

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K/A

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported): **July 21, 2003**

Centex Construction Products, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation)

1-12984

(Commission File Number)

75-2520779

(IRS Employer Identification No.)

2728 N. Harwood, Dallas, Texas

(Address of principal executive offices)

75201

(Zip Code)

(214) 981-5000

(Registrant's telephone number, including area code)

Not Applicable

(Former name or former address if changed from last report)

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On July 22, 2003, Centex Construction Products, Inc. (the “Company”) filed a Current Report on Form 8-K, dated July 21, 2003, reporting that (i) Centex Corporation (“Centex”), ARG Merger Corporation, a wholly owned subsidiary of Centex, and the Company had entered into an Agreement and Plan of Merger (the “Merger Agreement”) and (ii) Centex and the Company had entered into a Distribution Agreement (the “Distribution Agreement”), in order to facilitate the distribution (the “Distribution”) by Centex of its entire equity interest in the Company to the holders of Centex’s common stock, par value \$.25 per share, in a tax-free transaction. This Current Report on Form 8-K/A amends the previously filed Form 8-K as described below. Unless otherwise defined in this Form 8-K/A, capitalized terms used herein shall have the meanings ascribed to them as set forth in the Amended and Restated Agreement and Plan of Merger, filed as an exhibit hereto.

Item 5. Other Events and Regulation FD Disclosure.

Amended and Restated Merger Agreement

Effective as of November 4, 2003, the parties to the Merger Agreement amended and restated the Merger Agreement to, among other things, (i) provide for the change of the Company’s name from Centex Construction Products, Inc. to “Eagle Materials Inc.” as set forth in the Company’s proposed Restated Certificate of Incorporation and (ii) to amend and restate the Company’s proposed Restated Certificate of Incorporation to provide for 50,000,000 shares of Class A common stock and 50,000,000 shares of Class B common stock (and 5,000,000 shares of preferred stock). The revised forms of the proposed Restated Certificate of Incorporation and Amended and Restated Bylaws of the Company are attached as exhibits to the Amended and Restated Agreement and Plan of Merger. The Company is hereby filing as Exhibit 2.1 to this Form 8-K/A the Amended and Restated Agreement and Plan of Merger, dated as of November 4, 2003

Amended and Restated Distribution Agreement

Effective as of November 4, 2003, the parties to the Distribution Agreement amended and restated the Distribution Agreement to, among other things, (i) provide for the change of the Company’s name from Centex Construction Products, Inc. to “Eagle Materials Inc.” as set forth in the Company’s proposed Restated Certificate of Incorporation, (ii) provide for the changes in the Company’s authorized capital stock as now contemplated in the Company’s proposed Restated Certificate of Incorporation, (iii) revise the definitions of the Administrative Services Agreement and the Intellectual Property Agreement as these documents have now been included as exhibits to the amended Distribution Agreement, (iv) eliminate the reference to the Sublease Agreement as such agreement is no longer contemplated by the parties to the Distribution Agreement, (v) amend the termination provisions of the Distribution Agreement, and (vi) attach as exhibits to the Distribution Agreement the proposed forms of the Administrative Services Agreement and Intellectual Property Agreement, to be executed by the Company and Centex when the Distribution is completed. The Company is hereby filing as Exhibit 2.2 to this Form 8-K/A the Amended and Restated Distribution Agreement, dated as of November 4, 2003.

Stockholders’ Rights Plan

On October 30, 2003, the Board of Directors of the Company approved a Stockholders’ Rights Plan (the “Stockholders’ Rights Plan”), which the Company is hereby filing as Exhibit 99.1 to this Form 8-K/A. The Stockholders’ Rights Plan will not become effective until it is approved by the stockholders of the Company at a special meeting of stockholders, currently contemplated to be held in December 2003.

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Press Release

The Company is hereby filing as Exhibit 99.2 to this Form 8-K/A, a press release, dated November 5, 2003, announcing an increase in the Company's annual cash dividend from \$0.20 per share to \$1.20 per share (representing an increase in the regular quarterly cash dividend from \$0.05 to \$0.30 per share), effective upon the completion of the Distribution. The Company also announced that it currently anticipated that the reclassification and the Distribution (including the payment of the special one-time cash dividend of \$6.00 per share) would be completed in January 2004.

Item 7. Financial Statements and Exhibits.

Exhibit Number	Description
2.1	Amended and Restated Agreement and Plan of Merger, dated as of November 4, 2003, among Centex Corporation, Centex Construction Products, Inc. and ARG Merger Corporation.
2.2	Amended and Restated Distribution Agreement, dated as of November 4, 2003, between Centex Corporation and Centex Construction Products, Inc.
99.1	Form of Centex Construction Products, Inc. Stockholders' Rights Plan
99.2	Press Release dated November 5, 2003, announcing an increase in the annual dividend of Centex Construction Products, Inc. and the expected timing of the completion of the Distribution.

SIGNATURE

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

Date: November 12, 2003

CENTEX CONSTRUCTION PRODUCTS, INC.

By: /s/ JAMES H. GRAASS

Name: James H. Graass
Title: Executive Vice President, Secretary
and General Counsel

EXHIBIT INDEX

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AMENDED AND RESTATED
AGREEMENT AND PLAN OF MERGER
among
CENTEX CONSTRUCTION PRODUCTS, INC.,
CENTEX CORPORATION
and
ARG MERGER CORPORATION

dated as of November 4, 2003

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AMENDED AND RESTATED

AGREEMENT AND PLAN OF MERGER

This AMENDED AND RESTATED AGREEMENT AND PLAN OF MERGER, dated as of November 4, 2003 (this "Agreement"), amends and restates in its entirety the AGREEMENT AND PLAN OF MERGER, dated as of July 21, 2003, by and among CENTEX CONSTRUCTION PRODUCTS, INC., a Delaware corporation (the "Company"), CENTEX CORPORATION, a Nevada corporation ("Centex"), and ARG MERGER CORPORATION, a Delaware corporation and a wholly owned subsidiary of Centex ("Merger Sub").

WITNESSETH:

WHEREAS, Centex owns (i) all of the issued and outstanding shares of common stock, par value \$.01 per share, of Merger Sub ("Merger Sub Common Stock") and (ii) an aggregate of 11,962,304 shares of common stock, par value \$.01 per share ("Common Stock"), of the Company, representing approximately 65% of the total number of issued and outstanding shares of Common Stock;

WHEREAS, prior to the Effective Time (as hereinafter defined) of the Merger (as hereinafter defined), Centex plans to contribute to Merger Sub an aggregate of 9,220,000 shares of Common Stock owned by it (the "Contributed Shares") and will retain 2,742,304 shares of Common Stock owned by it (the "Additional Shares");

WHEREAS, Centex and the Company desire that Merger Sub be merged with and into the Company (the "Merger"), upon the terms and subject to the conditions set forth in this Agreement and in accordance with the applicable provisions of the General Corporation Law of the State of Delaware (the "DGCL"), with the result that (i) all of the issued and outstanding shares of Merger Sub Common Stock will be converted into an aggregate of 9,220,000 shares of a new class of common stock of the Company to be designated as Class B Common Stock, par value \$.01 per share ("Class B Common Stock"), and (ii) all of the issued and outstanding shares of Common Stock, including the Additional Shares (other than the Contributed Shares, which will be canceled with no securities or other consideration being issued in exchange therefor) will remain issued and outstanding;

WHEREAS, concurrently with the execution hereof, the Company and Centex are entering into an Amended and Restated Distribution Agreement, dated as of the date hereof (the "Distribution Agreement"), pursuant to which Centex has agreed, subject to the satisfaction of certain conditions set forth in the Distribution Agreement, to distribute on a pro rata basis to the holders of the common stock, par value \$.25 per share, of Centex (the "Distribution") (i) all of the Additional Shares and (ii) all of the shares of Class B Common Stock received by it as a result of the Merger (the Class B Common Stock and the Additional Shares shall be collectively referred to herein as the "Distributable Shares");

WHEREAS, the Distribution Agreement provides that the Company will pay a pro rata cash dividend (the "Cash Dividend") to all of its stockholders in the amount of \$6.00 per share of Common Stock;

WHEREAS, in accordance with the terms of the Distribution Agreement, the Cash Dividend is to be paid prior to the Effective Time of the Merger, and the Merger is to occur prior to the consummation of the Distribution;

WHEREAS, a special committee of the Board of Directors of the Company (the "Special Committee") has determined that this Agreement and the Merger are fair to, and in the best interests of, the Company and its stockholders (other than Centex and Merger Sub);

WHEREAS, the Board of Directors of the Company has, based in part on the determination of the Special Committee referred to above, (i) determined that this Agreement and the Merger are fair to and in the best interests of, the Company and its stockholders, (ii) approved this Agreement and, subject to obtaining the approval of the stockholders of the Company as required under applicable law, the Merger, and (iii) declared this Agreement to be advisable;

WHEREAS, the Board of Directors of the Company has directed that this Agreement and the Governance Proposals (as hereinafter defined) the Authorized Capital Increase (as hereinafter defined), the Name Change Proposal (as hereinafter defined) and the Stockholder Rights Plan Proposal (as hereinafter defined) be submitted to the stockholders of the Company at the Stockholders Meeting (as hereinafter defined);

WHEREAS, the Board of Directors of Merger Sub has (i) determined that this Agreement and the Merger are fair to and in the best interests of, Merger Sub and its sole stockholder, (ii) approved this Agreement and the Merger and (iii) declared the Merger Agreement to be advisable;

WHEREAS, the sole stockholder of Merger Sub has approved this Agreement and the Merger by written consent of such sole stockholder;

WHEREAS, the Merger is intended to constitute a reorganization within the meaning of Section 368(a)(1)(E) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, capitalized terms used herein have the meanings assigned to them in the provisions identified in Section 6.2;

NOW, THEREFORE, in consideration of the premises, the terms and conditions set forth herein, the mutual benefits to be gained from the performance thereof, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

THE MERGER

SECTION 1.1. *The Merger.*

(a) Upon the terms and subject to the conditions of this Agreement and in accordance with the applicable provisions of the DGCL, at the Effective Time, Merger Sub shall be merged with and into the Company, whereupon the separate corporate existence of Merger Sub shall cease, and the Company shall be the surviving corporation (the "Surviving Corporation").

(b) Following satisfaction or waiver of the conditions specified in Article IV, the Company and Merger Sub shall file a certificate of merger (the "Certificate of Merger") with the Secretary of State of the State of Delaware and make all other filings or recordings required by the DGCL in connection with the Merger. The Merger shall become effective at such time as the Certificate of Merger is duly filed with the Secretary of State of the State of Delaware, or at such later time as is specified in the Certificate of Merger in accordance with applicable law (the "Effective Time").

(c) The Merger shall have the effects set forth in Section 259 of the DGCL. Without limiting the generality of the foregoing, from and after the Effective Time, the Surviving Corporation shall possess all the rights, privileges, powers and franchises and be subject to all of the restrictions, disabilities and duties of the Company and Merger Sub, all as provided in the DGCL.

SECTION 1.2. *Effect on Capital Stock.* At the Effective Time, automatically and without necessity of any action on the part of the Company or Merger Sub:

(a) all of the shares of Merger Sub Common Stock outstanding immediately prior to the Effective Time shall be canceled and converted into 9,220,000 fully paid and non-assessable shares of Class B Common Stock of the Surviving Corporation and shall have the rights and privileges set forth in the Surviving Corporation Certificate of Incorporation (as hereinafter defined);

(b) all of the Contributed Shares shall be canceled and shall cease to exist, and no stock of the Surviving Corporation or any other consideration shall be delivered in exchange therefor; and

(c) all of the shares of Common Stock (including the Additional Shares) outstanding immediately prior to the Effective Time (other than the Contributed Shares), shall remain issued and outstanding, and

each share of Common Stock that immediately prior to the Effective Time was held in the treasury of the Company, if any, shall remain in the treasury of the Company and, in each case, such shares shall have the rights and privileges set forth in the Surviving Corporation Certificate of Incorporation.

SECTION 1.3. *Share Certificates.*

(a) As soon as practicable after the Effective Time:

(i) the Surviving Corporation shall deliver, or cause to be delivered, to Centex a certificate or certificates issued in the name of Centex, representing an aggregate of 9,220,000 shares of Class B Common Stock to be issued pursuant to Section 1.2(a);

(ii) Merger Sub shall surrender the certificates representing the Contributed Shares to the Surviving Corporation, and the Surviving Corporation shall cancel such certificates; and

(iii) the certificates that immediately prior to the Effective Time represented shares of Common Stock (including the Additional Shares) that remain issued and outstanding or in the treasury of the Company in accordance with Section 1.2(c) shall not be exchanged and shall continue to represent the same number of shares of Common Stock of the Surviving Corporation, without physical substitution of share certificates.

(b) Any dividend or other distribution declared or made with respect to any shares of capital stock of the Company, whether the record date for such dividend or distribution is before or after the Effective Time, shall be paid to the holder of record of such shares of capital stock on such record date, regardless of whether such holder has surrendered its certificates representing Common Stock or received certificates representing shares of Class B Common Stock pursuant to Section 1.3(a)(i).

ARTICLE II

THE SURVIVING CORPORATION

SECTION 2.1. *Certificate of Incorporation.*

(a) In the event that this Agreement is adopted by the stockholders, and each of the Written Consent Proposal, the Staggered Board Proposal, the Special Meeting Proposal and the Supermajority Voting Proposal (in each case as hereinafter defined, and collectively, the "Governance Proposals"), the Authorized Capital Increase Proposal and the Name Change Proposal are adopted by the stockholders of the Company at the Stockholders Meeting, at the Effective Time, the Restated Certificate of Incorporation of the Company as in effect immediately prior to the Effective Time shall be amended so as to read in its entirety as set forth in Exhibit A-1 hereto, and as so amended shall be the Restated Certificate of Incorporation of the Surviving Corporation.

(b) In the event the adoption of any of the Governance Proposals, the Authorized Capital Increase Proposal or the Name Change Proposal is not approved, but the adoption of this Agreement is approved, by the stockholders of the Company at the Stockholders Meeting, at the Effective Time, the Restated Certificate of Incorporation of the Company as in effect immediately prior to the Effective Time shall be amended so as to read in its entirety as set forth in Exhibit A-2 hereto (with such changes as are set forth in Exhibit A-2 hereto to reflect such of the Governance Proposals, the Authorized Capital Increase Proposal or the Name Change Proposal, if any, as may be approved by the stockholders of the Company at the Stockholders Meeting in accordance with Section 242 of the DGCL), and as so amended shall be the Restated Certificate of Incorporation of the Surviving Corporation.

(c) The Restated Certificate of Incorporation of the Surviving Corporation that becomes effective pursuant to Section 2.1(a) or 2.1(b) is herein referred to as the "Surviving Corporation Certificate of Incorporation."

SECTION 2.2. *By-Laws.*

(a) In the event that this Agreement is adopted by the stockholders of the Company, and each of the Governance Proposals, the Authorized Capital Increase Proposal and the Name Change Proposal are adopted by the stockholders of the Company at the Stockholders Meeting, at the Effective Time, the Amended and Restated Bylaws of the Company as in effect immediately prior to the Effective Time shall be amended so as to read in their entirety as set forth in Exhibit B-1 hereto, and as so amended shall be the Amended and Restated Bylaws of the Surviving Corporation.

(b) In the event the adoption of any of the Governance Proposals, the Authorized Capital Increase Proposal or the Name Change Proposal is not approved, but the adoption of this Agreement is approved, by the stockholders of the Company at the Stockholders Meeting, at the Effective Time, the Amended and Restated Bylaws of the Company as in effect immediately prior to the Effective Time shall be amended so as to read in their entirety as set forth in Exhibit B -2 hereto (with such changes as are set forth in Exhibit B-2 hereto to reflect such of the Governance Proposals, the Authorized Capital Increase Proposal or the Name Change Proposal, if any, as may be approved by the stockholders of the Company at the Stockholders Meeting in accordance with Section 242 of the DGCL), and as so amended shall be the Amended and Restated Bylaws of the Surviving Corporation.

(c) The Amended and Restated Bylaws of the Surviving Corporation as amended pursuant to Section 2.2(a) or 2.2(b) are herein referred to as the “Surviving Corporation Bylaws.”

SECTION 2.3. *Directors and Officers.*

(a) The Board of Directors of the Surviving Corporation initially shall consist of the persons serving as members of the Board of Directors immediately prior to the Effective Time, together with one or more additional directors to be designated by the Board of Directors of the Company prior to the Effective Time, to the extent necessary to ensure that the total number of members of the Board of Directors shall be at least seven immediately after the Effective Time. From and after the Effective Time, the directors of the Surviving Corporation shall consist of the directors of the Company specified in the immediately preceding sentence, until the earlier of their removal or resignation or until their successors are duly elected or appointed and qualified in accordance with applicable law. At the Effective Time, the directors of the Surviving Corporation shall be divided pursuant to the Surviving Corporation Certificate of Incorporation into (i) two separate classes (each a “Voting Constituency Class” and together, the “Voting Constituency Classes”) based on the class of common stock of the Surviving Corporation the holders of which are entitled to elect the directors serving as members of each such Voting Constituency Class and (ii) if the Staggered Board Proposal is adopted, three classes (each a “Term of Office Class” and collectively, the “Term of Office Classes”) based on the expiration of the term of office of the members of each such Term of Office Class. Each director in office as of the Effective Time shall be allocated to a Voting Constituency Class and (in the event the Staggered Board Proposal is adopted) a Term of Office Class in accordance with the applicable provisions of the Surviving Corporation Certificate of Incorporation. The Voting Constituency Class and (in the event the Staggered Board Proposal is adopted) the Term of Office Class to which each director is to be allocated shall be set forth in the Proxy Statement (as hereinafter defined) at the time it is mailed to the stockholders of the Company.

(b) From and after the Effective Time, until the earlier of their removal or resignation or until their successors are duly appointed and qualified in accordance with applicable law and the Surviving Corporation Bylaws, the officers of the Company in office at the Effective Time shall be the officers of the Surviving Corporation.

ARTICLE III

COVENANTS; REPRESENTATIONS AND WARRANTIES

SECTION 3.1. *Stockholders Meeting.* The Company shall, as soon as practicable following the date of this Agreement, duly call, give notice of, convene and hold a meeting of its stockholders (the

“Stockholders Meeting”) for the purpose of considering, as eight separate proposals, (i) the adoption of this Agreement; (ii) the approval of an amendment to the Restated Certificate of Incorporation of the Company to eliminate the ability of stockholders to act by written consent (the “Written Consent Proposal”); (iii) the approval of an amendment to the Restated Certificate of Incorporation of the Company to divide the Board of Directors into three Term of Office Classes (the “Staggered Board Proposal”); (iv) the approval of an amendment to the Restated Certificate of Incorporation of the Company eliminating the ability of the Surviving Corporation’s stockholders to call a special meeting of the stockholders (the “Special Meeting Proposal”); (v) the approval of an amendment to the Restated Certificate of Incorporation of the Company requiring a supermajority vote of the Company’s stockholders entitled to vote thereon to amend certain provisions of the Surviving Corporation’s Certificate of Incorporation (the “Supermajority Voting Proposal”), (vi) the ratification of the adoption of a stockholder rights plan to become effective upon the consummation of the Distribution (the “Stockholder Rights Plan Proposal”); (vii) the approval of an amendment to the Restated Certificate of Incorporation of the Company increasing the authorized capital stock of the Company (the “Authorized Capital Increase Proposal”); and (viii) the approval of an amendment to the Restated Certificate of Incorporation of the Company to change the name of the Company to “Eagle Materials Inc.” (the “Name Change Proposal”). The Special Committee and the Board of Directors of the Company shall recommend to the stockholders of the Company that the stockholders adopt this Agreement and approve each of the Governance Proposals, the Authorized Capital Increase Proposal, the Name Change Proposal and the Stockholder Rights Proposal. The Special Committee and the Board of Directors of the Company shall not withdraw such recommendation; provided, however, that the Special Committee or the Board of Directors may withdraw, change or modify such recommendation if it determines reasonably and in good faith that the Special Committee or the Board of Directors will violate its fiduciary duties to the stockholders of the Company by not withdrawing, changing or modifying such recommendations.

