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-and-

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GRAHAM MCALPINE, KENNETH
MCALPINE, JAMES MCALPINE, and
McALPINE & CO., LTD., derivatively on
behalf of MOUNTAIN ACCESSORIES,
INC. t/a MOUNTAIN PLUMBING
PRODUCTS, a New Jersey corporation,

Plaintiffs,

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION:
BERGEN COUNTY

DOCKET NO.: C-320-09

Civil Action

vs.

MOUNTAIN ACCESSORIES, INC. t/a
MOUNTAIN PLUMBING PRODUCTS, a
New Jersey corporation, JAMES
TOMAFSKY, TECTONIC ENTERPRISES,
LLC d/b/a PRESSALIT USA, GREG
TOUVELLE, JOHN STEWART, JOHN
DOES 1-10, and ABC COMPANIES 1-10,

Defendants.

AMENDED VERIFIED COMPLAINT

Plaintiffs, Graham McAlpine, Kenneth McAlpine, James McAlpine, and McAlpine
& Co., LTD, derivatively and on behalf of Mountain Accessories, Inc. t/a Mountain
Plumbing Products, by way of Amended Verified Complaint against the defendants,
hereby state as follows:

PARTIES

1. At all times hereinafter mentioned, Plaintiff, McAlpine & Co., Ltd.
("McAlpine & Co.") was and remains a corporation organized under the laws of

Scotland, with a principal place of business in Hillington, Glasgow. McAlpine & Co. is a manufacturer and exporter of plumbing products in over 50 countries.

2. At all times hereinafter mentioned, Defendant Mountain Accessories, Inc. d/b/a Mountain Plumbing Products (hereinafter "Mountain") was and remains a corporation organized under the laws of the state of New Jersey with offices located at 1351 Metropolitan Avenue, West Deptford, New Jersey. Mountain distributes decorative kitchen and bath accessories to a variety of local and regional customers. At all times material hereto, Mountain regularly transacts business in Bergen County.

3. At all times hereinafter mentioned, upon information and belief, Defendant James Tomafsky was and remains an individual residing in West Deptford, New Jersey.

4. At all times hereinafter mentioned, Defendant Tectonic Enterprises, LLC d/b/a Pressalit USA (hereinafter "Tectonic") was and remains a Limited Liability Company organized under the laws of the state of New Jersey with offices located at 1351 Metropolitan Avenue, West Deptford, New Jersey. Tectonic distributes kitchen and bath accessories.

5. At all times hereinafter mentioned, Defendant Greg Touvelle was Mountain's Chief Financial Officer. Upon information and belief, Defendant Greg Touvelle resides in West Deptford, New Jersey.

6. At all times hereinafter mentioned, Defendant John Stewart was an employee of Mountain. Upon information and belief, Defendant John Stewart resides in Haddon Township, New Jersey.

7. Defendants John Does 1-10 are fictitious persons whose identities are presently unknown to Plaintiffs.

8. Defendants ABC Companies 1-10 are fictitious entities whose identities are presently unknown to Plaintiffs.

FACTS COMMON TO ALL COUNTS

9. On or about March 1997 Mountain was incorporated in the state of New Jersey and entirely funded by Plaintiff, McAlpine & Co. who, at all relevant times, was and remains a 50% shareholder of Mountain. To date, Mountain is indebted to McAlpine & Co. in the amount of approximately \$6,000,000.

10. McAlpine & Co. is a well-known and well-respected leader in high quality plumbing products and manufacturer, serving the United Kingdom and European markets.

11. Mountain trades off the good will of McAlpine & Co. by promoting itself as “A McAlpine Company” on its website, www.mountainplumbing.com.

12. At or about the time of Mountain’s incorporation, Christopher Tomafsky, and Richard Espinosa were each 25% shareholders of Mountain.

13. In or about August 2002 Defendant James Tomafsky was appointed President of Mountain, and acquired Richard Espinosa’s 25% interest. The terms and conditions of James Tomafsky’s employment as President of Mountain and his fiduciary duties and obligations to Mountain are reflected in a written Employment Agreement dated August 1, 2002. See Exhibit A annexed hereto. (A signed copy of the Employment Agreement has been turned over to the hearing officer regarding the pending grievance complaint as discussed in ¶ 46 below).

14. Shortly after being appointed President of Mountain, James Tomafsky terminated his brother’s (Christopher Tomafsky) employment with Mountain.

15. Pursuant to the Mountain Shareholder’s Agreement dated February 13, 2003 annexed hereto as **Exhibit B**, upon termination of his employment, Christopher Tomafsky’s shares, representing 25% of Mountain, were deemed offered to his brother,

James Tomafsky. Thus, James Tomafsky purchased Christopher Tomafsky's 25% interest and became a 50% shareholder in Mountain.

16. At the present time, Mountain's shareholders are James Tomafsky and McAlpine & Co., each holding a 50% interest in the company.

17. At all relevant times, the Mountain Board of Directors was comprised of Graham McAlpine, Kenneth McAlpine, James McAlpine and James Tomafsky.

18. The By-Laws of Mountain authorize its Board of Directors to notice Special Meetings as follows:

3.04 A special meeting of the Board may be called for any purpose at any time by the President or 1 Director.

19. The By-Laws further require giving all Mountain Board of Directors at least two (2) days advanced oral notice of the scheduling of Special Meetings. See Exhibit C annexed hereto.

20. On October 14, 2009, Plaintiff, McAlpine & Co., a Mountain Board member, called for a Special Meeting of its Board of Directors for October 16, 2009 at 10:00 a.m. EST via telephone notice. Additional notice of this Special Meeting was also provided by e-mail to each Board member pursuant to the Notice provision in the By-Laws. See Exhibit D annexed hereto.

21. On October 16, 2009 a Special Meeting of the Mountain Board of Directors was convened by telephone conference pursuant to § 3.10 of the By-Laws. A quorum of the members of the Board of Directors were present and acting throughout, and the following resolutions were duly considered, voted upon and adopted pursuant to § 3.09 of the By-Laws as follows: (i) Pursuant to § 3.11(b) of the By-Laws Defendant James Tomafsky was removed as a Director and President for cause as more particularly detailed below; (ii) Defendant James Tomafsky's Employment Agreement

with Mountain dated August 1, 2002 was also terminated for cause pursuant to § 5.2, also more particularly detailed below.

22. Pursuant to § 3 (c) of the February 13, 2003 Shareholder's Agreement, upon Defendant James Tomafsky's termination of employment from Mountain, all of his shares are "deemed offered" to the other shareholders and/or to the corporation.

SPECIFIC MISCONDUCT BY DEFENDANT JAMES TOMAFSKY

The Illegal \$270,000 Loan/Corporate Theft

23. In order to fund his purchase of Christopher Tomafsky's shares, as recited in paragraph 15 above, unbeknownst to any member of the Mountain Board of Directors or its other 50% shareholder McAlpine & Co., Defendant James Tomafsky secured a \$270,000 bank loan in Mountain's name as borrower.

24. Without corporate authority, pursuant to a commitment letter issued by The Bank, Defendant James Tomafsky secured the bank loan by giving a first priority, perfected security interest in all present and after acquired accounts receivable, inventory, general intangibles, machinery, furniture, fixtures, and equipment of Mountain. See Exhibit E annexed hereto.

25. Not only was the \$270,000 loan an *ultra vires* act, but it violated McAlpine & Co.'s lending agreements with Mountain.

26. Upon information and belief, the \$270,000 loan unilaterally orchestrated by James Tomafsky is still outstanding, and it has been repaid, in part, not with James Tomafsky's monies, but rather with Mountain's corporate funds because Greg Touvelle caused Mountain to make monthly payments in the amount of \$5,424 for this loan and disguised the payments on Mountain's books and records as cost of goods sold.

Illegal Kickbacks/Theft by Deception/Embezzlement

27. Mountain purchases many of its product lines from overseas vendors. As a condition for securing Mountain's business, Defendant James Tomafsky coerced vendors to raise prices charged to Mountain by 10% which the vendors then paid to him as a kickback disguised as purported commissions.

28. In the case of Dawnway Enterprises, for example, located in Taiwan, which manufactures all of the faucets for Mountain, once Mountain paid its invoices, Dawnway Enterprises would then wire the 10% kickback to James Tomafsky's personal bank account. Upon information and belief, Mountain gave Dawnway over \$1 million in business.

29. As evidence of this nefarious plot, attached as **Exhibit F** is an email exchange between Frank Huang of Dawnway Enterprises in China and Defendant James Tomafsky discussing kickbacks disguised as purported commissions. In order to avoid detection, the emails are not on Mountain's server, but rather Defendant James Tomafsky's personal EarthLink email account. As indisputable evidence, attached as **Exhibit G** are wire confirmations from Dawnway Enterprises to Defendant James Tomafsky's personal bank account dated June 18 and 26, 2008, and July 30, 2008 in the respective amounts of \$8,189.24, \$6,608.37, and \$9,221.34.

30. Upon information and belief, in furtherance of this scheme to defraud, one of Mountain's vendors in China, AWH Hipole, opened a bank account in China for James Tomafsky in the name of one of its employees. The kickbacks from AWH were then deposited into this Chinese bank account, and James Tomafsky was furnished with an ATM card and the password, allowing him to withdraw the kickbacks as cash in the United States.

31. Upon information and belief, James Tomafsky, routinely raided Mountain's corporate funds for his own personal affairs disguised as corporate business.

Violation of Corporate Opportunity Doctrine/Competition with Employer

32. On or about December 4, 2008, without the knowledge or authority of the Mountain Board of Directors, and in direct violation of James Tomafsky's Employment Agreement with Mountain, James Tomafsky and Greg Touvelle, Mountain's CFO formed Tectonic Enterprises, LLC (hereinafter "Tectonic"). The incorporator and agent for service of process is John Stewart, also a Mountain employee. Attached as **Exhibit H** is the New Jersey Business Status Report for Tectonic.

33. Tectonic is a distributor of kitchen and bath accessories, precisely the same line of business as Mountain, and operates out of the same business premises as Mountain.

34. Tectonic, without Mountain's corporate authority, prior knowledge or consent, has been using Mountain's premises, employees, resources and good will to promote Tectonic by seizing corporate opportunities as follows:

- i) Tectonic is located in Mountain's offices and warehouse, and its name was added to the Mountain sign leading customers to believe they are related entities;
- ii) Tectonic advertises and uses Mountain's phone number and address, including Internet listings as reflected on www.pressalit.com;
- iii) Mountain employees are listed as contacts for Tectonic;
- iv) IP addresses for Tectonic's website www.pressalit.com and Mountain's website www.mountainplumbing.com are the same;
- v) Mountain sales representatives and employees are being forced by James Tomafsky to sell Tectonic products;
- vi) While Mountain rents booth space at trade shows, James Tomafsky features and promotes Tectonic products in Mountain's booth;

- vii) Key Mountain sales agencies have been forced by James Tomafsky to resign or have been coerced into taking Tectonic products into their sales line;
- viii) Tectonic stores, packages, ships and delivers its products from Mountain premises for which Mountain pays the monthly rent; and
- ix) Caused Mountain to make monthly payments in the amount of \$5,424 for this loan and disguised the payments on Mountain's books and records as a cost of goods sold.

35. Defendants, Tectonic, James Tomafsky, Greg Touvelle, and John Stewart, acting in concert and with the intent to deceive Mountain, its Board of Directors and the other 50% shareholder McAlpine & Co., are siphoning sales and resources from Mountain. For example, Pressalit is a worldwide toilet seat company in Europe for which Mountain was the exclusive US distributor. After Tectonic was formed, Mountain was no longer the exclusive US distributor, and Pressalit is now distributed by Tectonic. Moreover, Mountain employees are advertised as contact representatives for Tectonic.

Trademark Infringement

36. Mountain duly registered its trademark for Mountain Plumbing Products with the US Patent and Trademark Office.

37. For approximately 10 years, Mountain's logo reflected "Mountain Plumbing Products – A McAlpine Company." See Exhibit I. Once Defendant James Tomafsky formed Tectonic, all while employed by Mountain, he then changed the corporate logo on the banner for a trade show by deleting "A McAlpine Company" and inserting Tectonic Enterprises thereby leading Mountain's distributors, wholesale showrooms, clients and the general public to falsely believe that Tectonic is affiliated with or related to Mountain. Attached as **Exhibit J** are copies of the infringed logo. This false notion and "confusion" in the marketplace is further reinforced by the fact that Tectonic uses Mountain's very same business address.

38. Tectonic is seizing upon and undermining Mountain's good will, and ubiquitous name recognition it has earned in the industry. Mountain's reputation is further damaged because of James Tomafsky's reputation for unfilled promises, poor payment history and inferior Tectonic products.

Breach of the Employment Agreement

39. The August 1, 2002 Employment Agreement between Mountain and James Tomafsky specifically prohibits him from having an interest directly or indirectly in any other business similar to Mountain's as follows:

6. Other Employment. Employee shall not during the term hereof, be interested directly or indirectly, in any manner, as partner, officer director, investor, stockholder, advisor, employee, or in any other capacity, in any other business similar to Employer's business or engaged in the distribution of Kitchen and/or bath accessories or related services similar to Employer's services for Employee's personal advantage or benefit or that of others. Any other employment or position during the term hereof which might reasonably be deemed contrary to the best interest of the Employer is prohibited.....

See Exhibit A annexed hereto.

40. While the Employment Agreement specifically requires James Tomafsky's unfettered Duty of Loyalty and Best Efforts (§ 2) it also articulates the basis for the Board of Directors termination of him for cause, the most egregious of which are the receipt of kickbacks and the appropriation of Mountain's business opportunities, as follows:

5.2 Termination for Cause

- (a) A violation, as determined by the Employer's Board of Directors, of the Employer's Code of Ethics (which, *inter alia*, prohibits conflicts of interest) ;
- (b) The Employee's material breach of the terms of this Employment Agreement....

- (k) Appropriation of Business opportunities for the Company for the direct or indirect benefit of the Employee' or members of his family;
- (l) Causing the company to enter into transactions or arrangements with the Employee or a person or entity affiliated therewith, which results in the direct or indirect benefit to the Employee without the prior written consent of the President of the Company;
- (m) Willful or malicious interference with the Company's operations;
- (n) Employee's direct action or failure to act which causes or threatens to cause to the Company a material loss;
- (o) **Any act of fraud, material misappropriation of funds or assets or embezzlement by the Employee, including but not limit to the receipt of kickbacks.** (emphasis added)

See Exhibit A annexed hereto.

41. In brazen violation of Defendant James Tomafsky's contractual and common law duties, Defendant James Tomafsky used confidential information purloined from Mountain to promote Tectonic, formed a competing business in the same premises as Mountain using Mountain employees, and received kickbacks causing Mountain to suffer damages by incurring higher costs so its vendors could funnel kickbacks to Defendant James Tomafsky.

Covenant Not to Compete, Non-Solicit and Injunctive Relief

42. The Employment Agreement provides that upon termination of James Tomafsky's employment and for a period of two (2) years following the last day of employment, he will not directly or indirectly, compete with Mountain by soliciting or accepting competing business as follows:

9.1 Employee acknowledges that during the course of his employment, he will acquire confidential information about Employer's business, including but not limited to, its clients, vendors, prices, strategies and other proprietary, confidential information. In order to protect Employer's critical interest in these relationships and information, Employee covenants and agrees that, upon termination of his employment either by notice ...or for causefor a period of two (2) years

following the last day of employment, Employee will not directly or indirectly, compete with Employer by soliciting or accepting competing business from any person or entity which was a client (s) of Employer at the time of Employee's separation and/or for a two (2) year period prior thereto. The parties agree that competing with the Employer's business shall mean engaging directly or indirectly in the ownership, managerial, consulting or sales capacity in the business of distributing kitchen and/or bath accessories and relate services.

9.2 It is the specific intent of the parties that Employee shall be restricted as set forth above from engaging, directly or indirectly, for himself or any other person or entity, in an facet of Employer's business in which Employee engaged prior to the termination of employment and from any facet of Employer's business about which Employee acquired proprietary or confidential information during the course of his employment.

See Exhibit A annexed hereto.

43. Not only does the Employment Agreement prohibit James Tomafsky from competing with Mountain for two (2) years, it likewise prohibits him from soliciting Mountain's employees which he has already been utilizing for Tectonic's business. The non-solicit provision is as follows:

14. Non-solicitation of Employees. Employee agrees that during his employment with Employer and for two (2) years following termination of Employee's employment, whether such termination is voluntary or involuntary, effected by Employer or Employee, regardless of cause, Employee shall not, directly or indirectly, solicit or induce, or attempt to solicit or induce, any employee or Employer to leave Employer for any reason whatsoever or hire any individual employed by Employer.

See Exhibit A annexed hereto.

44. The Employment Agreement further provides that Mountain and James Tomafsky agree that irreparable injury will result to Mountain in the event he violates any restrictive covenant and, accordingly, the Employment Agreement provides for Injunctive Relief as follows:

11.1 Employer and Employee agree that irreparable injury will result to this Employer in the event Employee violates any restrictive covenant contained in the Agreement and Employee acknowledges that the remedies at law for any breach by Employee will be inadequate and that Employer shall be entitled to injunctive relief against Employee in addition to any other remedy and damages available. Employee acknowledges that the restrictions contained herein are reasonable, but agrees that if any court of competent jurisdiction shall hold such restrictions unreasonable as to time, geographic area, activities or otherwise, such restrictions are subject to and shall be deemed to be reduced to the extent necessary in the opinion of such court to make them reasonable.

See Exhibit A annexed hereto.

Ultra Vires Attempt to Change Shareholders Agreement and By-Laws

45. At or about the time that Defendant James Tomafsky acquired Christopher Tomafsky's 25% interest in Mountain, Defendant James Tomafsky demanded that Mountain's corporate counsel amend the Shareholders Agreement and By-Laws without a resolution from the Board of Directors in order to: (i) seize control of the corporation or cause a corporate stalemate; (ii) change the provision that upon Defendant James Tomafsky's termination or death, his stock would be deemed offered to the other shareholders and/or the corporation; and (iii) elevate his stepson, John Stewart, also a Mountain employee, as a Director.

46. Recognizing the gross impropriety, Mountain's then corporate counsel refused to amend the By-Laws or Shareholder' Agreement. As a result, Defendant John Tomafsky terminated corporate counsel, and filed a specious grievance complaint with the state bar. A hearing officer is presently in possession of the corporate books and records.

The Destruction of Documents/Spoliation of Evidence

47. On October 14, 2009 at or about the time Defendant James Tomafsky was notified of the Special Meeting of the Board of Directors, he surmised that

corporate changes were afoot, and his demise was imminent. Defendant James Tomafsky then instructed his confederate disloyal Mountain employees to destroy and/or remove boxes of documents from the Mountain premises which, presumably, detail the financial improprieties including payments by Mountain for the benefit of Tectonic, among other financial irregularities, which can only be learned of by a complete audit of the books and records. In fact, some boxes of documents have already been removed.

48. In order to preserve the integrity of the Mountain corporate books and records, the McAlpine Board Members issued a directive sending all of the disloyal employees home, hired a security agency to safeguard the premises and changed the locks.

49. It is well settled that the purpose of a preliminary injunction is to preserve the *status quo* pending trial and a decision on the merits. A temporary restraining order and preliminary injunction are appropriate because Mountain will suffer irreparable harm, with no adequate remedy at law, if injunctive relief is not granted. Defendants have misappropriated trade and confidential information, formed a competing entity in Mountain's premises and have already removed some documents and, if granted access, will further destroy and remove vital corporate documents and records belonging to Mountain, and monetary damages are not sufficient to compensate Mountain for that loss.

50. Mountain is entitled to the relief sought herein because Defendant James Tomafsky violated the express terms of the Employment Agreement with Mountain which contains express promises not to compete with Mountain nor hire its employees. Indeed, by the very express language of the Employment Agreement, Defendant James Tomafsky concedes that irreparable injury will occur if Defendant

James Tomafsky violates any of the restrictive covenants contained therein. See Exhibit A and ¶ 42-44 above.

51. Mountain is entitled to preliminary injunctive relief because the benefit of such relief outweighs any detriment to Defendants. On the one hand, an injunction would safeguard Mountain's goodwill, business reputation, trade secrets, methods of business operation, contractual rights, and most importantly, its business records. By contrast, Defendant James Tomafsky has deliberately breached his contractual commitments and common law duties to Mountain by, *inter alia*, surreptitiously forming a competing business in Mountain's premises as more particularly detailed above.

Health Insurance for Phantom Employees

52. Unbeknownst to plaintiffs and without Mountain's knowledge or consent, the Defendants James Tomafsky, Greg Touvelle, and James Stewart, acting in concert, added various phantom employees to Mountain's health insurance policy and used Mountain's funds to pay the monthly premiums for these phantom employees.

53. Specifically, Jennifer Tomafsky, the daughter of Defendant, James Tomafsky, and her spouse were added to Mountain's health insurance policy despite the fact that neither of them was employed by Mountain. As a result of the fraud and wrongful actions by Defendants James Tomafsky, Greg Touvelle, and James Stewart, Mountain paid \$711.47 in monthly health insurance premiums for Jennifer Tomafsky and her spouse for a period of 16 months commencing on August 1, 2008, the effective date of their enrollment on Mountain's health insurance policy, for a total of \$11,383.52.

54. Further, Jessica D. Stewart, the step daughter of Defendant, James Tomafsky, was added to Mountain's health insurance policy despite the fact that she was not employed by Mountain. As a result of the fraud and wrongful actions by Defendants, James Tomafsky, Greg Touvelle, and James Stewart, Mountain paid \$337.00 in monthly health insurance premiums for Jessica D. Stewart for a period of 27 months commencing on August 30, 2007, the effective date of her enrollment on Mountain's health insurance policy, for a total of \$9,099.00.

55. In addition, Lauren Bucksner, the girlfriend of Defendant, John Stewart, was added to Mountain's health insurance policy despite the fact the she was not employed by Mountain. As a result of the fraud and wrongful actions of Defendants James Tomafsky, Greg Touvelle, and James Stewart, Mountain paid \$313.47 in monthly health insurance premiums for a period of 9 months, commencing on March 1, 2009, the effective date of her enrollment on Mountain's health insurance policy, for a total of \$2,832.23.

56. Upon discovering this insurance fraud committed by the Defendants James Tomafsky, Greg Touvelle, and James Stewart, plaintiffs caused Mountain's health insurer to terminate coverage for these individuals.

FIRST COUNT

(Fraud; Injunctive Relief)

57. Plaintiffs incorporate by reference the preceding allegations of the Amended Verified Complaint as if set forth herein at length.

58. At all times throughout the employment of Defendant James Tomafsky, the 50% shareholder McAlpine and Co. and the Mountain Board of Directors entrusted him with the duties and responsibilities as company President to maintain a duty of

loyalty to the company and to act in the best interests of the company, its shareholder McAlpine & Co. and Board of Directors.

59. At all times throughout the employment of Defendant James Tomafsky as an officer of Mountain, he was acting in a fiduciary capacity with respect to his obligations to the company, its 50% shareholder McAlpine & Co., and Board of Directors.

60. At all times throughout the exercise of his employment duties as President of Mountain, and by virtue of the express terms of his Employment Agreement with Mountain, Defendant James Tomafsky represented to the company's shareholder McAlpine & Co. and its Board of Directors that he would not engage for his own personal benefit, either directly or indirectly, either as partner, officer, director, etc. in any other business similar to Mountain's business or engage in the distribution of Kitchen and/or bath accessories or related services similar to that of Mountain that might be deemed contrary to Mountain's best interests.

