those Expenses. The Company will accept any such undertaking without reference to the financial ability of Indemnatee to make repayment, and without regard to Indemnatee's ultimate entitlement to indemnification under other provisions of this Agreement.

Section 8. Procedure for Determination of Entitlement to Indemnification. (a) Within sixty (60) days after the actual receipt by Indemnatee of notice that he or she is a party to or a participant (as a witness or otherwise) in any Proceeding, Indemnatee shall submit to the Company

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a written notice identifying the Proceeding. The omission by the Indemnatee to notify the Company will not relieve the Company from any liability which it may have to Indemnatee (i) otherwise than under this Agreement, and (ii) under this Agreement only to the extent the Company can establish that such omission to notify resulted in actual prejudice to the Company.

(b) Indemnitee shall thereafter deliver to the Company a written application to indemnify Indemnitee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnitee deems appropriate in his or her sole discretion. Following such a written application for indemnification by Indemnitee, the Indemnitee's entitlement to indemnification shall be determined according to Section 8(c) of this Agreement.

(c) On written request by Indemnitee for indemnification pursuant to Section 8(b), a determination, if applicable law requires, with respect to Indemnitee's entitlement thereto will be made in the specific case: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, or (ii) if so requested by the Indemnitee in his or her sole discretion by an Independent Counsel in a written opinion to the Board, a copy of which will be delivered to Indemnitee. If it is so determined that Indemnitee is entitled to indemnification hereunder, the Company will: (i) within 10 days after that determination pay to Indemnitee all amounts theretofore incurred by or on behalf of Indemnitee in respect of which Indemnitee is entitled to that indemnification by reason of that determination; and (ii) thereafter on written request by Indemnitee, pay to Indemnitee within 10 days after that request such additional amounts theretofore incurred by or on behalf of Indemnitee in respect of which Indemnitee is entitled to that indemnification by reason of that determination. Indemnitee will cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification under this Agreement, including providing to such person, persons or entity on reasonable advance request any documentation or information which is (i) not privileged or otherwise protected from disclosure, (ii) reasonably available to Indemnitee and (iii) reasonably necessary to that determination. The Company will bear all costs and expenses (including attorneys' fees and disbursements) Indemnitee incurs in so cooperating (irrespective of the determination as to Indemnitee's entitlement to indemnification) and hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(d) If an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c), the Independent Counsel will be selected as this Section 8(d) provides. If a Change of Control has not occurred within two years prior to the date of Indemnitee's written request for indemnification pursuant to Section 8(a), the Board will select the Independent Counsel, and the Company will give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change of Control has occurred within two years prior to the date of that written request, Indemnitee will select the Independent Counsel (unless Indemnitee requests that the Board make the selection, in which event the preceding sentence will apply), and Indemnitee will give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within 10 days after the written notice of selection has been given, deliver to the Company or to Indemnitee, as the case may be, a written objection to the selection; provided, however, that any such objection may be asserted only on the ground that the Independent Counsel so selected is not an "Independent Counsel" as Section 17 defines that term, and the objection must set forth with particularity the factual basis for that assertion. Absent a proper and timely objection, the person so

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selected shall act as Independent Counsel. If any such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until that objection is withdrawn or a court of competent jurisdiction has determined that objection is without merit. If (i) an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c) and (ii) within 20 days after submission by Indemnitee of a written request for indemnification pursuant to Section 8(a), no Independent Counsel has been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery or other court of competent jurisdiction for resolution of any objection that has been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the petitioned court or by such other person as the petitioned court designates, and the person with respect to whom all objections are so resolved or the person so appointed will act as the Independent Counsel under Section 8(c). The Company will pay any and all reasonable fees and expenses the Independent Counsel incurs in connection with acting pursuant to Section 8(c),

and the Company will pay all reasonable fees and expenses incident to the procedures this Section 8(d) sets forth, regardless of the manner in which the Independent Counsel is selected or appointed. If (i) the Independent Counsel selected or appointed pursuant to this Section 8(d) does not make any determination respecting Indemnitee's entitlement to indemnification hereunder within 45 days after the Company receives a written request therefor and (ii) any judicial proceeding or arbitration pursuant to Section 10(a) is then commenced, that Independent Counsel will be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 9. Presumptions and Effect of Certain Proceedings. (a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making that determination must presume that Indemnitee is entitled to indemnification hereunder if Indemnitee has submitted a request for indemnification in accordance with Section 8(a), and the Company will have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or on a plea of nolo contendere or its equivalent, will not (except as this Agreement otherwise expressly provides) of itself adversely affect the right of Indemnitee to indemnification hereunder or create a presumption that Indemnitee did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his conduct was unlawful.

(c) Any action Indemnitee takes or omits to take in connection with any employee benefit plan will, if taken or omitted in good faith by Indemnitee and in a manner Indemnitee reasonably believed to be in the interest of the participants in or beneficiaries of that plan, be deemed

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to have been taken or omitted in a manner "not opposed to the best interests of the Company" for all purposes hereof.

(d) Reliance as Safe Harbor. For purposes of any determination of

good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise. The provisions of this Section 9(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

(e) Actions of Others. The knowledge and/or actions, or failure to

act, of any other director, trustee, partner, managing member, fiduciary, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 10. Remedies of Indemnitee. (a) In the event that (i) a determination is made pursuant to Section 8 that Indemnitee is not entitled to indemnification hereunder, (ii) advancement of Expenses is not timely made pursuant to Section 7, (iii) no determination as to Indemnitee's entitlement to indemnification shall have been made pursuant to Section 8(c) of this Agreement hereunder, or that determination shall not have been made within 45 days after receipt by the Company of the request for that indemnification, (iv) payment of indemnification is not made pursuant to Section 5 or 6 within 10 days after

receipt by the Company of a written request therefor or (v) payment of indemnification pursuant to Section 8(c) is not made timely, Indemnitee will be entitled to an adjudication from the Court of Chancery of his entitlement to that indemnification or advancement of Expenses. Alternatively, Indemnitee, at his option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee must commence any such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence that proceeding pursuant to this Section 10(a); provided, however, that this sentence will not apply in respect of a proceeding brought by Indemnitee to enforce his rights under Section 5.