SECTION 3.2. *Filings; Other Actions.*

(a) Subject to the provisions of this Agreement and the Distribution Agreement, the Company shall prepare and file with the Securities and Exchange Commission (the “SEC”) as soon as reasonably practicable following the execution hereof a proxy statement (the “Proxy Statement”) for the solicitation of proxies in favor of (i) the adoption of this Agreement and (ii) the approval of the Governance Proposals, the Authorized Capital Increase Proposal, the Name Change Proposal and the Stockholder Rights Proposal. The Company shall not propose to its stockholders the adoption of any of the Governance Proposals, the Authorized Capital Increase Proposal, the Name Change Proposal or the Stockholder Rights Proposal as independent amendments to the Company’s Restated Certificate of Incorporation, but only as amendments to be adopted upon the effectiveness of the Merger. The Company shall use all reasonable efforts to have the Proxy Statement cleared by the SEC for mailing in definitive form as promptly as practicable after such filing. The Company and Centex shall cooperate with each other in the preparation of the Proxy Statement and any amendment or supplement thereto, and the Company shall notify Centex of the receipt of any comments of the SEC with respect to the Proxy Statement and of any requests by the SEC for any amendment or supplement thereto or for additional information, and shall provide to Centex promptly copies of all correspondence between the SEC and the Company or any of its advisors with respect to the Proxy Statement. The Company shall give Centex and its counsel appropriate advance opportunity to review the Proxy Statement and all responses to requests for additional information by and replies to comments of the SEC, and shall incorporate therein any reasonable comments Centex may deliver to the Company with respect thereto, before such Proxy Statement, response or reply is filed with or sent to the SEC. The Company agrees to use its reasonable best efforts, after consultation with Centex and its advisors, to respond promptly to all such comments of, and requests by, the SEC and to cause the Proxy Statement to be mailed to the holders of the Common Stock entitled to vote at the Stockholders Meeting promptly upon the resolution of all such comments and requests or at such other time agreed to by the parties hereto.

(b) The Company agrees promptly to furnish to Centex all copies of written communications (and summaries of the substance of all oral communications) received by it, or any of its affiliates or

representatives from, or delivered by any of its affiliates or representatives to, any federal, state or local or international court, commission, governmental body, agency, authority, tribunal, board or other governmental entity (each a "Governmental Entity") in respect of the transactions contemplated hereby.

SECTION 3.3. *Reasonable Best Efforts.* Upon the terms and subject to the conditions set forth in this Agreement, each of the parties hereto shall use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable to obtain the adoption of this Agreement by the stockholders of the Company as contemplated by Sections 4.1(a) and 4.2(a) and to consummate as soon as practicable following such approval, the Merger and the other transactions contemplated by this Agreement and the Distribution Agreement, including, but not limited to (a) the obtaining of all necessary actions, waivers, consents and approvals from all Governmental Entities and the making of all necessary registrations and filings (including filings with the SEC and all other Governmental Entities) and the taking of all reasonable steps as may be necessary to obtain an approval or waiver from, or to avoid an action or proceeding by, any Governmental Entity, (b) the obtaining of all necessary consents, approvals or waivers from third parties, (c) the defending of any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the Distribution Agreement or the consummation of the transactions contemplated hereby or thereby, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Entity with respect to the Merger, this Agreement or the Distribution Agreement vacated or reversed, (d) the execution and delivery of any additional instruments necessary to consummate the transactions contemplated by this Agreement and the Distribution Agreement and (e) causing all conditions to the parties' obligations to consummate (i) the Merger set forth in Article IV of this Agreement and (ii) the Distribution as set forth in Section 2.1(b) of the Distribution Agreement to be satisfied. The Company and Centex, upon the other's request, shall provide all such information reasonably necessary to accomplish the foregoing concerning the party's business and affairs to the other party.

SECTION 3.4. *Representations and Warranties of the Company.* The Company hereby represents and warrants to Centex and Merger Sub that:

(a) the Special Committee has determined that this Agreement and the Merger are fair to, and in the best interests of, the Company and its stockholders (other than Centex and Merger Sub); and the Board of Directors of the Company has, based in part on the determination of the Special Committee referred to above, (i) determined that this Agreement and the Merger are fair to, and in the best interests of, the Company and its stockholders, (ii) approved this Agreement and, subject to obtaining the approval of the stockholders of the Company as required under applicable law, the Merger, and (iii) declared this Agreement to be advisable;

(b) the Proxy Statement, the form of proxy and any other solicitation material used in connection therewith and any oral solicitations of proxies made by the Company shall not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading or omit any statement necessary to correct any statement in any earlier communication with respect to any solicitation of a proxy for any of the matters to be voted upon at the Stockholders Meeting which has become false or misleading, except that no representation or warranty is made by the Company with respect to information relating to Centex or Merger Sub that is provided by Centex in writing specifically for inclusion in the Proxy Statement or any such other solicitation materials or oral solicitations;

(c) this Agreement has been duly executed and delivered by the Company and constitutes a valid and binding agreement of the Company, enforceable in accordance with its terms, except insofar as enforcement may be limited by (i) any bankruptcy, reorganization, insolvency, fraudulent conveyance or transfer, moratorium or similar laws affecting creditors' rights generally and (ii) general principles of equity (regardless of whether such is considered in a proceeding at law or in equity); and

(d) subject to the changes in the Company's capitalization contemplated by this Agreement, the authorized, issued and outstanding capitalization of the Company is as follows:

(i) 50,000,000 authorized shares of Common Stock, of which 18,440,000 shares were outstanding at the close of business on July 18, 2003; and

(ii) 2,000,000 authorized shares of preferred stock, of which no shares are outstanding on the date of this Agreement.

SECTION 3.5. *Representations and Warranties of Centex and Merger Sub.* Centex and Merger Sub jointly and severally represent and warrant to the Company that:

(a) this Agreement has been approved by the Board of Directors or a duly authorized committee thereof of each of Centex and Merger Sub; no approval by the shareholders of Centex is required for the consummation of the transactions contemplated by this Agreement; and the sole stockholder of Merger Sub has approved this Agreement and the Merger;

(b) this Agreement has been duly executed and delivered by Centex and Merger Sub and constitutes a valid and binding agreement of each of them, enforceable against Centex and Merger Sub in accordance with its terms, except insofar as enforcement may be limited by (i) any bankruptcy, reorganization, insolvency, fraudulent conveyance or transfer, moratorium or similar laws affecting creditors' rights generally and (ii) general principles of equity (regardless of whether such is considered in a proceeding at law or in equity);

(c) Centex owns beneficially and of record all outstanding capital stock of Merger Sub free and clear of any claims, liens or encumbrances and no other person holds any capital stock of Merger Sub nor has any right to acquire any interest in Merger Sub;

(d) Centex beneficially owns an aggregate of 11,962,304 shares of Common Stock free and clear of any claims, liens or encumbrances;

(e) immediately prior to the Effective Time, all of the Contributed Shares shall be owned beneficially and of record by Merger Sub free and clear of any claims, liens or encumbrances;

(f) Merger Sub was formed by Centex solely for the purposes of effectuating the Merger upon the terms and subject to the conditions of this Agreement, and Merger Sub has no liabilities, commitments or obligations of any kind (known or unknown, fixed or contingent) other than the obligations set forth in or arising from this Agreement and has not entered into any contracts, agreements, commitments or arrangements other than this Agreement; and

(g) the information provided to the Company in writing specifically for inclusion in the Proxy Statement or other solicitation materials by Centex or the Merger Sub shall not contain any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

ARTICLE IV

CONDITIONS TO THE MERGER

SECTION 4.1. *Conditions to the Obligations of the Company.* The obligations of the Company to consummate the Merger are subject to the satisfaction (or waiver by the Company, except that the condition set forth in Section 4.1(a) may not be waived) of the following conditions:

(a) a proposal to adopt this Agreement shall have been approved by the holders of (i) a majority of the shares of Common Stock issued and outstanding and entitled to vote thereon and (ii) a majority of the shares of Common Stock (other than shares held directly or indirectly by Centex or Merger Sub) present in person or by proxy at the Stockholders Meeting and voting on such proposal;

(b) all actions by or in respect of or filings with any Governmental Entity required to permit the consummation of the Merger shall have been obtained, except those that would not reasonably be expected to have a material adverse effect on any party's ability to consummate the transactions contemplated by this Agreement;

(c) the Distribution Agreement shall be in full force and effect;

(d) prior to the Effective Time, the Board of Directors of Centex shall have declared the Distribution (subject to the prior consummation of the Reclassification (as defined in the Distribution Agreement)); and

(e) all conditions to the obligations of the Company to pay the Cash Dividend shall have been satisfied or waived by the Company.

SECTION 4.2. *Conditions to the Obligations of Centex and Merger Sub.* The obligations of Centex and Merger Sub to consummate the Merger are subject to the satisfaction (or waiver by Centex, except that the condition set forth in Section 4.2(a) may not be waived) of the following conditions:

(a) a proposal to adopt this Agreement and approve the Merger shall have been approved by the holders of (i) a majority of the shares of Common Stock issued and outstanding and entitled to vote thereon and (ii) a majority of the shares of Common Stock (other than shares held directly or indirectly by Centex or Merger Sub) present in person or by proxy at the Stockholders Meeting and voting on such proposal;

(b) all actions by or in respect of or filings with any Governmental Entity required to permit the consummation of the Merger shall have been obtained, except those that would not reasonably be expected to have a material adverse effect on any party's ability to consummate the transactions contemplated by this Agreement;

(c) the Distribution Agreement shall be in full force and effect;

(d) immediately prior to the Effective Time, all the conditions to declaration of the Distribution and the making of the Distribution set forth in the Distribution Agreement, other than the prior consummation of the Merger, shall have been satisfied; and

(e) prior to the Effective Time, the Company shall have declared and paid the Cash Dividend.

ARTICLE V

TERMINATION

SECTION 5.1. *Termination*

(a) This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time (notwithstanding any approval of this Agreement by the stockholders of the Company):

(i) by mutual written consent of the Company and Centex;

(ii) by either the Company or Centex, if there shall be any law or regulation that makes consummation of the Merger or the Distribution illegal or otherwise prohibited or if there shall be entered any judgment, injunction, order or decree enjoining the Company or Merger Sub from consummating the Merger or enjoining Centex from consummating the Distribution and, in either case, such judgment, injunction, order or decree shall have become final and nonappealable;

(iii) by either the Company or Centex if, after a vote on the matter by the Company's stockholders at the Stockholders Meeting, the condition set forth in Sections 4.1(a) and 4.2(a) shall not be satisfied; or

(iv) by either the Company or Centex, if the Merger is not consummated by January 30, 2004; provided that if the Stockholders Meeting shall have been held and the conditions set forth in

Section 4.1(a) and 4.2(a) shall have been satisfied by January 30, 2004, but the Merger shall not have been consummated by such date, then the time period set forth in this clause (iv) shall be extended to the date that is 30 days after the date of the Stockholders Meeting (or such longer period as is agreed by the parties).

(b) This Agreement shall terminate automatically without any action on the part of the Company, Centex or Merger Sub in the event that the Distribution Agreement is terminated in accordance with its terms.

SECTION 5.2. *Effect of Termination.* If this Agreement is terminated pursuant to Section 5.1, this Agreement shall become void and of no effect with no liability on the part of any party hereto.

ARTICLE VI

MISCELLANEOUS

SECTION 6.1. *Notices.* All notices and other communications hereunder shall be in writing and hand delivered or mailed by registered or certified mail (return receipt requested) or sent by any means of facsimile or electronic message transmission with delivery confirmed (by voice or otherwise), or by overnight courier to the parties at the following addresses (or at such other addresses for a party as shall be specified by like notice) and will be deemed given on the date on which such notice is received:

If to Centex or Merger Sub:

c/o Centex Corporation
2728 North Harwood
Dallas, Texas 75201
Fax No.: (214) 981-6859
Attention: Chief Executive Officer

with a copy to:

Baker Botts L.L.P.
2001 Ross Avenue
Dallas, Texas 75201
Fax No.: (214) 953-6503
Attention: Geoffrey L. Newton

If to the Company:

Centex Construction Products, Inc.
2728 North Harwood
Dallas, Texas 75201
Fax No.: (214) 981-6559
Attention: Chief Operating Officer

and:

The Special Committee of the Board of Directors
c/o The Secretary of the Company
Centex Construction Products, Inc.
2728 North Harwood
Dallas, Texas 75201
Fax No.: (214) 981-6559

with a copy to:

Haynes and Boone, LLP
901 Main Street, Suite 3100
Dallas, Texas 75202
Attention: Michael M. Boone
Fax No.: (214) 651-5940
and
Attention: William L. Boeing
Fax No.: (972) 692-9053

SECTION 6.2. *Defined Terms.* The following terms have the meanings assigned to them in the provisions of this Agreement referred to in the table below:

Term	Section
Additional Shares	Recitals
Agreement	Preamble
Authorized Capital Increase Proposal	Section 3.1
Centex	Preamble
Certificate of Merger	Section 1.1(b)
Class B Common Stock	Recitals
Common Stock	Recitals
Company	Preamble
Contributed Shares	Recitals
Distributable Shares	Recitals
Distribution	Recitals
Distribution Agreement	Recitals
DGCL	Recitals
Effective Time	Section 1.1(b)
Governance Proposals	Section 2.1(b)
Governmental Entity	Section 3.2(b)
Merger	Recitals
Merger Sub	Preamble
Merger Sub Common Stock	Recitals
Name Change Proposal	Section 3.1
Proxy Statement	Section 3.2(a)
Special Committee	Recitals
Special Meeting Proposal	Section 3.1
Staggered Board Proposal	Section 3.1
Stockholder Rights Plan Proposal	Section 3.1
Stockholders Meeting	Section 3.1
Supermajority Voting Proposal	Section 3.1
Surviving Corporation	Section 1.1(a)
Surviving Corporation Bylaws	Section 2.2(c)
Surviving Corporation Certificate of Incorporation	Section 2.1(c)
Term of Office Classes	Section 2.3(a)
Voting Constituency Classes	Section 2.3(a)
Written Consent Proposal	Section 3.1

SECTION 6.3. *Successors and Assigns.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of the other party hereto, except that Merger Sub may at any time prior to the mailing of the Proxy Statement assign all of its rights and obligations under this Agreement to any other wholly owned subsidiary of Centex, and in the case of such assignment, the parties hereto agree to amend this Agreement to reflect such assignment.

SECTION 6.4. *Governing Law.* This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware.

SECTION 6.5. *Counterparts; Effectiveness.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received counterparts hereof signed by the other party hereto.

SECTION 6.6. *Amendments.* Any provision of this Agreement may be amended or waived prior to the Effective Time (whether before or after approval of matters presented in connection with the Merger by the stockholders of the Company) if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by the Company, Centex and Merger Sub or, in the case of a waiver, by the party against whom such waiver is to be effective; provided that after the adoption of this Agreement by the stockholders of the Company, no amendment shall become effective without a vote of the stockholders approving such amendment if such stockholder vote is required by applicable law in order to effect the proposed amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

CENTEX CONSTRUCTION PRODUCTS, INC.

By: /s/ STEVEN R. ROWLEY

Name: Steven R. Rowley

Title: President & CEO

CENTEX CORPORATION

By: /s/ LAURENCE E. HIRSCH

Name: Laurence E. Hirsch

Title: Chairman & CEO

ARG MERGER CORPORATION

By: /s/ LAURENCE E. HIRSCH

Name: Laurence E. Hirsch

Title: President

Exhibit A-1

**RESTATED CERTIFICATE OF INCORPORATION
OF
EAGLE MATERIALS INC.¹**

The undersigned, being the President of Centex Construction Products, Inc., a Delaware corporation, hereby certifies that:

1. The name of the corporation is EAGLE MATERIALS INC.¹ (the "Corporation"). The name under which the Corporation was originally incorporated is Centex Construction Products, Inc. and the date of filing the original Certificate of Incorporation of the Corporation with the Secretary of State of the State of Delaware was January 27, 1994.

2. This Restated Certificate of Incorporation amends and restates the provisions of the Certificate of Incorporation of the Corporation and was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

3. The Restated Certificate of Incorporation of the Corporation, as restated and amended hereby, shall, upon its filing with the Secretary of State of the State of Delaware, read in its entirety as follows:

ARTICLE I

The name of the Corporation is Eagle Materials Inc.¹

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle, Delaware. The name of the registered agent of the Corporation at such address is Corporation Service Company.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware as set forth in Title 8 of the Delaware Code (the "DGCL"), and the Corporation shall have perpetual existence.

ARTICLE IV

[The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 105,000,000 shares, consisting of (i) 5,000,000 shares of Preferred Stock, par value \$.01 per share ("Preferred Stock"), (ii) 50,000,000 shares of Common Stock, par value \$.01 per share ("Common Stock"), and (iii) 50,000,000 shares of Class B Common Stock, par value \$.01 per share ("Class B Common Stock" and, together with the Common Stock, the "Corporation Common Stock").]²

¹ If the Name Change Proposal is not approved, our name will remain Centex Construction Products, Inc.

² If the Authorized Capital Increase Proposal is not approved, then this Article IV shall read as follows: "The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 52,000,000 shares, consisting of (i) 2,000,000 shares of Preferred Stock, par value \$.01 per share ("Preferred Stock"), (ii) 40,780,000 shares of Common Stock, par value \$.01 per share ("Common Stock") and (iii) 9,220,000 shares of Class B Common Stock, par value \$.01 per share ("Class B Common Stock" and, together with the Common Stock, the "Corporation Common Stock")."

The powers, preferences and rights of each class of capital stock, and the qualifications, limitations and restrictions thereof, are as follows:

A. Preferred Stock.

Shares of Preferred Stock may be issued in such series as may from time to time be determined by the Board of Directors. Prior to the issuance of a series, the Board of Directors by resolution shall designate the series to distinguish it from any other classes or series of capital stock of the Corporation, shall specify the number of shares to be included in the series and shall fix the powers, preferences and relative, participating, optional or other special rights of the series, and the qualifications, limitations or restrictions thereof. Without limiting the generality of the foregoing, any such resolution of the Board of Directors may set forth the following characteristics of the series:

- (i) the designation of, and the number of shares of Preferred Stock which shall constitute, the series, which number may be increased (except as otherwise provided by the Board of Directors) or decreased (but not below the number of shares thereof then outstanding) from time to time by action of the Board of Directors;
- (ii) the rate or rates and the date or dates at which (or the method of determination thereof), and the terms and conditions upon which, dividends, if any, on shares of the series shall be paid, the nature of any preferences or the relative rights of priority of such dividends to the dividends payable on any other class or classes of capital stock of the Corporation or on any series of Preferred Stock of the Corporation, and whether such dividends shall be cumulative;
- (iii) whether shares of the series shall be convertible into or exchangeable for shares of capital stock or other securities or property of the Corporation or of any other corporation or entity, and, if so, the terms and conditions of such conversion or exchange, including any provisions for the adjustment of the conversion or exchange rate upon the occurrence of such events as the Board of Directors shall determine;
- (iv) whether shares of the series shall be redeemable, and, if so, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable and the amount and type of consideration payable upon redemption, which amount may vary under different conditions and at different redemption dates;
- (v) whether shares of the series shall have a sinking fund or redemption or purchase account for the redemption or purchase of shares of the series, and if so, the terms, conditions and amount of such sinking fund or redemption or purchase account;
- (vi) the rights of the holders of shares of the series upon voluntary or involuntary liquidation, merger, consolidation, distribution or sale of assets, dissolution or winding up of the Corporation;
- (vii) whether shares of the series shall have voting rights in addition to the voting rights provided by law, which may include (a) the right to more or less than one vote per share on any or all matters submitted to a vote of the stockholders of the Corporation and (b) the right to vote, as a series by itself or together with any other series of Preferred Stock or together with all series of Preferred Stock as a class or with the Common Stock as a class, upon such matters, under such circumstances and upon such conditions as the Board of Directors may fix (including, but not limited to, the right, voting as a series by itself or together with any other series of Preferred Stock or together with all series of Preferred Stock as a class, to elect one or more directors of the Corporation in the event there shall have been a default in the payment of dividends on any series of Preferred Stock or under such other circumstances and upon such other conditions as the Board of Directors may determine); and
- (viii) any other powers, preferences and relative, participating, optional or other rights, and the qualifications, limitations or restrictions thereof.