61. At all times throughout the exercise of his employment duties as President of Mountain, and by virtue of the express terms of his Employment Agreement with Mountain, Defendant James Tomafsky represented to the company's shareholders and Board of Directors that he would not engage in any acts of fraud, material misrepresentation of funds or assets, receive kickbacks, enter into any transactions or arrangements with any other person or entity that would result in him receiving a direct or indirect benefit without the company's prior written consent, or willfully or maliciously interfere with the company's operations.

62. In reliance upon these representations by Defendant James Tomafsky, Mountain paid him a salary and provided other compensatory benefits and perks such as health insurance, a cell phone, a car, and company credit cards to be used for business expenses.

63. In further reliance upon these representations by Defendant James Tomafsky, Mountain entrusted him, as company President, with running the day-to-day operations of the company, including check signing authority on the company's business operating accounts as well as access to the company's computer servers, e-mail, and control of the company's books and records.

64. In further reliance upon these representations by Defendant James Tomafsky, Mountain has and will continue to pay rent to the owner of the building located at 1351 Metropolitan Avenue, West Deptford, New Jersey where Mountain operates its business from. Unbeknownst to Mountain's other 50% shareholder McAlpine & Co. and its Board of Directors until recently, James Tomafsky participated in the incorporation of Tectonic in New Jersey and permitted Tectonic to operate out of the same premises, warehouse, sell and distribute Tectonic products which compete with Mountain's products, receive kickbacks from Mountain's vendors, and otherwise have complete use and enjoyment of the premises despite the fact that Mountain is paying 100% of the rent.

65. In accepting the terms and conditions of his Employment Agreement with Mountain, the aforesaid representations made by Defendant James Tomafsky to Mountain's 50% shareholder McAlpine & Co. and its Board of Directors were false, he knew them to be false at the time when made, and otherwise intended that McAlpine & Co. and Mountain's Board of Directors would rely upon same to their detriment.

66. Plaintiffs did, in fact, rely upon these misrepresentations to their detriment and substantial damage.

67. As a direct and proximate result of the misrepresentations made by Defendant James Tomafsky Plaintiffs have suffered substantial damages.

68. Prior to receiving official notice of the Special Meeting called by the Board of Directors for October 16, 2009, Mountain's Board and 50% shareholder McAlpine & Co. discovered that Defendants James Tomafsky, Tectonic, Greg Touvelle, and John Stewart, either acting separately or in concert with one another, immediately instructed Mountain's employees to begin shredding business records and documents upon the premises located at 1351 Metropolitan Avenue, West Deptford, New Jersey, and attempted to remove a substantial amount of plumbing products out of the building.

69. In an effort to prevent these defendants from further attempting to dissipate, transfer or liquidate Mountain's assets or to destroy business and computer records, Mountain's Board of Directors authorized the retention of a security firm and secured the premises from further theft and wrongful actions of these defendants.

70. Insomuch as these defendants, including John Does 1-10 and ABC Companies 1-10, have already demonstrated complete disregard for Mountain's personal property by destroying business records and attempting to remove substantial plumbing products/supplies from the building, Mountain will suffer immediate and irreparable harm if the defendants are able to continue accessing the company's business premises, computer servers, bank accounts, customer accounts, and books and records.

WHEREFORE, Plaintiffs, acting derivatively on behalf of Mountain Accessories, Inc., demand judgment against Defendants Mountain Accessories, Inc., James Tomafsky, Tectonic, Greg Touvelle, John Stewart, John Does 1-10, and ABC Companies 1-10, jointly and severally as follows:

- (A) Mandatorily enjoining and restraining all defendants from entering into the premises located at 1351 Metropolitan Avenue, West Deptford, New Jersey until further Order of this Court;
- (B) Mandatorily enjoining and restraining all defendants from contacting any employees of Mountain Accessories, Inc. pending further Order of the Court;
- (C) Mandatorily enjoining and restraining all defendants from contacting any customers of Mountain Accessories, Inc. pending further Order of the Court;
- (D) Mandatorily enjoining and restraining Defendant James Tomafsky from violating the terms and conditions of the restrictive covenants set forth in his Employment Agreement with Mountain Accessories, Inc.;
- (E) Mandatorily enjoining and restraining all defendants and their agents or anyone acting under them from destroying, transferring, hypothecating, shredding, mutilating, or otherwise altering or modifying any business records of Mountain Accessories, Inc. including, but not limited to, electronic mail, digital computer files, computer data, check registers, customer account information, customer lists, invoices, bills of lading, and all such other company

records stored at the premises located at 1351 Metropolitan Avenue, West Deptford, New Jersey;

- (F) Pending further Order of the Court directly or indirectly transferring, disposing, assigning and/or hypothecating any assets of Mountain Accessories, Inc., until further Order of this Court;
- (G) Mandatorily enjoining and compelling the defendants to provide an accounting of the sales and business operations generated by Tectonic from the premises located at 1351 Metropolitan Avenue, West Deptford, New Jersey;
- (H) For compensatory and punitive damages;
- (I) For counsel fees, interest and costs of suit; and
- (J) For such other and further relief as the Court may deem just and equitable.

SECOND COUNT

(Racketeering)

71. Plaintiffs incorporate by reference the preceding allegations of the Amended Verified Complaint as if set forth herein at length.

72. It is a violation of New Jersey law and policy for any person to engage in a pattern of racketeering activity and it is in the public interest to provide that activity which is inimical to the general health, welfare and prosperity of the State of New Jersey and its citizens be made subject to strict civil sanctions.

73. Defendant James Tomafsky, aided by his co-defendants Tectonic, Greg Touvelle and John Stewart along with others, the identity of whom has yet to be established but who are referred to herein as Defendants John Does 1-10 and ABC

Companies 1 -10, have engaged in a pattern of racketeering activities in their dealings with Mountain.

74. The following acts, along with other acts to be disclosed in the course of the continuing proceedings herein, are “Prohibited Acts” within the definition of racketeering activity in such case made and provided, including N.J.S.A. 2C:41-1:

(a) James Tomafsky, aided by his co-defendants Tectonic, Greg Touvelle and John Stewart and others, committed fraud in violation of N.J.S.A. 2C:21-3 (fraud related to public records and recordable instruments) by fraudulently incorporating Tectonic for the sole purpose of stealing business opportunities and profits from Mountain;

(b) James Tomafsky, aided by his co-defendants Tectonic, Greg Touvelle and John Stewart and others, committed fraud in violation of N.J.S.A. 2C:21-4 (falsifying or tampering with records) by falsifying various documents (invoices, bills of sale and other correspondence) associated with Mountain's business with purpose to deceive Mountain and to conceal wrongdoing;

(c) James Tomafsky, aided by his co-defendants Tectonic, Greg Touvelle and John Stewart and others, committed fraud in violation of N.J.S.A. 2C:21-9 (Misconduct by corporate official) by purposely and knowingly using, controlling, and operating Mountain to further and promote his unlawful scheme associated with Tectonic, including receiving kickbacks (as more fully described aforesaid);

(d) James Tomafsky, aided by his co-defendants Tectonic, Greg Touvelle and John Stewart and others, committed theft in violation of N.J.S.A. 2C:20-4 (Theft by deception) by obtaining the property of Mountain, specifically the \$270,000 bank loan obtained without the approval of Mountain's 50% shareholder McAlpine & Co. and its Board of Directors, and Greg Touvelle caused Mountain to make monthly

payments in the amount of \$5,424 for this loan and disguised the payments on Mountain's books and records as a costs of goods sold;

(e) James Tomafsky, aided by his co-defendants Tectonic, Greg Touvelle and John Stewart and others, committed mail fraud in violation of 18 U.S.C. 1341 by using the mails to further their scheme to defraud Mountain. The object of their scheme was the money and property of Mountain. Specifically, as more particularly described herein, James Tomafsky, and his co-defendants Tectonic, Greg Touvelle and John Stewart and others used the mails in connection with communicating and receiving information to and from Tectonic and to/from Mountain's customers and receiving monies and other kickbacks from these customers in exchange for purchasing Tectonic's products instead and in place of Mountain's products. These defendants thereby utilized the mails to deprive Mountain of their property (the leases) and the monies associated with the sale of Mountain's products.

(f) Defendants James Tomafsky, Greg Touvelle, and James Stewart, acting in concert, committed fraud by adding phantom employees to Mountain's health insurance policy thereby causing Mountain to incur the cost of health insurance premiums for individuals who were not employed by Mountain.

(g) Defendants James Tomafsky, Greg Touvelle, James Stewart, and Tectonic looted Mountain's assets by causing Mountain to issue checks and wire transfers payable to Tectonic despite the fact that Mountain did not transact any business with Tectonic, and thereby used Mountain's assets to fund Tectonic's operations and expenses.

75. The foregoing acts are not isolated acts but constitute a pattern of racketeering activity as defined in N.J.S.A. 2C:41-1. James Tomafsky, aided by his co-defendants Tectonic, Greg Touvelle and John Stewart and others, entered into

numerous sale transactions with Mountain's customers utilizing Tectonic as the seller and/or supplier of plumbing products in place and instead of Mountain, and in the process utilized Mountain's business premises, employees, computer systems, telephone system and other personal property owned and/or maintained by Mountain for the sole purpose of advancing their own pecuniary interests to the detriment and prejudice of Mountain, including receiving kickbacks from Mountain's customers as described aforesaid. Upon information and belief, these defendants committed numerous such transactions with each transaction constituting a separate racketeering act and thereby demonstrating a pattern of such racketeering activity.

76. Defendants James Tomafsky, Tectonic, Greg Touvelle and John Stewart and other persons unknown thus far, are persons within the definition of the same set forth in N.J.S.A. 2C:41-1(b), and that each of them is a legal entity that constitutes an "enterprise" within the meaning of N.J.S.A. 2C:41-1(c).

77. In accordance with N.J.S.A. 2C:41-4(c), each of the Plaintiffs is a person damaged by reason of a violation of N.J.S.A. 2C:41-2 and has standing to sue in this Court to recover threefold any damages it has sustained and the costs of suit, including reasonable attorneys' fees, costs of investigation and litigation.

WHEREFORE, Plaintiffs demand judgment against Defendants James Tomafsky, Tectonic, Greg Touvelle, John Stewart, John Does 1-10, and ABC Companies 1 -10, jointly and severally as follows:

- (A) Enjoining and restraining Defendants, directly or indirectly, from transferring, disposing, assigning and/or hypothecating any of their assets until further Order of this Court;
- (B) Mandatorily enjoining and restraining all defendants from entering into the premises located at 1351 Metropolitan Avenue, West

Deptford, New Jersey for any purpose until further Order of this Court;

- (C) Mandatorily enjoining and compelling the defendants to provide an accounting of the sales and business operations generated by Tectonic from the premises located at 1351 Metropolitan Avenue, West Deptford, New Jersey;
- (D) Mandatorily enjoining and compelling the defendants to provide an accounting of all commissions, kickbacks and all other forms of compensation received from any vendor or customer of Mountain who purchased products or supplies from Tectonic during the term of James Tomafsky's employment with Mountain Accessories, Inc.
- (E) For compensatory trebled plus interest;
- (F) Punitive damages;
- (G) For counsel fees, interest and costs of suit; and
- (H) For such other and further relief as the Court may deem just and equitable.

THIRD COUNT

(Conversion)

78. Plaintiffs incorporate by reference the preceding allegations of the Amended Verified Complaint as if set forth herein at length.

79. Mountain paid substantial amounts of monies and other benefits and perks to and for the benefit of Defendant James Tomafsky with the express understanding that he was faithfully carrying out his duties as President of Mountain.

80. Defendant James Tomafsky unlawfully collected a salary and other benefits and perks from Mountain without faithfully carrying out his duties as President

of Mountain, and otherwise assumed and exercised rights of ownership over Mountain's customer relationships, utilized Mountain's business premises, funds, employees, computers and office systems to advance his competing business Tectonic to Mountain's detriment, unilaterally borrowed \$270,000 from a bank without the approval of Mountain's other 50% shareholder McAlpine & Co. and Mountain's Board of Directors, received kickbacks and diverted funds from Mountain for his own personal pecuniary benefit and/or for that of Tectonic, and otherwise destroyed and/or attempted and continues to attempt to destroy/remove Mountain's business records.

81. Defendants Greg Touvelle and John Stewart also collected salaries and received other benefits and perks in connection with their employment by Mountain and, acting in concert with Defendant James Tomafsky, caused Mountain to add phantom employees to Mountain's health insurance policy thereby resulting in Mountain incurring the costs of monthly health insurance premiums for individuals who were not within its employ.

82. The aforesaid actions by Defendants James Tomafsky and Tectonic, acting in concert with Greg Touvelle and John Stewart, without Mountain's knowledge or consent, represent an exercise of rights of ownership over monies and other personal property rightfully belonging to Mountain.

83. Defendants James Tomafsky, Tectonic, Greg Touvelle, and John Stewart have wrongfully converted Mountain's monies and other personal property to their own use and purpose to the exclusion of Mountain's ownership rights.

84. Defendants James Tomafsky, Tectonic, Greg Touvelle and John Stewart's improper exercise of the rights of ownership over Mountain's monies and other personal property is inconsistent with Mountain's ownership rights to same and constitutes the unlawful conversion of such monies and property.

85. As a direct and proximate result of the wrongful actions of Defendants James Tomafsky, Tectonic, Greg Touvelle, and John Stewart, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment against Defendants James Tomafsky, Tectonic, Greg Touvelle, John Stewart, John Does 1-10, and ABC Companies 1 -10, jointly and severally as follows:

- (A) Enjoining and restraining Defendants, directly or indirectly, from transferring, disposing, assigning and/or hypothecating any of their assets until further Order of this Court;
- (B) Mandatorily enjoining and compelling Defendants to provide an accounting;
- (C) Return or disgorgement of prior salary and benefits received;
- (D) For compensatory and punitive damages;
- (D) For counsel fees, interest and costs of suit; and
- (E) For such other and further relief as the Court may deem just and equitable.

FOURTH COUNT

(Breach of Fiduciary Duty)

86. Plaintiffs incorporate by reference the preceding allegations of the Amended Verified Complaint as if set forth herein at length.

87. Defendant James Tomafsky, as the President of Mountain and a member of its Board of Directors, Greg Touvelle as CFO of Mountain, and John Stewart as an employee of Mountain, each owed a fiduciary duty to the company to act honestly and loyally.

88. These Defendants breached their fiduciary duties to Mountain by engaging in a scheme which included forming and operating the Tectonic entity to compete with Mountain and divert business opportunities and revenues from Mountain, as well as using the Mountain premises and resources for the benefit of Tectonic and themselves.

89. As a result of the breach of fiduciary duties by these Defendants, Plaintiffs have been damaged.

WHEREFORE, Plaintiffs demand judgment against Defendants James Tomafsky, Greg Touvelle, and John Stewart as follows:

- (A) Enjoining and restraining Defendants James Tomafsky, Greg Touvelle, and John Stewart directly or indirectly, from transferring, disposing, assigning and/or hypothecating any of their assets until further Order of this Court;
- (B) Mandatorily enjoining and compelling Defendants James Tomafsky, Greg Touvelle, and John Stewart to provide an accounting;
- (C) Mandatorily enjoining and compelling Defendant James Tomafsky to forfeit and surrender his 50% stock interest in Mountain;
- (D) Establishing a lien against the Defendant James Tomafsky's 50% stock interest in Mountain;
- (E) For compensatory and punitive damages;
- (D) For counsel fees, interest and costs of suit; and
- (E) For such other and further relief as the Court may deem just and equitable.

FIFTH COUNT

(Constructive Trust)

90. Plaintiffs incorporate by reference the preceding allegations of the Amended Verified Complaint as if set forth herein at length.

91. Mountain is the rightful owner of the monies and other personal property that Defendants have diverted, converted, profited and deposited for their own account, including, without limitation, the kickbacks and other forms of compensation paid to Defendants James Tomafsky and Tectonic, as well as profits earned by Tectonic.

92. The funds that Defendants and others have converted are being held by them as constructive trustees on behalf of Plaintiffs.

93. As constructive trustees, Plaintiffs' claim to the funds and property due to them has priority over any other claims to the funds and property.

WHEREFORE, Plaintiffs demand judgment against Defendants James Tomafsky, Tectonic, Greg Touvelle, John Stewart, John Does 1-10, and ABC Companies 1 -10, jointly and severally as follows:

- (A) Enjoining and restraining Defendants, directly or indirectly, from transferring, disposing, assigning and/or hypothecating any of their assets until further Order of this Court;
- (B) Mandatorily enjoining and compelling Defendants to provide an accounting;
- (C) For compensatory and punitive damages;
- (D) For counsel fees, interest and costs of suit; and
- (E) For such other and further relief as the Court may deem just and equitable.

SIXTH COUNT

(Unjust Enrichment)

94. Plaintiffs incorporate by reference the preceding allegations of the Amended Verified Complaint as if repeated herein at length.

95. By the conduct alleged herein, Defendants and others have been and continue to be unjustly enriched at the expense of Plaintiffs.

WHEREFORE, Plaintiffs demand judgment against Defendants James Tomafsky, Tectonic, Greg Touvelle, John Stewart, John Does 1-10, and ABC Companies 1 -10, jointly and severally as follows:

- (A) Enjoining and restraining Defendants, directly or indirectly, from transferring, disposing, assigning and/or hypothecating any of their assets until further Order of this Court;
- (B) Mandatorily enjoining and compelling Defendants to provide an accounting;
- (C) Mandatorily enjoining and compelling Defendant James Tomafsky to forfeit and surrender his 50% stock interest in Mountain;
- (D) Establishing a lien against the Defendant James Tomafsky's 50% stock interest in Mountain;
- (E) For compensatory and punitive damages;
- (F) For counsel fees, interest and costs of suit; and
- (G) For such other and further relief as the Court may deem just and equitable.

SEVENTH COUNT

(Breach of Contract)

96. Plaintiffs incorporate by reference the preceding allegations of the Amended Verified Complaint as if repeated herein at length.

97. The aforesaid actions and wrongful conduct by Defendant James Tomafsky constitutes a breach of his Employment Agreement with Mountain.

98. The aforesaid actions and wrongful conduct by Defendant James Tomafsky constitutes a breach of the Mountain Shareholders Agreement

99. Mountain's Board of Directors terminated James Tomafsky's employment for cause. Accordingly, James Tomafsky is in breach of his Employment Agreement and Mountain Shareholders Agreement.

100. As a result of the breach, James Tomafsky is responsible for damages incurred by Mountain as a result thereof.

WHEREFORE, Plaintiffs demand judgment against Defendant James Tomafsky, as follows:

- (A) For compensatory damages;
- (B) Rescission of the Employment Contract;
- (C) Return of disgorgement of prior salary and benefits received;
- (D) Mandatorily enjoining and compelling Defendant James Tomafsky to forfeit and surrender his 50% stock interest in Mountain;
- (E) Establishing a lien against the Defendant James Tomafsky's 50% stock interest in Mountain;
- (F) For attorneys' fees, interest, and costs of suit; and
- (G) For such other and further relief as the Court may deem just and equitable.

EIGHTH COUNT

(Tortious Interference With Contractual Relations)

101. Plaintiffs incorporate by reference the preceding allegations of the Amended Verified Complaint as if set forth herein at length.

102. Mountain has numerous vendor and customer relationships which it has cultivated over the years and which it regularly transacts business with in the form of contracts for the purchase and sale of various high end plumbing products and accessories for kitchens and baths.

103. Defendants, through their employment with Mountain and/or affiliation with Tectonic, have unique and specific knowledge of Mountain's contracts, customer relationships, and trade secrets.

104. By incorporating the competing entity Tectonic and using such entity for the purpose of diverting sales from Mountain's existing customers, Defendants intentionally and maliciously, with motive to harm and without justification, have tortuously interfered with Mountain's contractual relations with its customers thereby causing numerous customers to purchase products from Tectonic instead of from Mountain.

105. As a direct and proximate result of the Defendants' wrongful actions, Plaintiffs have sustained damages.

WHEREFORE, Plaintiffs demands judgment against Defendants James Tomafsky, Tectonic, Greg Touvelle, John Stewart, John Does 1-10, and ABC Companies 1-10, as follows:

- (A) For compensatory damages;
- (B) Punitive damages;
- (C) For attorneys' fees, interest, and costs of suit; and

- (D) For such other and further relief as the Court may deem just and equitable.

NINTH COUNT

(Tortious Interference With Prospective Economic Advantage)

106. Plaintiffs incorporate by reference the preceding allegations of the Amended Verified Complaint as if set forth herein at length.

107. At all relevant times throughout the employment of Defendant James Tomafsky as its President, Mountain, operating under the brand name of “A McAlpine Company”, had a reasonable expectation of economic benefit or advantage from the sales of its product lines and services both abroad and here in the United States. At all relevant times Defendants knew of Mountain’s expectancy of economic benefit and advantage, as well as that of the company’s other 50% shareholder Plaintiff McAlpine & Co.

108. Defendants, utilizing their inside positions at Mountain, wrongfully and intentionally interfered with Mountain’s and McAlpine & Co.’s expectancy of economic benefit and advantage.

109. There exists a reasonable probability that but for the Defendants’ wrongful interference that these Plaintiffs would have realized the economic benefit or advantage.

110. As a direct and proximate result of the Defendants’ wrongful conduct, Plaintiffs Mountain and McAlpine & Co. have sustained damages.

WHEREFORE, Plaintiffs, Mountain Accessories, Inc. and McAlpine & Co., Ltd. demand judgment against Defendants, James Tomafsky, Tectonic, Greg Touvelle, John Stewart, John Does 1-10, and ABC Companies 1 -10 as follows:

- (E) For compensatory damages;

- (F) Punitive damages;
- (G) For attorneys' fees, interest, and costs of suit; and
- (H) For such other and further relief as the Court may deem just and equitable.

TENTH COUNT

(Trademark Infringement)

111. Plaintiffs incorporate by reference the preceding allegations of the Amended Verified Complaint as if set forth herein at length. Mountain has spent considerable time, effort and money developing and promoting its products, good will and reputation through the McAlpine & Co. brand name.

112. For approximately 10 years, Mountain's corporate logo has included the name "A McAlpine Company." This logo is displayed on Mountain's website, www.mountainplumbing.com, its stationary, product labeling, invoices, company brochures and promotional materials, and in numerous advertisements circulated to the general public and industry trades. See Exhibit I.

113. Mountain is actively using this logo to advertise, market, promote, target and sell its product lines and services throughout the United States and overseas.

114. By virtue of the aforesaid, Mountain owns a common law trademark in the use of its logo and reference to being "A McAlpine Company."

115. Defendant Tectonic, which is engaged in the same business as Mountain, has violated, and continues to violate, Mountain's common law trademark and has otherwise diluted the value of such trademark. Examples that Plaintiffs are aware of include: (i) using a large display banner which combined the name "Tectonic Enterprises" and Mountain Plumbing Products at a nationally advertised and attended industry trade show; and (ii) promoting and advertising "Tectonic Enterprises" together

with reference to Mountain Plumbing at a national decorator plumbing conference and trade show known as “DPHA.” See collectively **Exhibit J**. These infringements have caused Mountain’s distributors, wholesale showrooms, clients and the public at large to falsely believe that Tectonic is affiliated with or related to Mountain. This false notion is further reinforced by the fact that Tectonic uses Mountain’s very same business address and employs some of Mountain’s key personnel, including Mountain’s CFO Greg Touvelle, himself a member of Tectonic.