(b) If a determination has been made pursuant to Section 8(c) that Indemnitee is not entitled to indemnification hereunder, any judicial proceeding or arbitration commenced pursuant to this Section 10 will be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee will not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 10, the Company will have the burden of proving that Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be and the Company may not refer to or introduce into evidence any determination pursuant to Section 8(c) of this Agreement adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 10, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 7 until a final determination is made

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with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(c) If a determination has been made pursuant to Section 8(c) that Indemnitee is entitled to indemnification hereunder, the Company will be bound by that determination in any judicial proceeding or arbitration commenced pursuant to this Section 10, absent (i) a misstatement by Indemnitee of a material fact, or an omission by Indemnitee of a material fact necessary to make Indemnitee's statements not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) If Indemnitee, pursuant to this Section 10, seeks a judicial adjudication of or an award in arbitration to enforce his rights under, or to recover damages for breach of, this Agreement, Indemnitee will be entitled to recover from the Company, and will be indemnified by the Company against, any and all expenses (of the types described in the definition of Expenses in Section 18) actually and reasonably incurred by him in that judicial adjudication or arbitration, but only if he prevails therein. If it is determined in that judicial adjudication or arbitration that Indemnitee is entitled to receive part of, but not all, the indemnification or advancement of expenses sought, the Expenses incurred by Indemnitee in connection with that judicial adjudication or arbitration will be appropriately prorated between those in respect of which this Section 10(d) entitles Indemnitee to indemnification and those Indemnitee must bear.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 10 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(f) The Company shall indemnify Indemnitee to the fullest extent permitted by law against all Expenses and, if requested by Indemnitee, shall (within ten (10) days after the Company's receipt of such written request) advance such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any judicial proceeding or arbitration brought by Indemnitee for (i) indemnification or advances of Expenses by the Company under this Agreement or any other agreement or provision of the Company's Certificate of Incorporation or Bylaws now or hereafter in effect or (ii) recovery or advances under any insurance policy maintained by any person for the benefit of Indemnitee, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advance or insurance recovery, as the case may be.

Section 11. Non-exclusivity; Survival of Rights; Insurance; Subrogation. (a) The rights to indemnification and advancement of Expenses this Agreement provides are not and will not be deemed exclusive of any other rights to which Indemnatee may at any time be entitled under applicable law, the Company's Certificate of Incorporation, the Company's Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or termination of this Agreement or any provision hereof will limit or restrict any right of Indemnatee hereunder in respect of any action Indemnatee has taken or omitted in his Corporate Status prior to that amendment, alteration or termination. To the extent that a change in Delaware law (whether by statute or judicial decision) permits greater indemnification by agreement than would be afforded currently under this Agreement, it is the intent and agreement of the parties hereto that Indemnatee

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will enjoy by this Agreement the greater benefits that change affords. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall 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 right or remedy.

(b) If the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managing members, employees, agents or fiduciaries of the Company or of any other Enterprise that any such person serves at the request of the Company, Indemnatee will be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, managing member, employee, agent or fiduciary under such policy or policies. IF, at the time the Company receives notice from any source of a Proceeding as to which Indemnatee is a party or a participant (as a witness or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnatee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) The Company will not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or for which advancement is provided hereunder) hereunder if and to the extent that Indemnatee has otherwise actually received that payment or obtained the entire benefit therefrom under any insurance policy, contract, agreement or otherwise.

(d) If the Company makes any payment hereunder, it will be subrogated to the extent of that payment to all the rights of recovery of Indemnatee, who will execute all papers required and take all action necessary to secure those rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce those rights.

(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnatee with respect to Indemnatee's service at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise will be reduced by any amount Indemnatee has actually received as indemnification or advancement of Expenses from that other Enterprise.

Section 12. Duration of Agreement. This Agreement will continue until and terminate on the later of: (i) 10 years after the date that Indemnatee has ceased to serve as a director or officer of the Company or as a director, officer, trustee, partner, managing partner, employee, agent or fiduciary of any other Enterprise that Indemnatee served on behalf of the Company at the request of the Company; or (ii) one year after the final termination of any Proceeding (including any rights of appeal thereto) then pending in respect of which Indemnatee is granted rights of indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnatee pursuant to Section 10 relating thereto including any rights of appeal of any Section 10 Proceeding. This Agreement will be binding on the Company and its successors and assigns and will inure to the benefit of Indemnatee and his spouse (if Indemnatee resides in Texas or another community property state), heirs, executors and administrators.

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Section 13. Severability. If any provision or provisions of this Agreement is or are invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions hereof (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will not in any way be affected or impaired thereby; (ii) such provision or provisions will be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (iii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will be construed so as to give effect to the intent manifested thereby.

Section 14. Exception to Right of Indemnification or Advancement of Expenses. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnitee:

(a) for which payment has actually been received by or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount actually received under any insurance policy or other indemnity provision; or

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law; or

(c) except as otherwise provided in Sections 10(d) - (f) hereof, prior to a Change in Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board of Directors of the Company authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

Section 15. Enforcement and Binding Effect.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

Section 16. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed to be an original but all of which together will constitute one and the same agreement. Only one such counterpart signed by the party

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against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 17. Headings. The headings of the Sections hereof are inserted for convenience only and do not and will not be deemed to constitute part of this Agreement or to affect the construction thereof.

Section 18. Definitions. For purposes of this Agreement:

"Acquiring Person" means any Person who or which, together with all its Affiliates and Associates, is or are the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding, but does not include any Exempt Person; provided, however, that a Person will not be or become an Acquiring Person if that Person, together with its Affiliates and Associates, becomes the Beneficial Owner of 15% or more of the shares of

Common Stock then outstanding solely as a result of a reduction in the number of shares of Common Stock outstanding which results from the Company's direct or indirect repurchase of Common Stock, unless and until such time as that Person or any Affiliate or Associate of that Person purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person, unless, in either such case, that Person, together with all its Affiliates and Associates, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

Notwithstanding anything in this definition of "Acquiring Person" to the contrary, so long as Main Street Merchant Partners II, L.P., a Delaware limited partnership ("Main Street"), together with all Affiliates and Associates thereof, remains the Beneficial Owner of 15% or more of the outstanding shares of Common Stock, Main Street and any Affiliate or Associate thereof will not be or become an Acquiring Person unless and until that Person, together with all Affiliates and Associates thereof, purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person unless, in either such case, that Person, together with all Affiliates and Associates of that Person, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

"Affiliate" has the meaning Exchange Act Rule 12b-2 specifies.

"Associate" means, with reference to any Person, (i) any corporation, firm, partnership, limited liability company, association, unincorporated organization or other entity (other than the Company or a subsidiary of the Company) of which that Person is an officer or general partner (or officer or general partner of a general partner) or is, directly or indirectly, the Beneficial Owner of 10% or more of any class of its equity securities or

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interests, (ii) any trust or other estate in which that Person has a substantial beneficial interest or for or of which that Person serves as trustee or in a similar fiduciary capacity and (iii) any relative or spouse of that Person, or any relative of that spouse, who has the same home as that Person.