Subject to the express terms of any series of Preferred Stock outstanding at any time, the vote or consent of the holders of Preferred Stock of any series shall not be required for the issuance of any other series of Preferred Stock, regardless of whether the powers, preferences and rights of such other series shall be fixed by the Board of Directors as senior to, on a parity with or junior to the powers, preferences and rights of such outstanding series.

B. *Common Stock*. The Common Stock and the Class B Common Stock shall be identical in all respects, except as otherwise provided by law or expressly provided herein. The relative powers, preferences, rights, qualifications, limitations and restrictions of the shares of Common Stock and Class B Common Stock shall be as follows:

(1) *Cash Dividends*. Subject to the rights, if any, of the holders of Preferred Stock with respect to the payment of dividends and the requirements, if any, with respect to the setting aside of sums as sinking funds or redemption or purchase accounts for the benefit of such holders and subject to any other conditions that may be fixed in accordance with the provisions of paragraph A of this Article IV, then, but not otherwise, the holders of Common Stock and Class B Common Stock shall be entitled to receive such dividends, if any, as may be declared from time to time by the Board of Directors out of assets which are legally available therefor; provided, that whenever a cash dividend is paid on any Corporation Common Stock, the same amount shall be paid in respect of each outstanding share of Common Stock and Class B Common Stock.

(2) *Stock Dividends*. If at any time a dividend is to be paid in shares of Common Stock or shares of Class B Common Stock (a "stock dividend"), such stock dividend may be declared and paid only as follows: only Common Stock may be paid to holders of Common Stock and only Class B Common Stock may be paid to holders of Class B Common Stock. Whenever a stock dividend is paid on any Corporation Common Stock, the same number of shares shall be paid in respect of each outstanding share of Common Stock and Class B Common Stock.

(3) *Property Dividends*. If at any time a dividend is to be paid in rights to purchase shares of the capital stock of the Corporation (a "rights dividend"), then: (i) if the rights dividend is of rights that entitle the holder thereof to purchase shares of Common Stock (or shares of capital stock of the Corporation having voting rights equivalent to those of the Common Stock ("Equivalent Shares")) or Class B Common Stock (or shares of capital stock of the Corporation having voting rights equivalent to those of the Class B Common Stock ("Equivalent Class B Shares")) then only rights to acquire Common Stock or Equivalent Shares may be paid to holders of Common Stock and only rights to acquire Class B Common Stock or Equivalent Class B Shares may be paid to holders of Class B Common Stock; and (ii) if the rights dividend is of rights that entitle the holder thereof to purchase shares of capital stock of the Corporation other than Common Stock (or Equivalent Shares) or Class B Common Stock (or Equivalent Class B Shares) then the Board of Directors of the Corporation may pay such dividend of rights to the holders of Common Stock and Class B Common Stock in such manner as the Board of Directors may determine. Whenever any rights dividend or dividend in the form of securities or other property (other than a cash dividend or stock dividend) is paid on any Corporation Common Stock, the same number or amount and kind of rights, securities or other property shall be paid in respect of each outstanding share of Common Stock and Class B Common Stock.

(4) *Stock Subdivisions and Combinations*. The Corporation shall not subdivide, reclassify or combine stock of any class of Corporation Common Stock without at the same time making a proportionate subdivision, reclassification or combination of shares of the other class.

(5) *Voting*. Voting power shall be divided between the classes of Corporation Common Stock as follows:

(i) Subject to Section B.(5)(ii) of this Article IV, in the election of directors, holders of shares of Class B Common Stock, voting separately as a class (the "Voting B Shares"), shall be entitled to elect that number of directors which constitutes 85% of the authorized number of

members of the Board of Directors (or, if 85% of the authorized number of members of the Board of Directors is not a whole number, then the nearest higher whole number) (the "Voting B Share Directors"). The initial Voting B Share Directors shall be designated by a majority of the directors of the Corporation as of the effectiveness of this Restated Certificate of Incorporation, and the holders of Voting B Shares, voting separately as a class, shall be entitled to vote for the election or replacement of such Voting B Share Directors at the next annual meeting of stockholders. Each share of Class B Common Stock shall have one vote in the election of the Voting B Share Directors. Subject to Section B.(5)(ii) of this Article IV, in the election of directors, holders of shares of Common Stock (the "Voting Shares"), shall be entitled to elect the remaining director or directors, if any (the "Voting Share Directors"). The initial Voting Share Director, if any, shall be designated by a majority of the directors of the Corporation as of the effectiveness of this Restated Certificate of Incorporation, and the holders of Voting Shares, voting separately as a class, shall be entitled to vote for the election or replacement of such Voting Share Director at the next annual meeting of stockholders. Each share of Common Stock shall have one vote in the election of the Voting Share Directors. For purposes of Sections B.(5)(i), (ii) and (iii) of this Article IV, references to the authorized number of members of the Board of Directors shall not include any directors which the holders of any shares of a series of Preferred Stock have the right to elect voting separately as one or more series.

(ii) For purposes of this Section B.(5)(ii) of this Article IV, "Special Voting Rights" means the different voting rights of the holders of Common Stock, on the one hand, and the holders of Class B Common Stock, on the other hand, with respect to the election of the applicable percentages of the authorized number of members of the Board of Directors as described in Section B.(5)(i) of this Article IV. At any time after _____, 2005³, if approved by the Board of Directors, at any annual or special meeting of stockholders of the Corporation, the holders of at least 66 2/3% of the outstanding shares of the Common Stock and Class B Common Stock, voting together as a class, may vote to eliminate the Special Voting Rights (the "Elimination Vote"), in which case the Special Voting Rights provided for in Section B.(5)(i) of this Article IV shall have no further force or effect, and thereafter holders of the Corporation Common Stock shall have equal voting rights in all respects, except as otherwise provided by law, and shall be entitled to elect the total authorized number of members of the Board of Directors voting together as a single class, with each share of Corporation Common Stock having one vote.

(iii) Unless the Special Voting Rights have been eliminated in accordance with Section B.(5)(ii) of this Article IV, all newly-created directorships resulting from an increase in the authorized number of directors shall be allocated between Voting Share Directors and Voting B Share Directors such that at all times the number of Class B Common Stock directorships shall be 85% of the authorized number of members of the Board of Directors (or if such 85% is not a whole number, then the nearest higher whole number) and the remaining directorships shall be Common Stock directorships.

(iv) Except as otherwise specified herein or required by law, the holders of Common Stock and Class B Common Stock shall in all matters not otherwise specified in Section B.(5)(i) of this Article IV vote together as one class, with each share of Common Stock and Class B Common Stock having one vote.

(v) Notwithstanding anything to the contrary contained in Section B.(5)(i), (ii), (iii) or (iv) of this Article IV, for so long as any person or entity or group of persons or entities acting in concert beneficially own 15% or more of the outstanding shares of Class B Common Stock, then in any election of directors or other exercise of voting rights with respect to the election or removal of directors, such person, entity or group shall only be entitled to vote (or otherwise

³ The second anniversary of the spin-off.

exercise voting rights with respect to) a number of shares of Class B Common Stock that constitutes a percentage of the total number of shares of Class B Common Stock then outstanding which is less than or equal to such person, entity or group's Entitled Voting Percentage. For the purposes hereof, a person, entity or group's "Entitled Voting Percentage" at any time shall mean the percentage of the then outstanding shares of Common Stock beneficially owned by such person, entity or group at such time. For purposes of this Section B.(5)(v), a "beneficial owner" of Common Stock includes any person or entity or group of persons or entities who, directly or indirectly, including through any contract, arrangement, understanding, relationship or otherwise, written or oral, formal or informal, control the voting power (which includes the power to vote or to direct the voting) of such Common Stock within the meaning of Rule 133(a)(1) under the Securities Exchange Act of 1934, as amended.

(6) *Merger or Consolidation.* The Corporation shall not enter into any consolidation of the Corporation with one or more other corporations, a merger of the Corporation with another corporation, a reorganization of the Corporation or other similar combination of the Corporation with one or more third parties, unless each holder of a share of Common Stock or Class B Common Stock is entitled to receive with respect to such share the same kind and amount of shares of stock and other securities and property (including cash) receivable upon such consolidation, merger, reorganization or other combination as each other holder of a share of Common Stock and Class B Common Stock; provided that, in any such transaction consummated prior to the Elimination Vote, the holders of shares of Common Stock and Class B Common Stock may each receive different kinds of shares of stock that differ to the extent and only to the extent that the Board of Directors determines in good faith that such shares differ with respect to the rights of holders of such shares to substantially the same extent as the Common Stock and the Class B Common Stock differ as provided herein.

(7) *Liquidation.* In the event of any liquidation, dissolution or winding up of the Corporation, the holders of the Common Stock and Class B Common Stock shall participate equally per share in any distribution to stockholders, without distinction between classes.

ARTICLE V

A. *General.* The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The Board of Directors shall have concurrent power with the stockholders to make, alter, amend, change, add to or repeal the Bylaws of the Corporation. In furtherance and not in limitation of the powers conferred upon the Board of Directors by the DGCL and this Restated Certificate of Incorporation, the Board of Directors is hereby expressly empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject to the provisions of the DGCL, this Restated Certificate of Incorporation and any bylaws adopted by the stockholders of the Corporation; provided, however, that no bylaws adopted by the stockholders of the Corporation shall invalidate any prior act of the Board of Directors that would have been valid if such bylaws had not been adopted.

B. *Number and Class of Directors.*

(1) *Number of Directors.* The number of directors that shall constitute the entire Board of Directors of the Corporation shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the Board of Directors; provided, however, (i) that in no event shall the number of directors constituting the entire Board of Directors be less than three nor more than fifteen (provided, however, that until such time as an Elimination Vote occurs, the Board of Directors shall not reduce the number of directors to a number less than seven) and (ii) no decrease in the number of directors shall have the effect of shortening the term of any incumbent director.

[(2) *Classified Board.* The directors, other than those who may be elected by the holders of any series of Preferred Stock, shall be divided into three classes: Class I, Class II and Class III. As of the effectiveness of this Restated Certificate of Incorporation, the Board of Directors shall assign each person who is serving as a director to one of such classes, as determined in the sole discretion of the Board of Directors; provided, however, that the initial Voting Share Director shall be assigned to Class I. Such classes shall be as nearly equal in number of directors as possible. Each director shall serve for a term ending on the third annual meeting of stockholders following the annual meeting of stockholders at which that director was elected; provided, however, that the directors first designated as Class I directors shall serve for a term expiring at the annual meeting of stockholders next following the date of their designation as Class I directors, the directors first designated as Class II directors shall serve for a term expiring at the second annual meeting of stockholders next following the date of their designation as Class II directors, and the directors first designated as Class III directors shall serve for a term expiring at the third annual meeting of stockholders next following the date of their designation as Class III directors. Each director shall hold office until the annual meeting of stockholders at which his term expires and, the foregoing notwithstanding, shall serve until his successor shall have been duly elected and qualified or until his earlier death, resignation or removal.

At each annual election, the directors chosen to succeed those whose terms then expire shall be of the same class as the directors they succeed, unless, by reason of any intervening changes in the authorized number of directors, the Board of Directors shall have designated one or more directorships whose term then expires as directorships of another class in order to more nearly achieve equality of number of directors among the classes.

In the event of any change in the authorized number of directors, each director then continuing to serve as such shall nevertheless continue as a director of the class of which he is a member until the expiration of his current term, or his prior death, resignation or removal. The Board of Directors shall specify the class to which a newly created directorship shall be allocated.]⁴

C. *Manner of Election.* The election of directors at any annual or special meeting of the stockholders of the Corporation need not be by written ballot unless the Bylaws of the Corporation so provide.

D. *Vacancies.*

(1) Any vacancy in the office of a director created by the death, resignation, retirement, disqualification, removal from office of a director or other cause, elected by (or appointed on behalf of) the holders of the Voting B Shares, on the one hand, or the holders of the Voting Shares, on the other hand, as the case may be, shall be filled by the vote of the majority of the directors (or the sole remaining director) elected by (or appointed on behalf of) such holders of Voting B Shares, on the one hand, or Voting Shares, on the other hand, as the case may be, unless there are no such directors in such class, in which case such vacancy shall be filled by the holders of the Voting B Shares or Voting Shares, respectively, unless the Elimination Vote shall have occurred, in which case such vacancy shall be filled by the vote of the majority of the directors (or the sole remaining director) then in office, even if less than a quorum, regardless of any quorum requirements set out in the Bylaws. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall have the same term as that of his predecessor.

(2) Unless the Elimination Vote shall have occurred, all newly-created directorships resulting from an increase in the authorized number of directors shall be allocated pursuant to Section B(5) of Article IV. Once such newly-created directorships have been allocated as Voting Share Directors or Voting B Share Directors, such newly-created directorships shall be filled by the vote of the majority of the directors in such class (or the sole remaining director in such class), as the case may be, unless

⁴ This Section B(2) of Article V will be included only if the Staggered Board Proposal is approved.

there are no such directors in such class, in which case such vacancy shall be filled by the holders of the Voting Shares or Voting B Shares, respectively, unless the Elimination Vote shall have occurred, in which case such vacancy shall be filled by the vote of the majority of the directors (or the sole remaining director) then in office, even if less than a quorum, regardless of any quorum requirements set out in the Bylaws.

ARTICLE VI

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, as the same exists or hereafter may be amended or replaced, or (iv) for any transaction from which the director derived any improper personal benefit. If the DGCL is amended after the filing of this Restated Certificate of Incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended. Any repeal or modification of this Article VI by the stockholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE VII

A. *Indemnification.* Each person who was or is made a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that he or she is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise (an "Indemnitee"), shall be indemnified and held harmless by the Corporation to the fullest extent permitted by applicable law in effect on the date of the filing of this Restated Certificate of Incorporation, and to such greater extent as applicable law may thereafter permit, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement incurred by such Indemnitee in connection with such a Proceeding, and such right of indemnification shall continue with respect to an Indemnitee who has ceased to be such a director or officer and shall inure to the benefit of his or her heirs, executors and administrators. The rights of an Indemnitee under the immediately preceding sentence shall include, but not be limited to, the right to be indemnified to the fullest extent permitted by Section 145(b) of the DGCL in the case of Proceedings by or in the right of the Corporation and to the fullest extent permitted by Section 145(a) of the DGCL in the case of all other Proceedings.

B. *Advancement of Expenses.* An Indemnitee shall be entitled to the payment of expenses (including attorneys' fees) incurred in defending any Proceeding in advance of the final disposition thereof in accordance with the provisions set forth in the Bylaws of the Corporation or, if no provisions relating to the advancement of expenses are set forth therein, in accordance with such terms and conditions as the Board of Directors deems appropriate.

C. *Determination of Entitlement to Indemnification.* A determination as to whether an Indemnitee is entitled to indemnification in respect of any expenses (including attorneys' fees), judgments, fines or amounts paid in settlement incurred by such Indemnitee in connection with a Proceeding shall be made in accordance with Section 145(d) of the DGCL and the provisions set forth in the Bylaws of the Corporation.

D. *Non-Exclusivity.* The rights conferred by this Article VII shall not be exclusive of any other rights which an Indemnitee or any other person may now or hereafter have under this Restated Certificate of Incorporation or any bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

ARTICLE VIII

No stockholder of the Corporation shall by reason of his or her holding shares of any class or series of its capital stock have any preemptive or preferential right to purchase or subscribe for or otherwise acquire or receive any shares of any class or series of capital stock issued by the Corporation, whether now or hereafter authorized, or any shares of any class or series of capital stock of the Corporation now or hereafter acquired by the Corporation as treasury stock and subsequently reissued or sold or otherwise disposed of, or any notes, debentures, bonds or other securities convertible into, or any warrants, rights or options exercisable for, any shares of any class or series of capital stock of the Corporation, whether or not the issuance of any such shares or such notes, debentures, bonds or other securities or warrants, rights or options would adversely affect the dividend, voting or any other rights of such stockholder.

[ARTICLE IX

Special meetings of the stockholders of the Corporation may be called only by the Chairman, or in his absence by the President, by the Board of Directors, or by the Secretary at the request in writing of a majority of the Board of Directors and may not be called by the stockholders of the Corporation.]⁵

[ARTICLE X

Any action required to be taken or which may be taken by the holders of the Corporation Common Stock must be effected at a duly called annual or special meeting of such holders and may not be taken by written consent in lieu of a meeting.]⁶

ARTICLE XI

The Board of Directors shall have the power to adopt, alter, amend and repeal the Bylaws of the Corporation, in any manner not inconsistent with the laws of the State of Delaware, subject to the power of the stockholders to adopt, amend or repeal the Bylaws.

[ARTICLE XII

Notwithstanding anything else contained in this Restated Certificate of Incorporation or the Bylaws to the contrary, the affirmative vote of the holders of record of at least 66 2/3% of the combined voting power of all of the outstanding stock of the Corporation entitled to vote in respect thereof, voting together as a single class, shall be required (A) to alter, amend, rescind or repeal Section B(5)(v) of Article IV, Article V, Article IX, Article X, Article XI or this Article XII of this Restated Certificate of Incorporation or to adopt any provision inconsistent therewith or (B) in order for the stockholders to adopt, alter, amend, rescind or repeal any Bylaws of the Corporation.]⁷

ARTICLE XIII

The Corporation reserves the right to amend, alter, change, rescind or repeal any provision contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon the stockholders herein are granted subject to this reservation.

⁵ This Article IX will be included only if the Special Meeting Proposal is approved.

⁶ This Article X will be included only if the Written Consent Proposal is approved.

⁷ This Article XII will be included only if the Supermajority Voting Proposal is approved.

Exhibit A-2

RESTATED CERTIFICATE OF INCORPORATION

OF

EAGLE MATERIALS INC.¹

The undersigned, being the President of Centex Construction Products, Inc., a Delaware corporation, hereby certifies that:

1. The name of the corporation is [EAGLE MATERIALS INC.]¹ (the "Corporation"). The name under which the Corporation was originally incorporated is Centex Construction Products, Inc. and the date of filing the original Certificate of Incorporation of the Corporation with the Secretary of State of the State of Delaware was January 27, 1994.

2. This Restated Certificate of Incorporation amends and restates the provisions of the Certificate of Incorporation of the Corporation and was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

3. The Restated Certificate of Incorporation of the Corporation, as restated and amended hereby, shall, upon its filing with the Secretary of State of the State of Delaware, read in its entirety as follows:

ARTICLE I

The name of the Corporation is [Eagle Materials Inc.]¹

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle, Delaware. The name of the registered agent of the Corporation at such address is Corporation Service Company.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware as set forth in Title 8 of the Delaware Code (the "DGCL"), and the Corporation shall have perpetual existence.

¹ If the Name Change Proposal is not approved, the name will remain Centex Construction Products, Inc.