116. Defendants James Tomafsky, Greg Touvelle, John Stewart, John Does 1-10, and ABC Companies 1-10 have acted in concert with Tectonic and have likewise violated and continue to violate Mountain’s trademark for the purpose of advancing Tectonic’s business to the prejudice and detriment of Mountain.

117. As a direct and proximate result of the Defendants’ wrongful actions, Mountain has sustained, and will continue to sustain damages and irreparable harm including, but not limited to, diminution in the value of its trademark and a likelihood of confusion within the marketplace as Tectonic continues to market, advertise, promote and sell its products and services throughout the United States and abroad as if it were affiliated with or related to Mountain.

WHEREFORE, Plaintiffs demand entry of a judgment against Defendants, Mountain Accessories, Inc., James Tomafsky, Tectonic, Greg Touvelle, John Stewart, John Does 1-10, and ABC Companies 1-10, jointly and severally as follows:

- A. Preliminary and permanent injunctive relief barring the continued use, advertising, promoting or marketing of Tectonic and its products in combination with Mountain’s mark in any form;
- B. Preliminary and permanent injunctive relief barring the sale of any Tectonic goods or services utilizing the Mountain mark in any form;

- C. Compelling an accounting of all advertisements presently maintained by Tectonic in the United States or abroad including, but not limited to, print media, Internet website listings, and online shopping directories.
- D. Compensatory damages, including statutory damages and penalties;
- E. Punitive damages;
- F. For counsel fees, interest and costs of suit; and
- G. For such other and further relief as the Court may deem just and equitable.

ELEVENTH COUNT

(Unfair Competition & Deceptive Trade Practices Under N.J.S.A. 56:4-1)

118. Plaintiffs incorporate by reference the preceding allegations of the Amended Verified Complaint as if set forth herein at length.

119. Defendant Tectonic is engaged in the same industry as Mountain and is competing for the same customer base. Tectonic has misappropriated and continues to misappropriate Mountain's brand, trademark, business premises, employees, resources, proprietary information, trade secrets, reputation and goodwill for its own use and profit to Mountain's detriment and prejudice.

120. Defendants James Tomafsky, Greg Touvelle, John Stewart, John Does 1-10, and ABC Companies 1-10 have exploited Mountain's business for their own pecuniary benefit through their membership, ownership and/or affiliation with Tectonic.

121. The aforesaid wrongful actions by Defendants constitute misappropriation and unfair trade practices in violation of *N.J.S.A. 56:4-1*.

122. As a direct and proximate result of the Defendants' wrongful actions,

Plaintiffs have sustained, and will continue to sustain, damages and irreparable harm.

WHEREFORE, Plaintiffs demand entry of a judgment against Defendants, Mountain Accessories, Inc., James Tomafsky, Tectonic, Greg Touvelle, John Stewart, John Does 1-10, and ABC Companies 1-10, jointly and severally as follows:

- A. Declaratory relief that Defendants have engaged in unfair and deceptive trade practices in violation of *N.J.S.A. 56:4-2*;
- B. Preliminary and permanent injunctive relief, including temporary restraints, pursuant to *N.J.S.A. 56:4-2*, barring the continued use, advertising, promoting or marketing Tectonic and its products and services in conjunction with Mountain's brand and mark;
- C. Preliminary and permanent injunctive relief, including temporary restraints, pursuant to *N.J.S.A. 56:4-2*, barring the continued use, advertising, promoting or marketing Tectonic and its products and services from the same business premises occupied by Mountain;
- D. Compensatory damages sustained by Plaintiffs resulting from the Defendants' violations of *N.J.S.A. 56:4-2*;
- E. Treble damages pursuant to *N.J.S.A. 56:4-2*;
- F. For counsel fees, interest and costs of suit; and
- G. For such other and further relief as the Court may deem just and equitable.

TWELFTH COUNT

(Misappropriation of Confidential Information)

123. Plaintiffs incorporate by reference the preceding allegations of the Amended Verified Complaint as if set forth herein at length.

124. While employed as President of Mountain and also serving as a member

of its Board of Directors, Defendant James Tomafsky was prohibited from actively competing with Mountain as per the express terms of his Employment Agreement and pursuant to New Jersey common law.

125. While employed as President of Mountain and serving on its Board of Directors, Plaintiffs entrusted James Tomafsky with Mountain's day-to-day operations. While occupying this position of trust, James Tomafsky knew that he was prohibited from utilizing Mountain's proprietary information, business practices, business premises, trade secrets, trademark, customer relationships, employees, computer systems, telephone systems, e-mail servers and other resources to advance his own pecuniary benefit or personal agenda.

126. Notwithstanding his duty of loyalty to Mountain as the company's President and as a member of its Board of Directors, as confirmed by the express terms of his Employment Agreement, James Tomafsky misappropriated Mountain's proprietary and confidential information by establishing Tectonic as a competing entity and operating Tectonic from the same business premises as Mountain, and in the process utilizing his access to Mountain's proprietary and confidential information, business practices, trade secrets, trademark, customer relationships, employees, computer systems, telephone systems, and e-mail servers to promote and advance Tectonic's business to the detriment and prejudice of Mountain.

127. Notwithstanding his duty of loyalty to Mountain as the company's President and member of its Board of Directors, as confirmed by the express terms of his Employment Agreement, James Tomafsky intentionally destroyed and/or instructed others to destroy/remove Mountain's business records resulting in Mountain's Board of Directors having to resort to emergency measures to protect against further destruction of its proprietary and confidential information.

128. Upon information and belief, James Tomafsky possesses a Mountain company computer which contains confidential and proprietary information belonging to Mountain.

129. As a direct and proximate result of Defendant James Tomafsky's wrongful actions and misappropriation, Plaintiffs have sustained damages.

WHEREFORE, Plaintiffs demand entry of a judgment against Defendant, James Tomafsky, as follows:

- A. Preliminary and permanent injunctive relief, including temporary restraints, prohibiting Defendant James Tomafsky from destroying, deleting, transferring, or otherwise misappropriating any proprietary and confidential information belonging to Mountain and which is presently stored on Mountain's lap top computer in his possession;
- B. Preliminary and permanent injunctive relief, including temporary restraints, prohibiting Defendant James Tomafsky from accessing Mountain's business premises located at 1351 Metropolitan Avenue, West Deptford, New Jersey for any purpose until further Order of this Court;
- C. Preliminary and permanent injunctive relief, including temporary restraints, prohibiting Defendant James Tomafsky from transferring, disclosing, disseminating, distributing or otherwise misappropriating any proprietary and confidential information belonging to Mountain which is in his possession or control, and from otherwise instructing or directing the Defendants or any other third party to engage in such activities;

- D. Preliminary and permanent injunctive relief compelling Defendant James Tomafsky to turnover Mountain's lap top computer and all proprietary and confidential information belonging to Mountain which is stored on the computer's hard drive;
- E. Preliminary and permanent injunctive relief, including temporary restraints, prohibiting Defendant James Tomafsky from using any personal e-mail accounts established for him or by him while employed by Mountain, whether accessed remotely or from computers located at the business premises of Mountain;
- F. Preliminary and permanent injunctive relief compelling Defendant James Tomafsky to account for any and all confidential and proprietary information belonging to Mountain in his possession;
- G. Preliminary and permanent injunctive relief compelling Defendant James Tomafsky to turnover any and all confidential and proprietary information belonging to Mountain in his possession;
- H. Compensatory damages;
- I. Punitive damages;
- J. For counsel fees, interest and costs of suit; and
- K. For such other and further relief as the Court may deem just and equitable.

THIRTEENTH COUNT

(Competition With Employer or Principal)

130. Plaintiffs incorporate by reference the preceding allegations of the Amended Verified Complaint as if set forth herein at length.

131. By incorporating Tectonic as a competing business and operating Tectonic from Mountain's business premises and with Mountain's resources during his period of employment with Mountain, including but not limited to coercing Mountain's customers and vendors to purchase Tectonic's products in exchange for kickbacks, advertising and promoting Tectonic's goods and services in conjunction with Mountain's brand, trademark, reputation and good will, James Tomafsky engaged in direct competition with his employer through these acts of self-dealing.

132. Defendant, John Stewart, by incorporating Tectonic as a competing business and operating Tectonic from Mountain's business premises and with Mountain's resources during his period of employment with Mountain has engaged in direct competition with his employer through these acts of self-dealing.

133. The aforesaid wrongful actions by James Tomafsky, who at all times occupied a fiduciary position with Mountain as both its President and a member of its Board of Directors, has deprived Mountain of sales and potential sales, and in so doing he has usurped Mountain's business opportunities with its existing customers and potential customers.

134. The aforesaid wrongful actions by Greg Touvelle, who at all times occupied a fiduciary position with Mountain as its CFO, has deprived Mountain of sales and potential sales, and in so doing he has usurped Mountain's business opportunities with its existing customers and potential customers.

135. The foregoing self-serving activities by Defendants James Tomafsky, John Stewart, and Greg Touvelle constitute fraud upon their employer Mountain.

136. The foregoing self-serving activities by Defendants James Tomafsky, John Stewart and Greg Touvelle constitute a breach of their fiduciary duties to Mountain.

137. The foregoing self-serving activities by Defendants James Tomafsky, John Stewart, and Greg Touvelle constitute a breach of their duty of loyalty to Mountain.

138. The aforesaid actions by Defendant Tectonic has resulted in Tectonic earning profits at the expense of Mountain, thus depriving Mountain of such profits that it reasonably expected to receive and would have received but for Tectonic operating a competing business from Mountain's premises and using Mountain's proprietary and confidential information and resources in furtherance thereof.

139. As a direct and proximate result of the wrongful actions of Defendants James Tomafsky, John Stewart, and Greg Touvelle, Plaintiffs have sustained damages.

WHEREFORE, Plaintiffs demand entry of a judgment against Defendants, James Tomafsky and Greg Touvelle, as follows:

- A. Compensatory damages;
- B. Rescission of the Employment agreement between Mountain and James Tomafsky;
- C. Return or disgorgement of prior salary and benefits received by each of them;
- D. Punitive damages;
- E. For counsel fees, interest and costs of suit; and
- F. For such other and further relief as the Court may deem just and equitable.

FOURTEENTH COUNT

(Appointment of Custodial Receiver of Tectonic)

140. Plaintiffs incorporate by reference the preceding allegations of the Amended Verified Complaint as if set forth herein at length.

141. Due to the fraud, misappropriation and conversion committed by Tectonic as against Mountain's assets, proprietary information, vendor and customer relationships, and the continuing and ongoing threats presented by Tectonic as a business competing with Mountain in the same industry and operating from the same premises as Mountain while also utilizing Mountain's employees, computers and other resources to Mountain's detriment and prejudice, it is critical that a custodial receiver of Tectonic be appointed *pendent lite* to:

- a. Maintain the status quo of Tectonic, to preserve Tectonic's assets for the constructive trust of Mountain;
- b. Prevent the co-defendants from removing, selling, transferring, secreting or otherwise disposing of Tectonic's assets;
- c. Prevent further irreparable harm to Mountain;
- d. Prevent further misappropriation of Mountain's assets and property by Tectonic and the other co-defendants; and
- e. Ensure that Tectonic is operated in a lawful and orderly manner.

142. The appointment of a custodial receiver for Tectonic is further necessitated by the breach of fiduciary duties of its members James Tomafsky and Greg Touvelle, each of whom occupied or continues to occupy positions of trust with Mountain.

143. In the absence of the appointment of a custodial receiver of Tectonic, Plaintiffs will sustain irreparable harm and prejudice.

WHEREFORE, Plaintiffs demand entry of a judgment against Defendants, James Tomafsky, Tectonic, Greg Touvelle, John Stewart, John Does 1-10, and ABC Companies 1-10, as follows:

- A. Preliminary injunctive relief appointing a custodial receiver of Tectonic *pendent lite* pending further Order of the Court;
- B. Empowering the receiver to manage, oversee and operate Tectonic with the usual powers and duties, and to take any action the receiver may deem necessary to fulfill his duties;
- C. Enjoining and restraining the Defendants from interfering with the Receiver's operation and management of Tectonic;
- D. Directing Defendants and their agents to immediately turn over and deliver to the Receiver or cause to be delivered, all keys, books and records in their possession, custody and/or control, and to further turn over any and all other documents or materials in their possession, custody and/or control as may be further requested by the Receiver pertaining to the operation of Tectonic;
- E. Directing the Receiver to deposit all monies received by him or her at the time of receipt in his or her own name as Receiver;
- F. Requiring the Receiver to file with the Clerk of the Court, within ten (10) days of his or her appointment, a surety company bond for the faithful discharge of his or her duties as receiver;
- G. Requiring the Receiver to file interim reports with the Court as to the status of Tectonic's business operations;
- H. Requiring the Receiver and any party in interest to apply to this Court for further directions and for such further powers as may be necessary to enable the Receiver to fulfill his or her duties; and
- I. Aiding in the liquidation or dissolution of Tectonic.

FIFTEENTH COUNT

(Appointment of Fiscal Agent)

144. Plaintiffs incorporate by reference the preceding allegations of the Verified Complaint as if set forth herein at length.

145. The aforesaid wrongful actions by Defendants necessitate the appointment of fiscal agent of Tectonic *pendent lite* to:

- A. Investigate and protect the assets of Tectonic for the benefit of a constructive trust in favor of Plaintiffs;
- B. Secure the books and records of Tectonic;
- C. Advise the Court as to the status of Tectonic and to preserve its assets and oversee its operations;
- D. Manage the financial affairs of Tectonic; and
- E. Ensure that Tectonic is operated in a lawful and orderly manner

146. In the absence of the appointment of a fiscal of Tectonic, Plaintiffs will sustain irreparable harm and prejudice.

WHEREFORE, Plaintiffs demand entry of a judgment against Defendants, James Tomafsky, Tectonic, Greg Touvelle, John Stewart, John Does 1-10, and ABC Companies 1-10, as follows:

- A. Preliminary injunctive relief appointing a fiscal agent of Tectonic *pendent lite* pending further Order of the Court;
- B. Empowering the fiscal agent to manage, oversee and operate Tectonic with the usual powers and duties, and to take any action the fiscal agent may deem necessary to fulfill his duties;
- C. Enjoining and restraining the Defendants from interfering with the fiscal agent's operation and management of Tectonic;

- D. Directing Defendants and their agents to immediately turn over and deliver to the fiscal agent or cause to be delivered, all keys, books and records in their possession, custody and/or control, and to further turn over any and all other documents or materials in their possession, custody and/or control as may be further requested by the fiscal agent pertaining to the operation of Tectonic;
- E. Directing the fiscal agent to deposit all monies received by him or her at the time of receipt in his or her own name as fiscal agent;
- F. Requiring the fiscal agent to file with the Clerk of the Court, within ten (10) days of his or her appointment, a surety company bond for the faithful discharge of his or her duties as fiscal agent;
- G. Requiring the fiscal agent to file interim reports with the Court as to the status of Tectonic's business operations; and
- H. Requiring the fiscal agent and any party in interest to apply to this Court for further directions and for such further powers as may be necessary to enable the fiscal agent to fulfill his or her duties.

SIXTEENTH COUNT

(Fraud and Breach of Fiduciary Duty for Adding Phantom Employees to Health Insurance Plan)

147. Plaintiffs incorporate by reference the preceding allegations of the Amended Verified Complaint as if set forth herein at length.

148. Defendants James Tomafsky, Greg Touvelle, and James Stewart, acting in concert and without Plaintiffs' knowledge or consent, falsely represented to Mountain's health insurer that certain phantom individuals were employed by Mountain, thereby causing Mountain's health insurer to add these individuals to Mountain's health

insurance plan, and further causing Mountain to incur the payment of monthly health insurance premiums for these individuals who had no entitlement to such benefits.

149. These individuals included Jennifer Tomafsky, her spouse, and Jessica D. Stewart, all of whom are related to Defendant James Tomafsky, and Lauren Bucksner, the girlfriend of Defendant John Stewart.

150. The aforesaid individuals had no right to participate in Mountain's health insurance plan, and thus received benefits for which they were not entitled to.

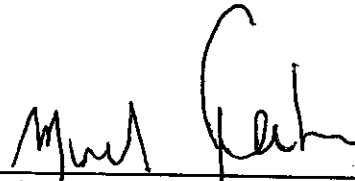
151. The aforesaid wrongful actions by the Defendants James Tomafsky, Greg Touvelle, and John Stewart, constitute fraud and a breach of their fiduciary duties to Mountain, and caused Mountain to incur expenses which it otherwise would not have incurred.

152. As a direct and proximate result of the wrongful actions of Defendants James Tomafsky, Greg Touvelle, and John Stewart, Plaintiffs have sustained damages.

WHEREFORE, Plaintiffs demand entry of a judgment against Defendants, James Tomafsky, Greg Touvelle, and James Stewart as follows:

- A. Compensatory damages including, but not limited to, reimbursement of all health insurance plan premiums paid by Mountain as a result of their misconduct;
- B. Punitive damages;
- C. For counsel fees, interest and costs of suit; and

D. For such other and further relief as the Court may deem just and equitable.



Michael Kalmus, Esq.
MICHAEL KALMUS, P.C.
Attorney for Plaintiffs


-And-

LOFARO & REISER, L.L.P.
Co-Counsel for Plaintiffs

Dated: November 13, 2009

DESIGNATION OF TRIAL COUNSEL

Michael Kalmus, Esq. and Glenn R. Reiser, Esq. are hereby designated as trial attorneys for Plaintiffs in the within action.



Michael Kalmus, Esq.
MICHAEL KALMUS, P.C.
Attorney for Plaintiffs

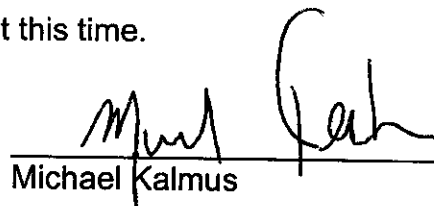
-And-

LOFARO & REISER, L.L.P.
Co-Counsel for Plaintiffs

Dated: November 13, 2009

CERTIFICATION PURSUANT TO RULE 4:5-1

I hereby certify that the matter in controversy herein is not the subject of any other court proceeding or arbitration. To the best of my knowledge and belief, there are no other known parties who should be joined at this time.



Michael Kalmus

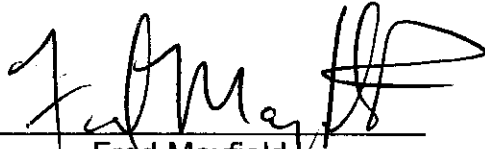
Dated: November 13, 2009

VERIFICATION

I, FRED MAYFIELD, of full age, verify as follows:

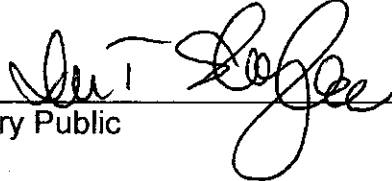
1. I am the President of Mountain Accessories, Inc., one of the Plaintiffs named in the within Amended Verified Complaint. I have read the allegations thereof.
2. I am familiar with the facts as set forth in the within Amended Verified Complaint. The allegations thereof are true of my own personal knowledge, except where made upon information and belief, which allegations I believe to be true.

I certify under penalty of perjury that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Fred Mayfield

Dated:

Sworn to and subscribed before me
This 12 th day of November 2009


Notary Public

IWONA T. SHILLINGFORD
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 20, 2010

EXHIBIT A

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT, made this 1st day of August 2002, by and between Mountain Accessories, Inc., a New Jersey Corporation whose address 1301 Metropolitan Avenue, Suite 5, West Deptford, NJ 08066 (hereinafter referred to as "Employer") and James S. Tomafsky whose address is 1713 Haven Avenue, Ocean City New Jersey 08226 (hereinafter referred to as "Employee").

WITNESSETH

WHEREAS, Employer is principally engaged in the business of distributing kitchen and bath accessories; and

WHEREAS, there is a substantial demand for Employer's services, as well as substantial goodwill in Employer's trade name, Mountain Plumbing Products, which name signifies to the public the highest standards of professional integrity and quality service; and

WHEREAS, Employee wishes to be employed by Employer as the Director of Sales and Marketing according to the terms of this Agreement; and

WHEREAS, Employee recognizes the importance to Employer and to the public of maintaining the high standards and quality associated with Employer's name and reputation, and is willing to maintain such high standards and quality; and

WHEREAS, Employer has established many valuable vendor and client contacts within its service area and wishes and requires protection in maintaining these client relationships; and

WHEREAS, Employer's personnel both develop and come in contact with Employer's clients, vendors and certain proprietary and confidential information which has significant economic value and is not readily available to the public, and which is of great importance to Employer in dealing with its clients, which is carefully protected by Employer as secret and confidential information; and

WHEREAS, Employee will, in his position as Director, act for Employer in maintaining, improving, developing, and servicing Employer's clients, and both parties to this Agreement have recognized and do recognize that Employee will be employed in a position of trust and confidence in which a high, fiduciary duty of loyalty on the part of the Employee to the Employer is created; and

WHEREAS, Employee desires to be employed by Employer and Employer desires to employ the services of Employee as a Director to perform such services as may be assigned to him by the Employer pursuant to the terms, covenants and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, Employer and Employee agree as follows:

AGREEMENT

1. Employment. Employer hereby employs Employee as a Director to perform all duties consistent with such position and associated therewith. Employee hereby accepts and agrees to such employment, subject to the general supervision and pursuant to the orders, advice and direction of Employer.

2. Loyalty and Best Efforts. Employee hereby acknowledges and undertakes a strict duty of loyalty to Employer and promises to devote his best efforts, experience and talents full time to the performance of his duties for Employer. Employee agrees to give proper time and attention to furthering Employer's business and goodwill, and to comply with all rules, regulations, and policies established or issued by Employer. Employee further agrees to refrain from taking advantage, for himself or others of any corporate opportunities of the Employer.

3. Term of Employment. The term of this Agreement shall commence as of the date first written above and remain in full force and effect for a period of two (2) years or until terminated as set forth herein.

4. Compensation and Duties. As compensation while employed hereunder, Employee, during his satisfactory performance of his duties and obligations as set forth in Exhibit A, attached hereto, shall be entitled to compensation from Employer as set forth in Exhibit A. Such duties and compensation may be changed from time to time by the preparation and signing of a new Exhibit "A" by both Employer and Employee.

5. Termination.

5.1 By Either Party

This Agreement, and the employment contemplated herein, may be terminated by the Employer by giving ninety (90) days written notice of termination to the Employee. This Agreement, and the employment contemplated herein, may be terminated by the Employee by giving ninety (90) days written notice of termination to the Employer. Termination under this Paragraph 5.1 shall not prejudice any remedy that the terminating party may have either at law, in equity, or under this Agreement. Survive any termination, voluntary or involuntary, effected by Employer or by Employee and regardless of cause, unless the parties agree in writing to the contrary.