A specified Person is deemed the "Beneficial Owner" of, and is deemed to "beneficially own," any securities:

(i) of which that Person or any of that Person's Affiliates or Associates, directly or indirectly, is the "beneficial owner" (as determined pursuant to Exchange Act Rule 13d-3) or otherwise has the right to vote or dispose of, including pursuant to any agreement, arrangement or understanding (whether or not in writing); provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," any security under this subparagraph (i) as a result of an agreement, arrangement or understanding to vote that security if that agreement, arrangement or understanding: (A) arises solely from a revocable proxy or consent given in response to a public (that is, not including a solicitation exempted by Exchange Act Rule 14a-2(b)(2)) proxy or consent solicitation made pursuant to, and in accordance with, the applicable provisions of the Exchange Act; and (B) is not then reportable by that Person on Exchange Act Schedule 13D (or any comparable or successor report);

(ii) which that Person or any of that Person's Affiliates or Associates, directly or indirectly, has the right or obligation to acquire (whether that right or obligation is exercisable or effective immediately or only after the passage of time or the occurrence of an event) pursuant to any agreement, arrangement or understanding (whether or not in writing) or on the exercise of conversion rights, exchange rights, other rights, warrants or options, or otherwise; provided, however, that a Person will not be deemed the "Beneficial

Owner" of, or to "beneficially own," securities tendered pursuant to a tender or exchange offer made by that Person or any of that Person's Affiliates or Associates until those tendered securities are accepted for purchase or exchange; or

(iii) which are beneficially owned, directly or indirectly, by (A) any other Person (or any Affiliate or Associate thereof) with which the specified Person or any of the specified Person's Affiliates or Associates has any agreement, arrangement or understanding (whether or not in writing) for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy or consent as described in the proviso to subparagraph (i) of this definition) or disposing of any voting securities of the Company or (B) any group (as Exchange Act Rule 13d-5(b) uses that term) of which that specified Person is a member;

provided, however, that nothing in this definition will cause a Person engaged in business as an underwriter of securities to be the "Beneficial Owner" of, or to "beneficially own," any securities that Person acquires through its participation in good faith in a firm commitment underwriting (including, without limitation, securities acquired pursuant to stabilizing

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transactions to facilitate a public offering in accordance with Exchange Act Regulation M or to cover over-allotments created in connection with a public offering) until the expiration of 40 days after the date of that acquisition. For purposes of this definition, "voting" a security includes voting, granting a proxy, acting by consent, making a request or demand relating to corporate action (including, without limitation, calling a stockholder meeting) or otherwise giving an authorization (within the meaning of Section 14(a) of the Exchange Act) in respect of that security.

"Change of Control" means the occurrence of any of the following events that occurs after the IPO Closing Date: (i) any Person becomes an Acquiring Person; (ii) at any time the then Continuing Directors cease to constitute a majority of the members of the Board; (iii) a merger of the Company with or into, or a sale by the Company of its properties and assets substantially as an entirety to, another Person occurs and, immediately after that occurrence, any Person, other than an Exempt Person, together with all Affiliates and Associates of that Person (other than Exempt Persons), will be the Beneficial Owner of 15% or more of the total voting power of the then outstanding Voting Shares of the Person surviving that transaction (in the case of a merger or consolidation) or the Person acquiring those properties and assets substantially as an entirety unless that Person, together with all its Affiliates and Associates, was the Beneficial Owner of 15% or more of the shares of Common Stock outstanding prior to that transaction; (iv) the approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets; or (v) occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

"Common Stock" means (i) the common stock, par value \$.001 per share, of the Company and (ii) any other class of capital stock of the Company which is (A) except for less voting rights, identical to the common stock clause (i) of this definition describes and (B) convertible into that common stock on a share for share basis on the occurrence of a Change of Control.

"Continuing Director" means at any time any individual who then (i) is a member of the Board and was a member of the Board as of the IPO Closing Date or whose nomination for his first election, or that first election, to the Board following that date was recommended or approved by a majority of the then Continuing Directors (acting separately or as a part of any action taken by the Board or any committee thereof) and (ii) is not an Acquiring Person, an Affiliate or Associate of an Acquiring Person or a nominee or representative of an Acquiring Person or of any such Affiliate or Associate.

"Corporate Status" describes the status of a natural person who is or was a director, officer, trustee, general partner, managing member, employee or agent of the Company or of any other Enterprise, provided that person is or was serving in that capacity at the request of the Company. For purposes of this Agreement, "serving at the request of the Company"

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includes any service by Indemnitee which imposes duties on, or involves services by, Indemnitee with respect to any employee benefit plan or its participants or beneficiaries.

"Court of Chancery" means the Court of Chancery of the State of Delaware.

"Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee hereunder.

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

"Exempt Person" means: (i) (A) the Company, any subsidiary of the Company, any employee benefit plan of the Company or of any subsidiary of the Company and (B) any Person organized, appointed or established by the Company for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of the Company or any subsidiary of the Company; and (ii) Indemnitee, any Affiliate or Associate of Indemnitee or any group (as Exchange Act Rule 13d-5(b) uses that term) of which Indemnitee or any Affiliate or Associate of Indemnitee is a member.

"Expenses" include all attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding and all interest or finance charges attributable to any thereof. Should any payments by the Company under this Agreement be determined to be subject to any federal, state or local income or excise tax, "Expenses" also will include such amounts as are necessary to place Indemnitee in the same after-tax position (after giving effect to all applicable taxes) he would have been in had no such tax been determined to apply to those payments. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

"Independent Counsel" means a law firm, or a member of a law firm, that or who is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company, its affiliates or Indemnitee in any matter material to any such party; or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" does not include at any time any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"IPO" means the first time a registration statement the Company has filed under the Securities Act of 1933, as amended, and respecting an underwritten primary offering by the

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Company of shares of Common Stock becomes effective under that Act and the Company issues and sells any of the shares registered by that registration statement.

"IPO Closing Date" means the date on which the Company first receives payment for the shares of Common Stock it sells in the IPO.

"Person" means any natural person, sole proprietorship, corporation, partnership of any kind having a separate legal status, limited liability company, business trust, unincorporated organization or association, mutual company, joint stock company, joint venture, estate, trust, union or employee organization or governmental authority.

"Proceeding" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, in which Indemnitee was, is or will be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action taken by him or of any action on his part while acting as director or officer of the Company, or by reason of the fact that he is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

"Voting Shares" means: (i) in the case of any corporation, stock of that corporation of the class or classes having general voting power under ordinary circumstances to elect a majority of that corporation's board of directors; and (ii) in the case of any other entity, equity interests of the class or classes having general voting power under ordinary circumstances equivalent to the Voting Shares of a corporation.