ARTICLE IV

[The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 105,000,000 shares, consisting of (i) 5,000,000 shares of Preferred Stock, par value \$.01 per share ("Preferred Stock"), (ii) 50,000,000 shares of Common Stock, par value \$.01 per share ("Common Stock"), and (iii) 50,000,000 shares of Class B Common Stock, par value \$.01 per share ("Class B Common Stock" and, together with the Common Stock, the "Corporation Common Stock").]²

The powers, preferences and rights of each class of capital stock, and the qualifications, limitations and restrictions thereof, are as follows:

A. Preferred Stock.

Shares of Preferred Stock may be issued in such series as may from time to time be determined by the Board of Directors. Prior to the issuance of a series, the Board of Directors by resolution shall designate the series to distinguish it from any other classes or series of capital stock of the Corporation, shall specify the number of shares to be included in the series and shall fix the powers, preferences and relative, participating, optional or other special rights of the series, and the qualifications, limitations or restrictions thereof. Without limiting the generality of the foregoing, any such resolution of the Board of Directors may set forth the following characteristics of the series:

(i) the designation of, and the number of shares of Preferred Stock which shall constitute, the series, which number may be increased (except as otherwise provided by the Board of Directors) or decreased (but not below the number of shares thereof then outstanding) from time to time by action of the Board of Directors;

(ii) the rate or rates and the date or dates at which (or the method of determination thereof), and the terms and conditions upon which, dividends, if any, on shares of the series shall be paid, the nature of any preferences or the relative rights of priority of such dividends to the dividends payable on any other class or classes of capital stock of the Corporation or on any series of Preferred Stock of the Corporation, and whether such dividends shall be cumulative;

(iii) whether shares of the series shall be convertible into or exchangeable for shares of capital stock or other securities or property of the Corporation or of any other corporation or entity, and, if so, the terms and conditions of such conversion or exchange, including any provisions for the

² If the Authorized Capital Increase Proposal is not approved, then this Article IV shall read as follows: "The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 52,000,000 shares, consisting of (i) 2,000,000 shares of Preferred Stock, par value \$.01 per share ("Preferred Stock"), (ii) 40,780,000 shares of Common Stock, par value \$.01 per share ("Common Stock") and (iii) 9,220,000 shares of Class B Common Stock, par value \$.01 per share ("Class B Common Stock" and, together with the Common Stock, the "Corporation Common Stock")."

adjustment of the conversion or exchange rate upon the occurrence of such events as the Board of Directors shall determine;

(iv) whether shares of the series shall be redeemable, and, if so, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable and the amount and type of consideration payable upon redemption, which amount may vary under different conditions and at different redemption dates;

(v) whether shares of the series shall have a sinking fund or redemption or purchase account for the redemption or purchase of shares of the series, and if so, the terms, conditions and amount of such sinking fund or redemption or purchase account;

(vi) the rights of the holders of shares of the series upon voluntary or involuntary liquidation, merger, consolidation, distribution or sale of assets, dissolution or winding up of the Corporation;

(vii) whether shares of the series shall have voting rights in addition to the voting rights provided by law, which may include (a) the right to more or less than one vote per share on any or all matters submitted to a vote of the stockholders of the Corporation and (b) the right to vote, as a series by itself or together with any other series of Preferred Stock or together with all series of Preferred Stock as a class or with the Common Stock as a class, upon such matters, under such circumstances and upon such conditions as the Board of Directors may fix (including, but not limited to, the right, voting as a series by itself or together with any other series of Preferred Stock or together with all series of Preferred Stock as a class, to elect one or more directors of the Corporation in the event there shall have been a default in the payment of dividends on any series of Preferred Stock or under such other circumstances and upon such other conditions as the Board of Directors may determine); and

(viii) any other powers, preferences and relative, participating, optional or other rights, and the qualifications, limitations or restrictions thereof.

Subject to the express terms of any series of Preferred Stock outstanding at any time, the vote or consent of the holders of Preferred Stock of any series shall not be required for the issuance of any other series of Preferred Stock, regardless of whether the powers, preferences and rights of such other series shall be fixed by the Board of Directors as senior to, on a parity with or junior to the powers, preferences and rights of such outstanding series.

B. *Common Stock*. The Common Stock and the Class B Common Stock shall be identical in all respects, except as otherwise provided by law or expressly provided herein. The relative powers, preferences, rights, qualifications, limitations and restrictions of the shares of Common Stock and Class B Common Stock shall be as follows:

(1) *Cash Dividends.* Subject to the rights, if any, of the holders of Preferred Stock with respect to the payment of dividends and the requirements, if any, with respect to the setting aside of sums as sinking funds or redemption or purchase accounts for the benefit of such holders and subject to any other conditions that may be fixed in accordance with the provisions of paragraph A of this Article IV, then, but not otherwise, the holders of Common Stock and Class B Common Stock shall be entitled to receive such dividends, if any, as may be declared from time to time by the Board of Directors out of assets which are legally available therefor; provided, that whenever a cash dividend is paid on any Corporation Common Stock, the same amount shall be paid in respect of each outstanding share of Common Stock and Class B Common Stock.

(2) *Stock Dividends.* If at any time a dividend is to be paid in shares of Common Stock or shares of Class B Common Stock (a “stock dividend”), such stock dividend may be declared and paid only as follows: only Common Stock may be paid to holders of Common Stock and only Class B Common Stock may be paid to holders of Class B Common Stock. Whenever a stock dividend is paid on any Corporation Common Stock, the same number of shares shall be paid in respect of each outstanding share of Common Stock and Class B Common Stock.

(3) *Property Dividends.* If at any time a dividend is to be paid in rights to purchase shares of the capital stock of the Corporation (a “rights dividend”), then: (i) if the rights dividend is of rights that entitle the holder thereof to purchase shares of Common Stock (or shares of capital stock of the Corporation having voting rights equivalent to those of the Common Stock (“Equivalent Shares”)) or Class B Common Stock (or shares of capital stock of the Corporation having voting rights equivalent to those of the Class B Common Stock (“Equivalent Class B Shares”)) then only rights to acquire Common Stock or Equivalent Shares may be paid to holders of Common Stock and only rights to acquire Class B Common Stock or Equivalent Class B Shares may be paid to holders of Class B Common Stock; and (ii) if the rights dividend is of rights that entitle the holder thereof to purchase shares of capital stock of the Corporation other than Common Stock (or Equivalent Shares) or Class B Common Stock (or Equivalent Class B Shares) then the Board of Directors of the Corporation may pay such dividend of rights to the holders of Common Stock and Class B Common Stock in such manner as the Board of Directors may determine. Whenever any rights dividend or dividend in the form of securities or other property (other than a cash dividend or stock dividend) is paid on any Corporation Common Stock, the same number or amount and kind of rights, securities or other property shall be paid in respect of each outstanding share of Common Stock and Class B Common Stock.

(4) *Stock Subdivisions and Combinations.* The Corporation shall not subdivide, reclassify or combine stock of any class of Corporation Common Stock without at the same time making a proportionate subdivision, reclassification or combination of shares of the other class.

(5) *Voting.* Voting power shall be divided between the classes of Corporation Common Stock as follows:

(i) Subject to Section B.(5)(ii) of this Article IV, in the election of directors, holders of shares of Class B Common Stock, voting separately as a class (the “Voting B Shares”), shall be entitled to elect that number of directors which constitutes 85% of the authorized number of members of the Board of Directors (or, if 85% of the authorized number of members of the Board of Directors is not a whole number, then the nearest higher whole number) (the “Voting B Share Directors”). The initial Voting B Share Directors shall be designated by a majority of the directors of the Corporation as of the effectiveness of this Restated Certificate of Incorporation, and the holders of Voting B Shares, voting separately as a class, shall be entitled to vote for the election or replacement of such Voting B Share Directors at the next annual meeting of stockholders. Each share of Class B Common Stock shall have one vote in the election of the Voting B Share Directors. Subject to Section B.(5)(ii) of this Article IV, in the election of directors, holders of shares of Common Stock (the “Voting Shares”), shall be entitled to elect the remaining director or directors, if any (the “Voting Share Directors”). The initial Voting Share Director, if any, shall be designated by a majority of the directors of the Corporation as of the effectiveness of this Restated Certificate of Incorporation, and the holders of Voting Shares, voting separately as a class, shall be entitled to vote for the election or replacement of such Voting Share Director at the next annual meeting of stockholders. Each share of Common Stock shall have one vote in the election of the Voting Share Directors. For purposes of Sections B.(5)(i), (ii) and (iii) of this Article IV, references to the authorized number of members of the Board of Directors shall not include any directors which the holders of any shares of a series of Preferred Stock have the right to elect voting separately as one or more series.

(ii) For purposes of this Section B.(5)(ii) of this Article IV, “Special Voting Rights” means the different voting rights of the holders of Common Stock, on the one hand, and the holders of Class B Common Stock, on the other hand, with respect to the election of the applicable percentages of the authorized number of members of the Board of Directors as described in Section B.(5)(i) of this Article IV. At any time after _____, 2005³, if approved by the Board of Directors, at any annual or special meeting of stockholders of the Corporation, the holders of at least 66 2/3% of the outstanding shares of the Common Stock and Class B Common Stock, voting together as a class, may vote to eliminate the Special Voting Rights (the “Elimination Vote”), in which case the Special Voting Rights provided for in Section B.(5)(i) of this Article IV shall have no further force or effect, and thereafter holders of the

³ The second anniversary of the spin-off.

Corporation Common Stock shall have equal voting rights in all respects, except as otherwise provided by law, and shall be entitled to elect the total authorized number of members of the Board of Directors voting together as a single class, with each share of Corporation Common Stock having one vote.

(iii) Unless the Special Voting Rights have been eliminated in accordance with Section B.(5)(ii) of this Article IV, all newly-created directorships resulting from an increase in the authorized number of directors shall be allocated between Voting Share Directors and Voting B Share Directors such that at all times the number of Class B Common Stock directorships shall be 85% of the authorized number of members of the Board of Directors (or if such 85% is not a whole number, then the nearest higher whole number) and the remaining directorships shall be Common Stock directorships.

(iv) Except as otherwise specified herein or required by law, the holders of Common Stock and Class B Common Stock shall in all matters not otherwise specified in Section B.(5)(i) of this Article IV vote together as one class, with each share of Common Stock and Class B Common Stock having one vote.

(v) Notwithstanding anything to the contrary contained in Section B.(5)(i), (ii), (iii) or (iv) of this Article IV, for so long as any person or entity or group of persons or entities acting in concert beneficially own 15% or more of the outstanding shares of Class B Common Stock, then in any election of directors or other exercise of voting rights with respect to the election or removal of directors, such person, entity or group shall only be entitled to vote (or otherwise exercise voting rights with respect to) a number of shares of Class B Common Stock that constitutes a percentage of the total number of shares of Class B Common Stock then outstanding which is less than or equal to such person, entity or group's Entitled Voting Percentage. For the purposes hereof, a person, entity or group's "Entitled Voting Percentage" at any time shall mean the percentage of the then outstanding shares of Common Stock beneficially owned by such person, entity or group at such time. For purposes of this Section B.(5)(v), a "beneficial owner" of Common Stock includes any person or entity or group of persons or entities who, directly or indirectly, including through any contract, arrangement, understanding, relationship or otherwise, written or oral, formal or informal, control the voting power (which includes the power to vote or to direct the voting) of such Common Stock within the meaning of Rule 13d-3(a)(1) under the Securities Exchange Act of 1934, as amended.

(6) *Merger or Consolidation.* The Corporation shall not enter into any consolidation of the Corporation with one or more other corporations, a merger of the

Corporation with another corporation, a reorganization of the Corporation or other similar combination of the Corporation with one or more third parties, unless each holder of a share of Common Stock or Class B Common Stock is entitled to receive with respect to such share the same kind and amount of shares of stock and other securities and property (including cash) receivable upon such consolidation, merger, reorganization or other combination as each other holder of a share of Common Stock and Class B Common Stock; provided that, in any such transaction consummated prior to the Elimination Vote, the holders of shares of Common Stock and Class B Common Stock may each receive different kinds of shares of stock that differ to the extent and only to the extent that the Board of Directors determines in good faith that such shares differ with respect to the rights of holders of such shares to substantially the same extent as the Common Stock and the Class B Common Stock differ as provided herein.

(7) *Liquidation.* In the event of any liquidation, dissolution or winding up of the Corporation, the holders of the Common Stock and Class B Common Stock shall participate equally per share in any distribution to stockholders, without distinction between classes.

ARTICLE V

A. *General.* The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The Board of Directors shall have concurrent power with the stockholders to make, alter, amend, change, add to or repeal the Bylaws of the Corporation. In furtherance and not in limitation of the powers conferred upon the Board of Directors by the DGCL and this Restated Certificate of Incorporation, the Board of Directors is hereby expressly empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject to the provisions of the DGCL, this Restated Certificate of Incorporation and any bylaws adopted by the stockholders of the Corporation; provided, however, that no bylaws adopted by the stockholders of the Corporation shall invalidate any prior act of the Board of Directors that would have been valid if such bylaws had not been adopted.

B. *Number and Class of Directors.*

(1) *Number of Directors.* The number of directors that shall constitute the entire Board of Directors of the Corporation shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the Board of Directors; provided, however, (i) that in no event shall the number of directors constituting the entire Board of Directors be less than three nor more than fifteen (provided, however, that until such time as a Elimination Vote occurs, the Board of Directors shall not reduce the number of directors to a number less than seven) and (ii) no decrease in the number of directors shall have the effect of shortening the term of any incumbent director.

(2) *Classified Board.* The directors, other than those who may be elected by the holders of any series of Preferred Stock, shall be divided into three classes: Class I,

Class II and Class III. As of the effectiveness of this Restated Certificate of Incorporation, the Board of Directors shall assign each person who is serving as a director to one of such classes, as determined in the sole discretion of the Board of Directors; provided, however, that the initial Voting Share Director shall be assigned to Class I. Such classes shall be as nearly equal in number of directors as possible. Each director shall serve for a term ending on the third annual meeting of stockholders following the annual meeting of stockholders at which that director was elected; provided, however, that the directors first designated as Class I directors shall serve for a term expiring at the annual meeting of stockholders next following the date of their designation as Class I directors, the directors first designated as Class II directors shall serve for a term expiring at the second annual meeting of stockholders next following the date of their designation as Class II directors, and the directors first designated as Class III directors shall serve for a term expiring at the third annual meeting of stockholders next following the date of their designation as Class III directors. Each director shall hold office until the annual meeting of stockholders at which his term expires and, the foregoing notwithstanding, shall serve until his successor shall have been duly elected and qualified or until his earlier death, resignation or removal.

At each annual election, the directors chosen to succeed those whose terms then expire shall be of the same class as the directors they succeed, unless, by reason of any intervening changes in the authorized number of directors, the Board of Directors shall have designated one or more directorships whose term then expires as directorships of another class in order to more nearly achieve equality of number of directors among the classes.

In the event of any change in the authorized number of directors, each director then continuing to serve as such shall nevertheless continue as a director of the class of which he is a member until the expiration of his current term, or his prior death, resignation or removal. The Board of Directors shall specify the class to which a newly created directorship shall be allocated.]⁴

C. *Manner of Election.* The election of directors at any annual or special meeting of the stockholders of the Corporation need not be by written ballot unless the Bylaws of the Corporation so provide.

D. *Vacancies.*

(1) Any vacancy in the office of a director created by the death, resignation, retirement, disqualification, removal from office of a director or other cause, elected by (or appointed on behalf of) the holders of the Voting B Shares, on the one hand, or the holders of the Voting Shares, on the other hand, as the case may be, shall be filled by the vote of the majority of the directors (or the sole remaining director) elected by (or appointed on behalf of) such holders of Voting B Shares, on the one hand, or Voting Shares, on the other hand, as the case may be, unless there are no such directors in such class, in which case such vacancy shall be filled by the holders of the Voting B Shares or

⁴ This Section B(2) of Article V will be included only if the Staggered Board Proposal is approved.

Voting Shares, respectively, unless the Elimination Vote shall have occurred, in which case such vacancy shall be filled by the vote of the majority of the directors (or the sole remaining director) then in office, even if less than a quorum, regardless of any quorum requirements set out in the Bylaws. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall have the same term as that of his predecessor.

(2) Unless the Elimination Vote shall have occurred, all newly-created directorships resulting from an increase in the authorized number of directors shall be allocated pursuant to Section B(5) of Article IV. Once such newly-created directorships have been allocated as Voting Share Directors or Voting B Share Directors, such newly-created directorships shall be filled by the vote of the majority of the directors in such class (or the sole remaining director in such class), as the case may be, unless there are no such directors in such class, in which case such vacancy shall be filled by the holders of the Voting Shares or Voting B Shares, respectively, unless the Elimination Vote shall have occurred, in which case such vacancy shall be filled by the vote of the majority of the directors (or the sole remaining director) then in office, even if less than a quorum, regardless of any quorum requirements set out in the Bylaws.

ARTICLE VI

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, as the same exists or hereafter may be amended or replaced, or (iv) for any transaction from which the director derived any improper personal benefit. If the DGCL is amended after the filing of this Restated Certificate of Incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended. Any repeal or modification of this Article VI by the stockholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE VII

A. *Indemnification.* Each person who was or is made a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that he or she is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise (an "Indemnitee"), shall be indemnified and held harmless by the Corporation to the fullest extent permitted by applicable law in effect on the date of the filing of this Restated Certificate of

Incorporation, and to such greater extent as applicable law may thereafter permit, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement incurred by such Indemnitee in connection with such a Proceeding, and such right of indemnification shall continue with respect to an Indemnitee who has ceased to be such a director or officer and shall inure to the benefit of his or her heirs, executors and administrators. The rights of an Indemnitee under the immediately preceding sentence shall include, but not be limited to, the right to be indemnified to the fullest extent permitted by Section 145(b) of the DGCL in the case of Proceedings by or in the right of the Corporation and to the fullest extent permitted by Section 145(a) of the DGCL in the case of all other Proceedings.

B. *Advancement of Expenses.* An Indemnitee shall be entitled to the payment of expenses (including attorneys' fees) incurred in defending any Proceeding in advance of the final disposition thereof in accordance with the provisions set forth in the Bylaws of the Corporation or, if no provisions relating to the advancement of expenses are set forth therein, in accordance with such terms and conditions as the Board of Directors deems appropriate.

C. *Determination of Entitlement to Indemnification.* A determination as to whether an Indemnitee is entitled to indemnification in respect of any expenses (including attorneys' fees), judgments, fines or amounts paid in settlement incurred by such Indemnitee in connection with a Proceeding shall be made in accordance with Section 145(d) of the DGCL and the provisions set forth in the Bylaws of the Corporation.

D. *Non-Exclusivity.* The rights conferred by this Article VII shall not be exclusive of any other rights which an Indemnitee or any other person may now or hereafter have under this Restated Certificate of Incorporation or any bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

ARTICLE VIII

No stockholder of the Corporation shall by reason of his or her holding shares of any class or series of its capital stock have any preemptive or preferential right to purchase or subscribe for or otherwise acquire or receive any shares of any class or series of capital stock issued by the Corporation, whether now or hereafter authorized, or any shares of any class or series of capital stock of the Corporation now or hereafter acquired by the Corporation as treasury stock and subsequently reissued or sold or otherwise disposed of, or any notes, debentures, bonds or other securities convertible into, or any warrants, rights or options exercisable for, any shares of any class or series of capital stock of the Corporation, whether or not the issuance of any such shares or such notes, debentures, bonds or other securities or warrants, rights or options would adversely affect the dividend, voting or any other rights of such stockholder.

[ARTICLE IX

Special meetings of the stockholders of the Corporation may be called only by the Chairman, or in his absence by the President, by the Board of Directors, or by the Secretary at the request in writing of a majority of the Board of Directors and may not be called by the stockholders of the Corporation.]⁵

[ARTICLE X

Any action required to be taken or which may be taken by the holders of the Corporation Common Stock must be effected at a duly called annual or special meeting of such holders and may not be taken by written consent in lieu of a meeting.]⁶

ARTICLE XI

The Board of Directors shall have the power to adopt, alter, amend and repeal the Bylaws of the Corporation, in any manner not inconsistent with the laws of the State of Delaware, subject to the power of the stockholders to adopt, amend or repeal the Bylaws.