5.2 For Cause

The Employer may terminate this Agreement immediately upon written notice to Employee for cause. For purposes of this Section 5 "cause" shall mean the occurrence of any of the following events:

- (a) A violation, as determined by the Employer's Board of Directors, of the Employer's Code of Ethics; or
- (b) The Employer's material breach of the terms of this Employment Agreement or a material failure or refusal by the Employee to comply with the reasonable directions of the Board of Directors or officers of the Company; or
- (c) The Employee's indictment or conviction of a serious misdemeanor or felony; or
- (d) The failure or refusal by Employee to comply with the policies, standards or regulations of Employer as established from time to time by Employer; or
- (e) Habitual abuse or addiction of alcohol or drugs by Employee; or
- (f) Continued lateness or absence from work, including by not limited to continued absence from work for a substantial portion of the workday without the consent of the Company; or
- (g) Denigrating in public the Company or any officer, director or affiliate thereof; or
- (h) Physical violence against the Company's officers, directors, employees or their families; or
- (i) Physical destruction or substantial damage to assets of the Company; or
- (j) Racial bias toward or sexual harassment of employees of the Company;
- (k) Appropriation of business opportunities for the Company for the direct or indirect benefit of the Employee or members of his family; or
- (l) Causing the Company to enter into transactions or arrangements with the Employee or a person of entity affiliated therewith, which results in the direct or indirect benefit to the Employee without the prior written consent of the President of the Company; or
- (m) Willful or malicious interference with the Company's operations;
- (n) Employee's direct action or failure to act which causes or threatens to cause to the Company a material loss; or
- (o) Any act of fraud, material misappropriation of funds or assets or embezzlement by the Employee, including but not limited to the receipt of kickbacks.

Upon termination of employment under the Section, Employee shall be entitled to received the salary that would be payable to Employee up to the effective date of employment termination; however, Employee shall not be entitled to receive any pro-rated bonus or any further benefit, compensation. Or severance payment of any kind hereunder.

The failure of Employer at any time to require performance by Employee of any provision expressed herein shall in no way effect the Employer's right to thereafter enforce such provision; nor shall the waiver by Employer of any breach of any provision expressed herein be taken or held to be a waiver of any succeeding breach of any such portion or as a waiver of a provision itself. Furthermore, this Agreement shall terminate immediately if

either the death or disability of the Employee shall render Employee incapable of carrying out Employee's responsibilities and duties as expressed herein.

5.3 Compensation upon Termination.

In the event of termination of this Agreement by either party under Paragraph 5.1, the Employee shall be entitled to compensation and benefits from the date notice of termination is received through the notice period (i.e. ninety (90) days). In the event of termination of this Agreement for cause by the Employer under Paragraph 5.2, the Employee shall be entitled to compensation and benefits only through the termination date.

6. Other Employment. Employee shall not, during the term hereof, be interested directly or indirectly, in any manner, as partner, officer, director, investor, stockholder, advisor, employee, or in any other capacity, in any other business similar to Employer's business or engaged in the distribution of kitchen and/or bath accessories or related services similar to Employer's services for Employee's personal advantage or benefit or that of others. Any other employment or position during the term hereof which might reasonably be deemed contrary to the best interests of the Employer is prohibited. Employee agrees to obtain written consent, which consent shall not be unreasonably withheld, prior to entering into any other occupation, even if dissimilar to that of Employer. Provided, however, that nothing herein contained shall be deemed to prevent or limit the right of Employee to invest in the capital stock or other securities of any corporation whose stock or securities are publicly owned or are regularly traded on any public exchange, nor shall anything herein contained be deemed to prevent Employee from investing in real estate for his own benefit, provided such investment is not related to or in support of any entity engaged in a business similar to that of the Employer.

7. Benefits. Employer will provide Employee with those fringe benefits which Employer, at its sole discretion, determines to make available from time to time.

8. No Prior Agreements. Employee represents that he is not a party to, or otherwise subject to or bound by the terms of any contract, agreement, or understanding which in any manner would limit or otherwise affect his ability to perform his obligations hereunder, including, without limitation, any contract, agreement, or understanding containing any provision limiting Employee's right to compete with a prior Employer. Employee further represents that his employment with Employer will not require the disclosure or use of any confidential information belonging to prior employers or other persons or entities. In the event that Employer is required to expend sums in defense of an action brought by a former employer of Employee regarding the employment created herein, Employee will indemnify and hold Employer harmless from such action including, but not limited to all damages, attorneys' fees, court costs or other sums reasonably incurred in Employer's defense.

9. Covenant Not to Compete.

9.1. Employee acknowledges that during the course of his employment, he will acquire confidential information about Employer's business, including but not limited to, its

clients, vendors, prices, strategies and other proprietary, confidential information. In order to protect Employer's critical interest in these relationships and information, Employee covenants and agrees that, upon the termination of his employment either by notice given by Employee under Paragraph 5.1 above or for cause under Paragraph 5.2 above, for a period of two (2) years following the last day of employment, Employee will not, directly or indirectly, compete with Employer by soliciting or accepting competing business from any person or entity which was a client(s) of Employer at the time of Employee's separation and/or for a two (2) year period prior thereto. The parties agree that competing with the Employer's business shall mean engaging directly or indirectly in any ownership, managerial, consulting or sales capacity in the business of distributing kitchen and/or bath accessories and related services.

9.2 It is the specific intent of the parties that Employee shall be restricted as set forth above from engaging, directly or indirectly, for himself or any other person or entity, in any facet of Employer's business in which Employee engaged prior to the termination of employment and from any facet of Employer's business about which Employee acquired proprietary or confidential information during the course of his employment.

9.3 Employee agrees that competition shall include, but not be limited to, engaging in competitive activity, either as an individual, director, shareholder, officer, partner, independent contractor, consultant or joint venture with any other person or entity, or as an employee, agent, contractor, consultant or representative of any other person or entity, or otherwise being associated in a competitive capacity with any business entity which directly or indirectly competes with Employer. Nothing contained in this Paragraph 9.3 shall be deemed to prevent or limit the right of Employee to invest in capital stock or other securities of any corporation whose stock or securities are publicly owned or are regularly traded on any public exchange, nor shall anything herein contained be deemed to prevent Employee from investing in real estate for his own benefit, provided such investment is not related to or in support of any entity engaged in a business similar to that of the Employer.

9.4 Employer and Employee have examined in detail the Covenant Not to Compete and agree that the restraint imposed upon Employee is reasonable in light of the legitimate interests of Employer, and it is not unduly harsh upon Employee's ability to earn a livelihood.

10. Non-Disclosure of Confidential Information.

10.1 Employee agrees to hold and safeguard any information about Employer gained by Employer during the course of Employee's employment. Employee shall not, without the prior written consent of Employer, misappropriate, disclose or make available to anyone for use outside Employer's organization at any time, either during his employment or subsequent to any termination of his employment, whether such termination is voluntary or involuntary, effected by Employee or Employer, regardless of cause, any confidential and/or proprietary information, and any information regarding Employer's clients whether or not developed by Employee, except as required in the performance of Employee's duties for Employer.

10.2 Employee understands and agrees that any information about Employer's clients is the sole property of Employer and is essential to the protection of Employer's goodwill and to the maintenance of Employer's competitive position and accordingly should be kept secret.

11. Injunctive Relief

11.1 Employer and Employee agree that irreparable injury will result to this Employer in the event Employee violates any restrictive covenant contained in the Agreement and Employee acknowledges that the remedies at law for any breach by Employee will be inadequate and that Employer shall be entitled to injunctive relief against Employee in addition to any other remedy and damages available. Employee acknowledges that the restrictions contained herein are reasonable, but agrees that if any court of competent jurisdiction shall hold such restrictions unreasonable as to time, geographic area, activities or otherwise, such restrictions are subject to and shall be deemed to be reduced to the extent necessary in the opinion of such court to make them reasonable.

11.2 Employee agrees that the non-competition, non-disclosure, and non-solicitation obligations contained herein shall be extended by the length of time which Employee shall have been in breach of any of said provisions. Accordingly, Employee recognizes that the time periods included in the restrictive covenants order enjoining Employee from violating such provisions unless good cause can be shown as to why the periods described should not begin at that time.

12. Disclosure of Materials. Employee agrees that he shall promptly disclose to Employer all processes, techniques, methods, discoveries, improvements, and/or other materials made or developed by Employee in whole or in part during the period of Employee's employment which are related in any way to the business or activities of Employer. Employee recognizes that all such materials shall belong to and be the sole property of Employer, and Employee hereby assigns and agrees to assign all rights to such materials to Employer.

13. Return of Materials. Upon the termination of Employee's employment with Employer for any reason, whether such termination is voluntary or involuntary, effected by Employee or Employer, regardless of cause, Employee shall promptly deliver to Employer all property, records, materials, documents, and copies of documents concerning Employer's operations and/or its clients which Employee has in his possession or under his control at the time of termination of his employment.

14. Non-Solicitation of Employees. Employee agrees that during his employment with Employer and for two (2) years following termination of Employee's employment, whether such termination is voluntary or involuntary, effected by Employer or Employee, regardless of cause, Employee shall not, directly or indirectly, solicit or induce, or attempt to solicit or induce, any employee of Employer to leave Employer for any reason whatsoever or hire any individual employed by Employer.

15. Opportunity For Review. Employee understands the nature of the burdens imposed by the restrictive covenants contained in this Agreement. Employee acknowledges that he is entering into this Agreement on his own volition, and that he has been given the opportunity to have this Agreement reviewed by the person(s) of his choosing. Employee represents that upon careful review, he knows of no reason why any restrictive covenant contained in this Agreement is not reasonable and enforceable.

16. Restrictive Covenants of the Essence. There restrictive covenants upon the Employee set forth herein are of the essence of this Agreement; they shall be construed as independent of any other provision in this Agreement; and the existence of any claim or cause of action of the Employee against the Employer, whether predicated on this Agreement or not, shall not constitute a defense to the enforcement by the Employer of the restrictive covenants contained herein.

17. Renewal. Upon the expiration of the term of this Agreement as set forth in Section 3 above, and provided this Agreement is not otherwise subject to termination as set forth in Section 5 above, this Agreement shall immediately renew for a period of one (1) year. At least sixty (60) days prior to the expiration of this Agreement, including any renewals thereof, Employee shall notify in writing Employer which, if any, provisions of this Agreement are not acceptable for the renewal term.

18. Assignability. The obligations of Employee under this Agreement shall continue after the termination of his employment and shall be binding on Employee's heirs, executors, legal representatives and assigns; such obligations shall inure to the benefit of any successors or assigns of Employer. This Agreement may be assigned only by Employer.

19. Severability. It is the intention of the parties that the provisions of the restrictive covenants herein shall be enforceable to the fullest extent permissible under the applicable law. If any clause or provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, then the remainder of this Agreement shall not be affected thereby, and in lieu of each clause or provision of this Agreement which is illegal, invalid or unenforceable, there shall be added, as part of this Agreement, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and as may be legal, valid and enforceable.

20. Attorneys' Fees. Employee shall pay, indemnify and hold Employer harmless against all costs and expenses (including reasonable attorneys' fees) incurred by Employer with respect to enforcement of its rights under this Agreement.

21. Integration and Modification. This Agreement constitutes the entire agreement of the parties concerning their employment arrangement and supersedes all other prior or contemporaneous agreements, written or oral. No modification or waiver of any covenant, condition or limitation contained herein shall be valid unless done in writing and duly executed by both parties hereto.

22. Consent to Jurisdiction and Venue. Employee hereby irrevocably submits to the jurisdiction of the State of New Jersey, in any action or proceeding arising out of, or relating to, this Agreement, and Employee hereby irrevocably agrees that all claims in respect of any such action or proceeding may be heard and determined in such court. Employee agrees that a final judgment in any such action or proceeding shall, to the extent permitted by applicable law, be conclusive and may be enforced in other jurisdictions by suit on the judgment, or in any other manner provided by applicable law related to the enforcement of judgments.

23. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

WITNESS

JAMES S. TOMAFSKY

ATTEST:

MOUNTAIN ACCESSORIES, INC.

BY: _____

President

CHRISTOPHER G. TOMAFSKY
Director

EXHIBIT B

SHAREHOLDERS AGREEMENT

BY AND AMONG

MOUNTAIN ACCESSORIES, INC.,

a New Jersey Corporation,

AND

McALPINE & CO., LTD.

CHRISTOPHER G. TOMAFSKY

JAMES S. TOMAFSKY

Shareholders

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SHAREHOLDERS AGREEMENT

THIS AGREEMENT is made this 13th day of FEBRUARY, 2003, by and among McALPINE & CO., LTD., CHRISTOPHER G. TOMAFSKY and JAMES S. TOMAFSKY (individually a "Shareholder" and collectively the "Shareholders") and MOUNTAIN ACCESSORIES, INC., a New Jersey Corporation, with its principal place of business at 1301 Metropolitan Avenue, Suite 5, West Deptford, New Jersey 08066 (the "Corporation").

WITNESSETH:

WHEREAS, the Shareholders are the owners of all of the issued and outstanding common stock of Corporation (the "Shares"); and

WHEREAS, it is in the best interest of the Corporation and the Shareholders that the transfer of the Shares be restricted as provided herein; and

WHEREAS, the Shareholders wish to provide for continuity of the present successful and harmonious management of the Corporation; and

WHEREAS, the Shareholders desire to promote their mutual interests and the interests of the Corporation by imposing certain restrictions and obligations on themselves, on the Corporation and on the Shares; and

WHEREAS, the parties wish to establish an orderly procedure to effectuate the transfer of a Shareholder's stock in the event of a Shareholder's death or dissolution, or in the event that a disposition of his Shares, whether voluntary or involuntary, becomes necessary, advisable or desirable.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, it is agreed among the parties hereto as follows:

1. **Restrictions Against Encumbrances**

No Shareholder shall encumber all or any part of the Shares now owned or hereafter acquired by him. For purposes of this Agreement, "encumber" or "encumbrance" shall include any lien, attachment, assignment for the benefit of creditors, pledge, hypothecation or similar restriction, as well as the institution of any voluntary or involuntary proceedings against any Shareholder under the provisions of any federal or state act relating to bankruptcy or insolvency or any foreign equivalent thereof.

2. **Restriction on Voluntary Dispositions**

(a) **Disposing Shareholder**

(i) No Shareholder shall have the right to dispose of or transfer, as hereinafter defined, any of the Shares now owned or hereafter acquired by him, or to participate in the acquisition of any such Shares except as permitted by this Agreement and in accordance with its terms and conditions, and unless such transferee will become a party to this Agreement and will be bound by all of the terms and conditions of this Agreement. As used in this Agreement, "dispose of" or "transfer" shall include, without limitation, any sale, transfer, gift, bequest, devise or other voluntary disposition; provided, however, that "dispose of" or "transfer" shall not mean a transfer of Shares which is made pursuant to the deemed offer provisions of Paragraph 3 of this Agreement. Any purported transfer or disposition of Shares in violation of this Agreement will not affect the beneficial ownership of said Shares, and the Shareholder making such purported transfer will retain all rights to vote said Shares and all rights to receive dividends, distributions and liquidation proceeds on said Shares.

(ii) A Shareholder shall have the right to transfer or dispose of any or all of his Shares if such Shareholder (1) specifies in writing the name of the proposed transferee and the price and terms of the transfer, and (2) obtains the prior written consent of the owners of all of the remaining Shares then issued and outstanding; provided, however, that upon any transfer or disposition, said Shares must remain subject to all the terms and conditions of this Agreement, all transferees must become parties to this Agreement, and all transferees must agree in writing to be bound by all of the terms and conditions of this Agreement. Any consent given pursuant hereto shall be null and void if the disposing Shareholder deviates from the price, terms or intended transferee specified in the notice issued hereunder. In such case, a new consent must be obtained in order to effectuate a transfer hereunder.

(iii) In the absence of written consent as provided for in subparagraph 2(a)(ii), each Shareholder agrees that, prior to disposing of any of the Shares now owned or hereafter acquired by him, said Shareholder will first offer the Shares to be disposed of to the other Shareholders in writing, as provided below.

(b) Nondisposing Shareholders

(i) If the disposing shareholder is either Christopher G. Tomafsky or James S. Tomafsky, then the nondisposing Tomafsky shall have a first option to purchase the shares of the disposing Tomafsky for a period of thirty (30) days after a written offer is received pursuant to subparagraph 2(a)(iii), to accept, in writing, the offer as to all or any part of the Shares offered at the price and on the terms determined under Paragraphs 5 and 6 of this Agreement. If the nondisposing Tomafsky fails to purchase any of the shares offered, or if the disposing shareholder is McAlpine & Co., Ltd., then all the nondisposing Shareholders shall

have the right, for a period of thirty (30) days after a written offer is received pursuant to subparagraph 2(a)(iii), to accept, in writing, the offer as to all or any part of the Shares offered at the price and on the terms determined under Paragraphs 5 and 6 of this Agreement. Each nondisposing Shareholder shall have the right to purchase that number of Shares (including fractions) of the disposing Shareholder's offered Shares as is proportionate to a fraction, the numerator of which is the number of Shares owned by such Shareholder immediately prior to the acquisition, and the denominator of which is the number of Shares owned by all nondisposing Shareholders at that time, it being the intention of this subparagraph 2(b)(i) that each nondisposing Shareholder be entitled to maintain his proportionate equity and voting interest in the total Shares relative to each other nondisposing Shareholder.

(ii) Should any nondisposing Shareholder decide to acquire less than all of the disposing Shareholder's Shares to which he is otherwise entitled under subparagraph 2(b)(i), then the remaining Shares shall be reoffered to those nondisposing Shareholders who fully accept the first option under subparagraph 2(b)(i). Strictly for purposes of determining how much of such remaining Shares each other nondisposing Shareholder is entitled to purchase, the principles of Paragraph 2(b)(i) shall again apply except that each nondisposing Shareholder who is acquiring less of the offered Shares than he is otherwise entitled to acquire hereunder shall be deemed to be acquiring none of such Shares. Each nondisposing Shareholder entitled to acquire additional Shares shall have a period of fifteen (15) days after the receipt of a second written offer to accept, in writing, some or all of the remaining Shares at the price and terms determined under Paragraphs 5 and 6 of this Agreement. This procedure shall be repeated until all Shares offered have been accepted or until all Shareholders have declined to purchase the remaining Shares.

(iii) If the offer is not accepted by the nondisposing Shareholders as to all of the Shares offered, the offer shall be deemed to be rejected in whole or in part, as the case may be, in which case the Shares which were not accepted must then be offered, in writing, to the Corporation. Corporation shall have the right for a period of thirty (30) days after the receipt of a written notice, to accept this offer to purchase the Shares not accepted by the nondisposing Shareholders at the same price and upon the same terms of payment. The Shareholder offering his Shares for sale shall not vote or otherwise participate in the decision of the Corporation to purchase said Shares, whether under this Paragraph or any other Paragraph of this Agreement. In order to accept its offer, Corporation must, in writing, accept all of the Shares not accepted by the nondisposing Shareholders.

(c) If all the Shares offered pursuant to subparagraph 2(a)(iii) are not accepted by the other Shareholders and/or Corporation, such offer shall be deemed rejected in full, and the offering Shareholder may dispose of any of the offered Shares at a price not less than, and upon terms not less favorable than, the price and terms determined under the provisions of Paragraphs 5 and 6 herein. The offering Shareholder shall have thirty (30) days to effectuate the proposed transfer. Upon the expiration of such thirty (30) day period, any Shares which have not been so disposed of shall again be subject to the restrictions contained in this Agreement, with the same force and effect as if the offer had never been made. Any Shares transferred to third parties pursuant to this Paragraph 2(c) must remain subject to the terms and conditions of this Agreement, and any such transferee must agree, in writing, to become a party to this Agreement and to be bound by its terms and conditions as a condition precedent to said transfer.

3. **Deemed Offers of Shares**

All of a Shareholder's Shares now owned or hereafter acquired shall be deemed offered to the other Shareholders and/or to Corporation in accordance with the provisions of this Paragraph 3(a) upon the occurrence of any one of the following events (a "Deemed Offer"):

(a) Upon (i) the encumbrance (as defined in Paragraph 1) of all or part of a Shareholder's Shares, (ii) the commencement of any legal action to effectuate an involuntary transfer of all or part of a Shareholder's Shares, or (iii) a transfer of all or part of a Shareholder's Shares by operation of law, in which case an offer shall be deemed made by the affected Shareholder on the date Corporation first receives notice from any source of the encumbrance, commencement of legal action or transfer by operation of law, as the case may be; or

(b) Upon a Shareholder's death, in which case such offer shall be deemed to be made by the Shareholder's estate or legal representative upon the appointment of the personal representative of the deceased Shareholder's estate; or

(c) Upon the termination of employment of a Shareholder in which case such offer shall be deemed to be made on the last day of employment; or

(d) Upon a Shareholder's Permanent Disability, in which case such offer shall be deemed to be made as of (i) the date disability is certified by the insurer (if applicable), (ii) the thirtieth day following the giving of a Disability Notice (if the Shareholder who received such notice does not properly object to the notice as provided for in subparagraph (e)), or (iii) in the case of a Shareholder who properly objects to a Disability Notice, the date the arbitration panel provided for in this subparagraph (e) renders its decision.

(e) As used in this Paragraph (e) above "Permanent Disability" or "Permanently Disabled" shall have the same meaning as that term is defined in any disability insurance policy acquired by the Corporation (the Corporation selecting the applicable definition in the event more than one policy of disability insurance is maintained by the Corporation with respect to such Shareholder) with respect to the Shareholder in question and which is in force at the time the question of disability arises or, in the absence of such insurance, shall mean the existence of a physical or mental disability which renders a Shareholder incapable of performing the usual and customary duties previously performed for the Corporation by such Shareholder for a period of three hundred sixty-five (365) days in any twenty-four (24) consecutive month period and (ii) "Disability Notice" shall mean written notification to a Shareholder by a majority determined by the number of shares of the other Shareholders to the effect that such Shareholder has, in the opinion of such other Shareholders, become Permanently Disabled, which Disability Notice shall be given only in cases in which no disability insurance, as described above, is in force.

Upon the receipt by a Shareholder of a Disability Notice, said Shareholder has the right to object. The objection must be in writing and received by the Corporation within ten (10) days following the receipt by the Shareholder of the Disability Notice. Failure to so object will constitute a waiver of the Shareholder's right to object to the Disability Notice. Within twenty-one (21) days following the Corporation's receipt of the written objection, an arbitration panel shall be convened at the headquarters of the Corporation, at a mutually convenient time for all parties involved, for the purposes of determining whether or not the Shareholder who received the Disability Notice is, in fact, Permanently Disabled as that term is defined within this Paragraph 3(e). Said panel shall consist of the following: (i) a

medical doctor selected by the Shareholders who sent the Disability Notice; (ii) a medical doctor selected by the Shareholder who received the Disability Notice; and (iii) a medical doctor who is a specialist in the field of the illness which affects the Shareholder who has received a Disability Notice, such specialist being selected by the other two medical doctors comprising the arbitration panel, or in the event such doctors are not able to agree on a third medical doctor, such third medical doctor shall be chosen by the American Arbitration Association, as provided for in Paragraph 28. The Corporation shall pay the expenses of the medical doctor selected by the other Shareholders and the independent medical specialist. The Shareholder who received the Disability Notice shall be responsible for the expense of the medical doctor selected to be part of the arbitration panel by said Shareholder. The determination of the arbitration panel as to whether the Shareholder who received the Disability Notice is Permanently Disabled shall be based upon a majority vote of the panel, with each medical doctor being entitled to one vote. The determination of the arbitration panel, which determination should be issued within ten (10) days following the panel's convening, shall be final, non-appealable and binding on all parties.

Should the arbitration panel determine that the Shareholder who received the Disability Notice is not Permanently Disabled, then the deemed offer provisions of subparagraph 3(d) shall not be applicable. Should the arbitration panel determine that the Shareholder who received the Disability Notice is Permanently Disabled, then the deemed offer provisions of subparagraph 3(d) shall be applicable.