Section 19. Modification and Waiver. No supplement to or modification or amendment of this Agreement will be binding unless executed in writing by both parties hereto. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any other provisions hereof (whether or not similar), nor will any such waiver constitute a continuing waiver.

Section 20. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing on being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses hereunder; provided, however, a failure to give that notice will not deprive Indemnitee of his rights to indemnification and advancement of Expenses hereunder unless the Company is actually and materially prejudiced thereby.

Section 21. Notices. All notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered and received (i) if personally delivered or if delivered by telex, telegram, facsimile or courier service, when actually received by the party

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to whom the notice or communication is sent or (ii) if delivered by mail (whether actually received or not), at the close of business on the third business day in the city in which the Company's principal executive office is located next following the day when placed in the mail, postage prepaid, certified or registered, addressed to the appropriate party at the address of that party set forth below (or at such other address as that party may designate by written notice to the other party in accordance herewith):

(a) If to Indemnitee, to: Terry Green
3215 Canyon Links Drive
Katy, Texas 77450

with a copy (which will not constitute notice for the purposes of this Agreement) to such legal counsel, if any, as the Indemnitee may designate in writing; and

(b) If to the Company, to: U.S. Concrete, Inc.
1300 Post Oak Blvd., Suite 1220
Houston, Texas 77056
Attention: President

Section 22. Contribution. To the fullest extent applicable law permits, if the indemnification this Agreement provides is unavailable to Indemnatee for any reason whatsoever, the Company, in lieu of indemnifying Indemnatee, will contribute to the amount incurred by Indemnatee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all the circumstances of that Proceeding in order to reflect: (i) the relative benefits received by the Company and Indemnatee as a result of the event(s) and/or transaction(s) giving rise to that Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnatee in connection with such event(s) and/or transaction(s).

Section 23. Governing Law; Submission to Jurisdiction. This Agreement and the legal relations among the parties will be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration Indemnatee commences pursuant to Section 10(a), the Company and Indemnatee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement will be brought only in the Court of Chancery and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Court of Chancery for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Court of Chancery and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Court of Chancery has been brought in an improper or otherwise inconvenient forum.

Section 24. Miscellaneous. Use of one gender herein includes usage of each other gender where appropriate. This Agreement uses the words "herein," "hereof" and words of similar

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import to refer to this Agreement as a whole and not to any provision of this Agreement, and the word "Section" refers to a Section of this Agreement, unless otherwise specified.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

ATTEST: U.S. CONCRETE, INC.

By: /s/ Terry Green

By: /s/ Eugene P. Martineau

Print Name: Terry Green

Eugene P. Martineau
President and Chief Executive Officer

ATTEST:

INDEMNITEE:

By: /s/ Eugene P. Martineau

/s/ Terry Green

Print Name: Eugene P. Martineau

Terry Green

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THIS INDEMNIFICATION AGREEMENT (this "Agreement") is made as of August 17, 2000 by and between U.S. Concrete, Inc., a Delaware corporation (the "Company"), and Raymond C. Turpin, Jr. ("Indemnitee").

PRELIMINARY STATEMENT

Highly competent persons have become more reluctant to serve corporations as directors or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of corporations.

The Board of Directors of the Company (the "Board") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of that insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Board believes that, given current market conditions and trends, that insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises increasingly are being subjected to expensive and time-consuming litigation relating to, among other matters, matters that traditionally would have been brought only against the corporation or business enterprise itself. The uncertainties relating to liability insurance and to indemnification have increased the difficulty of attracting and retaining those persons, and the Board has determined that (i) this increased difficulty is detrimental to the best interests of the Company's stockholders and that the Company should act to assure those persons that there will be increased certainty of such protection in the future and (ii) it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify those persons to the fullest extent applicable law permits so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified.

The Bylaws of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the Delaware General Corporation Law ("DGCL"). The Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification.

This Agreement is a supplement to and in furtherance of the Bylaws of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

The Indemnitee does not regard the protection available under the Company's Bylaws and insurance as adequate in the present circumstances, and may not be willing to serve as an officer or director without adequate protection, and the Company desires Indemnitee to serve in such

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capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he be so indemnified.

NOW, THEREFORE, in consideration of the premises and the covenants herein, the parties to this Agreement agree as follows:

Section 1. Services by Indemnitee. Indemnitee agrees to serve as a director and/or officer of the Company and, as mutually agreed by Indemnitee and the Company, as a director, officer, trustee, general partner, managing member, employee, agent or fiduciary of other corporations, limited liability companies, partnerships, joint ventures, trusts or other enterprises (including, without limitation, employee benefit plans) (each, an "Enterprise"). Indemnitee may at any time and for any reason resign from any such position (subject to any

other contractual obligation or any obligation applicable law imposes), in which event the Company will have no obligation under this Agreement to continue Indemnitee in that position. This Agreement is not and is not to be construed as an employment contract between the Company (or any of its subsidiaries) and Indemnitee. Indemnitee specifically acknowledges that Indemnitee's employment with the Company (or any of its subsidiaries), if any, is at will, and the Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Company (or any of its subsidiaries), other applicable formal severance policies duly adopted by the Board or, with respect to service as a director of the Company, by the Company's Certificate of Incorporation, Bylaws and the DGCL. The foregoing notwithstanding, subject to Section 12, this Agreement will continue in force after Indemnitee has ceased to serve as an officer or director of the Company and no longer serves at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise.

Section 2. Indemnification--General. The Company will indemnify, and advance Expenses (as hereinafter defined) to, Indemnitee (i) as this Agreement permits and (ii) (subject to the provisions hereof) to the fullest extent applicable law in effect on the date hereof and as amended from time to time permits. The rights the preceding sentence provide to Indemnitee will include, but will not be limited to, the rights the other Sections hereof set forth.

Section 3. Proceedings Other Than by or in the Right of the Company. Indemnitee will be entitled to the rights of indemnification this Section 3 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant in any threatened, pending or completed Proceeding (as hereinafter defined), other than a Proceeding by or in the right of the Company. Pursuant to this Section 3, the Company will indemnify Indemnitee against, and will hold Indemnitee harmless from and in respect of, all Expenses, judgments, penalties, fines (including excise taxes) and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection with or in respect of those Expenses, judgments, fines, penalties or amounts paid in settlement) actually and reasonably incurred by him or on his behalf in connection with that Proceeding or any claim, issue or matter therein, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and, with respect to any criminal Proceeding, had no reasonable cause to believe his conduct was unlawful.