[ARTICLE XII

Notwithstanding anything else contained in this Restated Certificate of Incorporation or the Bylaws to the contrary, the affirmative vote of the holders of record of at least 66 2/3% of the combined voting power of all of the outstanding stock of the Corporation entitled to vote in respect thereof, voting together as a single class, shall be required (A) to alter, amend, rescind or repeal Section B(5)(v) of Article IV, Article V, Article IX, Article X, Article XI or this Article XII of this Restated Certificate of Incorporation or to adopt any provision inconsistent therewith or (B) in order for the stockholders to adopt, alter, amend, rescind or repeal any Bylaws of the Corporation.]⁷

ARTICLE XIII

The Corporation reserves the right to amend, alter, change, rescind or repeal any provision contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon the stockholders herein are granted subject to this reservation.

⁵ This Article IX will be included only if the Special Meeting Proposal is approved.

⁶ This Article X will be included only if the Written Consent Proposal is approved.

⁷ This Article XII will be included only if the Supermajority Voting Proposal is approved

Exhibit B-1

AMENDED AND RESTATED

BYLAWS

of

EAGLE MATERIALS INC.¹

adopted and effective

, 2003²

¹ If the Name Change Proposal is not approved, our name will remain Centex Construction Products, Inc.

² The date of the spin-off.

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AMENDED AND RESTATED

**BYLAWS
of
EAGLE MATERIALS INC.³**

ARTICLE I

OFFICES

SECTION 1.1 *Registered Office.* The registered office of Eagle Materials Inc.³ (the “Corporation”) in the State of Delaware shall be in care of Corporation Service Company, 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle, Delaware.

SECTION 1.2 *Other Offices.* The Corporation may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

SECTION 2.1 *Place of Meetings.* All meetings of the stockholders shall be held at such place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors.

SECTION 2.2 *Annual Meeting.* An annual meeting of the stockholders, for the purpose of electing directors and transacting such other business as may properly be brought before the meeting, shall be held on such date in each year and at such time as shall be designated by the Board of Directors. A failure to hold the annual meeting at the designated time or to elect a sufficient number of directors to conduct the business of the Corporation shall not affect otherwise valid corporate acts or work a forfeiture or dissolution of the Corporation, except as may be otherwise specifically provided by law. If the annual meeting for election of directors is not held on the date designated therefor, the directors shall cause the meeting to be held as soon thereafter as convenient. Written notice of the annual meeting stating the place, date and hour of the meeting shall be given not less than ten nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the Corporation.

SECTION 2.3 *Special Meeting.* [Unless otherwise prescribed by law or by the Certificate of Incorporation, a special meeting of the stockholders, for any purpose or purposes, may be called only by the Chairman of the Board or in his absence by the President, by the Board of Directors, or by the Secretary, at the request in writing of a majority of the members of the Board of Directors and may not be called by the stockholders of the Corporation.]⁴ Any such request shall state the purpose or purposes of the proposed meeting. Written notice of a special meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called shall be given not less than ten nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the Corporation.

³ If the Name Change Proposal is not approved, our name will remain Centex Construction Products, Inc.

⁴ If the Special Meeting Proposal is not approved, then this sentence shall read as follows: “Unless otherwise prescribed by law or by the Certificate of Incorporation, a special meeting of the stockholders, for any purpose or purposes, may be called (i) by the President or (ii) by the Secretary if requested to do so by a majority of the members of the Board of Directors.”

SECTION 2.4 *Quorum.* Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the presence, in person or represented by proxy, of the holders of a majority of the voting power of the shares of capital stock of the Corporation entitled to vote on any matter shall constitute a quorum for the purpose of considering such matter at a meeting of the stockholders. If a meeting of the stockholders cannot be organized because a quorum has not attended, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time until a quorum shall be present or represented. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting at which a quorum shall be present or represented, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

SECTION 2.5 *Voting.* Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, (i) any question brought before any meeting of stockholders shall be decided by the affirmative vote of the holders of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter and (ii) directors of the Corporation shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors.

SECTION 2.6 *Conduct of Meetings of Stockholders.* At each meeting of the stockholders, the Chairman of the Board or, in his absence, the President or, in his absence, a chairman chosen by a majority vote of the stockholders present in person or represented by proxy and entitled to vote thereat, shall preside and act as chairman of the meeting. The Secretary or, in his absence, an Assistant Secretary, or, in the absence of the Secretary and all Assistant Secretaries, a person whom the chairman of such meeting shall appoint, shall act as secretary of such meeting and keep the minutes thereof. The Board of Directors may adopt such rules and regulations as it determines are reasonably necessary or appropriate in connection with the organization and conduct of any meeting of the stockholders. Without limiting the generality of the foregoing, the Board of Directors, in its discretion, or the person presiding at a meeting of the stockholders, in his or her discretion, may require that any votes cast at such meeting be cast by written ballot.

SECTION 2.7 *Proxies.* Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for him by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally.

SECTION 2.8 *Stockholder List.* The officer or agent who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept open at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. In lieu of making and producing such list, the Corporation may make the information therein available by any other means permitted by law.

SECTION 2.9 *Stock Ledger.* The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by Section 2.8 or the books of the Corporation, or to vote in person or by proxy at any meeting, of the stockholders.

SECTION 2.10 *Stockholder Action by Written Consent.* [No action required to be taken or which may be taken at any annual or special meeting of the stockholders of the Corporation may be taken by written consent, without a meeting, as the power of the stockholders to take action by written consent is specifically denied.]⁵

SECTION 2.11 *Stockholder Proposals at Annual or Special Meetings.* At an annual or special meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before a meeting, business must be specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, otherwise properly brought before the meeting by or at the direction of the Board of Directors or otherwise properly brought before the meeting by a stockholder. In addition to any other applicable requirements, for business to be properly brought before a meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation, not less than 90 days nor more than 180 days prior to an annual meeting, or in the case of a special meeting, not less than 30 days nor more than 60 days prior to such meeting; provided, however, that in the event that less than 50 days notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the seventh day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made. A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the meeting, (i) a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting, (ii) the name and record address of the stockholder proposing such business, (iii) the class and number of shares of the Corporation that are beneficially owned by the stockholder and (iv) any material interest of the stockholder in such business. Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at an annual or special meeting except in accordance with the procedures set forth in this Section 2.11; provided, however, that nothing in this Section 2.11 shall be deemed to preclude discussion by any stockholder of any business properly brought before the annual meeting in accordance with said procedures.

SECTION 2.12 *Stockholder Nominations of Persons for Election to the Board of Directors.* In addition to any other applicable requirements, only persons who are nominated in accordance with the following procedures shall be eligible for election as directors at an annual or special meeting of the stockholders. Nominations of persons for election to the Board of Directors of the Corporation may be made at a meeting of stockholders by or at the direction of the Board of Directors, by any nominating committee or person appointed by the Board of Directors or by any stockholder of the Corporation entitled to vote for the election of directors at the meeting who complies with the notice procedures set forth in this Section 2.12. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation not less than 90 days nor more than 180 days prior to an annual meeting or, in the case of a special meeting, not less than 30 days nor more than 60 days prior to such meeting; provided, however, that in the event that less than 50 days notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the seventh day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made. Such stockholder's notice shall set forth

⁵ If the Written Consent Proposal is not approved, then this Section 2.10 shall read as follows: "Any action required to be taken or which may be taken at any annual or special meeting of the stockholders of the Corporation may be taken by written consent, without a meeting."

(a) as to each person whom the stockholder proposes to nominate for election or re-election as a director, (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class and number of shares of the Corporation beneficially owned by the person and (iv) any other information relating to the person that is required to be disclosed in solicitations for proxies for election of directors pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"); and (b) as to the stockholder giving the notice, (i) the name and record address of the stockholder and (ii) the class and number of shares of the Corporation beneficially owned by the stockholder. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a director of the Corporation. No person shall be eligible for election as a director of the Corporation at an annual or special meeting of the stockholders unless nominated in accordance with the procedures set forth herein. These provisions shall not apply to the nomination of any persons entitled to be separately elected by holders of any class or series of preferred stock.

ARTICLE III

DIRECTORS

SECTION 3.1 *Number and Election of Directors.* The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The number of directors that shall constitute the entire Board of Directors of the Corporation shall be fixed from time to time exclusively by the affirmative vote of a majority of the members at any time constituting the Board of Directors, and such number may be increased or decreased from time to time; provided, however, that (i) in no event shall the number of directors serving on the Board of Directors be less than three nor more than fifteen and (ii) no decrease in the number of directors shall have the effect of shortening the term of any incumbent director. Except as provided in the Certificate of Incorporation or in Section 3.2, directors shall be elected by a plurality of the votes of the shares present or represented by proxy at annual meetings of the stockholders. Except as provided in the Certificate of Incorporation, each director shall hold office until the next annual meeting of the stockholders and until his successor shall have been duly elected and qualified. [If the Certificate of Incorporation so provides, (i) the directors of the Corporation shall be divided into classes ("Term of Office Classes") based upon the expiration of their terms of office and (ii) the directors of the Corporation shall be divided into classes ("Voting Constituency Classes") based on the class of capital stock the holders of which are entitled to elect such directors. If the Certificate of Incorporation provides for both Term of Office Classes and Voting Constituency Classes, each director shall be assigned to a Term of Office Class and a Voting Constituency Class in accordance with the terms of the Certificate of Incorporation and the provisions set forth in the remainder of this Article III. Notwithstanding anything to the contrary contained in this Article III, the manner of election, terms of office and other provisions relating to directors serving in any Term of Office Classes or Voting Constituency Classes shall be as provided in the Certificate of Incorporation.]⁶

SECTION 3.2 *Vacancies and Newly Created Directorships.* In addition to any applicable requirements set forth in the Certificate of Incorporation, if at a time when the Certificate of Incorporation provides for Voting Constituency Classes⁷ there occurs any vacancy in the office of a Voting Share Director (as defined in Section B.(5)(i) of Article IV of the Certificate of Incorporation) or Voting B Share Director (as defined in Section B.(5)(i) of Article IV of the Certificate of Incorporation) due to the death, resignation, retirement, disqualification or removal from office of such director or other cause, such vacancy shall be filled by the vote of the majority of the Voting Share Directors (or the sole remaining Voting Share Director) or a majority of the Voting B Share Directors (or the sole remaining Voting B Share Director), as the case may be, unless there are no such directors in such class, in which

⁶ To be included only if the Staggered Board Proposal is approved.

⁷ If the Staggered Board Proposal is not approved, the term "Voting Constituency Classes" will be defined here.

case such vacancy shall be filled by the holders of the Voting Shares or Voting B Shares, as the case may be. If at a time when the Certificate of Incorporation does not provide for Voting Constituency Classes there occurs any vacancy in the office of a director due to the death, resignation, retirement, disqualification or removal from office of such director or other cause, such vacancy shall be filled exclusively by the vote of the majority of the directors (or the sole remaining director) then in office, even if less than a quorum, regardless of any quorum requirements set out in these Bylaws.

All newly-created directorships resulting from an increase in the authorized number of directors at a time when the Certificate of Incorporation provides for Voting Constituency Classes shall be allocated between such classes pursuant to in Section B.(5)(iii) of Article IV of the Certificate of Incorporation. Once such newly-created directorships have been designated as Voting Share Directors or Voting B Share Directors, such newly created directorships shall be filled by the vote of the majority of the directors in such class (or the sole remaining director in such class), as the case may be, unless there are no such directors in such class, in which case such vacancy shall be filled by the holders of the Voting Shares or Voting B Shares, as the case may be. All newly-created directorships resulting from an increase in the authorized number of directors at a time when the Certificate of Incorporation does not provide for Voting Constituency Classes shall be filled exclusively by the vote of the majority of the directors (or the sole remaining director) then in office, even if less than a quorum, regardless of any quorum requirements set out in these Bylaws.

Any vacancies or newly-created directorships filled in accordance with this Section 3.2 at a time when the Certificate of Incorporation provides for Term of Office Classes shall be allocated among the Term of Office Classes pursuant to Section B of Article V of the Certificate of Incorporation.

No decrease in the number of authorized directors constituting the entire Board of Directors shall shorten the term of any incumbent director.

SECTION 3.3 *Place of Meetings.* The Board of Directors of the Corporation may hold its meetings, both regular and special, at such place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors, the Chairman of the Board or the President.

SECTION 3.4 *Regular Meetings.* Promptly after each annual election of directors, the Board of Directors shall meet for the purpose of the election of officers and the transaction of other business, at the place where such annual election is held. The Board of Directors may also hold other regular meetings at such time or times and at such place or places as shall be designated by the Board of Directors from time to time. Notice of regular meetings of the Board of Directors need not be given.

SECTION 3.5 *Special Meetings.* Special meetings of the Board of Directors may be called by (i) the Chairman of the Board or (ii) the Secretary, if requested to do so by a majority of the members of the Board of Directors. Notice shall be sent to the last known address of each director, by mail, telegram, cable or telex, at least two days before the meeting, or oral notice may be substituted for such written notice if received not later than the day preceding such meeting, and the place and time of such special meeting shall be as designated in the notice of such meetings.

SECTION 3.6 *Quorum.* Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, at all meetings of the Board of Directors a majority of the total number of directors in office shall constitute a quorum for the transaction of business, and the vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until quorum shall be present.

SECTION 3.7 *Conduct of Meetings of the Board of Directors.* The Board of Directors may, in its discretion, elect from among its members a Chairman of the Board, who may, but need not be, an officer of the Corporation. A person elected as Chairman of the Board shall serve in such capacity for such term as is specified by the Board of Directors at the time of his or her election. At each meeting of the Board of Directors, the Chairman of the Board or, in his or her absence, any other director chosen by a majority

of the directors present, shall preside and act as chairman of the meeting. The Secretary or, in his or her absence, any other person whom the chairman of the meeting shall appoint, shall act as secretary of such meeting and keep the minutes thereof.

SECTION 3.8 Meetings by Telephone Conference. Members of the Board of Directors of the Corporation may participate in a meeting of such Board of Directors or a committee thereof by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 3.8 shall constitute presence in person at such meeting.

SECTION 3.9 Action by Written Consent. Except as otherwise provided by the Certificate of Incorporation, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in writing setting forth the action so taken, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

SECTION 3.10 Committees of Directors. The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation. Notwithstanding the foregoing, no committee shall have the power or authority to take any of the following actions:

(a) amend the Certificate of Incorporation (except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of any series of capital stock of the Corporation adopted by the Board of Directors as permitted by the General Corporation Law of the State of Delaware as set forth in Title 8 of the Delaware Code (the "DGCL"), fix the designations and any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the Corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation or fix the number of shares of any series of stock or authorize the increase or decrease of the shares of any series);

(b) adopt an agreement of merger or consolidation under the DGCL;

(c) recommend to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets;

(d) recommend to the stockholders a dissolution of the Corporation or a revocation of a dissolution; or

(e) amend the Bylaws of the Corporation.

In addition, unless the resolution of the Board of Directors designating the committee expressly so provides, no such committee shall have the power or authority to take any of the following actions:

(i) declare a dividend;

(ii) authorize the issuance of stock; or

(iii) adopt a certificate of ownership and merger pursuant to the DGCL.

Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

SECTION 3.11 *Interested Directors.* No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose if (i) the material facts as to his or their relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or the committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (ii) the material facts as to his or their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof or the stockholders. Interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

SECTION 3.12 *Resignation.* Any director of the Corporation may resign at any time by giving written notice of his resignation to the President or the Secretary. Such resignation shall take effect at the date of receipt of such notice by the President or the Secretary, or at any later time specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 3.13 *Compensation of Directors.* The directors shall receive such compensation for their services as the Board of Directors may from time to time determine. No director shall be prevented from receiving compensation for his services as a director by reason of the fact that he is also an officer of the Corporation. All directors shall be reimbursed for their reasonable expenses of attendance at each regular or special meeting of the Board of Directors. Members of any committee of directors may be allowed like compensation and reimbursement for expenses for serving as members of any such committee and for attending committee meetings.

ARTICLE IV

OFFICERS

SECTION 4.1 *General.* The officers of the Corporation shall be chosen by the Board of Directors and shall include a President, a Secretary and a Treasurer. The Board of Directors, in its discretion, may also elect a Chief Executive Officer, one or more Vice Presidents (including Executive Vice Presidents and Senior Vice Presidents), Assistant Secretaries, Assistant Treasurers and other officers. Any number of offices may be held by the same person, unless otherwise prohibited by law, the Certificate of Incorporation or these Bylaws. The officers of the Corporation need not be stockholders or directors of the Corporation.

SECTION 4.2 *Election and Terms.* The Board of Directors at its first meeting held after each annual meeting of stockholders shall elect the officers of the Corporation, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors; and all officers of the Corporation shall hold office until their successors are chosen and qualified or until their earlier resignation or removal. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors.

SECTION 4.3 *Salaries.* The salaries of all officers of the Corporation shall be fixed by the Board of Directors and may be altered from time to time, except as otherwise provided by contract. No officer shall be prevented from receiving a salary solely by reason of the fact that he is also a director.

SECTION 4.4 *Chief Executive Officer and President.* The Chief Executive Officer, or if there be none, the President shall be the chief executive officer of the Corporation. Subject to the supervision of the Board of Directors, the Chief Executive Officer and, subject to the supervision of the Chief Executive Officer, the President shall have general charge of the business, affairs and property of the Corporation and shall have control over its officers, agents, and employees. The President shall see that all orders and resolutions of the Board of Directors and the Chief Executive Officer are carried into effect. Either the Chief Executive Officer or the President may execute and deliver certificates for shares of the Corporation, any deeds, mortgages, bonds, contracts or other instruments that the Board of Directors has authorized to be executed and delivered, except where required or permitted by law to be otherwise executed and delivered and except that the other officers of the Corporation may execute and deliver documents when authorized to do so by these Bylaws, the Board of Directors or the President. The Chief Executive Officer and the President shall also perform such other duties and may exercise such other powers as from time to time may be assigned to him or her by these Bylaws or by the Board of Directors.

SECTION 4.5 *Vice Presidents.* Each Vice President shall perform such duties and have such other powers as the Board of Directors from time to time may prescribe. Certain Vice Presidents may from time to time be designated by the Board of Directors as Executive Vice Presidents or Senior Vice Presidents, which positions shall have such varying degrees of authority as the Board of Directors shall prescribe.

SECTION 4.6 *Secretary.* The Secretary shall attend all meetings of the Board of Directors and all meetings of stockholders and record all the proceedings thereat in a book or books to be kept for that purpose; the Secretary shall also perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors, under whose supervision he or she shall act. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board of Directors, and if there be no Assistant Secretary, then the Board of Directors may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or an Assistant Secretary, if there be one, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his or her signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

SECTION 4.7 *Treasurer.* The Treasurer shall be the chief financial officer of the Corporation and shall have custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Board of Directors, at its regular meeting, or when the Board of Directors so requires, an account of all his or her transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his or her office and for the restoration to the Corporation, in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his or her control belonging to the Corporation.

SECTION 4.8 *Assistant Secretaries.* Except as may be otherwise provided in these Bylaws, Assistant Secretaries, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Secretary, and in the absence of the Secretary or in the event of his or her disability or refusal to act, shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

SECTION 4.9 *Assistant Treasurers.* Assistant Treasurers, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Treasurer, and in the absence of the Treasurer or in the event of his or her disability or refusal to act, shall perform the duties of the Treasurer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Treasurer. If required by the Board of Directors, an Assistant Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his or her office and for the restoration to the Corporation, in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his or her control belonging to the Corporation.