(f) Upon a "Change in Control" of McAlpine & Co., Ltd. For purposes of this paragraph, "Change of Control" shall mean (a) the acquisition by a "person" (within the meaning of Section 13(d)(3) or 14(d)(2) of the SEC Exchange Act) of "beneficial

ownership" (within the meaning of Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of 50% or more of the combined voting power of the voting securities of either McAlpine & Co., Ltd. or any parent of McAlpine & Co., Ltd. entitled to vote generally in the election of directors (the "Voting Securities"); (b) the occurrence of a public offering of the capital stock of either McAlpine & Co., Ltd. or its parent company; (c) Approval by the shareholders of McAlpine & Co., Ltd. or the parent company of McAlpine & Co., Ltd. of a reorganization, merger or consolidation, other than a reorganization, merger or consolidation with respect to which all or substantially all of the persons who were the beneficial owners, immediately prior to such reorganization, merger or consolidation of the Voting Securities beneficially own, directly or indirectly, immediately after such reorganization, merger or consolidation, more than 50% of the then outstanding voting securities (entitled to vote generally in the election of directors) of the corporation resulting from such reorganization, merger or consolidation in substantially the same proportions as their respective ownership, immediately prior to such reorganization, merger or consolidation, of the Voting Securities; (d) Approval by the shareholders of either McAlpine & Co., Ltd. or the parent company of McAlpine & Co., Ltd., or the occurrence of (i) a complete liquidation or dissolution of either McAlpine & Co., Ltd. or the parent company of McAlpine & Co., Ltd., or (ii) the sale of other disposition of all or substantially all of the assets of either McAlpine & Co., Ltd. or the parent company of McAlpine & Co., Ltd.; (e) A change in control of either McAlpine & Co., Ltd. or the parent company of McAlpine & Co., Ltd. of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A, as promulgated under the Exchange Act, or any successor provision thereto, whether or not McAlpine & Co., Ltd. or its parent company is then subject to such reporting requirements.

4. **Acceptance or Rejection of Deemed Offers**

(a) Each Shareholder, or his personal representative, is under a duty immediately to notify the Corporation and the other Shareholders, in writing, of any event or action resulting in a Deemed Offer of any of his Shares pursuant to Paragraph 3. Said notice shall set forth fully the nature of the triggering event or action and the number of Shares involved. In addition, any Shareholder whose Shares are the subject of a Deemed Offer pursuant to Paragraph 3 shall consent, if requested, to the intervention in any resultant legal proceeding by Corporation and/or the remaining Shareholders.

(b) If, pursuant to the provisions of subparagraph 3(b) or 3(e), a Deemed Offer of a Shareholder's stock is made to the Corporation, then, in such situation, the Corporation shall be obligated to purchase from the offering Shareholder (or such Shareholder's legal representative, if appropriate) all the shares of stock of the Corporation which such Shareholder owns as of the date of the deemed offer if the shares are not otherwise purchased by one of the Tomafskys.

(c) For purposes of subparagraphs 3(b) and 3(e), acceptance by the Corporation shall be deemed to have taken place on the thirtieth (30th) day following the date of the deemed offer.

(d) Any deemed offer of stock made in accordance with the provisions of Paragraph 3(b) shall be subject to the rules and restrictions of Paragraphs 2 and 3 of this Agreement.

(e) In the event any Shareholder is treated as having made a Deemed Offer pursuant to Paragraphs 3(a), 3(b), 3(c) or 3(d), said Deemed Offering Shareholder shall be treated as having made a voluntary offer to dispose of the affected Shares pursuant to

subparagraph 2(a)(iii), and the remaining Shareholders and Corporation shall be accorded successive options to acquire such Shares in accordance with Paragraph 2. If, for any reason, a transfer or encumbrance is effectuated prior to the conclusion of the offer process as more fully described in Paragraph 2, then the transferee or holder of the encumbrance shall be deemed to have made a voluntary offer to dispose of the subject Shares pursuant to subparagraph 2(a)(iii), which voluntary offer shall be deemed made on the later of the date of such transfer or encumbrance or the date Corporation becomes aware that such transfer or encumbrance has been consummated. The remaining Shareholders and Corporation shall thus be granted successive options to acquire the transferred or encumbered Shares in accordance with Paragraph 2.

(f) If any Shares subject to the Deemed Offer provisions of Paragraph 3(a) are not accepted for purchase by the remaining Shareholders and/or Corporation in accordance with this Paragraph 4, then any transfer or encumbrance which is the subject of the Deemed Offer shall be considered valid, completed and not in violation of this Agreement if the transferee or holder of the encumbrance agrees, in writing, to be bound by the provisions of this Agreement.

5. **Purchase Price**

(a) The purchase price ("Purchase Price") to be paid by the other Shareholders and/or the Corporation for any Shares purchased pursuant to the provisions of Paragraph 2 or 3 of this Agreement shall be determined by multiplying the number of shares to be purchased by the value computed in Paragraph 5(b) below.

(b) The value of the Corporation's shares on the date of an offer or deemed offer shall be greater of (i) the "Certificate of Value" as determined in accordance with

Paragraph 5(c) below or (ii) the Corporation's "Capitalized Value" as defined in Paragraph 5(d) below.

(c) As used herein, the term "Certificate of Value" refers to a certificate, signed by the parties hereto and filed with the Corporation in the form attached hereto as Schedule "A", specifying the value per share of stock for purposes of this Agreement, taking into consideration all assets, tangible and intangible, including goodwill, if any, and all other relevant factors. The value per share shall be adjusted annually within ninety (90) days of the close of each fiscal year (or more often if all of the Shareholders so consent), and such adjustment shall be so noted by the filing of a new Certificate of Value signed by all of the parties hereto. Any annual adjustment hereunder shall be retroactively effective to the first day of such fiscal year. Any such adjustment shall require the unanimous consent of the Shareholders. The Certificate of Value at the Effective Date of this Agreement shall reflect a value of Four Hundred (\$400.00) Dollars a Share.

(i) If the Shareholders fail to revalue the stock in accordance herewith, or in the event the Shareholders are unable to agree to the adjustment of the Certificate of Value, then the last stated value per share shall be controlling for purposes of determining the purchase price hereunder. Provided, however, if the Corporation's stock has not been revalued in more than twelve (12) months, then the value per share shall be determined by arbitration as follows:

(a) The Corporation, through the remaining Shareholders, and the disposing Shareholder (or his personal representative) shall each appoint a qualified business appraiser within forty-five (45) days after an offer, deemed offer, redemption or other transfer, as the case may be. If, within sixty (60) days of this appointment, the two appointed appraisers

cannot agree upon the value of such shares, they shall within twenty (20) days appoint a third qualified business appraiser and the decision of a majority of the three (3) appraisers, which shall be rendered within sixty (60) days of the appointment of the third appraiser, shall be binding on all parties.

(d) The "Capitalized Value" of the Shares will be determined by the independent certified public accountant ("CPA") regularly employed by the Corporation, or, if the Corporation has no regularly employed independent CPA, by an independent CPA selected by the Corporation, for this purpose. The value of the Shares shall be four (4) times the weighted average of the Corporation's earnings per share, based on the three (3) most recently ended fiscal years.

(i) In determining the weighted average earnings per share over the three (3) most recently ended fiscal years, the most recently ended year shall be most heavily weighted, the next most recently ended year shall be next most heavily weighted, and the third most recently ended year shall be least heavily weighted. The weighted average earnings per share shall be equal to one-sixth ($1/6$) of the following sum: (3 x the earnings per share for the most recently completed year) + (2 x the earnings per share for the next most recently completed year) + (2 x the earnings per share for the third most recently completed year).

(ii) The earnings per share shall be determined from the Corporation's financial statements in accordance with the regular financial statements prepared by the Corporation and in accordance with generally accepted accounting principles consistently applied.

(iii) In making this determination, earnings per share shall be

adjusted to reflect:

(A) No deemed earnings on account of the receipt of any life insurance on the life of a Stockholder whose shares of the Stock are being or have been purchased on account of his or her death;

(B) Calculation of depreciation on the straight-line method;

(C) The valuation of all inventory on the FIFO (first-in, first-out) method;

(D) The elimination of any past service pension cost charges; and,

(E) The elimination of any amortization of goodwill or other intangibles.

(iv) The Corporation will provide such data as the CPA deems necessary or useful to make such determination of the fair market value of the Shares.

(v) By way of example, the Capitalized Value of the shares computed as of December 31, 2001 (with tentative and preliminary figures for the year ended December 31, 2001) would be as follows:

<u>Year</u>	<u>EPS*</u>	<u>Multiplier</u>	<u>Product</u>
2001	\$124.63	3	\$373.89
2000	(\$175.15)	2	(350.30)
1999	(\$262.48)	1	<u>(262.48)</u>
			\$(238.89)

*Earnings Per Share (EPS) is calculated using the following formula: Earnings (Loss) for the year ÷ Number of Shares Outstanding (i.e. 100 for each year).

Thus, the Capitalized Value for the year ended December 31, 2001 would be zero and the Certificate of Value contained in Paragraph 5(c) above would control the value of a stock purchase under this Agreement.

If however, the Corporation broke even for the year 1999, the Capitalized Value would be:

<u>Year</u>	<u>EPS*</u>	<u>Multiplier</u>	<u>Product</u>
2001	\$124.63	3	\$373.89
2000	(\$175.15)	2	(350.30)
1999	(\$0)	1	<u>(0.00)</u>
			\$(23.59)
	Divided by 6 to determine annual weighted average		÷6 <hr/>
	per share weighted average		3.93
	Times capitalization factor of 4		<hr/> 4
	Capitalized Value for Shares		<u>15.72</u>

The Capitalized Value Per Share would be multiplied by the number of shares purchased under this Agreement to determine the total Capitalized Value payment.

(e) Notwithstanding the foregoing, if the liabilities exceed the assets of the Corporation as determined by the Corporation's independent accountant as of the date of the most recently issued annual financial statements, then the Certificate Value of Paragraph 5(c)

shall control the Purchase Price of the Shares, and the Capitalized Value contained in Paragraph 5(d) shall be ignored.

(f) The fees and reimbursement expenses charged by the CPA in the valuation under this Section shall be borne solely by the Corporation.

6. **Closing Payment of Purchase Price**

(a) Unless otherwise agreed by all of the parties hereto, the closing of a sale of Shares hereunder (the "Closing") shall take place at the principal office of Corporation sixty (60) days (excepting Saturdays, Sundays and holidays) following the later of (i) the date of the acceptance or rejection of the final offer under Paragraph 2 or 4, or (ii) the date the Purchase Price is determined under Paragraph 5. Certification for the Shares being sold shall be in proper form for transfer together with duly executed Shares powers, with signatures guaranteed.

(b) The Purchase Price shall be paid in cash at Closing.

7. **Deliveries at Closing**

(a) At the closing in Paragraph 6(a) above, the disposing Shareholder will deliver the following:

(i) The disposing Shareholder's certificates representing shares of stock, duly executed and, in the case of share certificates, endorsed in blank for transfer, free of any liens, encumbrances or restrictions on sale;

(ii) A general release running in favor of Corporation and/or other Shareholders; and

(iii) Opinion of counsel that the disposing Shareholder owns the Shares free and clear of any liens and encumbrances and has the legal right to sell said Shares.

(b) At the closing in Paragraph 6(a) above, each of the purchasing Shareholders and/or Corporation shall deliver the following:

- (i) Cash as required by this Agreement; and
- (ii) A general release running in favor of the disposing Shareholder (excepting, however, liabilities of the disposing Shareholder that are not to be assumed under this Agreement).

8. **Indemnity**

As part of any closing pursuant to Paragraph 6, the purchasing Shareholders and/or Corporation shall each execute an agreement whereby they shall promise to indemnify and hold the selling Shareholder, and/or his spouse, as the case may be, harmless from and on account of any obligation of Corporation, for which the selling Shareholder, and/or his spouse may be personally liable either directly or as guarantors with respect to the Shares purchased. This indemnification shall extend to any claim against the selling Shareholder, and/or his spouse with respect to such obligations including damages, attorneys fees and costs of suit related to same.

9. **Payment of Outstanding Debts to Shareholders**

If, at the time any purchase of Shares is consummated pursuant to this Agreement, there is any outstanding indebtedness owing to a selling Shareholder (or his representative), then, notwithstanding the terms of such indebtedness, the same percentage as is equal to the percentage of the selling Shareholder's Shares purchased shall, if it does not otherwise become due, be repaid in twelve (12) equal monthly installments, the first of which shall be due thirty (30) days after Closing. For purposes of this Paragraph 12, loans from a person related to the selling Shareholder under the rules of Section 318 of the Internal Revenue

Code of 1986, as amended (the "Code") shall be considered as loans from the selling Shareholder, unless such related person shall also be related under such rules to a remaining Shareholder.

10. **Payment of Outstanding Debt to the Corporation**

If any Shareholder disposes of all of his Shares under the provisions of this Agreement, then all loans, advances or accounts of any nature owing by such Shareholder to the Corporation shall be repaid in accordance with this Paragraph 10. All such loans, advances or accounts of any nature owing by the selling Shareholder shall become due and payable at Closing. If the purchaser of the selling Shareholder's stock is the Corporation, said amounts shall be offset against the amount due the selling Shareholder for his stock. In the case of any transfer or disposition of Shares other than to the remaining Shareholders and/or Corporation, any such indebtedness shall be due and payable on the date on which equitable title to such Shares passes to the purchaser without regard to the retention by the seller of legal title for security. For purposes of this Paragraph 10, loans to a person related to the selling Shareholder under the rules of Section 318 of the Code shall be considered as loans to the selling Shareholder, unless such related person shall also be related under such rules to a remaining Shareholder.

11. **Voting Status of Offering Shareholder**

Notwithstanding the provisions of the by-laws of the Corporation, the vote of the Shareholder whose Shares are being offered pursuant to the terms of this Agreement for sale to either Corporation and/or the other Shareholders, as a shareholder, officer and/or director of Corporation shall not be deemed necessary to enable Corporation effectively to exercise any of its options under this Agreement. The non-offering Shareholders shall

constitute a quorum of a Shareholders or Directors meeting for this purpose and shall be permitted to vote so as to bind Corporation to such an exercise of any of its elections granted to it pursuant to the terms of this Agreement.

12. **Liquidation of Corporation**

In the event that any of the Corporation shall be placed in a status of liquidation, such entity shall take whatever steps are necessary to distribute its assets, including the proceeds of any sale from any third party, to the Shareholders in proportion to their Shares.

13. **Corporate Authority**

Whenever Corporation becomes obligated to purchase any Shares under the terms of the Agreement, Corporation agrees to take, and the remaining or surviving Shareholders agree to cause Corporation to take, whatever corporate action may be necessary to effectuate the undertaking of Corporation provided for herein.

14. **Executed Agreement**

An executed copy of this Agreement, as amended from time to time, along with all accompanying Schedules and Exhibits, shall be filed by Corporation at its principal place of business and exhibited to any Shareholder or any other interested party at all reasonable times, and each of the parties hereto acknowledges receipt of a copy hereof.

15. **Additional Shareholder Agreements**

(a) Each of the Shareholders agrees to take all action and to vote for and consent to all such changes and proceedings, corporate or otherwise, as may at any time become reasonably necessary and proper to fully carry out the terms of and provisions of this Agreement.

(b) Each of the Shareholders authorizes the Corporation and its transfer

agents not to transfer any certificates of its shares on its books and records disposed of in violation of this Agreement, and further agrees that any such purported disposition shall be void and of no effect.

16. **Endorsement of Share Certificates**

An original of this Agreement shall be kept in the files of Corporation at its principal office and reference to this Agreement shall be endorsed on all share certificates of the Corporation subject to this Agreement now or hereafter issued by writing or stamping thereon the following legend:

"This certificate and the shares represented thereby, have not been registered in accordance with the Securities Act of 1933, and the sale, transfer, gift, pledge, bequest, devise, encumbrance or other disposition thereof, is subject to the terms of an Agreement dated _____, 2002, a copy of which Agreement and any adjustments thereto are on file at the principal office of the corporation. ANY ATTEMPTED TRANSFER OR ENCUMBRANCE OF THESE SHARES EXCEPT AS PERMITTED IN THE AGREEMENT WILL BE DEEMED NULL AND VOID."

All restricted endorsements on any existing share certificates are declared void and shall be deleted therefrom, or at the request of any Shareholder, such certificates shall be surrendered and new substitute certificates shall be issued therefor free of such prior endorsement, but containing the new endorsement provided in this Paragraph 16.

17. **Stock Splits, Recapitalizations and Reorganizations**

If any shares of stock referred to in this Agreement are affected by reclassification, reduction of capital stock, stock-split or otherwise, or a stock dividend is declared, or there is a merger, consolidation, reorganization or the like, then all additional stock or securities issued in respect of such shares of stock shall likewise be subject to and deemed

referred to in this Agreement to the same extent as the shares of stock in respect of which it was issued, and such additional stock or securities shall be deemed included in the term "Shares" as used herein, and the legend provided for in Paragraph 16 of this Agreement hereof shall be endorsed on certificates therefor.

18. **Issuance of New Stock**

The parties hereto agree that the Corporation will not issue any additional shares of stock now or hereafter authorized, or reissue any such shares of stock previously acquired, or issue or honor any rights to subscribe to any such shares of stock without the consent of all of the Shareholders and unless such shares of stock are made subject to the terms and conditions of this Agreement in all respects, and unless the holder thereof becomes a party to this Agreement and agrees to be bound by its terms and conditions, and further agrees that it will not cause the transfer thereof to be made on its book except as permitted by this Agreement and in accordance with its terms and conditions.

19. **Extent of Restriction**

All Shares purchased pursuant to the acceptance of offers made or deemed made under Paragraph 2 or 3 of this Agreement shall be held by the purchaser subject to the same restrictions provided for in this Agreement. The term "Shareholder," for purposes of this Agreement, shall include all holders of Shares at any time and their respective heirs, executors, administrators, successors, and assigns.

20. **Notice; Manner of Delivery**

(a) All offers, acceptances, notices, requests, demands, exercises of options and other communications made or given hereunder shall be written and shall be deemed to have been duly given or made when hand delivered or when mailed by certified or registered

mail, return receipt requested, to the address designated herein, or to such other address as may be designated by notice given hereunder.

(i) If to the Corporation:

Mountain Accessories, Inc.
1301 Metropolitan Avenue
Suite 5
West Deptford, New Jersey 08066

(ii) If to any Shareholder (or his legal representative): to such address as now appears on the records of Corporation (unless such Shareholder (or his legal representative) has notified Corporation, in writing, of a change of address, in which case such new address shall control).

(b) Whenever a notice, offer, acceptance or rejection, or a copy thereof, is required to be sent to more than one person, all such communications should, whenever reasonably possible, be mailed within a single twenty-four (24) hour period.

(c) For all purposes hereunder, receipt shall be deemed to have taken place as of the date upon which notice is hand delivered or mailed in the manner herein.

21. **Unenforceability of Certain Provisions**

If any term, covenant, condition or provision of this Agreement is held for any reason and to any extent to be unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect to the fullest extent allowable.

22. **Execution of Counterparts**

This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument and shall for all purposes be deemed to have been

made, executed and delivered as of the date and year first above written, irrespective of the time or times when the same or any of the counterparts thereof may be made, executed or delivered.

23. **Creation of Surplus**

If, at any time Corporation is required to make payment of the Purchase Price of Shares, its surplus is insufficient for such purpose, (i) the entire amount available as surplus shall be paid on account; and (ii) Corporation shall promptly take all action necessary and proper under applicable law to reduce the capital shares of Corporation to permit, to the extent possible, the payment of the balance and shall promptly pay the surplus created by such action to the retiring Shareholder, or to his estate or the distributee of his estate, as the case may be. In such event, default shall not occur until thirty (30) days after such capital has been reduced, provided that not more than ninety (90) days is taken to effect such reduction from the date the payment was due.

24. **Termination**

This Agreement shall terminate upon the occurrence of any of the following events:

- (a) Bankruptcy, receivership or dissolution of Corporation;
- (b) The purchase by Corporation of all of the Shares of all but one of the Shareholders and the payment in full of the purchase price therefor; or
- (c) The voluntary agreement of all Shareholders.

Upon termination of this Agreement, the Secretary of the Corporation shall, upon tender of the certificates, delete the legend endorsed thereon pursuant to Paragraph 16 of this Agreement.

25. **Remedies**

The parties hereto agree that the Shares are unique and that any violation of this Agreement with respect to a sale or transfer of said Shares cannot be fully or adequately compensated for in damages and, therefore, each of the parties shall have the right and is hereby granted the privilege, in addition to all other remedies set forth herein or otherwise available at law or in equity, including the right to arbitration under Paragraph 28 hereof, of obtaining specific enforcement of this Agreement with respect to a sale or transfer of said Shares by way of a temporary restraining order or injunctive relief in any court of competent jurisdiction in the event of any violation hereof by any of the parties hereto.

26. **Assignment**

Rights under this Agreement may not be assigned, but notes delivered hereunder may be negotiated or transferred.

27. **Testamentary Distributions**

No testamentary provision or distribution of any party hereto shall take precedence over the terms of this Agreement and each of the parties specifically agrees that the restrictions on transfer in this Agreement pertain with equal force to testamentary distributions.

28. **Arbitration**

Any dispute, disagreement or controversy arising out of or relating to this Agreement, or the management of the affairs of the Corporation, the policies of the Board of Directors, or the conduct of the officers of the Corporation, shall be determined by arbitration in Camden County, New Jersey. Each party to the dispute shall appoint an arbitrator within ten (10) days after written demand therefor is made by any other party, which demand shall set forth a statement of the issue or issues to be arbitrated. The two so appointed shall select a

third arbitrator within fifteen (15) days thereafter. The Board of Arbitrators shall convene within ten (10) days after the date of their appointment, accept evidence with respect to the dispute, and file a written award within thirty (30) days after the close of the taking of evidence. Such an award signed by at least two of the arbitrators shall be final and conclusive upon all of the parties, and may be entered as a common law award in any court of competent jurisdiction. If either party fails to appoint an arbitrator, or if the two so appointed cannot agree upon the designation of a third arbitrator, either party may request the American Arbitration Association to fill the vacancy or vacancies and conduct the arbitration in accordance with its rules and regulations. The parties to any such arbitration shall each pay their own costs and expense, including their own legal and accounting expenses. Any remaining costs and expenses, including the fees of the arbitrators, shall be paid by Corporation.

29. **Entire Agreement**

This Agreement and all rights, obligations, duties, restrictions and qualifications provided for herein shall inure to and be binding upon the parties hereto and upon all parties who may become shareholders of Corporation hereafter, with the same force and effect as if they had been original parties, and upon the respective heirs, executors, administrators, successors and assigns of each and all of them. This Agreement shall be equally effective as to Shares now owned, as well as to any additional Shares hereafter acquired by any means or in any manner whatsoever by any Shareholder.

30. **Applicable Law**

This Agreement shall be subject to and shall be construed under the laws of the State of New Jersey.

31. **Amendment of Agreement**

This Agreement may be changed, modified, amended, altered, discharged, rescinded, terminated, waived or canceled only by a writing signed by all of the parties hereto.

32. **Consent of Spouse**

Each Shareholder agrees to use his best efforts to secure the informed consent of his spouse to the terms and conditions of this Agreement in the form attached hereto as Exhibit


33. **Prior Agreements**


This Agreement shall supersede any and all prior agreements and restrictions on the Shares or any portion thereof and shall supersede all prior written or oral agreements between the parties dealing with the subject matter hereof.

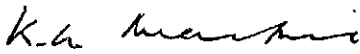
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.