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Section 4. Proceedings by or in the Right of the Company. Indemnitee will be entitled to the rights of indemnification this Section 4 provides if, by reason of his Corporate Status, he is, or is threatened to be made, a party to or a participant (as a witness or otherwise) in any threatened, pending or completed Proceeding brought by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, the Company will indemnify Indemnitee against, and will hold Indemnitee harmless from and in respect of, all Expenses actually and reasonably incurred by him or on his behalf in connection with that Proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that no indemnification against those Expenses will be made in respect of any claim, issue or matter in that Proceeding as to which Indemnitee has been adjudged to be liable to the Company unless and to the extent that the Court of Chancery, or the court in which that Proceeding has been brought or is pending, determines that despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification.

Section 5. Indemnification for Expenses of a Party Who Is Wholly or Partly Successful. Notwithstanding any other provision hereof, to the extent that Indemnitee is, by reason of his Corporate Status, a party to (or a participant in) and is successful, on the merits or otherwise, in defense of any Proceeding, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is not wholly successful in defense of any Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in that Proceeding, the Company will indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section 5 and without limitation, the termination of any

claim, issue or matter in any Proceeding by dismissal, with or without prejudice, will be deemed to be a successful result as to that claim, issue or matter.

Section 6. Indemnification for Expenses as a Witness. Notwithstanding any other provision hereof, to the extent that Indemnitee is, by reason of his Corporate Status, a witness in any Proceeding to which Indemnitee is not a party, the Company will indemnify him against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

Section 7. Advancement of Expenses. The Company will advance all reasonable Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding within 10 days after the Company receives a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of that Proceeding. Each such statement must reasonably evidence the Expenses incurred by or on behalf of Indemnitee and include or be preceded or accompanied by an undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it ultimately is determined that Indemnitee is not entitled to be indemnified by the Company against those Expenses. The Company will accept any such undertaking without reference to the financial ability of Indemnitee to make repayment, and without regard to Indemnitee's ultimate entitlement to indemnification under other provisions of this Agreement.

Section 8. Procedure for Determination of Entitlement to Indemnification. (a) Within sixty (60) days after the actual receipt by Indemnitee of notice that he or she is a party to or

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a participant (as a witness or otherwise) in any Proceeding, Indemnitee shall submit to the Company a written notice identifying the Proceeding. The omission by the Indemnitee to notify the Company will not relieve the Company from any liability which it may have to Indemnitee (i) otherwise than under this Agreement, and (ii) under this Agreement only to the extent the Company can establish that such omission to notify resulted in actual prejudice to the Company.

(b) Indemnitee shall thereafter deliver to the Company a written application to indemnify Indemnitee in accordance with this Agreement. Such application(s) may be delivered from time to time and at such time(s) as Indemnitee deems appropriate in his or her sole discretion. Following such a written application for indemnification by Indemnitee, the Indemnitee's entitlement to indemnification shall be determined according to Section 8(c) of this Agreement.

(c) On written request by Indemnitee for indemnification pursuant to Section 8(b), a determination, if applicable law requires, with respect to Indemnitee's entitlement thereto will be made in the specific case: (i) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, or (ii) if so requested by the Indemnitee in his or her sole discretion by an Independent Counsel in a written opinion to the Board, a copy of which will be delivered to Indemnitee. If it is so determined that Indemnitee is entitled to indemnification hereunder, the Company will: (i) within 10 days after that determination pay to Indemnitee all amounts theretofore incurred by or on behalf of Indemnitee in respect of which Indemnitee is entitled to that indemnification by reason of that determination; and (ii) thereafter on written request by Indemnitee, pay to Indemnitee within 10 days after that request such additional amounts theretofore incurred by or on behalf of Indemnitee in respect of which Indemnitee is entitled to that indemnification by reason of that determination. Indemnitee will cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification under this Agreement, including providing to such person, persons or entity on reasonable advance request any documentation or information which is (i) not privileged or otherwise protected from disclosure, (ii) reasonably available to Indemnitee and (iii) reasonably necessary to that determination. The Company will bear all costs and expenses (including attorneys' fees and disbursements) Indemnitee incurs in so cooperating (irrespective of the determination as to Indemnitee's entitlement to indemnification) and hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(d) If an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c), the Independent Counsel

will be selected as this Section 8(d) provides. If a Change of Control has not occurred within two years prior to the date of Indemnatee's written request for indemnification pursuant to Section 8(a), the Board will select the Independent Counsel, and the Company will give written notice to Indemnatee advising him of the identity of the Independent Counsel so selected. If a Change of Control has occurred within two years prior to the date of that written request, Indemnatee will select the Independent Counsel (unless Indemnatee requests that the Board make the selection, in which event the preceding sentence will apply), and Indemnatee will give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnatee or the Company, as the case may be, may, within 10 days after the written notice of selection has been given, deliver to the Company or to Indemnatee, as the case may be, a written objection to the selection; provided, however, that any such objection may be asserted only on the ground that the Independent Counsel so selected is not

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an "Independent Counsel" as Section 17 defines that term, and the objection must set forth with particularity the factual basis for that assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If any such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until that objection is withdrawn or a court of competent jurisdiction has determined that objection is without merit. If (i) an Independent Counsel is to make the determination of entitlement to indemnification pursuant to Section 8(c) and (ii) within 20 days after submission by Indemnatee of a written request for indemnification pursuant to Section 8(a), no Independent Counsel has been selected and not objected to, either the Company or Indemnatee may petition the Court of Chancery or other court of competent jurisdiction for resolution of any objection that has been made by the Company or Indemnatee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the petitioned court or by such other person as the petitioned court designates, and the person with respect to whom all objections are so resolved or the person so appointed will act as the Independent Counsel under Section 8(c). The Company will pay any and all reasonable fees and expenses the Independent Counsel incurs in connection with acting pursuant to Section 8(c), and the Company will pay all reasonable fees and expenses incident to the procedures this Section 8(d) sets forth, regardless of the manner in which the Independent Counsel is selected or appointed. If (i) the Independent Counsel selected or appointed pursuant to this Section 8(d) does not make any determination respecting Indemnatee's entitlement to indemnification hereunder within 45 days after the Company receives a written request therefor and (ii) any judicial proceeding or arbitration pursuant to Section 10(a) is then commenced, that Independent Counsel will be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 9. Presumptions and Effect of Certain Proceedings. (a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making that determination must presume that Indemnatee is entitled to indemnification hereunder if Indemnatee has submitted a request for indemnification in accordance with Section 8(a), and the Company will have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnatee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnatee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnatee has not met the applicable standard of conduct.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or on a plea of nolo contendere or its equivalent, will not (except as this Agreement otherwise expressly provides) of itself adversely affect the right of Indemnatee to indemnification hereunder or create a presumption that Indemnatee did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnatee had reasonable cause to believe that his conduct was unlawful.