SECTION 4.10 *Other Officers.* Such other officers as the Board of Directors may appoint shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

SECTION 4.11 *Delegation of Authority.* In the case of the absence of any officer of the Corporation or for any other reason that the Board of Directors may deem sufficient, the Board of Directors may delegate some or all of the powers or duties of such officer to any other officer or to any director, employee, stockholder or agent for whatever period of time the Board of Directors determines is necessary or appropriate.

SECTION 4.12 *Removal.* Any officer may be removed, either with or without cause, by the affirmative vote of a majority of the Board of Directors, or, except in the case of any officer elected by the Board of Directors, by any officer upon whom the powers of removal may be conferred by the Board of Directors.

SECTION 4.13 *Resignation.* Any officer of the Corporation may resign at any time by giving written notice of his resignation to the Corporation. Such resignation shall take effect at the date of receipt of such notice by the Corporation, or at any later time specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

ARTICLE V

STOCK AND STOCK CERTIFICATES

SECTION 5.1 *Certificates Evidencing Shares.* Every holder of stock in the Corporation shall be entitled to have a certificate evidencing the number of shares owned by such holder signed by or in the name of the Corporation by (i) the President or a Vice President and (ii) the Secretary or an Assistant Secretary.

SECTION 5.2 *Transfer Agents and Registrars.* The Board of Directors may appoint, or authorize any officer or officers to appoint, one or more transfer agents and one or more registrars.

SECTION 5.3 *Signatures.* Where a certificate is countersigned by (i) a transfer agent other than the Corporation or an employee thereof or (ii) a registrar other than the Corporation or an employee thereof, any other signature on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such officer, transfer agent or registrar continued to discharge said office or function at the date of issuance.

SECTION 5.4 *Lost, Stolen or Destroyed Stock Certificates.* The Corporation may issue a new stock certificate in place of any certificate theretofore issued by it which is alleged to have been lost, stolen or destroyed upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issuance of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require that the owner

of such lost, stolen or destroyed certificate or certificates, or his legal representative give the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

SECTION 5.5 *Transfers.* Stock of the Corporation shall be transferable in the manner prescribed by law and in these Bylaws. Transfers of stock shall be made on the books of the Corporation only by the person named in the certificate or by his or her attorney lawfully constituted in writing and upon the surrender of the certificate therefor, which shall be cancelled before a new certificate shall be issued.

SECTION 5.6 *Record Date.* In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than 60 days nor less than ten days before the date of such meeting, nor more than 60 days prior to any other action. A determination of stockholders of record entitled to notice or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

SECTION 5.7 *Registered Stockholders.* Except as otherwise required by law, the Corporation shall be entitled to recognize the exclusive right of the person registered on its books as the owner of shares to receive dividends in respect of such shares and to vote as the owner thereof, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have notice thereof.

ARTICLE VI

INDEMNIFICATION

SECTION 6.1 *General.* The Corporation shall indemnify, and advance Expenses (as this and all other capitalized words used in this Article VI and not otherwise defined shall have the respective meanings set forth in Section 6.14) to, each Indemnitee to the fullest extent permitted by applicable law in effect on the date of the adoption of these Bylaws, and to such greater extent as applicable law may thereafter permit. The rights of an Indemnitee provided under the preceding sentence shall include, but not be limited to, the right to be indemnified to the fullest extent permitted by Section 145(b) of the DGCL in the case of Proceedings by or in the right of the Corporation and to the fullest extent permitted by Section 145(a) of the DGCL in the case of all other Proceedings. The provisions set forth below in this Article VI are provided in furtherance, and not by way of limitation, of the obligations expressed in this Section 6.1.

SECTION 6.2 *Expenses Related to Proceedings.* If an Indemnitee is, by reason of his or her Corporate Status, a witness in or a party to and is successful, on the merits or otherwise, in any Proceeding, he or she shall be indemnified against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection therewith. If an Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to any Matter in such Proceeding, the Corporation shall indemnify such Indemnitee against all Expenses actually and reasonably incurred by him or her or on his or her behalf relating to such Matter. The termination of any Matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such Matter.

SECTION 6.3 *Advancement of Expenses.* To the fullest extent permitted by Section 145(e) of the DGCL, each Indemnitee shall be entitled to payment of, and the Corporation shall pay, Expenses in advance of the final disposition of any Proceeding within ten days after receipt by the Corporation of a written notice requesting the advancement of such Expenses, which notice shall contain an undertaking by

or on behalf of such Indemnitee to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized by Section 145 of the DGCL.

SECTION 6.4 *Request for Indemnification.* To obtain indemnification hereunder, an Indemnitee shall submit to the Corporation a written request with such information pertinent to such request as is reasonably available to the Indemnitee. The Secretary of the Corporation shall promptly advise the Board of Directors of any such request.

SECTION 6.5 *Determining Entitlement to Indemnification Prior to a Change of Control.* If a Change of Control has not occurred prior to or at the time a request for indemnification hereunder is submitted to the Corporation, an Indemnitee's entitlement to indemnification shall be determined in accordance with Section 145(d) of the DGCL. If entitlement to indemnification is to be determined by Independent Counsel, the Corporation shall furnish notice to the Indemnitee within ten days after receipt of the request for indemnification, specifying the identity and address of Independent Counsel. The Indemnitee may, within 14 days after receipt of such written notice of selection, deliver to the Corporation a written objection to such selection. Such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of Independent Counsel and the objection shall set forth with particularity the factual basis of such assertion. If there is an objection to the selection of Independent Counsel, either the Corporation or the Indemnitee may petition the Court of Chancery of the State of Delaware or any other court of competent jurisdiction for a determination that the objection is without a reasonable basis or for the appointment of Independent Counsel selected by the court.

SECTION 6.6 *Determining Entitlement to Indemnification After a Change of Control.* If a Change of Control has occurred prior to or at the time a request for indemnification hereunder is submitted to the Corporation, an Indemnitee's entitlement to indemnification shall be determined in a written opinion of Independent Counsel selected by the Indemnitee. The Indemnitee shall give the Corporation written notice advising of the identity and address of the Independent Counsel so selected. The Corporation may, within seven days after receipt of such written notice of selection, deliver to the Indemnitee a written objection to such selection. The Indemnitee may, within five days after the receipt of such objection from the Corporation, submit the name of another Independent Counsel and the Corporation may, within seven days after receipt of such written notice of selection, deliver to Indemnitee a written objection to such selection. Any objection is subject to the limitations set forth in Section 6.5. The Indemnitee may petition the Court of Chancery of the State of Delaware or any other court of competent jurisdiction for a determination that the Corporation's objection to any selection of Independent Counsel is without a reasonable basis or for the appointment as Independent Counsel of a person selected by the court.

SECTION 6.7 *Procedures of Independent Counsel.* If a Change of Control has occurred prior to or at the time the request for indemnification hereunder is submitted to the Corporation, an Indemnitee shall be presumed (except as otherwise expressly provided in this Article VI) to be entitled to indemnification upon submission of a request for indemnification in accordance with Section 6.4, and thereafter the Corporation shall have the burden of proof to overcome the presumption in reaching a determination contrary to the presumption. The presumption shall be used by Independent Counsel as a basis for a determination of entitlement to indemnification unless the Corporation provides information sufficient to overcome such presumption by clear and convincing evidence or the investigation, review and analysis of Independent Counsel convinces him or her by clear and convincing evidence that the presumption should not apply.

Except where the determination of entitlement to indemnification is to be made by Independent Counsel, if the person or persons empowered under Section 6.5 or 6.6 to determine entitlement to indemnification shall not have made and furnished to the Indemnitee in writing a determination within 60 days after receipt by the Corporation of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and the Indemnitee shall be entitled to such indemnification unless the Indemnitee knowingly misrepresented a material fact in connection with the request for indemnification. The termination of any Proceeding or of any Matter therein, by judgment,

order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Article VI) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that (a) the Indemnitee did not act in good faith and in a manner that he or she reasonably believed, in the case of conduct in his or her official capacity as a director of the Corporation, to be in the best interests of the Corporation, or, in all other cases, that at least his or her conduct was not opposed to the Corporation's best interests, or (b) with respect to any criminal Proceeding, the Indemnitee had reasonable cause to believe that his or her conduct was unlawful.

SECTION 6.8 *Expenses of Independent Counsel.* The Corporation shall pay any and all reasonable fees and expenses of Independent Counsel acting pursuant to this Article VI and in any proceeding to which it is a party or witness in respect of its investigation and written report and shall pay all reasonable fees and expenses incident to the procedures in which such Independent Counsel was selected or appointed. No Independent Counsel may serve if a timely objection has been made to his or her selection until a court has determined that such objection is without a reasonable basis.

SECTION 6.9 *Trial De Novo.* In the event that (a) a determination is made pursuant to Section 6.5 or 6.6 that an Indemnitee is not entitled to indemnification under this Article VI, (b) advancement of Expenses is not timely made pursuant to Section 6.3, (c) Independent Counsel has not made and delivered a written opinion determining the request for indemnification (i) within 90 days after being appointed by a court, (ii) within 90 days after objections to his or her selection have been overruled by a court or (iii) within 90 days after the time for the Corporation or the Indemnitee to object to his or her selection or (d) payment of indemnification is not made within five days after a determination of entitlement to indemnification has been made or deemed to have been made pursuant to Section 6.5, 6.6 or 6.7, the Indemnitee shall be entitled to an adjudication in any court of competent jurisdiction of his or her entitlement to such indemnification or advancement of Expenses. In the event that a determination shall have been made that the Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 6.9 shall be conducted in all respects as a de novo trial on the merits, and Indemnitee shall not be prejudiced by reason of that adverse determination. If a Change of Control shall have occurred, in any judicial proceeding commenced pursuant to this Section 6.9, the Corporation shall have the burden of proving that the Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be. If a determination shall have been made or deemed to have been made that the Indemnitee is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 6.9, or otherwise, unless the Indemnitee knowingly misrepresented a material fact in connection with the request for indemnification.

The Corporation shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 6.9 that the procedures and presumptions of this Article VI are not valid, binding and enforceable and shall stipulate in any such court that the Corporation is bound by all provisions of this Article VI. In the event that an Indemnitee, pursuant to this Section 6.9, seeks a judicial adjudication to enforce his or her rights under, or to recover damages for breach of, this Article VI, the Indemnitee shall be entitled to recover from the Corporation, and shall be indemnified by the Corporation against, any and all Expenses actually and reasonably incurred by him or her in such judicial adjudication, but only if he or she prevails therein. If it shall be determined in such judicial adjudication that an Indemnitee is entitled to receive part but not all of the indemnification or advancement of Expenses sought, the Expenses incurred by the Indemnitee in connection with such judicial adjudication or arbitration shall be appropriately prorated.

SECTION 6.10 *Non-Exclusivity.* The rights of indemnification and to receive advancement of Expenses provided by this Article VI shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, these Bylaws, any agreement, vote of stockholders, resolution of the Board of Directors or otherwise. The provisions of this Article VI shall continue as to an Indemnitee whose Corporate Status has ceased and shall inure to the benefit of his or her heirs, executors and administrators.

SECTION 6.11 *Insurance and Subrogation.* To the extent the Corporation maintains an insurance policy or policies providing liability insurance for directors or officers of the Corporation or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which such person serves at the request of the Corporation, each Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of coverage available for any such director or officer under such policy or policies.

In the event of any payment hereunder, the Corporation shall be subrogated to the extent of such payment to all the rights of recovery of the Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Corporation to bring suit to enforce such rights.

The Corporation shall not be liable under this Article VI to make any payment of amounts otherwise indemnifiable hereunder if, and to the extent that, Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

SECTION 6.12 *Severability.* If any provision or provisions of this Article VI shall be held to be invalid, illegal or unenforceable for any reason whatsoever, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby; and, to the fullest extent permitted by law, the provisions of this Article VI shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

SECTION 6.13 *Certain Persons Not Entitled to Indemnification.* Subject to the provisions of Section 6.9, no person shall be entitled to indemnification or advancement of Expenses under this Article VI with respect to any Proceeding, or any Matter therein, brought or made by such person against the Corporation.

SECTION 6.14 *Definitions.* As used in this Article VI, the terms set forth below shall have the following respective meanings:

“Affiliate” means, with respect to any person, any other person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such person.

“Change of Control” means the occurrence after _____, 2003⁸ of any of the following events: (a) an event required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item or any similar schedule or form) promulgated under the Exchange Act, whether or not the Corporation is then subject to such reporting requirement; (b) any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) shall become the “beneficial owner” (as defined in Rule 133 under the Exchange Act), directly or indirectly, of securities of the Corporation representing 50% or more of the combined voting power of the then outstanding voting securities of the Corporation without prior approval of at least two-thirds of the members of the Board of Directors in office immediately prior to such person’s attaining such percentage interest; or (c) the Corporation is a party to a merger, consolidation, sale of assets or other reorganization, or a proxy contest, as a consequence of which members of the Board of Directors in office immediately prior to such transaction or event constitute less than a majority of the Board of Directors thereafter.

“Corporate Status” describes the status of (i) an individual who is or was a director or officer of the Corporation, (ii) an individual who is an employee or agent of the Corporation (who is not also director or officer of the Corporation), if the Board of Directors adopts a resolution that specifically states that such employee or agent shall be entitled to the benefits of this Article VI to the same extent as if he were an officer or director, or (iii) an individual identified in clause (i) or (ii) above who is serving at the request of the Corporation as a director, officer or administrator of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

⁸ The date of the spin-off.

“Expenses” shall include all reasonable attorneys’ fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating or being or preparing to be a witness in a Proceeding.

“Indemnitee” includes any person who is, or is threatened to be made, a witness in or a party to any Proceeding as described in Section 6.1 or 6.2 by reason of his or her Corporate Status.

“Independent Counsel” means a law firm, or member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the five years prior to his or her selection or appointment has been, retained to represent: (a) the Corporation or the Indemnitee in any matter material to either such party, (b) any other party to the Proceeding giving rise to a claim for indemnification hereunder or (c) the beneficial owner, directly or indirectly, of securities of the Corporation representing 5% or more of the combined voting power of the then outstanding voting securities of the Corporation.

“Matter” is a claim, a material issue or a substantial request for relief.

“Proceeding” includes any action, suit, arbitration, alternate dispute resolution mechanism, investigation, administrative hearing or any other proceeding, whether civil, criminal, administrative or investigative, except one initiated by an Indemnitee pursuant to Section 6.9 to enforce his or her rights under this Article VI.

SECTION 6.15 *Notices.* Any notice or other communication required or permitted to be sent to the Corporation pursuant to this Article VI shall be addressed to the Secretary of the Corporation and any such notice or other communication to an Indemnitee shall be given in writing by depositing the same in the United States mail, with postage thereon prepaid, addressed to the person to whom such notice is directed at the address of such person on the records of the Corporation, and such notice shall be deemed given at the time when the same shall be so deposited in the United States mail.

SECTION 6.16 *Contractual Rights.* The right to be indemnified and to the advancement or reimbursement of Expenses in accordance with this Article VI (i) is a contract right based upon good and valuable consideration, pursuant to which Indemnitee may sue as if these provisions were set forth in a separate written contract between him or her and the Corporation, (ii) is and is intended to be retroactive and shall be available as to events occurring prior to the adoption of these provisions and (iii) shall continue after any rescission or restrictive modification of such provisions as to events occurring prior to such rescission or modification.

ARTICLE VII

NOTICES

SECTION 7.1 *Notices.* Whenever written notice is required by law, the Certificate of Incorporation or these Bylaws to be given to any director, member of a committee or stockholder, such notice may be given by mail, addressed to such director, member of a committee or stockholder, at his address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Written notice may also be given personally or by telegram, telecopy, telex or cable and such notice shall be deemed given at the time when the same is sent.

SECTION 7.2 *Waiver of Notice.* Whenever notice is required by law, the Certificate of Incorporation or these Bylaws to be given to any director, member of a committee or stockholder, a written waiver, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting of stockholders, in person or by proxy, or at a meeting of the Board of Directors or committee thereof shall constitute a waiver of notice of such meeting, except when the person attends such meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or

convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice unless so required by the Certificate of Incorporation or these Bylaws.

ARTICLE VIII

AMENDMENTS

SECTION 8.1 *Amendments by Stockholders.* These Bylaws may be altered, amended or repealed, in whole or in part, or new Bylaws may be adopted, by the affirmative vote of the holders of record of at least 66 2/3% of the combined voting power of all the outstanding stock of the Corporation entitled to vote in respect thereof, voting together as a single class.

SECTION 8.2 *Amendments by Directors.* These Bylaws may be altered, amended or repealed, in whole or in part, or new Bylaws may be adopted, by action of a majority of directors then in office.

ARTICLE IX

GENERAL PROVISIONS

SECTION 9.1 *Fiscal Year.* The fiscal year of the Corporation shall end on the 31st day of March of each year, unless otherwise provided by resolution of the Board of Directors.

SECTION 9.2 *Disbursements.* All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

SECTION 9.3 *Corporate Seal.* The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced.

Exhibit B-2
AMENDED AND RESTATED
BYLAWS
OF
[EAGLE MATERIALS INC.]¹
Adopted and Effective
, 2003²

1 If the Name Change Proposal is not approved, the name will remain Centex Construction Products, Inc.

2 The date of the spin-off.

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AMENDED AND RESTATED

BYLAWS

OF

[EAGLE MATERIALS INC.]³

ARTICLE I

OFFICES

SECTION 1.1 *Registered Office.* The registered office of [Eagle Materials Inc.]³ (the "Corporation") in the State of Delaware shall be in care of Corporation Service Company, 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle, Delaware.

SECTION 1.2 *Other Offices.* The Corporation may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

SECTION 2.1 *Place of Meetings.* All meetings of the stockholders shall be held at such place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors.

SECTION 2.2 *Annual Meeting.* An annual meeting of the stockholders, for the purpose of electing directors and transacting such other business as may properly be brought before the meeting, shall be held on such date in each year and at such time as shall be designated by the Board of Directors. A failure to hold the annual meeting at the designated time or to elect a sufficient number of directors to conduct the business of the Corporation shall not affect otherwise valid corporate acts or work a forfeiture or dissolution of the Corporation, except as may be otherwise specifically provided by law. If the annual meeting for election of directors is not held on the date designated therefor, the directors shall cause the meeting to be held as soon thereafter as convenient. Written notice of the annual meeting stating the place, date and hour of the meeting shall be given not less than ten nor more than 60 days before the date of the

³ If the Name Change Proposal is not approved, the name will remain Centex Construction Products, Inc.

meeting to each stockholder entitled to vote at such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the Corporation.

SECTION 2.3 *Special Meeting*. [Unless otherwise prescribed by law or by the Certificate of Incorporation, a special meeting of the stockholders, for any purpose or purposes, may be called only by the Chairman of the Board or in his absence by the President, by the Board of Directors, or by the Secretary, at the request in writing of a majority of the members of the Board of Directors and may not be called by the stockholders of the Corporation.]⁴ Any such request shall state the purpose or purposes of the proposed meeting. Written notice of a special meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called shall be given not less than ten nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the Corporation.

SECTION 2.4 *Quorum*. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the presence, in person or represented by proxy, of the holders of a majority of the voting power of the shares of capital stock of the Corporation entitled to vote on any matter shall constitute a quorum for the purpose of considering such matter at a meeting of the stockholders. If a meeting of the stockholders cannot be organized because a quorum has not attended, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time until a quorum shall be present or represented. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting at which a quorum shall be present or represented, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

SECTION 2.5 *Voting*. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, (i) any question brought before any meeting of stockholders shall be decided by the affirmative vote of the holders of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter and (ii) directors of the Corporation shall be elected by a plurality of

⁴ If the Special Meeting Proposal is not approved, then this sentence shall read as follows: “Unless otherwise prescribed by law or by the Certificate of Incorporation, a special meeting of the stockholders, for any purpose or purposes, may be called (i) by the President or (ii) by the Secretary if requested to do so by a majority of the members of the Board of Directors.”

the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors.