Witness:

Shareholders and Individuals:

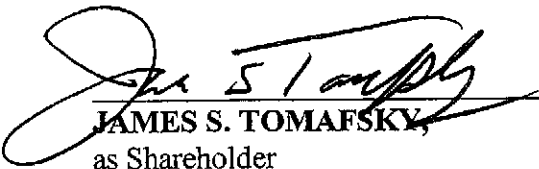






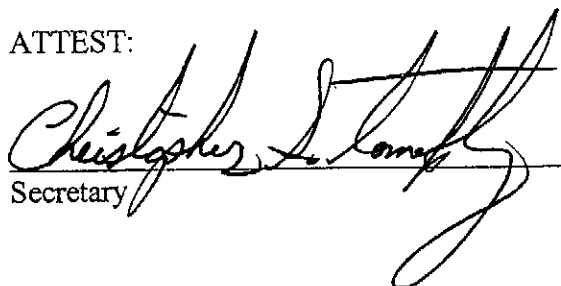
McALPINE & CO., LTD.
as Shareholder


CHRISTOPHER G. TOMAFSKY
as Shareholder




JAMES S. TOMAFSKY,
as Shareholder

ATTEST:



Secretary

MOUNTAIN ACCESSORIES, INC.

By: 

President

EXHIBIT I

ACKNOWLEDGMENT OF POTENTIAL

CONFLICT OF INTEREST

The undersigned each acknowledge that counsel for Corporation, Kulzer & DiPadova, P.A., prepared the foregoing Shareholders Agreement on behalf of and in the course of its representation of Corporation, as directed by Corporation's Board of Directors, and that:

(A) HE HAS BEEN ADVISED THAT A CONFLICT MAY EXIST BETWEEN HIS INTERESTS AND THOSE OF CORPORATION AND THE OTHER CORPORATION SHAREHOLDERS AND OTHER RELATED AND AFFILIATED CORPORATIONS AND PARTNERSHIPS AND THEIR SHAREHOLDERS AND PARTNERS; AND

(B) HE HAS BEEN ADVISED BY CORPORATION'S COUNSEL THAT IT MAY BE IN HIS BEST INTERESTS TO SEEK THE ADVICE OF INDEPENDENT COUNSEL; AND

(C) HE HAS HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT COUNSEL; AND

(D) HE HAS BEEN ADVISED BY CORPORATION'S COUNSEL THAT THIS AGREEMENT MAY HAVE TAX CONSEQUENCES; AND

(E) HE HAS BEEN ADVISED BY CORPORATION'S COUNSEL THAT IT MAY BE IN HIS BEST INTERESTS TO SEEK THE ADVICE OF INDEPENDENT TAX COUNSEL; AND

(F) HE HAS HAD THE OPPORTUNITY TO SEEK THE ADVICE OF

INDEPENDENT TAX COUNSEL.

This acknowledgment applies with respect to the Shareholders Agreement to which it is attached and other related transactions. This acknowledgment is dated

FEB 13TH, 2003. *AT*

Witness:

D. Seer

K. H. Murphy
McALPINE & CO., LTD.

Christopher G. Tomafsky
CHRISTOPHER G. TOMAFSKY

James S. Tomafsky
James S. Tomafsky

James S. Tomafsky
JAMES S. TOMAFSKY

SCHEDULE A

CERTIFICATE OF VALUE

The undersigned, being the owners of all of the issued and outstanding shares of stock of MOUNTAIN ACCESSORIES, INC., do hereby agree that each share of stock of said Corporation has a value, for purposes of the Shareholders' Agreement duly executed by the undersigned, of:

<u>Date</u>	<u>Value</u>	<u>Shareholder Initials</u>
12/31/2002	\$400.00/SH	JST

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 13th
day of FEBRUARY, 2003

Witness:

D. Sean

Donald M. Gamm

Donald M. Gamm

K. M. McAlpine

McAlpine & Co., Ltd.

Christopher G. Tomafsky

Christopher G. Tomafsky

James S. Tomafsky

James S. Tomafsky

EXHIBIT C

**BY-LAWS OF
MOUNTAIN ACCESSORIES, INC.**

**ARTICLE I. OFFICES
REGISTERED OFFICE**

1.01 The Corporation shall continuously maintain a registered office in the State of New Jersey and a registered agent having a business office at the registered office. The Corporation's initial registered office and registered agent shall be as set forth in the Corporation's certificate of incorporation. When the registered office is changed or when the registered agent is changed, dies, resigns or become disqualified, the Board shall determine the address of a new registered office or designate a successor registered agent or both, and shall cause the proper officers of the Corporation to file the required certificates with the Secretary of State of New Jersey.

PRINCIPAL PLACE OF BUSINESS

1.02 The principal place of business of the Corporation is 1501 Grandview Avenue, Suite 3, West Deptford, New Jersey 08066. The Board of Directors has full power and authority to change the principal place of business at any time to another location within or outside of the State of New Jersey.

OTHER PLACES OF BUSINESS

2.03 Other places of business or offices may at any time be established by the Board at any place or places within or outside of the State of New Jersey.

**ARTICLE II. SHAREHOLDERS AND SHAREHOLDERS' MEETINGS
ANNUAL MEETING**

2.01 The annual meeting of shareholders of the Corporation shall be held at the time and place, either within or outside of the State of New Jersey, fixed by the Board of Directors. The Secretary of the Corporation shall cause written notice of the time, place and purposes, including the election of directors, of the meeting to be transmitted to shareholders within the time periods prescribed by law.

SPECIAL MEETINGS

2.02 A special meeting of shareholders of the Corporation may be called for any purpose and at any time by the President or pursuant to a resolution adopted by the Board of Directors. Special meetings may also be called by the Secretary or, in the case of the death, absence, incapacity, or refusal of the Secretary, by any officer on the written request of the shareholders who hold, in the aggregate, at least 1 percent of the shares of stock of the Corporation entitled to vote on the matter to be acted on at the meeting. The shareholders' written request must set forth the purpose or purposes of the special meeting. In all instances in which a special meeting is called, the Secretary shall cause written notice of the time, place and purposes of the meeting to be transmitted to shareholders within the term periods prescribed by law.

CONSENTS INSTEAD OF MEETING

2.03 a. Except as otherwise provided in New Jersey Statutes Section 14A:5-1(a), any action required or permitted to be taken at a meeting of shareholders may be taken without a meeting, provided that every shareholder who is entitled to vote on the action consents in writing to the action.

b. In spite of Subparagraph (a) above, any action to be taken by the shareholders, other than the annual election of directors, may be taken without a meeting and without the unanimous written consent of the shareholders, provided that:

(1) Before the action, the Corporation obtains the written consent of shareholders who would have been entitled to cast the minimum number of votes necessary to authorize the action at a meeting at which all shareholders entitled to vote on the action were present and voting;

(2) If any shareholder has the right to dissent from the action, the Board shall fix a date on which written consents are to be tabulated; if no shareholder may dissent, the fixing of a date for tabulation shall be optional;

(3) No consent shall be counted that is received more than sixty days after the date on which the Board authorizes the solicitation of consents or, in a case in which consents (or proxies for consents) are solicited from all shareholders who would have been entitled to vote at a meeting called to authorize the proposed action, more than sixty days after the date of mailing of solicitations of consents (or of proxies for consents); and

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(4) To the extent (if any) and in the manner required by New Jersey Statutes Section 14:5-6(2), the Secretary of the Corporation shall provide advance written notice of the proposed action and the conditions precedent to that action to all nonconsenting shareholders who would have been entitled to notice of a meeting to vote on the action.

c. All written consents obtained by the Corporation pursuant to this Section 2.03 shall be filed in the minute book of the Corporation promptly after submission by the shareholders. Written consents may be executed together or in counterparts.

d. Any action taken pursuant to this Section 2.03 shall have the same effect, for all purposes, as if taken at a shareholders' meeting.

QUORUM

2.04 Except as otherwise required by New Jersey Statute Sections 14A:5-2 and 14A:5-3, the presence at a meeting in person or by proxy of the holders of shares entitled to cast a majority of the votes of all shares issued and outstanding shall constitute a quorum. The shareholders present at a meeting at which a quorum is present may continue to do business until adjournment, despite the withdrawal of enough shareholders to leave less than a quorum. If an insufficient number of shareholders is present at a meeting, in person or by proxy, to constitute a quorum, those shareholders who are present and who are entitled to vote at the meeting shall have the power to adjourn the meeting until enough shareholders are present to constitute a quorum.

ADJOURNMENT OF MEETINGS

2.05 Any annual or special shareholders' meeting may be adjourned by the holders of a majority of the voting shares of the Corporation who are present in person or by proxy at the meeting. If the new time and place for the meeting are announced at the time of adjournment, and the only business to be transacted after reconvening could have been transacted at the original meeting, then no further notice of the new time and place for the meeting need be given to shareholders. If, however, after the adjournment, the Board of Directors fixes a new record date for the meeting, new notice of the meeting shall be given to each shareholder of record, as determined on a new record date.

VOTING

a. At every meeting of shareholders, each person entitled to vote and present at the meeting in person or by proxy shall have one vote for each full voting share of the Corporation that stands in that person's name on the books of the Corporation. If the Corporation has more than one class of shares outstanding on the applicable record date, then

the foregoing provision shall apply only to the common shares of the Corporation; the shareholders of all other classes shall vote their shares in the manner provided in the certificate of incorporation as amended from time to time.

b. If the Corporation holds its own shares, the Corporation shall not vote those shares at any meeting and those shares shall not be counted in determining the total number of outstanding shares at any given time. If the Corporation holds a majority of the shares entitled to vote for the election of directors of another domestic corporation or a foreign corporation, shares of the Corporation held by the other domestic or foreign corporation may not be voted at any meeting of shareholders of the Corporation for any purpose.

c. Except as otherwise provided in New Jersey Statute Section 14A:5-11 with regard to multiple classes or series of shares, whenever any action, other than the election of directors, is to be taken by vote of the shareholders, the action shall be authorized by a majority of the votes cast at a meeting of shareholders by the holders of shares entitled to vote unless a greater plurality is required by the certificate of incorporation or by the New Jersey Business Corporation Act.

RECORD DATE

2.07 The Board of Directors shall fix, in advance, the record date for the determination of shareholders entitled to notice of and to vote at any annual or special meeting of shareholders. The record date shall not be more than sixty days or less than ten days before the date of the meeting. If the Board fails to fix a record date for any shareholders' meeting, the record date shall be the close of business on the day before the day on which notice of the meeting is given, or if no notice is given, the next day before the day on which the meeting is held.

PROXIES

2.08 Every shareholder entitled to vote at a meeting of shareholders may authorize another person or persons to act by written proxy (which may be in the form of a telegram or cable or its equivalent) given by the shareholder or to the shareholder's agent. No proxy shall be valid for more than eleven months, unless a longer time is expressly provided in the proxy. Unless it is coupled with an interest or is otherwise irrevocable as provided in New Jersey Statute Section 14A:5-19(3), a proxy shall be revocable at will. The grant of a later proxy revokes any earlier proxy unless the earlier proxy is irrevocable. A proxy shall not be revoked by the death or incapacity of the shareholder but shall continue in force until revoked by the personal representative or guardian of the shareholder. The presence at any shareholders' meeting of any shareholder who has given a proxy shall not revoke the proxy unless the shareholder files written notice of revocation with the Secretary of the meeting before the voting of that proxy or the voting of the shares subject to the proxy by written ballot. A person named in a proxy as the attorney or agent of a shareholder may, if the proxy so provides,

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substitute another person to act in his or her place, including any other person named as an attorney or agent in the same proxy. The substitution shall not be effective until an instrument effecting it is filed with the Secretary of the Corporation.

VOTING OF PLEDGED SHARES

2.09 Any person who has pledged shares entitled to vote at an annual or special meeting of shareholders of this Corporation shall have the right to vote those shares until they have been transferred into the name of the pledgee or a nominee of the pledgee.

VOTING OF REDEEMABLE SHARES

2.10 If the Corporation issues redeemable shares, the holders of those shares shall not be entitled to vote on any matter on or after the date on which (a) written notice of redemption of the shares has been mailed to the holders of those shares, and (b) a sum sufficient to redeem the shares has been deposited with a bank or trust company with irrevocable authorization to pay the redemption price to the shareholders on the surrender of the share certificates.

OFFICERS OF MEETINGS

2.11 The President, if present, shall preside at all meetings of shareholders. In the absence of the President, the most senior Executive Vice President (or in the absence of any Executive Vice Presidents, the most senior Vice President) present at the meeting, shall preside. The Secretary of the Corporation shall, if present, act as secretary at all meetings of shareholders. In the absence of the Secretary, any Assistant Secretary of the Corporation who is present may act as secretary of the meeting. If no Assistant Secretary is present, a temporary secretary for that particular meeting shall be designated by the presiding officer.

ORDER OF BUSINESS

2.12 The order of business at all meetings of the shareholders, unless changed by a majority vote of the shares entitled to vote at the meeting, shall be as follows:

- a. Call to order;
- b. Report on presence of quorum;
- c. Reading or waiver of proof of mailing of notice of meeting and minutes of preceding meeting;
- d. Designation of inspectors of election, if any;

e. Election of directors (if applicable);

f. Old business;

g. New business;

h. Reports of officers; and

i. Adjournment.

USE OF BALLOTS

2.13 Election of directors and other matters requiring shareholder approval need not be by ballot unless a shareholder requests a vote by ballot on a particular issue before the commencement of voting on that issue.

INSPECTORS

2.14 a. Before any annual or special meeting of shareholders, the Board of Directors may appoint one or more inspectors to act as such at the meeting.

b. In connection with any annual or special meeting of shareholders, if inspectors are not appointed by the Board of Directors or if they fail to qualify, the presiding officer at the meeting may and, on the request of any shareholder entitled to vote at the meeting, shall appoint one or more individuals to act as inspectors at the meeting.

c. If an individual appointed as inspector fails to appear, qualify or act as an inspector, the vacancy may be filled by the Board of Directors before the applicable meeting or at the meeting by the presiding officer at the meeting.

d. Before performing their duties, all inspectors shall sign an oath or affirmation to execute faithfully the duties of inspector with strict impartiality and according to the best of their abilities.

e. No person shall be elected a director at a meeting at which he or she has served as an inspector.

VOTING LIST

2.15 At each shareholders' meeting, the Secretary or any Assistant Secretary shall produce a list of shareholders entitled to vote at the meeting. The list shall be certified to be complete by the Secretary or any Assistant Secretary or by a transfer agent duly appointed by the Board of Directors. The list, which may consist of cards or any equipment that permits a

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visual display, shall be arranged alphabetically, with the address of and the number of shares held by, each shareholder of record. The list constitutes a prima facie evidence of the identity of the Board of Directors entitled to vote at the meeting and may be inspected by any shareholder during the meeting.

Use of Communication Equipment

2.16 Where appropriate communication facilities are reasonably available, any or all of the members of the Shareholders may participate in part or in all of a meeting the Shareholders by means of conference telephone or by any other means of communication by which all persons participating in the meeting are able to hear each other.

ARTICLE III. BOARD OF DIRECTORS

RESPONSIBILITIES AND NATURE OF THE BOARD

3.01. a. Except as otherwise provided in the Corporation's certificate of incorporation, the business and affairs of the Corporation shall be managed by the Board of Directors. Directors must be at least eighteen years of age, but need not be residents of New Jersey, citizens of the United States or shareholders of the Corporation unless the Corporation's certificate of incorporation so requires.

b. In discharging his or her duties to the Corporation and in determining what he or she reasonably believes to be in the best interest of the Corporation, a director may, in addition to considering the effects of any action on the shareholders, consider any of the following: (1) the effects of the action on the Corporation's employees, suppliers, creditors and customers; (2) the effects of the action on the community in which the Corporation operates; and (3) the long-term as well as short-term interests of the Corporation and its shareholders, including the possibility that these interests may best be served by the continued independence of the Corporation.

c. If, on the basis of the above factors, the Board of Directors determines that any proposal or offer to acquire the Corporation is not in the best interest of the Corporation, it may reject such proposal or offer. If the Board of Directors determines to reject any such proposal or offer, the Board of Directors shall have no obligation to facilitate, remove any barriers to or refrain from impeding the proposal or offer.

NUMBER OF DIRECTORS

3.02 The Board of Directors shall consist of not less than three (3) Directors not more than six (6) Directors.

REGULAR MEETINGS

3.03 Regular meetings of the Board of Directors shall be held, without call or notice, immediately following the annual meeting of shareholders of the Corporation and, with notice, at any other time the Board of Directors so determines.

SPECIAL MEETINGS

3.04 A special meeting of the Board may be called for any purpose at any time by the President or by 1 Director.

NOTICE OF MEETINGS

3.05 The Secretary shall give notice of the time, date and place of each special meeting of the Board and of each regular meeting of the Board other than the meeting that immediately follows the annual meeting of shareholders. Notice shall be given at least two days before the meeting if given orally, at least three days before the meeting if given by cable, telegram, telecopier or overnight messenger and at least five days before the meeting if given by mail or in any other manner. Any notice given by mail shall be deposited with the United States Postal Service, postage prepaid and addressed to the director's last known residence or business address. The notice need not specify the business to be transacted at the meeting or its purpose.

LOCATION OF MEETINGS

3.06 Meetings of the Board of Directors may be held at any place within or outside the State of New Jersey, provided that the regular meeting of the Board following the annual meeting of shareholders is held at the same location as the annual meeting.

UNANIMOUS CONSENT INSTEAD OF MEETING

3.07 Any action required or permitted to be taken pursuant to authorization voted at a meeting of the Board of Directors may be taken without a meeting on the written consent of each member of the Board of Directors. Written consents may be executed together or in counterparts and may be given before or after the action is taken. All consents shall be filed in the minute book of the Corporation promptly after they are given by the Directors. Written consents by all of the members of the Board of Directors shall have the same effect as a unanimous vote of the Board for all purposes.

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QUORUM

3.08 Except as otherwise provided by the certificate of incorporation, each Director shall have one vote at meetings of the Board, and the participation of the Directors with a majority of the votes of the entire Board shall constitute a quorum for the transaction of business.

VOTING

3.09 Except as otherwise provided by law or the certificate of incorporation of the Corporation, every act or decision by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board of Directors.

USE OF COMMUNICATION EQUIPMENT

3.10 Where appropriate communication facilities are reasonably available, any or all of the members of the Board of Directors may participate in part or in all of a meeting the Board by means of conference telephone or by any other means of communication by which all persons participating in the meeting are able to hear each other.

RESIGNATION AND REMOVAL

3.11 a. Any Director may resign at any time by written notice to the Corporation. A resignation shall be effective on receipt by the Corporation or at any later date specified by the resigning director in the notice of resignation.

b. Any Director may be removed for cause by the Board. The Board shall also have the power to suspend Directors pending a final determination that cause exists for removal.

VACANCIES

3.12 a. A vacancy or vacancies in the Board of Directors shall be deemed to exist (1) in the case of the death, resignation or removal of any Director; (2) if the authorized number of Directors shall be increased; or (3) if, at any meeting at which Directors are to be elected, the shareholders fail to elect the authorized number of Directors to be elected at the meeting. No reduction of the authorized number of Directors shall have the effect of removing any Director prior to the expiration of his or her term of office.

b. Vacancies in the Board of Directors existing for any reason, including vacancies arising as a result of an increase in the number of Directors, may be filled by the affirmative vote of a majority of the remaining Directors then in office, even if their number is

insufficient to constitute a quorum, or by a sole remaining Director. A Director so elected to fill a vacancy shall hold office until a successor is elected and qualified at the next annual meeting of the shareholders.

c. If a Director resigns from the Board effective at some future date, the future vacancy may be filled by the affirmative vote of a majority of the Directors then in office, including the Director who has resigned, even if their number is insufficient to constitute a quorum. The term of the newly elected Director will begin when the resignation becomes effective. A Director elected to fill a future vacancy shall hold office from the effective date of the predecessor's resignation until a successor is elected and qualified at the next annual or special meeting of the shareholders.

d. The shareholders may elect a Director or Directors at any time to fill any vacancy or vacancies not filled by the Directors.

e. If, for any reason, the Corporation has no Directors in office, any shareholder or the executor or administrator of a deceased shareholder has the right to call a special meeting of shareholders for the election of Directors. Any shareholder electing to exercise this right shall give notice of the meeting in accordance with Section 2.02 of these by-laws.

COMMON DIRECTORSHIPS; DIRECTORS' PERSONAL INTEREST

3.13 a. It shall not be necessary for a Director to leave a meeting of the Board or abstain from voting merely because the Board may be voting on (1) a transaction between the Corporation and that Director or (2) a transaction between the Corporation and one or more entities in which that Director is interested, whether as a director of that entity or otherwise, and whether alone or with other Directors, provided that one or more of the conditions set forth in New Jersey Statutes Section 14A:6-8(1) is satisfied.

b. Common or interested Directors may be counted in determining the presence of a quorum at a Board meeting at which a transaction described in Subparagraph 3.13(a) above is authorized, approved or ratified.

PRESIDING OFFICER

3.14 The President, if a member of the Board of Directors, shall preside at all meetings of the Board at which he or she is present. If the President is not present, the Board shall select one person from among its members present at the meeting to preside at the meeting. If the Secretary or any Assistant Secretary is present at meetings of the Board, that person shall record the minutes; if neither the Secretary nor any Assistant Secretary is present, the Board shall select one person from among its members present at the meeting to record the minutes.

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ADJOURNMENTS

3.15 A majority of the members of the Board present at a meeting of the Board may adjourn any Directors' meeting to meet again at a time and place fixed in the resolution adjourning the meeting. Notice need not be given if the period of adjournment does not exceed ten days and the time and place of the adjourned meeting are fixed in the resolution.

COMPENSATION OF DIRECTORS

3.16 Directors shall be compensated for their services and reimbursed for their expenses as employees, officers, Directors and members of Board committees. The Board shall periodically determine a reasonable basis for compensation, and a majority of the Board must adopt any resolution determining compensation. The Board may, if it deems it appropriate, provide for reduced or no additional compensation for Board members who are compensated employees of the Corporation.

DISSENTING VOTES

3.17 Any Director who disagrees with any action taken by the Board of Directors shall have the right to record a dissent in the minute books of the Corporation; provided, however, that the legal effect of that action shall be governed by applicable law.

PROVISION FOR DEADLOCK

3.18 a. For purposes of this Section 3.18 "Deadlock" shall occur when the Board of Directors is equally divided respecting the management of the Corporation's affairs, so that votes required for action of the board cannot be obtained for a continuous period of at least sixty days (the "Deadlock Period").

b. When there occurs a Deadlock of the Board of Directors for the Deadlock Period, any Shareholder may submit to the Corporation's general counsel a written sealed bid and a demand upon the other Shareholders to submit to the Corporation's general counsel a written sealed bid within ten days of receiving the notice. Each sealed bid shall contain the price per share at which the Shareholder submitting it is willing to purchase all of the issued and outstanding shares owned by the other Shareholders. On the tenth day after the first sealed bid is delivered (or the next business day if that day is not a business day) (hereafter the "Bid Opening Date"), the sealed bids shall be opened. The Shareholder whose bid contains the highest price (the "Successful Bidder") per share shall purchase and the other shareholder shall sell all of his or her shares of the Successful Bidder at a price per share set forth in the higher of the sealed bids (the "Bid Price"). The purchase price shall be the bid price multiplied by the number of shares to be sold.