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(c) Any action Indemnitee takes or omits to take in connection with any employee benefit plan will, if taken or omitted in good faith by Indemnitee and in a manner Indemnitee reasonably believed to be in the interest of the participants in or beneficiaries of that plan, be deemed to have been taken or omitted in a manner "not opposed to the best interests of the Company" for all purposes hereof.

(d) Reliance as Safe Harbor. For purposes of any determination

of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected by the Enterprise. The provisions of this Section 9(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed or found to have met the applicable standard of conduct set forth in this Agreement.

(e) Actions of Others. The knowledge and/or actions, or failure to

act, of any other director, trustee, partner, managing member, fiduciary, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 10. Remedies of Indemnitee. (a) In the event that (i) a determination is made pursuant to Section 8 that Indemnitee is not entitled to indemnification hereunder, (ii) advancement of Expenses is not timely made pursuant to Section 7, (iii) no determination as to Indemnitee's entitlement to indemnification shall have been made pursuant to Section 8(c) of this Agreement hereunder, or that determination shall not have been made within 45 days after receipt by the Company of the request for that indemnification, (iv) payment of indemnification is not made pursuant to Section 5 or 6 within 10 days after receipt by the Company of a written request therefor or (v) payment of indemnification pursuant to Section 8(c) is not made timely, Indemnitee will be entitled to an adjudication from the Court of Chancery of his entitlement to that indemnification or advancement of Expenses. Alternatively, Indemnitee, at his option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee must commence any such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence that proceeding pursuant to this Section 10(a); provided, however, that this sentence will not apply in respect of a proceeding brought by Indemnitee to enforce his rights under Section 5.

(b) If a determination has been made pursuant to Section 8(c) that Indemnitee is not entitled to indemnification hereunder, any judicial proceeding or arbitration commenced pursuant to this Section 10 will be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee will not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 10, the Company will have the burden of proving that Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be and the Company may not refer to or introduce into evidence any determination pursuant to

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Section 8(c) of this Agreement adverse to Indemnitee for any purpose. If Indemnitee commences a judicial proceeding or arbitration pursuant to this Section 10, Indemnitee shall not be required to reimburse the Company for any advances pursuant to Section 7 until a final determination is made with respect to Indemnitee's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed).

(c) If a determination has been made pursuant to Section 8(c) that Indemnitee is entitled to indemnification hereunder, the Company will be bound by that determination in any judicial proceeding or arbitration commenced pursuant to this Section 10, absent (i) a misstatement by Indemnitee of a material fact, or an omission by Indemnitee of a material fact necessary to make Indemnitee's statements not materially misleading, in connection with the

request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) If Indemnitee, pursuant to this Section 10, seeks a judicial adjudication of or an award in arbitration to enforce his rights under, or to recover damages for breach of, this Agreement, Indemnitee will be entitled to recover from the Company, and will be indemnified by the Company against, any and all expenses (of the types described in the definition of Expenses in Section 18) actually and reasonably incurred by him in that judicial adjudication or arbitration, but only if he prevails therein. If it is determined in that judicial adjudication or arbitration that Indemnitee is entitled to receive part of, but not all, the indemnification or advancement of expenses sought, the Expenses incurred by Indemnitee in connection with that judicial adjudication or arbitration will be appropriately prorated between those in respect of which this Section 10(d) entitles Indemnitee to indemnification and those Indemnitee must bear.

(e) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 10 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement.

(f) The Company shall indemnify Indemnitee to the fullest extent permitted by law against all Expenses and, if requested by Indemnitee, shall (within ten (10) days after the Company's receipt of such written request) advance such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any judicial proceeding or arbitration brought by Indemnitee for (i) indemnification or advances of Expenses by the Company under this Agreement or any other agreement or provision of the Company's Certificate of Incorporation or Bylaws now or hereafter in effect or (ii) recovery or advances under any insurance policy maintained by any person for the benefit of Indemnitee, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advance or insurance recovery, as the case may be.

Section 11. Non-exclusivity; Survival of Rights; Insurance; Subrogation. (a) The rights to indemnification and advancement of Expenses this Agreement provides are not and will not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Company's Certificate of Incorporation, the Company's Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or termination of this Agreement or any provision hereof will limit or restrict any right of Indemnitee

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hereunder in respect of any action Indemnitee has taken or omitted in his Corporate Status prior to that amendment, alteration or termination. To the extent that a change in Delaware law (whether by statute or judicial decision) permits greater indemnification by agreement than would be afforded currently under this Agreement, it is the intent and agreement of the parties hereto that Indemnitee will enjoy by this Agreement the greater benefits that change affords. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall 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 right or remedy.

(b) If the Company maintains an insurance policy or policies providing liability insurance for directors, officers, trustees, partners, managing members, employees, agents or fiduciaries of the Company or of any other Enterprise that any such person serves at the request of the Company, Indemnitee will be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, trustee, partner, managing member, employee, agent or fiduciary under such policy or policies. If, at the time the Company receives notice from any source of a Proceeding as to which Indemnitee is a party or a participant (as a witness or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of

such Proceeding in accordance with the terms of such policies.

(c) The Company will not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or for which advancement is provided hereunder) hereunder if and to the extent that Indemnatee has otherwise actually received that payment or obtained the entire benefit therefrom under any insurance policy, contract, agreement or otherwise.

(d) If the Company makes any payment hereunder, it will be subrogated to the extent of that payment to all the rights of recovery of Indemnatee, who will execute all papers required and take all action necessary to secure those rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce those rights.

(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnatee with respect to Indemnatee's service at the request of the Company as a director, officer, employee, agent or fiduciary of any other Enterprise will be reduced by any amount Indemnatee has actually received as indemnification or advancement of Expenses from that other Enterprise.

Section 12. Duration of Agreement. This Agreement will continue until and terminate on the later of: (i) 10 years after the date that Indemnatee has ceased to serve as a director or officer of the Company or as a director, officer, trustee, partner, managing partner, employee, agent or fiduciary of any other Enterprise that Indemnatee served on behalf of the Company at the request of the Company; or (ii) one year after the final termination of any Proceeding (including any rights of appeal thereto) then pending in respect of which Indemnatee is granted rights of

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indemnification or advancement of Expenses hereunder and of any proceeding commenced by Indemnatee pursuant to Section 10 relating thereto including any rights of appeal of any Section 10 Proceeding. This Agreement will be binding on the Company and its successors and assigns and will inure to the benefit of Indemnatee and his spouse (if Indemnatee resides in Texas or another community property state), heirs, executors and administrators.