SECTION 2.6 *Conduct of Meetings of Stockholders.* At each meeting of the stockholders, the Chairman of the Board or, in his absence, the President or, in his absence, a chairman chosen by a majority vote of the stockholders present in person or represented by proxy and entitled to vote thereat, shall preside and act as chairman of the meeting. The Secretary or, in his absence, an Assistant Secretary, or, in the absence of the Secretary and all Assistant Secretaries, a person whom the chairman of such meeting shall appoint, shall act as secretary of such meeting and keep the minutes thereof. The Board of Directors may adopt such rules and regulations as it determines are reasonably necessary or appropriate in connection with the organization and conduct of any meeting of the stockholders. Without limiting the generality of the foregoing, the Board of Directors, in its discretion, or the person presiding at a meeting of the stockholders, in his or her discretion, may require that any votes cast at such meeting be cast by written ballot.

SECTION 2.7 *Proxies.* Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for him by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally.

SECTION 2.8 *Stockholder List.* The officer or agent who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept open at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. In lieu of making and producing such list, the Corporation may make the information therein available by any other means permitted by law.

SECTION 2.9 *Stock Ledger.* The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by Section 2.8 or the books of the Corporation, or to vote in person or by proxy at any meeting, of the stockholders.

SECTION 2.10 *Stockholder Action by Written Consent*. [No action required to be taken or which may be taken at any annual or special meeting of the stockholders of the Corporation may be taken by written consent, without a meeting, as the power of the stockholders to take action by written consent is specifically denied.]⁵

SECTION 2.11 *Stockholder Proposals at Annual or Special Meetings*. At an annual or special meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before a meeting, business must be specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, otherwise properly brought before the meeting by or at the direction of the Board of Directors or otherwise properly brought before the meeting by a stockholder. In addition to any other applicable requirements, for business to be properly brought before a meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation, not less than 90 days nor more than 180 days prior to an annual meeting, or in the case of a special meeting, not less than 30 days nor more than 60 days prior to such meeting; provided, however, that in the event that less than 50 days notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the seventh day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made. A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the meeting, (i) a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting, (ii) the name and record address of the stockholder proposing such business, (iii) the class and number of shares of the Corporation that are beneficially owned by the stockholder and (iv) any material interest of the stockholder in such business. Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at an annual or special meeting except in accordance with the procedures set forth in this Section 2.11; provided, however, that nothing in this Section 2.11 shall be deemed to preclude discussion by any stockholder of any business properly brought before the annual meeting in accordance with said procedures.

SECTION 2.12 *Stockholder Nominations of Persons for Election to the Board of Directors*. In addition to any other applicable requirements, only persons who are nominated in accordance with the following procedures shall be eligible for election as directors at an annual or special meeting of the stockholders. Nominations of persons

⁵ If the Written Consent Proposal is not approved, then this Section 2.10 shall read as follows: "Any action required to be taken or which may be taken at any annual or special meeting of the stockholders of the Corporation may be taken by written consent, without a meeting."

for election to the Board of Directors of the Corporation may be made at a meeting of stockholders by or at the direction of the Board of Directors, by any nominating committee or person appointed by the Board of Directors or by any stockholder of the Corporation entitled to vote for the election of directors at the meeting who complies with the notice procedures set forth in this Section 2.12. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation not less than 90 days nor more than 180 days prior to an annual meeting or, in the case of a special meeting, not less than 30 days nor more than 60 days prior to such meeting; provided, however, that in the event that less than 50 days notice or prior public disclosure of the date of the meeting is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the seventh day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or re-election as a director, (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class and number of shares of the Corporation beneficially owned by the person and (iv) any other information relating to the person that is required to be disclosed in solicitations for proxies for election of directors pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"); and (b) as to the stockholder giving the notice, (i) the name and record address of the stockholder and (ii) the class and number of shares of the Corporation beneficially owned by the stockholder. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a director of the Corporation. No person shall be eligible for election as a director of the Corporation at an annual or special meeting of the stockholders unless nominated in accordance with the procedures set forth herein. These provisions shall not apply to the nomination of any persons entitled to be separately elected by holders of any class or series of preferred stock.

ARTICLE III

DIRECTORS

SECTION 3.1 *Number and Election of Directors.* The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The number of directors that shall constitute the entire Board of Directors of the Corporation shall be fixed from time to time exclusively by the affirmative vote of a majority of the members at any time constituting the Board of Directors, and such number may be increased or decreased from time to time; provided, however, that (i) in no event shall the number of directors serving on the Board of Directors be less than three nor more than fifteen and (ii) no decrease in the number of directors shall have the

effect of shortening the term of any incumbent director. Except as provided in the Certificate of Incorporation or in Section 3.2, directors shall be elected by a plurality of the votes of the shares present or represented by proxy at annual meetings of the stockholders. Except as provided in the Certificate of Incorporation, each director shall hold office until the next annual meeting of the stockholders and until his successor shall have been duly elected and qualified. [If the Certificate of Incorporation so provides, (i) the directors of the Corporation shall be divided into classes (“Term of Office Classes”) based upon the expiration of their terms of office and (ii) the directors of the Corporation shall be divided into classes (“Voting Constituency Classes”) based on the class of capital stock the holders of which are entitled to elect such directors. If the Certificate of Incorporation provides for both Term of Office Classes and Voting Constituency Classes, each director shall be assigned to a Term of Office Class and a Voting Constituency Class in accordance with the terms of the Certificate of Incorporation and the provisions set forth in the remainder of this Article III. Notwithstanding anything to the contrary contained in this Article III, the manner of election, terms of office and other provisions relating to directors serving in any Term of Office Classes or Voting Constituency Classes shall be as provided in the Certificate of Incorporation.]⁶

SECTION 3.2 *Vacancies and Newly Created Directorships*. In addition to any applicable requirements set forth in the Certificate of Incorporation, if at a time when the Certificate of Incorporation provides for Voting Constituency Classes⁷ there occurs any vacancy in the office of a Voting Share Director (as defined in Section B.(5)(i) of Article IV of the Certificate of Incorporation) or Voting B Share Director (as defined in Section B.(5)(i) of Article IV of the Certificate of Incorporation) due to the death, resignation, retirement, disqualification or removal from office of such director or other cause, such vacancy shall be filled by the vote of the majority of the Voting Share Directors (or the sole remaining Voting Share Director) or a majority of the Voting B Share Directors (or the sole remaining Voting B Share Director), as the case may be, unless there are no such directors in such class, in which case such vacancy shall be filled by the holders of the Voting Shares or Voting B Shares, as the case may be. If at a time when the Certificate of Incorporation does not provide for Voting Constituency Classes there occurs any vacancy in the office of a director due to the death, resignation, retirement, disqualification or removal from office of such director or other cause, such vacancy shall be filled exclusively by the vote of the majority of the directors (or the sole remaining director) then in office, even if less than a quorum, regardless of any quorum requirements set out in these Bylaws.

⁶ To be included only if the Staggered Board Proposal is approved.

⁷ If the Staggered Board Proposal is not approved, the term “Voting Constituency Classes” will be defined here.

All newly-created directorships resulting from an increase in the authorized number of directors at a time when the Certificate of Incorporation provides for Voting Constituency Classes shall be allocated between such classes pursuant to in Section B.(5)(iii) of Article IV of the Certificate of Incorporation. Once such newly-created directorships have been designated as Voting Share Directors or Voting B Share Directors, such newly created directorships shall be filled by the vote of the majority of the directors in such class (or the sole remaining director in such class), as the case may be, unless there are no such directors in such class, in which case such vacancy shall be filled by the holders of the Voting Shares or Voting B Shares, as the case may be. All newly-created directorships resulting from an increase in the authorized number of directors at a time when the Certificate of Incorporation does not provide for Voting Constituency Classes shall be filled exclusively by the vote of the majority of the directors (or the sole remaining director) then in office, even if less than a quorum, regardless of any quorum requirements set out in these Bylaws.

Any vacancies or newly-created directorships filled in accordance with this Section 3.2 at a time when the Certificate of Incorporation provides for Term of Office Classes shall be allocated among the Term of Office Classes pursuant to Section B of Article V of the Certificate of Incorporation.

No decrease in the number of authorized directors constituting the entire Board of Directors shall shorten the term of any incumbent director.

SECTION 3.3 *Place of Meetings.* The Board of Directors of the Corporation may hold its meetings, both regular and special, at such place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors, the Chairman of the Board or the President.

SECTION 3.4 *Regular Meetings.* Promptly after each annual election of directors, the Board of Directors shall meet for the purpose of the election of officers and the transaction of other business, at the place where such annual election is held. The Board of Directors may also hold other regular meetings at such time or times and at such place or places as shall be designated by the Board of Directors from time to time. Notice of regular meetings of the Board of Directors need not be given.

SECTION 3.5 *Special Meetings.* Special meetings of the Board of Directors may be called by (i) the Chairman of the Board or (ii) the Secretary, if requested to do so by a majority of the members of the Board of Directors. Notice shall be sent to the last known address of each director, by mail, telegram, cable or telex, at least two days before the meeting, or oral notice may be substituted for such written notice if received not later than the day preceding such meeting, and the place and time of such special meeting shall be as designated in the notice of such meetings.

SECTION 3.6 *Quorum.* Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, at all meetings of the Board of Directors a majority of

the total number of directors in office shall constitute a quorum for the transaction of business, and the vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until quorum shall be present.

SECTION 3.7 *Conduct of Meetings of the Board of Directors.* The Board of Directors may, in its discretion, elect from among its members a Chairman of the Board, who may, but need not be, an officer of the Corporation. A person elected as Chairman of the Board shall serve in such capacity for such term as is specified by the Board of Directors at the time of his or her election. At each meeting of the Board of Directors, the Chairman of the Board or, in his or her absence, any other director chosen by a majority of the directors present, shall preside and act as chairman of the meeting. The Secretary or, in his or her absence, any other person whom the chairman of the meeting shall appoint, shall act as secretary of such meeting and keep the minutes thereof.

SECTION 3.8 *Meetings by Telephone Conference.* Members of the Board of Directors of the Corporation may participate in a meeting of such Board of Directors or a committee thereof by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 3.8 shall constitute presence in person at such meeting.

SECTION 3.9 *Action by Written Consent.* Except as otherwise provided by the Certificate of Incorporation, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in writing setting forth the action so taken, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

SECTION 3.10 *Committees of Directors.* The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management

of the business and affairs of the Corporation. Notwithstanding the foregoing, no committee shall have the power or authority to take any of the following actions:

(a) amend the Certificate of Incorporation (except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of any series of capital stock of the Corporation adopted by the Board of Directors as permitted by the General Corporation Law of the State of Delaware as set forth in Title 8 of the Delaware Code (the "DGCL"), fix the designations and any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the Corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation or fix the number of shares of any series of stock or authorize the increase or decrease of the shares of any series);

(b) adopt an agreement of merger or consolidation under the DGCL;

(c) recommend to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets;

(d) recommend to the stockholders a dissolution of the Corporation or a revocation of a dissolution; or

(e) amend the Bylaws of the Corporation.

In addition, unless the resolution of the Board of Directors designating the committee expressly so provides, no such committee shall have the power or authority to take any of the following actions:

(i) declare a dividend;

(ii) authorize the issuance of stock; or

(iii) adopt a certificate of ownership and merger pursuant to the DGCL.

Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

SECTION 3.11 *Interested Directors*. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because his or their votes

are counted for such purpose if (i) the material facts as to his or their relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or the committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (ii) the material facts as to his or their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof or the stockholders. Interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

SECTION 3.12 *Resignation*. Any director of the Corporation may resign at any time by giving written notice of his resignation to the President or the Secretary. Such resignation shall take effect at the date of receipt of such notice by the President or the Secretary, or at any later time specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 3.13 *Compensation of Directors*. The directors shall receive such compensation for their services as the Board of Directors may from time to time determine. No director shall be prevented from receiving compensation for his services as a director by reason of the fact that he is also an officer of the Corporation. All directors shall be reimbursed for their reasonable expenses of attendance at each regular or special meeting of the Board of Directors. Members of any committee of directors may be allowed like compensation and reimbursement for expenses for serving as members of any such committee and for attending committee meetings.

ARTICLE IV

OFFICERS

SECTION 4.1 *General*. The officers of the Corporation shall be chosen by the Board of Directors and shall include a President, a Secretary and a Treasurer. The Board of Directors, in its discretion, may also elect a Chief Executive Officer, one or more Vice Presidents (including Executive Vice Presidents and Senior Vice Presidents), Assistant Secretaries, Assistant Treasurers and other officers. Any number of offices may be held by the same person, unless otherwise prohibited by law, the Certificate of Incorporation or these Bylaws. The officers of the Corporation need not be stockholders or directors of the Corporation.

SECTION 4.2 *Election and Terms*. The Board of Directors at its first meeting held after each annual meeting of stockholders shall elect the officers of the Corporation, who shall hold their offices for such terms and shall exercise such powers

and perform such duties as shall be determined from time to time by the Board of Directors; and all officers of the Corporation shall hold office until their successors are chosen and qualified or until their earlier resignation or removal. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors.

SECTION 4.3 *Salaries*. The salaries of all officers of the Corporation shall be fixed by the Board of Directors and may be altered from time to time, except as otherwise provided by contract. No officer shall be prevented from receiving a salary solely because of the fact that he is also a director.

SECTION 4.4 *Chief Executive Officer and President*. The Chief Executive Officer, or if there be none, the President shall be the chief executive officer of the Corporation. Subject to the supervision of the Board of Directors, the Chief Executive Officer and, subject to the supervision of the Chief Executive Officer, the President shall have general charge of the business, affairs and property of the Corporation and shall have control over its officers, agents, and employees. The President shall see that all orders and resolutions of the Board of Directors and the Chief Executive Officer are carried into effect. Either the Chief Executive Officer or the President may execute and deliver certificates for shares of the Corporation, any deeds, mortgages, bonds, contracts or other instruments that the Board of Directors has authorized to be executed and delivered, except where required or permitted by law to be otherwise executed and delivered and except that the other officers of the Corporation may execute and deliver documents when authorized to do so by these Bylaws, the Board of Directors or the President. The Chief Executive Officer and the President shall also perform such other duties and may exercise such other powers as from time to time may be assigned to him or her by these Bylaws or by the Board of Directors.

SECTION 4.5 *Vice Presidents*. Each Vice President shall perform such duties and have such other powers as the Board of Directors from time to time may prescribe. Certain Vice Presidents may from time to time be designated by the Board of Directors as Executive Vice Presidents or Senior Vice Presidents, which positions shall have such varying degrees of authority as the Board of Directors shall prescribe.

SECTION 4.6 *Secretary*. The Secretary shall attend all meetings of the Board of Directors and all meetings of stockholders and record all the proceedings thereat in a book or books to be kept for that purpose; the Secretary shall also perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors, under whose supervision he or she shall act. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board of Directors, and if there be no Assistant Secretary, then the Board of Directors may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or an Assistant Secretary, if there be one, shall have authority to affix the same to any

instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his or her signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

SECTION 4.7 *Treasurer*. The Treasurer shall be the chief financial officer of the Corporation and shall have custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Board of Directors, at its regular meeting, or when the Board of Directors so requires, an account of all his or her transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his or her office and for the restoration to the Corporation, in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his or her control belonging to the Corporation.

SECTION 4.8 *Assistant Secretaries*. Except as may be otherwise provided in these Bylaws, Assistant Secretaries, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Secretary, and in the absence of the Secretary or in the event of his or her disability or refusal to act, shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

SECTION 4.9 *Assistant Treasurers*. Assistant Treasurers, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Treasurer, and in the absence of the Treasurer or in the event of his or her disability or refusal to act, shall perform the duties of the Treasurer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Treasurer. If required by the Board of Directors, an Assistant Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his or her office and for the restoration to the Corporation, in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his or her control belonging to the Corporation.

SECTION 4.10 *Other Officers*. Such other officers as the Board of Directors may appoint shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

SECTION 4.11 *Delegation of Authority*. In the case of the absence of any officer of the Corporation or for any other reason that the Board of Directors may deem sufficient, the Board of Directors may delegate some or all of the powers or duties of such officer to any other officer or to any director, employee, stockholder or agent for whatever period of time the Board of Directors determines is necessary or appropriate.

SECTION 4.12 *Removal*. Any officer may be removed, either with or without cause, by the affirmative vote of a majority of the Board of Directors, or, except in the case of any officer elected by the Board of Directors, by any officer upon whom the powers of removal may be conferred by the Board of Directors.

SECTION 4.13 *Resignation*. Any officer of the Corporation may resign at any time by giving written notice of his resignation to the Corporation. Such resignation shall take effect at the date of receipt of such notice by the Corporation, or at any later time specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

ARTICLE V

STOCK AND STOCK CERTIFICATES

SECTION 5.1 *Certificates Evidencing Shares*. Every holder of stock in the Corporation shall be entitled to have a certificate evidencing the number of shares owned by such holder signed by or in the name of the Corporation by (i) the President or a Vice President and (ii) the Secretary or an Assistant Secretary.

SECTION 5.2 *Transfer Agents and Registrars*. The Board of Directors may appoint, or authorize any officer or officers to appoint, one or more transfer agents and one or more registrars.

SECTION 5.3 *Signatures*. Where a certificate is countersigned by (i) a transfer agent other than the Corporation or an employee thereof or (ii) a registrar other than the Corporation or an employee thereof, any other signature on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such officer, transfer agent or registrar continued to discharge said office or function at the date of issuance.

SECTION 5.4 *Lost, Stolen or Destroyed Stock Certificates*. The Corporation may issue a new stock certificate in place of any certificate theretofore issued by it which is alleged to have been lost, stolen or destroyed upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issuance of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require that the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative give the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

SECTION 5.5 *Transfers*. Stock of the Corporation shall be transferable in the manner prescribed by law and in these Bylaws. Transfers of stock shall be made on the books of the Corporation only by the person named in the certificate or by his or her attorney lawfully constituted in writing and upon the surrender of the certificate therefor, which shall be cancelled before a new certificate shall be issued.

SECTION 5.6 *Record Date*. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than 60 days nor less than ten days before the date of such meeting, nor more than 60 days prior to any other action. A determination of stockholders of record entitled to notice or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

SECTION 5.7 *Registered Stockholders*. Except as otherwise required by law, the Corporation shall be entitled to recognize the exclusive right of the person registered on its books as the owner of shares to receive dividends in respect of such shares and to vote as the owner thereof, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have notice thereof.

ARTICLE VI

INDEMNIFICATION

SECTION 6.1 *General*. The Corporation shall indemnify, and advance Expenses (as this and all other capitalized words used in this Article VI and not otherwise defined shall have the respective meanings set forth in Section 6.14) to, each Indemnitee to the fullest extent permitted by applicable law in effect on the date of the

adoption of these Bylaws, and to such greater extent as applicable law may thereafter permit. The rights of an Indemnitee provided under the preceding sentence shall include, but not be limited to, the right to be indemnified to the fullest extent permitted by §145(b) of the DGCL in the case of Proceedings by or in the right of the Corporation and to the fullest extent permitted by §145(a) of the DGCL in the case of all other Proceedings. The provisions set forth below in this Article VI are provided in furtherance, and not by way of limitation, of the obligations expressed in this Section 6.1.

SECTION 6.2 *Expenses Related to Proceedings.* If an Indemnitee is, by reason of his or her Corporate Status, a witness in or a party to and is successful, on the merits or otherwise, in any Proceeding, he or she shall be indemnified against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection therewith. If an Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to any Matter in such Proceeding, the Corporation shall indemnify such Indemnitee against all Expenses actually and reasonably incurred by him or her or on his or her behalf relating to such Matter. The termination of any Matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such Matter.