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c. The purchase and sale of the shares shall occur at a closing ("Closing"), which shall take place ten business days after the Bid Opening Date. At the closing, the Successful Bidder shall deliver the purchase price in cash to the selling Shareholder against receipt of the share certificates of the selling shareholder and endorsed for transfer.

ARTICLE IV. COMMITTEES

ESTABLISHMENT OF COMMITTEES

4.01 The Board of Directors may designate an executive committee from among its members, consisting of 1 or more Directors and may at any time designate additional committees, each of which shall consist of 1 or more Directors by the affirmative vote of a majority of the entire Board. Subject to the limitations contained in Section 4.08 below, the executive committee shall have the maximum authority permitted by law in effect at the time of the exercise of that authority. Each additional committee shall have the authority, not exceeding the authority of the executive committee, specified by the Board in resolutions adopted by a majority of the entire Board.

PRESIDING OFFICER AND SECRETARY

4.02 If the President is a member of any committee, the President shall serve as the chairperson of the committee. If the President is not a member of a committee, then the committee may choose one of its members to act as chairperson, unless the Board designates a chairperson. Each committee shall from time to time designate a secretary of the committee who shall keep a record of its proceedings.

VACANCIES

4.03 Vacancies in the membership of any committee may be filled by the Board, pursuant to a resolution adopted by a majority of the entire Board, for the unexpired term of the member whose death, resignation, removal or disability caused the vacancy.

MEETINGS

4.04 Each committee shall adopt its own rules of procedure. Each committee shall meet at whatever times it may determine by resolution and shall also meet whenever called together by the Board. Members of committees may attend meetings through the medium of communications equipment, in the same manner as members of the Board; any committee may act by unanimous written consent instead of a meeting, in the same manner as the Board. Written consents submitted by all of the members of a committee shall have the same effect as a unanimous vote of the committee for all purposes.

NOTICE OF MEETINGS

4.05 If a committee establishes regular meeting dates, it shall not be necessary to give notice of a regular meeting. Notice of every special meeting shall be given in the manner and within the term periods specified in these by-laws with respect to notices of special meetings of the Board of Directors.

QUORUM; VOTING

4.06 Except as otherwise provided by the certificate of incorporation, each Director shall have one vote at a meeting of the Board committee, and the participation of the Directors with a majority of the votes of the committee shall constitute a quorum for the transaction of business. A quorum at any meeting of any committee shall be a majority of the entire committee, except that if any committee consists of only one member, then that one Director constitutes a quorum. Every act or decision by a majority of the Directors present at a duly held committee meeting at which a quorum is present shall be regarded as the act of the committee.

REPORTS

4.07 Actions taken at a meeting of any committee shall be reported to the Board at its next meeting, except that when the meeting of the Board is held within two days after a committee meeting, the report may be made at the second Board meeting following the committee meeting.

LIMITATIONSON POWERS

4.08 No committee of the Board shall have authority to do any of the following:

- a. Make, alter or repeal any by-law of the Corporation;
- b. Elect or appoint any Director or remove any officer or Director;
- c. Submit to the shareholders any action that requires their approval; or
- d. Amend or repeal any resolution adopted by the Board that by its terms is amendable or repealable only by the Board.

POWERS OF THE BOARD

4.09 By resolution adopted by a majority of the entire Board, the Board shall have the power to:

- a. Appoint one or more Directors to serve as alternate members of any committee and to act in the absence or disability of members of any committee with all the powers of the absent or disabled members;
- b. Abolish any committee at its pleasure; and
- c. Remove any Director from membership on any committee at any time, with or without cause.

ARTICLE V. WAIVER OF NOTICE

REQUIREMENTS FOR WAIVER

5.01 Any notice required to be given pursuant to these by-laws may be waived in writing either before or after the meeting that is the subject of the notice. Copies of the waivers shall be filed in the minute book of the Corporation promptly after they are given. The attendance of any Director, committee member or shareholder at a meeting without protesting the lack of notice before the conclusion of the meeting constitutes a waiver of the right to notice.

NATURE OF BUSINESS

5.02 A waiver of notice of a Board meeting need not specify the nature of business transacted or to be transacted at the meeting or the purpose of the meeting. A waiver of notice of a shareholders' meeting shall specify the nature of business transacted or to be transacted at the meeting and the purpose of the meeting.

ARTICLE VI. OFFICERS

ELECTION

6.01 The officers of the Corporation shall consist of a President, a Treasurer, a Secretary and any other officers, including without limitation one or more Executive Vice Presidents, one or more Vice Presidents, one or more Assistant Treasurers and one or more Assistant Secretaries, as the Board deems necessary. All officers shall be elected by the Board of Directors. The President, Treasurer, Secretary and any other officers that the Board considers appropriate shall be elected at the regular Board meeting immediately following the

annual meeting of the shareholders. Any two or more offices may be held by the same person; provided, however, that no officer shall be authorized to verify any instrument in more than one capacity if the instrument is required by law to be executed, acknowledged, or verified by two or more officers.

ADDITIONAL OFFICERS

6.02 The Board of Directors may from time to time elect any other officers that it deems necessary who shall hold their offices for the terms and have the powers and duties prescribed by the Board.

ELECTION AND TERM OF OFFICE; REMOVAL

6.03 Each officer shall hold office from the date elected until the next annual election of officers and until a successor has been elected, unless the officer has previously resigned or been removed. All officers of the Corporation shall hold office at the pleasure of the Board of Directors.

VACANCIES

6.04 Any vacancy in the offices of President, Treasurer and Secretary shall be filled promptly by the Board. Any vacancy in any other office may be filled by the Board of Directors at its discretion.

REMOVAL, SUSPENSION AND RESIGNATION

6.05 a. Any officer elected by the Board may be removed by the Board either with or without cause. Any officer elected by the shareholders may be removed with or without cause only by the shareholders. However, the Board may suspend for cause the authority of an officer appointed by the shareholders pending shareholder action. The removal or suspension of an officer shall be without prejudice to any contract rights that the officer may have. Election of an officer shall not, in and of itself, create contract rights.

b. Any officer may resign at any time by giving written notice to the Board or to the President. The resignation will be effective on receipt, or at any later time specified in the resignation. Unless otherwise specified in the resignation, its acceptance is not necessary to make it effective.

POWERS AND DUTIES

6.06 The officers of the Corporation shall have the responsibilities set forth in these by-laws. The officers may have additional responsibilities as determined by the Board of Directors, the Executive Committee (if any) and, in the case of all officers other than the

President, the President, provided that any additional responsibilities are not inconsistent with the provisions of these by-laws. Without limiting the foregoing, the officers shall have the following duties and responsibilities:

PRESIDENT

a. The President shall be the chief executive officer of the Corporation and, as such, shall have general supervision over the business and affairs of the Corporation, subject to the control of the Board of Directors. The President shall be a member ex officio of each standing committee to which he or she is not personally appointed. Subject to the control of the Board of Directors, the President may enter into any contract or execute and deliver any instruments on behalf of the Corporation. The President shall preside at all meetings of the shareholders and at all meetings of the Board of Directors that he or she attends. In general, the President shall perform all duties incident to the office of the President and any other duties that may be assigned by the Board of Directors.

b. In the order of their seniority unless otherwise determined by the Board of Directors, the Executive Vice Presidents (if any) shall perform the functions of the President in the absence or disability of the President. In addition, they shall perform all other functions prescribed by the President or the Board of Directors.

TREASURER

c. The Treasurer shall have charge and custody of, and be responsible for, all funds and securities of the Corporation. The Treasurer shall deposit all funds in the name of the Corporation in the institutions selected by the Board of Directors. The Treasurer shall keep or cause to be kept books of account on behalf of the Corporation and shall make these books available to any of the Directors of the Corporation during business hours at the office of the Corporation where the books and records are kept. In general, the Treasurer shall perform all the duties incident to the office of the Treasurer and any other duties as may be assigned by the President or the Board of Directors.

ASSISTANT TREASURER

d. Assistant Treasurers shall perform all of the duties and responsibilities of the Treasurer whenever the Treasurer is unavailable to perform the duties of the office, and shall perform all other duties as may be assigned to them by the Board of Directors, the President, or the Treasurer.

SECRETARY

e. The Secretary, if present, shall act as secretary at all meetings of the Board of Directors and of the shareholders and shall keep the minutes of those meetings in a book or books to be provided for that purpose. The Secretary shall cause notices of meetings to

7

be given in accordance with these by-laws. In general, the Secretary shall perform all the duties incident to the office of the Secretary and any other duties as may be assigned by the President or the Board of Directors.

ASSISTANT SECRETARIES

f. Assistant Secretaries shall perform all of the duties and responsibilities of the Secretary whenever the Secretary is unavailable to perform the duties of the office, and shall perform all other duties and exercise all other powers as may be assigned to them by the Board of Directors, the President or the Secretary.

ARTICLE VII. SHARES

FORM AND SIGNATURE

7.01. The certificates for shares of the Corporation shall be in the form determined by the Board of Directors, subject to these by-laws, the certificate of incorporation, and applicable provisions of law. Each certificate shall indicate that the Corporation is organized under the laws of the State of New Jersey, and shall set forth the registered holder's name and the number of shares. Each certificate shall be signed (by or in the name of the Corporation by) the President or any Executive Vice President or Vice President and the Treasurer, any Assistant Treasurer, the Secretary, or any Assistant Secretary, and shall bear the seal of the Corporation or its facsimile. If any certificate is countersigned by a transfer agent or registrar who is not an officer or an employee of the Corporation, any and all other signatures may be facsimiles. If any officer, transfer agent, or registrar who has signed, or whose facsimile signature has been placed on, any certificate shall have ceased to serve in that capacity before the certificate is issued, the certificate may be issued by the Corporation with the same effect as if that person continued to serve in his or her former capacity at the date of the certificate's issue. Provided that it otherwise complies with the requirements of this Section 7.01 and applicable provisions of law, a card that is punched, magnetically coded, or otherwise treated so as to facilitate machine or automatic processing may be used by the Corporation as a share certificate.

DESCRIPTION OF RIGHTS AND PREFERENCES

7.02. If the Corporation is at any time authorized to issue shares of more than one class, then each share certificate issued by the Corporation shall contain the following information on the face or back of the certificate, or shall state that the Corporation will furnish the following information to any shareholder on request and without charge:

a. The designations, relative rights, preferences and limitations of the shares of each class and series authorized to be issued, so far as they have been determined;

b. The authority of the Board to divide the shares into classes or series and to determine and change the relative rights, preferences, and limitations of any class or series.

REPLACEMENT CERTIFICATES

7.03. The Board of Directors may direct that a new share certificate be issued to replace any certificate alleged to have been lost, destroyed, or wrongfully taken, on written notice received from the shareholder before the Corporation is informed that the share has been acquired by a bona fide purchaser. The notice required from the shareholder shall be in the form of an affidavit showing that the certificate has been lost, destroyed, or wrongfully taken. When authorizing the issuance of a new certificate, the Board of Directors may, in its discretion and as a condition precedent to the certificate's issuance, require the shareholder or the shareholder's legal representative to file a bond with the Corporation in whatever reasonable sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, destroyed, or wrongfully taken.

TRANSFER OF SECURITIES

7.04. The Corporation's registered securities shall be transferable only on the books of the Corporation. Transfer shall be permitted only by the person in whose name the securities appear on the Corporation's books, by that person's legal representative, or by that person's attorney if authorized by power of attorney duly executed and filed with the Corporation or its transfer agent. Transfers of registered securities may be made on surrender to the Corporation or to its agents of an outstanding certificate or certificates representing the security with a duly executed assignment and authorization to transfer endorsed on or attached to the certificate, together with proof of the authenticity of the signature and of the power of the assignor to transfer the security as the Corporation or its agents may require. On surrender, the Corporation or its agent shall issue a new certificate to the person entitled to it, cancel the old certificate, and record the transaction on its books. Except as provided in these by-laws or by the laws of the State of New Jersey, the person in whose name registered securities stand on the books of the Corporation shall be deemed the owner for all purposes.

RECORD DATE FOR DIVIDENDS OR RIGHTS

7.05. The Board of Directors may fix, in advance, a date as the record date for determining the shareholders entitled to receive payment of any dividend or the allotment of any right. The record date may in no case be more than sixty days before the event to which it relates. If the Board of Directors does not fix a record date in connection with the these matters, then the record date with respect to these matters shall be at the close of business on the day on which the Board adopts the resolution authorizing a dividend or allotment of rights.

ISSUE OF NEW SHARES OR SALE OF TREASURY SHARES

7.06. Shares of the Corporation that are authorized but not yet issued and treasury shares may be issued or sold from time to time for the consideration determined by the Board of Directors, but in no case for less than par value, subject to the provisions of the certificate of incorporation and the Business Corporation Act.

PREEMPTIVE RIGHTS

7.07. The Shareholders of the Corporation shall have pre-emptive rights as specified in N.J.S.A. 14A:5-29(3), except that those rights shall be applicable to all shares to be issued after the issuance of the shares authorized at the organizational meeting of the first Board.

ARTICLE VIII. FISCAL YEAR

DESIGNATION

8.01. The fiscal year of the Corporation shall end on the last day of December each year.

ARTICLE IX. AMENDMENTS

AMENDMENTS IN GENERAL

9.01. The power to alter, amend, or repeal these by-laws is vested in both the shareholders and the Board of Directors, subject to Paragraphs 9.02 and 9.03 below.

AMENDMENTS BY SHAREHOLDERS

9.02. Any by-law made or amended by the Board of Directors may be amended or repealed by the shareholders, and new by-laws may be added by the shareholders. The shareholders may provide as to any or all by-laws that bylaw provisions adopted by them may not be altered or repealed by the Board.

AMENDMENTS BY THE BOARD OF DIRECTORS

9.03. Any by-law made or amended by the shareholders may be amended or repealed by the Board of Directors, and new by-laws may be added by the Board of Directors unless the shareholders prescribe in the by-law that it shall not be altered or repealed by the Board.

ARTICLE X. MISCELLANEOUS

SEAL

10.01. The Corporation's seal shall be inscribed with the name of the Corporation, the year of its incorporation, and the words "New Jersey." The seal may be used by causing it or a facsimile to be impressed or reproduced on a document or instrument, or affixed to a document or instrument.

MAINTENANCE OF BOOKS AND RECORDS

10.02. The Corporation shall maintain books and records of account and minutes of the meetings of its shareholders and Directors, including meetings of committees of the Board. These documents shall be maintained at one or more locations within or outside of the State of New Jersey, the location or locations to be designated by the Board of Directors. Each of these documents shall be in written form or in any other form capable of being converted into written form within a reasonable time.

INSPECTION OF CORPORATE RECORDS

10.03. Any shareholder of the Corporation who has been a shareholder of record for at least six months immediately preceding his or her demand and any person [holding or so authorized in writing by the holders of at least five percent of the outstanding shares of any class or series shall have the right, on at least five days' written demand to the President or the Secretary of the Corporation and for a purpose deemed proper under any applicable law, to examine in person, by in person or by an agent or attorney, during usual business hours, the minutes of the Corporation's shareholders' meeting and the Corporation's record of its shareholders and to make extracts. The examination shall take place where the minutes and record are maintained.

EXECUTION OF CONTRACTS

10.04. The Board of Directors may authorize any person to enter into any contract or execute any instrument in the name of and on behalf of the Corporation. Authorization may be general or specific.

VOTING SHARES OF OTHER CORPORATIONS

10.05. The President and any Executive Vice President or Vice President are authorized to vote any shares of any other corporation or corporations standing in the name of the Corporation. This authority may be exercised by these officers either in person, by proxy, or by a duly executed power of attorney.

02

BONDS

10.06. The seal of the Corporation and any or all signatures of the officers or other agents of the Corporation on a bond of the Corporation and on any coupon attached to the bond may be facsimiles if the bond is countersigned by an officer or other agent of a trustee or by other certifying or authenticating authority. If any officer or other agent of the Corporation who has signed or whose facsimile signature has been placed on a bond or coupon has ceased to be an officer or agent before the bond is issued, the bond may be issued by the Corporation with the same effect as if that person were an officer or agent at the date of its issue.

ARTICLE XI. EMERGENCY PROVISIONS

11.01. The following provisions shall govern and shall supersede any other provisions in these by-laws in the event of an emergency.

a. For purposes of this Article XI, the following terms shall have the following meanings:

- (1) "Emergency" shall mean an emergency in the conduct of the business of the Corporation resulting from an attack on the United States or any nuclear or atomic disaster
- (2) "Emergency list" shall mean the most current list in effect pursuant to Section 11.02.
- (3) "Listed officers" shall mean the officers listed on the "emergency list".
- (4) "Principal headquarters" shall mean the principal place of business of the Corporation. If use of the principal place of business is not practical during an emergency, the "principal headquarters" shall mean the place of business at which the largest number of employees remain employed by the Corporation during the emergency.

b. In the event of emergency, the senior officer of the Corporation present at the principal headquarters shall call an initial emergency meeting of the Board of Directors to be held as soon as practicable after the commencement of the emergency. The officer shall use his or her best efforts to notify each Director and each listed officer of the time and location of the meeting, but no action taken at the meeting or during the emergency shall be invalidated by reason of the fact that any Director or listed officer could not be notified of the time and location of the meeting.

c. A Director or listed officer may participate in any Board meeting held during the emergency by means of any communications device that enables him or her to hear the person presiding at the meeting and enables the presiding officer to hear that Director or listed officer. It shall not be necessary for each Director or listed officer to hear all other Directors and listed officers.

d. For purposes of the initial emergency meeting, the Board of Directors shall be deemed to consist of the Directors who attend or otherwise participate at the initial emergency meeting together with those listed officers who both (1) attend or otherwise participate at the initial emergency meeting and (2) are designated as "Special Directors" by the Directors participating at the meeting or, in the event no Directors participate at the meeting, by the Senior Officer. The number of listed officers who shall be designated as Special Directors shall be the lesser of (1) the number of listed officers participating at the meeting or (2) the difference between the number of Directors on the Board immediately before the commencement of the emergency and the number of Directors participating at the initial emergency meeting. If the number of Special Directors to be designated is smaller than the number of listed officers participating at the meeting, the listed officers shall be designated in the order of priority set forth in the emergency list.

e. Actions to be taken at the initial emergency meeting shall require the affirmative vote of a majority of the Directors and Special Directors participating at the meeting. No quorum requirement shall apply with respect to the meeting.

f. At the initial emergency meeting, the Directors and Special Directors shall adopt whatever procedures they deem appropriate with respect to further Board meetings during the course of the emergency, provided that the following conditions shall apply:

(1) At these further Board meetings, the Board shall be deemed to consist of all Directors who participate at the meetings, together with those listed officers who were designated as Special Directors for purposes of the Initial Emergency Meeting.

(2) No quorum requirements shall apply with respect to these meetings. Actions to be taken at these meetings shall require the affirmative vote of a majority of the Directors and Special Directors participating at the meetings.

(3) The procedures to be developed shall, to the maximum extent feasible under the circumstances, be consistent with the provisions of these by-laws that apply in the absence of any emergency; provided, however, that any procedure used shall be valid unless it bears no reasonable relationship to the circumstances.

11.02. The Board of Directors shall maintain a list of officers eligible to participate in Board meetings as Special Directors pursuant to Section 11.01. The list shall set forth the titles of the eligible officers and shall rank these listed officers in order of priority. In the event that the Corporation fails to maintain this list, the emergency list shall be as follows:

- a. President;
- b. Executive Vice Presidents (if any), in the order in which they were elected;
- c. Vice Presidents, in the order in which they were elected;
- d. Treasurer; and
- e. Secretary.

EXHIBIT D

Sent: 14 October 2009 17:17
To: 'Jim Tomafsky'
Cc: K B McAlpine; J E McAlpine
Subject: SPECIAL MEETING OF MOUNTAIN ACCESSORIES INC.

Jim,

This is to confirm the telephone message left on your cell phone today stating that we wish to have a Special Meeting on Friday 16th October at 10.00am your time (3.00pm our time) which we will do via a Telephone Conference Call. This will be to discuss corporate / business affairs and we will forward the Agenda to you tomorrow by email.

The dial-in number to be used is 0844-580-0555 and your pin number to access the call will be 014181.

Regards,
Graham

'The information contained in this message is confidential and is intended for the addressee only. If you have received this message in error or there are any problems please notify the originator immediately.

The unauthorised use, disclosure, copying or alteration of this message is strictly forbidden.'

This Email has been scanned by McAfee GroupShield Security for Microsoft Exchange.

<http://www.mcalpineplumbing.com>

10/15/2009

EXHIBIT E

**The Bank***New Jersey's
Best Community Bank*

100 Park Avenue
Woodbury, NJ 08096
866.246.BANK (2265)
thebankonline.com

December 31, 2007

James Tomafsky
Mountain Accessories, Inc.
1351 Metropolitan Avenue
West Deptford, NJ 08066

Dear James,

I am pleased to advise you that The Bank ("Lender") hereby agrees to grant the following extension of credit to Mountain Accessories, Inc. ("Borrower") under the terms and conditions described below:

1. AMOUNT AND TYPE OF CREDIT

\$270,000.00 - Term Loan

2. INTEREST RATE and TERM

1. A fixed interest rate of 7.50% per annum for a five (5) year term with an amortizing monthly payment of principal and interest in the approximate amount of \$5,423.62 that will pay the loan to a \$0 balance after 60 months.

All interest rates will be computed on the basis of a 360-day year.

3. REPAYMENT

In the event that any of the aforesaid payments of principal and interest will become overdue for a period in excess of fifteen (15) days, the Borrower will pay to the Lender a "late charge" of five cents (\$.05) for each dollar so overdue.

If a default shall occur in this loan and not be cured as provided in the loan documents or otherwise agreed to by the Lender, the Lender shall,



after declaring the loan to be in default, have the right to increase the applicable interest rate to five (5%) percent in excess of the contract rate. This provision is in addition to any late charges that may be due

4. PREPAYMENT

A prepayment fee will be charged if the Term Loan is prepaid, in whole or in part, during the fixed rate period. The fee will be calculated at two percent (2%) of the principal amount prepaid. A prepayment fee will not be charged on any amount (up to twenty percent (20%) of the original principal amount) prepaid within any loan year from internally generated funds. The term "loan year" is defined as any period of one year commencing on the closing date or any anniversary date thereof.]

Borrower will have the ability to prepay the whole or any part of the outstanding principal balance of the Term Loan and Line of Credit at any time and from time to time without penalty and without payment of unearned interest. Any prepayment will reduce the amount of the unpaid principal and no prepayment will reduce the amount of the scheduled payments nor relieve the Borrower from paying the scheduled payments on each due date until the entire indebtedness is paid.

5. USE OF PROCEEDS

To fund the acquisition of 25% of buyout of current member. Additional monies will be used for closing costs and working capital.

6. FEES

A commitment fee of \$2,500.00 will be paid to the Lender at closing

7. COLLATERAL

The Term Loan will be secured by a first priority, perfected security interest in all present and after-acquired accounts receivable, inventory, general intangibles, machinery, furniture, fixtures and equipment of the Borrower.

The Term Loan will be also secured with an additional mortgage on 115 Vineyards Court, Wilmington, DE 19810 ("the Real Property") pledged by Borrower.

All extensions of credit to Borrower will be cross-collateralized and cross-defaulted.

Lender will agree to release the mortgage lien on 115 Vineyards Court only for the purpose of sale. In exchange for the release of this collateral, the Borrower and/or Guarantor must allow for a new mortgage lien to be placed on a different property with like equity prior to or concurrent with the sale of 115 Vineyards Court in Wilmington Delaware.