Section 13. Severability. If any provision or provisions of this Agreement is or are invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions hereof (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will not in any way be affected or impaired thereby; (ii) such provision or provisions will be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (iii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section containing any such invalid, illegal or unenforceable provision which is not itself invalid, illegal or unenforceable) will be construed so as to give effect to the intent manifested thereby.

Section 14. Exception to Right of Indemnification or Advancement of Expenses. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnatee:

(a) for which payment has actually been received by or on behalf of Indemnatee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount actually received under any insurance policy or other indemnity provision; or

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnatee of securities of the Company within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law; or

(c) except as otherwise provided in Sections 10(d) - (f) hereof, prior to a Change in Control, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnatee, including any Proceeding (or any part of any Proceeding) initiated by Indemnatee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board of Directors of the Company authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole

discretion, pursuant to the powers vested in the Company under applicable law.

Section 15. Enforcement and Binding Effect.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

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(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

Section 16. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed to be an original but all of which together will constitute one and the same agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 17. Headings. The headings of the Sections hereof are inserted for convenience only and do not and will not be deemed to constitute part of this Agreement or to affect the construction thereof.

Section 18. Definitions. For purposes of this Agreement:

"Acquiring Person" means any Person who or which, together with all its Affiliates and Associates, is or are the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding, but does not include any Exempt Person; provided, however, that a Person will not be or become an Acquiring Person if that Person, together with its Affiliates and Associates, becomes the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding solely as a result of a reduction in the number of shares of Common Stock outstanding which results from the Company's direct or indirect repurchase of Common Stock, unless and until such time as that Person or any Affiliate or Associate of that Person purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person, unless, in either such case, that Person, together with all its Affiliates and Associates, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

Notwithstanding anything in this definition of "Acquiring Person" to the contrary, so long as Main Street Merchant Partners II, L.P., a Delaware limited partnership ("Main Street"), together with all Affiliates and Associates thereof, remains the Beneficial Owner of 15% or more of the outstanding shares of Common Stock, Main Street and any Affiliate or Associate thereof will not be or become an Acquiring Person unless and until that Person, together with all Affiliates and Associates thereof, purchases or otherwise becomes the Beneficial Owner of additional shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock or any other Person (or Persons) who is (or collectively are) the Beneficial Owner of shares of Common Stock constituting 1% or more of the then outstanding shares of Common Stock becomes an Affiliate or Associate of that Person unless, in either such case, that Person, together with all Affiliates and Associates of that Person, is not then the Beneficial Owner of 15% or more of the shares of Common Stock then outstanding.

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"Affiliate" has the meaning Exchange Act Rule 12b-2 specifies.

"Associate" means, with reference to any Person, (i) any corporation, firm, partnership, limited liability company, association, unincorporated organization or other entity (other than the Company or a subsidiary of the

Company) of which that Person is an officer or general partner (or officer or general partner of a general partner) or is, directly or indirectly, the Beneficial Owner of 10% or more of any class of its equity securities or interests, (ii) any trust or other estate in which that Person has a substantial beneficial interest or for or of which that Person serves as trustee or in a similar fiduciary capacity and (iii) any relative or spouse of that Person, or any relative of that spouse, who has the same home as that Person.

A specified Person is deemed the "Beneficial Owner" of, and is deemed to "beneficially own," any securities:

(i) of which that Person or any of that Person's Affiliates or Associates, directly or indirectly, is the "beneficial owner" (as determined pursuant to Exchange Act Rule 13d-3) or otherwise has the right to vote or dispose of, including pursuant to any agreement, arrangement or understanding (whether or not in writing); provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," any security under this subparagraph (i) as a result of an agreement, arrangement or understanding to vote that security if that agreement, arrangement or understanding: (A) arises solely from a revocable proxy or consent given in response to a public (that is, not including a solicitation exempted by Exchange Act Rule 14a-2(b)(2)) proxy or consent solicitation made pursuant to, and in accordance with, the applicable provisions of the Exchange Act; and (B) is not then reportable by that Person on Exchange Act Schedule 13D (or any comparable or successor report);

(ii) which that Person or any of that Person's Affiliates or Associates, directly or indirectly, has the right or obligation to acquire (whether that right or obligation is exercisable or effective immediately or only after the passage of time or the occurrence of an event) pursuant to any agreement, arrangement or understanding (whether or not in writing) or on the exercise of conversion rights, exchange rights, other rights, warrants or options, or otherwise; provided, however, that a Person will not be deemed the "Beneficial Owner" of, or to "beneficially own," securities tendered pursuant to a tender or exchange offer made by that Person or any of that Person's Affiliates or Associates until those tendered securities are accepted for purchase or exchange; or

(iii) which are beneficially owned, directly or indirectly, by (A) any other Person (or any Affiliate or Associate thereof) with which the specified Person or any of the specified Person's Affiliates or Associates has any agreement, arrangement or understanding (whether or not in writing) for the purpose of acquiring, holding,

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voting (except pursuant to a revocable proxy or consent as described in the proviso to subparagraph (i) of this definition) or disposing of any voting securities of the Company or (B) any group (as Exchange Act Rule 13d-5(b) uses that term) of which that specified Person is a member;

provided, however, that nothing in this definition will cause a Person engaged in business as an underwriter of securities to be the "Beneficial Owner" of, or to "beneficially own," any securities that Person acquires through its participation in good faith in a firm commitment underwriting (including, without limitation, securities acquired pursuant to stabilizing transactions to facilitate a public offering in accordance with Exchange Act Regulation M or to cover overallotments created in connection with a public offering) until the expiration of 40 days after the date of that acquisition. For purposes of this definition, "voting" a security includes voting, granting a proxy, acting by consent, making a request or demand relating to corporate action (including, without limitation, calling a stockholder meeting) or otherwise giving an authorization (within the meaning of Section 14(a) of the Exchange Act) in respect of that security.

"Change of Control" means the occurrence of any of the following events that occurs after the IPO Closing Date: (i) any Person becomes an Acquiring Person; (ii) at any time the then Continuing Directors cease to constitute a majority of the members of the Board; (iii) a merger of the Company with or into, or a sale by the Company of its properties and assets

substantially as an entirety to, another Person occurs and, immediately after that occurrence, any Person, other than an Exempt Person, together with all Affiliates and Associates of that Person (other than Exempt Persons), will be the Beneficial Owner of 15% or more of the total voting power of the then outstanding Voting Shares of the Person surviving that transaction (in the case of a merger or consolidation) or the Person acquiring those properties and assets substantially as an entirety unless that Person, together with all its Affiliates and Associates, was the Beneficial Owner of 15% or more of the shares of Common Stock outstanding prior to that transaction; (iv) the approval by the stockholders of the Company of a complete liquidation of the Company or an agreement or series of agreements for the sale or disposition by the Company of all or substantially all of the Company's assets; or (v) occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

"Common Stock" means (i) the common stock, par value \$.001 per share, of the Company and (ii) any other class of capital stock of the Company which is (A) except for less voting rights, identical to the common stock clause (i) of this definition describes and (B) convertible into that common stock on a share for share basis on the occurrence of a Change of Control.