8. GUARANTY

The unlimited, unconditional personal guaranty of James Tomafsky the "Guarantor") has been offered as additional security for all extensions of credit and is acceptable to the Lender.

9. LOAN DOCUMENTS

The Borrower will be required to execute and deliver to the Lender such loan agreements, notes, mortgages, security agreements, financing statements, assignments, certificates, opinions, assurances and other documents as the Lender requests in connection with closing (the "Loan Documents"), and in connection with the authority of the Borrower to accept the extensions of credit and to execute, acknowledge and deliver the Loan Documents. The Loan Documents will contain such representations, warranties, covenants, terms and conditions as may be required by the Lender and its counsel.

The loan agreement will specifically provide, among other things, that:

- a. The Borrower will submit to Lender annually its [audited] financial statements in such detail as Lender may require within one hundred-twenty (120) days of the close of the Borrower's fiscal year.
- b. The Guarantor will submit to Lender annually their tax returns and personal financial statements in such detail as Lender may require within one hundred-twenty (120) days of the close of the calendar year.
- c. The Borrower will submit to Lender on a monthly basis its accounts receivable/accounts payable listing and aging(s) within ten (10) days of month end.

d. The Borrower will not be permitted to obtain any other extensions of credit secured by an encumbrance, lien, mortgage, security interest or other interest in the Real Property, nor to assign, sell or transfer (voluntarily or by operation of law), or to dispose of any of its interest in the Real Property without the Lender's prior written consent.

e. The loan documents shall include a fifteen (15) day default clause and a due on transfer clause.

f. The Borrower will establish and maintain its primary deposit relationship with the Lender.

g. Financial ratio(s) and other special financial covenant(s)], including but not limited to the following:

- Minimum Annual Debt Service Ratio of 1.20X.
- No distributions permitted from Mountain Associates, Inc. to any owner of the company for the term of facilities. This does not include \$200,000 in annual salary to James Tomafsky.

h. The mortgage shall also secure all other obligations to the Lender by the Mortgagor, its successors or assigns, the corporate guarantors, or any related person or entity under common control with the mortgagor or controlled by the Mortgagor whether oral or written, secured or unsecured and regardless of their nature, and shall also secure any and all such future obligations when they are incurred. In the event that the Mortgagor shall default under any obligation or mortgage held by mortgagee and made by mortgagor, such default shall constitute a default hereunder and under the note hereby secured and shall entitle mortgagee to declare the mortgage and the accompanying note which it secures immediately due and payable. In the event that Mortgagor shall default, all obligations and mortgages shall be immediately due and payable.

i. The Borrower authorizes The Bank to charge an account as designated by them for all payments due on this loan on the date of said payments.

10. CONDITIONS OF CLOSING

The Lender's obligation to close is conditioned upon the Borrower's delivery to Lender, at least three (3) business days prior to closing, the

following, among other things, each of which shall be subject to Lender's and Lender counsel's approval:

- a. Casualty & Flood Insurance. Policies of fire and casualty insurance, with extended coverage on the Real Property, issued by such companies and in such amounts as are satisfactory to the Lender. If the Real Property is determined to be located in a flood hazard area, the Lender will require flood insurance coverage in the amount of the credit to be extended to the Borrower or in the maximum amount available, whichever is less.
- b. Casualty Insurance. Policies of fire and casualty insurance on the business assets issued by such companies and in such amounts as are satisfactory to the Lender.
- c. Lease(s). A copy of any lease for all or a portion of the Real Property.
- d. Compliance with Law; Litigation; Material Adverse Change. Satisfactory evidence to the effect that: (i) The Real Property is maintained in compliance with applicable state and municipal statutes, regulations, codes and ordinances; (ii) There is no action or proceeding pending or threatened against or affecting Borrower, which if adversely determined would impair the validity or enforceability of the Loan Documents or have a material or adverse effect on the financial condition of Borrower; and (iii) There has not been any material adverse change in the value of the collateral or the financial condition of Borrower, as reflected by any financial statements submitted to Lender, or operating condition of the Borrower, between the date of this commitment and the closing date.
- e. Authorization. A copy of the articles of incorporation of the Borrower, resolutions and any other authorizations required for the Borrower to execute, deliver and perform the Loan Documents.
- f. Landlord's Waiver. A landlord's waiver for each parcel of real estate leased by the Borrower.
- g. Lien Search. A satisfactory lien search of 115 Vineyards Court.
- h. Financial Information. A copy of two years of income tax returns and personal financial statements of Guarantor.

i. Subject to proof of discharge and written explanation of bankruptcy dated 3/23/01.

j. Full subordination of any officer debt and/or obligations to owners of Mountain Associates, Inc. Borrower will be allowed to continue to make payments on any obligations due any owners of Mountain Associates, Inc. as long as the proposed facilities are not in default.

11. EXPENSES

All out-of-pocket expenses incurred by the Lender and Borrower in connection with the extension(s) of credit, and the transactions contemplated thereby, including, but not limited to, fees and disbursements of legal counsel, title insurance premiums, survey, appraisal and environmental audit costs, flood determination costs, and filing and recording costs, will be paid by the Borrower upon request, whether or not the extension(s) of credit are made (unless such extensions of credit are not made notwithstanding the Borrower's fulfillment of all terms and conditions set forth in this letter). This obligation will survive the expiration or termination of this commitment.

12. ACCEPTANCE OF COMMITMENT

This commitment shall be accepted by the Borrower by executing the enclosed copy of this letter and returning it to the Lender within 15 days from the date hereof. Please retain one of the enclosed copies for your own records. Unless accepted as indicated, this commitment shall automatically expire. The applicable rate(s) of interest and other terms and conditions contained in this letter are based on the understanding that the Borrower will accept, and fulfill the conditions to obtain all extensions of credit being offered pursuant to this commitment; in the event that the Borrower accepts, or fulfills the conditions to obtain less than all extensions of credit, the Lender reserves the right to withdraw, or modify the terms and conditions of this commitment.

Please review this commitment carefully. We suggest that you seek legal counsel before signing this commitment letter, as all terms and conditions will be incorporated into the closing documents. We suggest that you engage legal counsel for documentation review purposes. Any changes mutually agreed upon between the Borrower and Lender must be in writing. Any changes requested by the Borrower after the documents have been prepared may necessitate an additional fee from the Borrower.

13. CLOSING

Closing will be held within 60 days from the date of this letter, unless the Lender agrees in writing to a later date. This commitment letter does not survive the execution of the loan documents. The fixed interest rate offered by Lender shall expire 60 days from the date of this commitment letter.

14. MODIFICATION OF THIS COMMITMENT

The terms of this commitment supersede all prior written or oral communications between the Borrower and Lender with respect to the terms of the commitment and the extension(s) of credit to be made pursuant hereto. The terms of this commitment letter may not be waived, modified or in any way changed unless such waiver, modification or change is made in the form of an amendment to this commitment letter in writing and agreed to by both parties.

15. NO ASSIGNMENT

This commitment is not assignable by the Borrower without the prior written consent of the Lender.

The Lender is required by New Jersey law to make the following disclosure:

THE INTEREST OF THE BORROWER AND THE LENDER ARE OR MAY BE DIFFERENT AND MAY CONFLICT. THE LENDER'S ATTORNEY REPRESENTS ONLY THE LENDER AND NOT THE BORROWER. THE BORROWER IS THEREFORE ADVISED TO EMPLOY AN ATTORNEY OF THE BORROWER'S CHOICE, LICENSED TO PRACTICE LAW IN THE STATE OF NEW JERSEY TO REPRESENT THE INTEREST OF THE BORROWER.

16. CUSTOMER IDENTIFICATION.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR
OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

If you have any questions concerning the above, please contact the undersigned, or in my absence Kimberlee' Williams at (856) 396-2571 who will be coordinating settlement.

Sincerely,

Chris Wolf

Accepted and Agreed to on: _____
Date

Borrower: Borrower: Mountain Accessories, Inc.

James Tomafsky - President

Personal Guarantor:

James Tomafsky

EXHIBIT F

Mountain paid for the tooling. But, as you can see, my share was deposited into Jim's account; so he received \$2.00 per squeegee!

It goes on and on!!!!!!

Janice

--- On **Mon, 3/16/09**, Janice Adamek <ootistini@gmail.com> wrote:

From: Janice Adamek <ootistini@gmail.com>
Subject: Fwd: Delivery Status Notification (Failure)
To: janice.adamek@yahoo.com
Date: Monday, March 16, 2009, 2:33 PM

Forwarded conversation

Subject: **Fw: comission payments**

From: **Frank Huang (Dawnway company)** <frank@dawnway.com.tw>
Date: Thu, Jun 19, 2008 at 9:28 AM
To: Jim Tomafsky <jtomafsky@earthlink.net>, JANICE ADAMEK <ootistini@gmail.com>

Hi Jim,

We are pleased to inform you that we already wired you \$8189.24 yesterday and \$5,500 today. Did you get the commission? Please confirmed if you get them.
Thanks.

Best regards,

Frank Huang

Dawnway Enterprise Co., Ltd.
Tel: 886-4-26396969
Fax: 886-4-26391990

----- Original Message -----

From: [Frank Huang](#)
To: [Jim Tomafsky](#); [Frank Huang](#)
Sent: Thursday, June 12, 2008 1:19 AM
Subject: Re: commission payments

Hi Jim

Thanks for your explation. We will improve our delivery in the future.

Regarding the comission, we will wire you \$8189.24 for the first week, \$5,500 for the second week. Please kindly check and confirmed if O.K. Thanks.

Best regards,

Frank Huang
Dawnway Enterprise Co., Ltd.
Tel: 886-4-26396969
Fax: 886-4-26391990

----- Original Message -----

From: [James Tomafsky](#)
To: [Frank Huang \(Dawnway company\)](#)
Sent: Tuesday, June 10, 2008 1:00 AM
Subject: Re: comission payments

I agree in principle. The reason why we are behind for April invoices is because as you know, the new faucets were very late in coming in from you for many reasons. We lost many orders due to late shipments which now has cost us the cash flow problem. You should have all of your money for April invoices by next Monday. All of May invoices will be paid in one wire transfer.

So if you could, wire the commissions for the 2 partial payments it would be appreciated and then wire the ballance when Greg sends it to you.

Thanks
Jim

----- Original Message -----

From: [Frank Huang \(Dawnway company\)](#)
To: jtomafsky@earthlink.net
Sent: 6/10/2008 3:02:59 AM
Subject: Re: comission payments

Hi Jim,

First of all, I have to clarify it that the money we get from Greg was USD 50,000 not USD55,000. But yes! Today we get the money from Greg was USD55,000. Please kindly check with Greg and clarify it. Thank you very much.

Yes, we agree with you. Basically, it should be no problem that we pay you commissions when we get the pay from Mountain either partial payments or full payments. But I got a question for you about this issue. As you know, the

April payment already delayed over one month and we still didn't get any May payment until now. Meanwhile, we get too many partial payment for one due payment. It cost a lot for partial payment. As you know, the bank charge each time when you wire transfer no matter how much you make the payment. And according to our accountant, we have to take more time and cost to handle it. Therefore, we hope that you can make the due payment one time. I believe that it will be clear and easy for both of us to arrange the finance. Please kindly check and let us know your comment. Thanks.

Best regards,

Frank Huang

Dawnway Enterprise Co., Ltd.

Tel: 886-4-26396969

Fax: 886-4-26391990

----- Original Message -----

From: James Tomafsky

To: Frank Huang (Dawnway company)

Sent: Saturday, June 07, 2008 3:09 AM

Subject: comission payments

Frank,

it will be easier for me to keep tract of paments for commissions if you will pay commissions when we pay you either partial payments or full payments.

I understand Greg has wired you \$55,000 back on May 29th and he wired today another \$55,000. The ballance will be paid in 10 days only because most of the invoice was copper mt300 and mt200 which we dont even have in the price book yet..

so when you get this next wire, please issue commissions twice for \$5,500.00 each for each wire transfer. This will make it easier.

I will make sure we catch up payment wise real quick for you.

I also need you to make 3 kitchen faucets for OEM
CUSTOMERS WILL EXPLAIN LATER

James Tomafsky

tomafsky@earthlink.net

EarthLink Revolves Around You.

EXHIBIT G

TRN REF #: 20080618-00000800

**** MESSAGE ENVELOPE ****

(Bank : 001)

SRC:SWF CALLER:

SND DATE: 08/06/18

EXT:

RPT# AMT:8,189.24

CUR:USD RATE: 1. T

TEST: DUE:

TYP:FTR/ FNDS:S CHG:DB:Y CD:Y C

DBT D/0009024252/

CDT *D/080:5607298491

DEBIT VAL: 08/06/18

CREDIT VAL: 08/06/18

AMT:8,189.24 CUR:USD

AMT:8,189.24 CUR:USD

GL RECON: 001

GL RECON: 080

DEPT:0158

JAMES S TOMAFSKY

MEGA INTERNATIONAL COMMERCIAL BANK

115 VINEYARDS CT

CO.,LTD.AIWAN

WILMINGTON

DE

FLOOR 9

(FM)

BNF:/

TAIPEI, TW

XX .

SEND:S/ICBCTWTP004

MEGA INTERNATIONAL COMMERCIAL BANK

CO., LTD.

216 MING CHUAN ROAD

TAICHUNG, TW

SNDR REF NUM:AAACTS80005872

ORIG:/00000453060243

DAWNWAY ENTERPRISE CO., LTD.

NO.375-1 TZU LI RD, . WU CHI TOWN

TAICHUNG TAIWAN R.O.C

TRN REF #: 20080626-00001176

**** MESSAGE ENVELOPE ****

(Bank : 001)

SRC:SWF CALLER:

SND DATE: 08/06/26

EXT:

RPT# AMT:6,608.37

CUR:USD RATE: 1. T

TEST: DUE:

TYP:FTR/ FNDS:S CHG:DB:Y CD:Y C

DBT D/0009024252/

CDT *D/080:5607298491

DEBIT VAL: 08/06/26

CREDIT VAL: 08/06/26

AMT:6,608.37 CUR:USD

AMT:6,608.37 CUR:USD

GL RECON: 001

GL RECON: 080

DEPT:0158

JAMES S TOMAFSKY

MEGA INTERNATIONAL COMMERCIAL BANK

115 VINEYARDS CT

CO., LTD. AIWAN

WILMINGTON

DE

FLOOR 9

(FM)

BNF:/

TAIPEI, TW

XX .

SEND:S/ICBCTWTP004

MEGA INTERNATIONAL COMMERCIAL BANK

CO., LTD.

216 MING CHUAN ROAD

TAICHUNG, TW

SNDR REF NUM:AAACTS80006168

ORIG:/00000453060243

DAWNWAY ENTERPRISE CO., LTD.

NO.375-1 TZU LI RD, . WU CHI TOWN

TAICHUNG TAIWAN R.O.C

'D FROM BANK OF AMERICA NATIONAL ASSOC NEW YORK NY
DER'S DDA # 110001010161

*** Message: NOT TESTED. ***

REF #: 20080730-00001608

*** MESSAGE ENVELOPE ***

(Bank : 080)

FED CALLER:

SND DATE: 08/07/30

EXT:

AMT: 9,221.34

CUR: USD RATE: 1.

TRDR#

BT: {} DUE:

TYP: FTR/

FNDS: S CHG: DB: N CD: Y COM: N CBL: N

A/026009593

CDT *D/5607298491

ADV: LTR

BIT VAL: 08/07/30

CREDIT VAL: 08/07/30

9,221.34 CUR: USD

AMT: 9,221.34 CUR: USD

RECON: 080

GL RECON: 080

PT: 0161

JAMES S TOMAFSKY

ANK OF AMERICA NATIONAL ASSOC

115 VINEYARDS CT

W YORK NY

WILMINGTON

DE 19810

ND: S/BOFAUS3N

BNF: /5607298491

CHG: S BK?N

ANK OF AMERICA NATIONAL ASSOC

JANICE ADAMEK

W YORK NY

TEL: 3024794529

DR REF NUM: 2008073000056677

DERING BNK: S/BKTWTWTP

ANK OF TAIWAN

CHUNGKING SOUTH RD SEC 1

D. BOX 305

IPEI 10036, TAIWAN

IG: /70680727

WNWAY ENTERPRISE CO., LTD.

, NO. 96 LANE 465, SEC 1, DA-REN

AD, WU-CHI, TAICHUNG, TAIWAN, ROC

F NUM: T057247507/01012

**** MESSAGE TEXT ****

100) Message Disposition:

Format Version:

02 (New expanded format)

Test Production Code:

P (Production)

Msg Duplication Code:

(Original incoming msg)

Msg Status Indicator:

N (Incoming msg)

110) Acceptance Timestamp:

Date:

07/30

Time:

04:59

Application Id:

FT01

120) OMAD:

Output cycle date:

2008/07/30

Output Destination Id:

D3B74V7C

Output sequence number:

000005

Output date:

07/30

Output time:

04:59

Output application Id:

FT01

510) Type/Subtype Code:

Type Code:

10 (Transfer of funds)

Subtype Code:

00 (Regular transfer)

520) IMAD:

Input Cycle date:

2008/07/30

Input Source Id:

D3B74V7C

EXHIBIT H

02/09/2009

NJ Business Entity Status Re...

New Jersey State Business Gateway Service

Corporate and Business Information Reporting



Business Entity Status Report

Printing Instructions: Open your Browser's Page Setup menu and set your page margins to 0.25". Use your Browser's Print option to print the report as seen on screen.

Saving Instructions: Save this file to your hard drive for later viewing by using the Browser's "Save As" function. All available information is displayed.

Status Report For: TECTONIC ENTERPRISES LIMITED LIABILITY COMPANY	
Business Name: TECTONIC ENTERPRISES LIMITED LIABILITY COMPANY	Report Date: 02/03/2009
Business ID Number: 0400283231	Transaction Number/Sequence: 1542782: 2
Business Type: DOMESTIC LIMITED LIABILITY COMPANY Status: ACTIVE	
Filing Date: 12/04/2008 Status Change Date: DOB Suspension Start Date: Tax Suspension Start Date: Annual Report Month: 12 Last Annual Report Filed: For Last Annual Report Paid Year:	Home Jurisdiction: NJ Stock Amount: 0 DOB Suspension End Date: Tax Suspension End Date:
Securaportal: Agent: JOHN STEWART Agent Address: 9 AARON AVE HADDON TOWNSHIP, NJ 08106 Office Address/Status: Deliverable Main Business Address: Principal Business Address:	
Associated Names	
Name:	Type Description:
Officers/Directors/Members	
1) TYPE: OTHER Name: GREG TOLIVELLE Address: 192 MYRTLE DR GIBBSTOWN, NJ 08027	
2) TYPE: OTHER Name: JAMES TOMASKY Address: 22 PELHAM DR WEST DEPTFORD, NJ 08051	
3) TYPE: OTHER	

EXHIBIT I

[About](#) | [Contact](#) | [Support](#) | [Sitemap](#)

Mountain PLUMBING PRODUCTS

A McAlpine Company



BATH

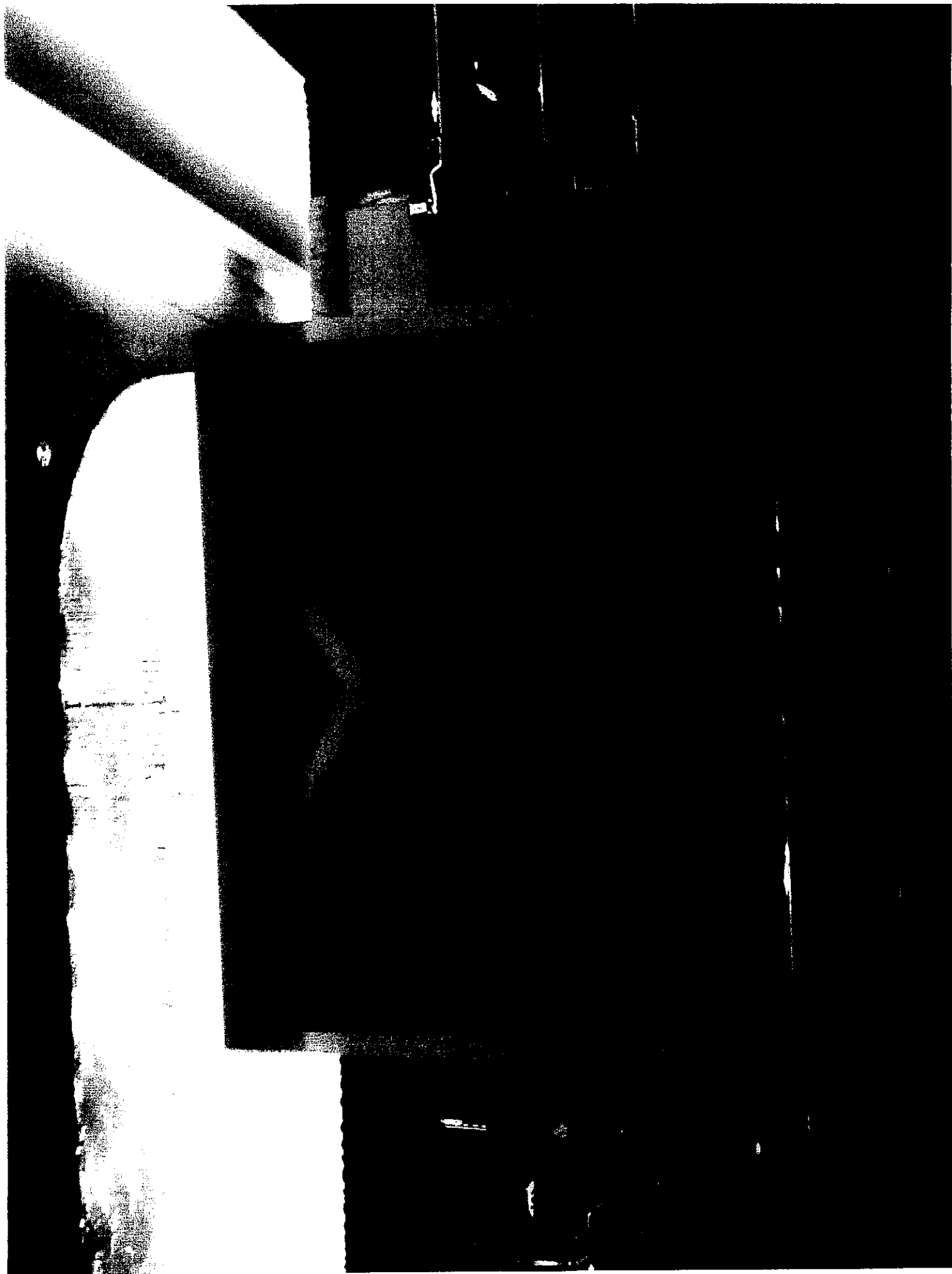


► *Welcome*

to Mountain Plumbing Products



EXHIBIT J



DPHA - Conference - October 16th - 18th

The Showcase this year will have these exciting new products on display!

Go to www.dpha.net to sign up attend today!!

Mountain Plumbing/ Tectonic Enterprises

Tectonic Enterprises US importer for Unidrain innovated the art and technology of shower drain placement at the junction of the floor and wall

Before Unidrain shower drains were placed in the middle of the floor Unidrain creates a floor drain against the shower wall with vertical flanges which form a waterproof interface with the wall making precise installation and fastening during construction easy

Made of high-quality stainless-steel Unidrain is strong easy to clean and corrosion resistant Developed by architects they provide a look perfect for any shower with a choice of drain covers for design symmetry