"Continuing Director" means at any time any individual who then (i) is a member of the Board and was a member of the Board as of the IPO Closing Date or whose nomination for his first election, or that first election, to the Board following that date was

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recommended or approved by a majority of the then Continuing Directors (acting separately or as a part of any action taken by the Board or any committee thereof) and (ii) is not an Acquiring Person, an Affiliate or Associate of an Acquiring Person or a nominee or representative of an Acquiring Person or of any such Affiliate or Associate.

"Corporate Status" describes the status of a natural person who is or was a director, officer, trustee, general partner, managing member, employee or agent of the Company or of any other Enterprise, provided that person is or was serving in that capacity at the request of the Company. For purposes of this Agreement, "serving at the request of the Company" includes any service by Indemnitee which imposes duties on, or involves services by, Indemnitee with respect to any employee benefit plan or its participants or beneficiaries.

"Court of Chancery" means the Court of Chancery of the State of Delaware.

"Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee hereunder.

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

"Exempt Person" means: (i) (A) the Company, any subsidiary of the Company, any employee benefit plan of the Company or of any subsidiary of the Company and (B) any Person organized, appointed or established by the Company for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of the Company or any subsidiary of the Company; and (ii) Indemnitee, any Affiliate or Associate of Indemnitee or any group (as Exchange Act Rule 13d-5(b) uses that term) of which Indemnitee or any Affiliate or Associate of Indemnitee is a member.

"Expenses" include all attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding and all interest or finance

charges attributable to any thereof. Should any payments by the Company under this Agreement be determined to be subject to any federal, state or local income or excise tax, "Expenses" also will include such amounts as are necessary to place Indemnitee in the same after-tax position (after giving effect to all applicable taxes) he would have been in had no such tax been determined to apply to those payments. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

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"Independent Counsel" means a law firm, or a member of a law firm, that or who is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company, its affiliates or Indemnitee in any matter material to any such party; or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" does not include at any time any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

"IPO" means the first time a registration statement the Company has filed under the Securities Act of 1933, as amended, and respecting an underwritten primary offering by the Company of shares of Common Stock becomes effective under that Act and the Company issues and sells any of the shares registered by that registration statement.

"IPO Closing Date" means the date on which the Company first receives payment for the shares of Common Stock it sells in the IPO.

"Person" means any natural person, sole proprietorship, corporation, partnership of any kind having a separate legal status, limited liability company, business trust, unincorporated organization or association, mutual company, joint stock company, joint venture, estate, trust, union or employee organization or governmental authority.

"Proceeding" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, in which Indemnitee was, is or will be involved as a party or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action taken by him or of any action on his part while acting as director or officer of the Company, or by reason of the fact that he is or was serving at the request of the Company as a director, officer, trustee, general partner, managing member, fiduciary, employee or agent of any other Enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement.

"Voting Shares" means: (i) in the case of any corporation, stock of that corporation of the class or classes having general voting power under ordinary circumstances to elect a majority of that corporation's board of directors; and (ii) in the case of any other entity, equity interests of the class or classes having general voting power under ordinary circumstances equivalent to the Voting Shares of a corporation.

Section 19. Modification and Waiver. No supplement to or modification or amendment of this Agreement will be binding unless executed in writing by both parties hereto. No waiver of any of the provisions of this Agreement will be deemed or will constitute a waiver of any

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other provisions hereof (whether or not similar), nor will any such waiver

constitute a continuing waiver.

Section 20. Notice by Indemnatee. Indemnatee agrees promptly to notify the Company in writing on being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses hereunder; provided, however, a failure to give that notice will not deprive Indemnatee of his rights to indemnification and advancement of Expenses hereunder unless the Company is actually and materially prejudiced thereby.

Section 21. Notices. All notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered and received (i) if personally delivered or if delivered by telex, telegram, facsimile or courier service, when actually received by the party to whom the notice or communication is sent or (ii) if delivered by mail (whether actually received or not), at the close of business on the third business day in the city in which the Company's principal executive office is located next following the day when placed in the mail, postage prepaid, certified or registered, addressed to the appropriate party at the address of that party set forth below (or at such other address as that party may designate by written notice to the other party in accordance herewith):

(a) If to Indemnatee, to: Raymond C. Turpin, Jr.
3825 Wieuca Terrace, N.E.
Atlanta, Georgia 30342

with a copy (which will not constitute notice for the purposes of this Agreement) to such legal counsel, if any, as the Indemnatee may designate in writing; and

(b) If to the Company, to: U.S. Concrete, Inc.
1300 Post Oak Blvd., Suite 1220
Houston, Texas 77056
Attention: President

Section 22. Contribution. To the fullest extent applicable law permits, if the indemnification this Agreement provides is unavailable to Indemnatee for any reason whatsoever, the Company, in lieu of indemnifying Indemnatee, will contribute to the amount incurred by Indemnatee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all the circumstances of that Proceeding in order to reflect: (i) the relative benefits received by the Company and Indemnatee as a result of the event(s) and/or transaction(s) giving rise to that Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnatee in connection with such event(s) and/or transaction(s).

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Section 23. Governing Law; Submission to Jurisdiction. This Agreement and the legal relations among the parties will be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration Indemnatee commences pursuant to Section 10(a), the Company and Indemnatee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement will be brought only in the Court of Chancery and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Court of Chancery for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Court of Chancery and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Court of Chancery has been brought in an improper or otherwise inconvenient forum.

Section 24. Miscellaneous. Use of one gender herein includes usage of each other gender where appropriate. This Agreement uses the words "herein," "hereof" and words of similar import to refer to this Agreement as a whole and not to any provision of this Agreement, and the word "Section" refers to a Section of this Agreement, unless otherwise specified.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the

day and year first above written.

ATTEST:

U.S. CONCRETE, INC.

By: /s/ Raymond C. Turpin

By: /s/ Eugene P. Martineau

Print Name: Raymond C. Turpin

Eugene P. Martineau
President and Chief Executive Officer

ATTEST:

INDEMNITEE:

By: /s/ Eugene P. Martineau

/s/ Raymond C. Turpin

Print Name: Eugene P. Martineau

Raymond C. Turpin

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