SECTION 6.3 *Advancement of Expenses.* To the fullest extent permitted by §145(e) of the DGCL, each Indemnitee shall be entitled to payment of, and the Corporation shall pay, Expenses in advance of the final disposition of any Proceeding within ten days after receipt by the Corporation of a written notice requesting the advancement of such Expenses, which notice shall contain an undertaking by or on behalf of such Indemnitee to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized by §145 of the DGCL.

SECTION 6.4 *Request for Indemnification.* To obtain indemnification hereunder, an Indemnitee shall submit to the Corporation a written request with such information pertinent to such request as is reasonably available to the Indemnitee. The Secretary of the Corporation shall promptly advise the Board of Directors of any such request.

SECTION 6.5 *Determining Entitlement to Indemnification Prior to a Change of Control.* If a Change of Control has not occurred prior to or at the time a request for indemnification hereunder is submitted to the Corporation, an Indemnitee's entitlement to indemnification shall be determined in accordance with §145(d) of the DGCL. If entitlement to indemnification is to be determined by Independent Counsel, the Corporation shall furnish notice to the Indemnitee within ten days after receipt of the request for indemnification, specifying the identity and address of Independent Counsel. The Indemnitee may, within 14 days after receipt of such written notice of selection, deliver to the Corporation a written objection to such selection. Such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the

requirements of Independent Counsel and the objection shall set forth with particularity the factual basis of such assertion. If there is an objection to the selection of Independent Counsel, either the Corporation or the Indemnitee may petition the Court of Chancery of the State of Delaware or any other court of competent jurisdiction for a determination that the objection is without a reasonable basis or for the appointment of Independent Counsel selected by the court.

SECTION 6.6 Determining Entitlement to Indemnification After a Change of Control. If a Change of Control has occurred prior to or at the time a request for indemnification hereunder is submitted to the Corporation, an Indemnitee's entitlement to indemnification shall be determined in a written opinion of Independent Counsel selected by the Indemnitee. The Indemnitee shall give the Corporation written notice advising of the identity and address of the Independent Counsel so selected. The Corporation may, within seven days after receipt of such written notice of selection, deliver to the Indemnitee a written objection to such selection. The Indemnitee may, within five days after the receipt of such objection from the Corporation, submit the name of another Independent Counsel and the Corporation may, within seven days after receipt of such written notice of selection, deliver to Indemnitee a written objection to such selection. Any objection is subject to the limitations set forth in Section 6.5. The Indemnitee may petition the Court of Chancery of the State of Delaware or any other court of competent jurisdiction for a determination that the Corporation's objection to any selection of Independent Counsel is without a reasonable basis or for the appointment as Independent Counsel of a person selected by the court.

SECTION 6.7 Procedures of Independent Counsel. If a Change of Control has occurred prior to or at the time the request for indemnification hereunder is submitted to the Corporation, an Indemnitee shall be presumed (except as otherwise expressly provided in this Article VI) to be entitled to indemnification upon submission of a request for indemnification in accordance with Section 6.4, and thereafter the Corporation shall have the burden of proof to overcome the presumption in reaching a determination contrary to the presumption. The presumption shall be used by Independent Counsel as a basis for a determination of entitlement to indemnification unless the Corporation provides information sufficient to overcome such presumption by clear and convincing evidence or the investigation, review and analysis of Independent Counsel convinces him or her by clear and convincing evidence that the presumption should not apply.

Except where the determination of entitlement to indemnification is to be made by Independent Counsel, if the person or persons empowered under Section 6.5 or 6.6 to determine entitlement to indemnification shall not have made and furnished to the Indemnitee in writing a determination within 60 days after receipt by the Corporation of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and the Indemnitee shall be entitled to such indemnification unless the Indemnitee knowingly misrepresented a material fact in connection with the request for indemnification. The termination of any Proceeding or

of any Matter therein, by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not (except as otherwise expressly provided in this Article VI) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that (a) the Indemnitee did not act in good faith and in a manner that he or she reasonably believed, in the case of conduct in his or her official capacity as a director of the Corporation, to be in the best interests of the Corporation, or, in all other cases, that at least his or her conduct was not opposed to the Corporation's best interests, or (b) with respect to any criminal Proceeding, the Indemnitee had reasonable cause to believe that his or her conduct was unlawful.

SECTION 6.8 *Expenses of Independent Counsel*. The Corporation shall pay any and all reasonable fees and expenses of Independent Counsel acting pursuant to this Article VI and in any proceeding to which it is a party or witness in respect of its investigation and written report and shall pay all reasonable fees and expenses incident to the procedures in which such Independent Counsel was selected or appointed. No Independent Counsel may serve if a timely objection has been made to his or her selection until a court has determined that such objection is without a reasonable basis.

SECTION 6.9 *Trial De Novo*. In the event that (a) a determination is made pursuant to Section 6.5 or 6.6 that an Indemnitee is not entitled to indemnification under this Article VI, (b) advancement of Expenses is not timely made pursuant to Section 6.3, (c) Independent Counsel has not made and delivered a written opinion determining the request for indemnification (i) within 90 days after being appointed by a court, (ii) within 90 days after objections to his or her selection have been overruled by a court or (iii) within 90 days after the time for the Corporation or the Indemnitee to object to his or her selection or (d) payment of indemnification is not made within five days after a determination of entitlement to indemnification has been made or deemed to have been made pursuant to Section 6.5, 6.6 or 6.7, the Indemnitee shall be entitled to an adjudication in any court of competent jurisdiction of his or her entitlement to such indemnification or advancement of Expenses. In the event that a determination shall have been made that the Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 6.9 shall be conducted in all respects as a de novo trial on the merits, and Indemnitee shall not be prejudiced by reason of that adverse determination. If a Change of Control shall have occurred, in any judicial proceeding commenced pursuant to this Section 6.9, the Corporation shall have the burden of proving that the Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be. If a determination shall have been made or deemed to have been made that the Indemnitee is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 6.9, or otherwise, unless the Indemnitee knowingly misrepresented a material fact in connection with the request for indemnification.

The Corporation shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 6.9 that the procedures and presumptions of this Article VI are not valid, binding and enforceable and shall stipulate in any such court

that the Corporation is bound by all provisions of this Article VI. In the event that an Indemnitee, pursuant to this Section 6.9, seeks a judicial adjudication to enforce his or her rights under, or to recover damages for breach of, this Article VI, the Indemnitee shall be entitled to recover from the Corporation, and shall be indemnified by the Corporation against, any and all Expenses actually and reasonably incurred by him or her in such judicial adjudication, but only if he or she prevails therein. If it shall be determined in such judicial adjudication that an Indemnitee is entitled to receive part but not all of the indemnification or advancement of Expenses sought, the Expenses incurred by the Indemnitee in connection with such judicial adjudication or arbitration shall be appropriately prorated.

SECTION 6.10 *Non-Exclusivity*. The rights of indemnification and to receive advancement of Expenses provided by this Article VI shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, these Bylaws, any agreement, vote of stockholders, resolution of the Board of Directors or otherwise. The provisions of this Article VI shall continue as to an Indemnitee whose Corporate Status has ceased and shall inure to the benefit of his or her heirs, executors and administrators.

SECTION 6.11 *Insurance and Subrogation*. To the extent the Corporation maintains an insurance policy or policies providing liability insurance for directors or officers of the Corporation or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which such person serves at the request of the Corporation, each Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of coverage available for any such director or officer under such policy or policies.

In the event of any payment hereunder, the Corporation shall be subrogated to the extent of such payment to all the rights of recovery of the Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Corporation to bring suit to enforce such rights.

The Corporation shall not be liable under this Article VI to make any payment of amounts otherwise indemnifiable hereunder if, and to the extent that, Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

SECTION 6.12 *Severability*. If any provision or provisions of this Article VI shall be held to be invalid, illegal or unenforceable for any reason whatsoever, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby; and, to the fullest extent permitted by law, the provisions of this Article VI shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

SECTION 6.13 *Certain Persons Not Entitled to Indemnification*. Subject to the provisions of Section 6.9, no person shall be entitled to indemnification or advancement of Expenses under this Article VI with respect to any Proceeding, or any Matter therein, brought or made by such person against the Corporation.

SECTION 6.14 *Definitions*. As used in this Article VI, the terms set forth below shall have the following respective meanings:

“Affiliate” means, with respect to any person, any other person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such person.

“Change of Control” means the occurrence after _____, 2003⁸ of any of the following events: (a) an event required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item or any similar schedule or form) promulgated under the Exchange Act, whether or not the Corporation is then subject to such reporting requirement; (b) any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) shall become the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Corporation representing 50% or more of the combined voting power of the then outstanding voting securities of the Corporation without prior approval of at least two-thirds of the members of the Board of Directors in office immediately prior to such person’s attaining such percentage interest; or (c) the Corporation is a party to a merger, consolidation, sale of assets or other reorganization, or a proxy contest, as a consequence of which members of the Board of Directors in office immediately prior to such transaction or event constitute less than a majority of the Board of Directors thereafter.

“Corporate Status” describes the status of (i) an individual who is or was a director or officer of the Corporation, (ii) an individual who is an employee or agent of the Corporation (who is not also director or officer of the Corporation), if the Board of Directors adopts a resolution that specifically states that such employee or agent shall be entitled to the benefits of this Article VI to the same extent as if he were an officer or director, or (iii) an individual identified in clause (i) or (ii) above who is serving at the request of the Corporation as a director, officer or administrator of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

“Expenses” shall include all reasonable attorneys’ fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees and all other disbursements or expenses of the types customarily incurred in connection with

⁸ The date of the spin-off.

prosecuting, defending, preparing to prosecute or defend, investigating or being or preparing to be a witness in a Proceeding.

“Indemnitee” includes any person who is, or is threatened to be made, a witness in or a party to any Proceeding as described in Section 6.1 or 6.2 by reason of his or her Corporate Status.

“Independent Counsel” means a law firm, or member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the five years prior to his or her selection or appointment has been, retained to represent: (a) the Corporation or the Indemnitee in any matter material to either such party, (b) any other party to the Proceeding giving rise to a claim for indemnification hereunder or (c) the beneficial owner, directly or indirectly, of securities of the Corporation representing 5% or more of the combined voting power of the then outstanding voting securities of the Corporation.

“Matter” is a claim, a material issue or a substantial request for relief.

“Proceeding” includes any action, suit, arbitration, alternate dispute resolution mechanism, investigation, administrative hearing or any other proceeding, whether civil, criminal, administrative or investigative, except one initiated by an Indemnitee pursuant to Section 6.9 to enforce his or her rights under this Article VI.

SECTION 6.15 *Notices*. Any notice or other communication required or permitted to be sent to the Corporation pursuant to this Article VI shall be addressed to the Secretary of the Corporation and any such notice or other communication to an Indemnitee shall be given in writing by depositing the same in the United States mail, with postage thereon prepaid, addressed to the person to whom such notice is directed at the address of such person on the records of the Corporation, and such notice shall be deemed given at the time when the same shall be so deposited in the United States mail.

SECTION 6.16 *Contractual Rights*. The right to be indemnified and to the advancement or reimbursement of Expenses in accordance with this Article VI (i) is a contract right based upon good and valuable consideration, pursuant to which Indemnitee may sue as if these provisions were set forth in a separate written contract between him or her and the Corporation, (ii) is and is intended to be retroactive and shall be available as to events occurring prior to the adoption of these provisions and (iii) shall continue after any rescission or restrictive modification of such provisions as to events occurring prior to such rescission or modification.

ARTICLE VII

NOTICES

SECTION 7.1 *Notices*. Whenever written notice is required by law, the Certificate of Incorporation or these Bylaws to be given to any director, member of a

committee or stockholder, such notice may be given by mail, addressed to such director, member of a committee or stockholder, at his address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Written notice may also be given personally or by telegram, telecopy, telex or cable and such notice shall be deemed given at the time when the same is sent.

SECTION 7.2 *Waiver of Notice*. Whenever notice is required by law, the Certificate of Incorporation or these Bylaws to be given to any director, member of a committee or stockholder, a written waiver, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting of stockholders, in person or by proxy, or at a meeting of the Board of Directors or committee thereof shall constitute a waiver of notice of such meeting, except when the person attends such meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice unless so required by the Certificate of Incorporation or these Bylaws.

ARTICLE VIII

AMENDMENTS

SECTION 8.1 *Amendments by Stockholders*. These Bylaws may be altered, amended or repealed, in whole or in part, or new Bylaws may be adopted, by the affirmative vote of the holders of record of at least 66 2/3% of the combined voting power of all the outstanding stock of the Corporation entitled to vote in respect thereof, voting together as a single class.

SECTION 8.2 *Amendments by Directors*. These Bylaws may be altered, amended or repealed, in whole or in part, or new Bylaws may be adopted, by action of a majority of directors then in office.

ARTICLE IX

GENERAL PROVISIONS

SECTION 9.1 *Fiscal Year*. The fiscal year of the Corporation shall end on the 31st day of March of each year, unless otherwise provided by resolution of the Board of Directors.

SECTION 9.2 *Disbursements*. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

SECTION 9.3 *Corporate Seal*. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced.

AMENDED AND RESTATED DISTRIBUTION AGREEMENT

between

CENTEX CORPORATION

and

CENTEX CONSTRUCTION PRODUCTS, INC.

November 4, 2003

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EXHIBITS

Exhibit A — Form of Administrative Services Agreement

Exhibit B — Form of Intellectual Property Agreement

AMENDED AND RESTATED DISTRIBUTION AGREEMENT

This AMENDED AND RESTATED DISTRIBUTION AGREEMENT, dated as of November 4, 2003 (this "Agreement"), amends and restates in its entirety the DISTRIBUTION AGREEMENT, dated as of July 21, 2003, between CENTEX CORPORATION, a Nevada corporation ("Centex"), and CENTEX CONSTRUCTION PRODUCTS, INC., a Delaware corporation ("CXP").

WITNESSETH:

WHEREAS, as of the date hereof, Centex owns 11,962,304 shares of Common Stock, par value \$.01 per share, of CXP ("Common Stock"), representing approximately 65% of the outstanding shares of such class;

WHEREAS, prior to the date upon which the Reclassification (as hereinafter defined) is consummated, Centex will contribute 9,220,000 shares of Common Stock (the "Contributed Shares") to ARG Merger Corporation, a Delaware corporation and a wholly owned subsidiary of Centex ("Merger Sub") and will continue to own 2,742,304 shares of Common Stock (the "Additional Shares");

WHEREAS, concurrently with the execution hereof, CXP, Centex and Merger Sub are entering into an Amended and Restated Agreement and Plan of Merger, dated as of the date hereof (as amended from time to time, the "Merger Agreement"), pursuant to which, among other things, Merger Sub will merge with and into CXP (the "Merger"), with the result that the following changes will be made to the capital stock of CXP and Merger Sub: (i) the Contributed Shares will be canceled and retired with no securities or other consideration issued in exchange therefor; (ii) all of the outstanding shares of common stock of Merger Sub will be converted into an aggregate of 9,220,000 shares (the "Class B Shares") of a new class of common stock of the Company to be designated as Class B Common Stock, par value \$.01 per share ("Class B Common Stock"), which class will be entitled to elect at least 85% of the members of the Board of Directors of CXP and will in all other respects be identical to the Common Stock; and (iii) all other shares of Common Stock held by the stockholders of CXP, including the Additional Shares, will remain issued and outstanding (such changes, as they relate to the capital stock of CXP, being referred to herein as the "Reclassification");

WHEREAS, the Board of Directors of Centex has determined that it is desirable and in the best interests of Centex and its stockholders to distribute the Class B Shares and all shares of Common Stock owned by Centex on the Distribution Date (as hereinafter defined) (collectively, the "Distributable Shares"), on the terms and subject to the conditions set forth in this Agreement, to the holders of record of the Common Stock, par value \$.25 per share ("Centex Common Stock"), of Centex as of the Distribution Record Date (as hereinafter defined) (the "Distribution");

WHEREAS, upon the terms and subject to the conditions of this Agreement, the Board of Directors of CXP shall declare the Cash Dividend (as hereinafter defined), payable on a pro rata basis to the holders of record of Common Stock as of the Cash Dividend Record Date (as hereinafter defined);

WHEREAS, the Cash Dividend shall be paid prior to the consummation of the Reclassification and the Distribution;

WHEREAS, Centex has submitted a request for a ruling (as it may be amended from time to time, the "Ruling Request") from the IRS (as hereinafter defined) confirming that the Distribution will be a tax-free distribution within the meaning of Section 355 of the Code (as defined herein); and

WHEREAS, each of Centex and CXP desire to set forth their agreement as to the principal corporate transactions required in order to effect the Reclassification, the Cash Dividend, the Distribution and the other Transactions (as hereinafter defined);

NOW, THEREFORE, in consideration of the premises, the terms and conditions set forth herein, the mutual benefits to be gained from the performance thereof, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I.

DEFINITIONS

SECTION 1.1 *Certain Definitions.* The following terms, as used herein, shall have the following meanings:

“Action” means any suit, action, arbitration, inquiry, investigation or other proceeding of any nature (whether criminal, civil, legislative, administrative, regulatory, prosecutorial or otherwise) by or before any arbitrator or Governmental Entity or similar Person or body.

“Administrative Services Agreement” means the Administrative Services Agreement to be entered into prior to or on the Distribution Date between CXP and Centex Service Company, which shall be substantially in the form of Exhibit A hereto, with such changes thereto as CXP and Centex Service Company shall mutually agree.

“Affiliate” means, when used with respect to a specified Person, another Person that controls, is controlled by, or is under common control with such Person. As used in this definition, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities or other interests, by contract or otherwise.

“Ancillary Agreements” means all agreements, certificates, deeds, instruments, assignments and other written arrangements (other than this Agreement) entered into between Centex or any of its Affiliates (including Centex Service Company) on the one hand and CXP or any of its Affiliates on the other hand in connection with the Transactions, including the Administrative Services Agreement and the Intellectual Property Agreement.

“Assets” means assets, properties and rights (including goodwill), wherever located (including in the possession of vendors or other third parties or elsewhere), whether real, personal or mixed, tangible, intangible or contingent, in each case whether or not recorded or reflected or required to be recorded or reflected on the books and records or financial statements of any Person.

“Authorized Capital Increase Proposal” has the meaning set forth in the Merger Agreement.

“Business Day” shall mean any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies are authorized or obligated by law to close in New York City.

“Cash Dividend Date” means the close of business on the Business Day next preceding to the Distribution Date.

“Cash Dividend Record Date” means the close of business on the Business Day next preceding the Distribution Record Date.

“Centex Business” means each and every business conducted at any time prior to, on or after the Distribution Date by Centex or any current, former or future Subsidiary of Centex (other than CXP and its Subsidiaries), whether or not such Subsidiary is a Subsidiary of Centex on the date hereof, except for the CXP Business.

“Centex Group” means Centex and each Person (other than any member of the CXP Group) that is a Subsidiary of Centex immediately prior to the Distribution Date.

“Centex Indemnites” means Centex, each member of the Centex Group, each of their respective present and former directors, officers, employees and agents and each of the heirs, executors, successors and assigns of any of the foregoing.

“Centex Liabilities” means any and all Liabilities whatsoever that arise out of, result from or are related to the operation of the Centex Business or the ownership of the Assets of the Centex Business by Centex, any predecessor entity of Centex (and all predecessors thereto) or any current, former or future Subsidiary of Centex (other than CXP and its Subsidiaries), whether such Liabilities arise before, on or after the Distribution Date and whether known or unknown, fixed or contingent, and shall include, without limitation:

(a) any Liabilities for a breach by Centex of any representation, warranty or covenant herein or in the Merger Agreement; and

(b) any and all Liabilities which CXP incurs as a result of, and to the extent resulting from, information provided by Centex in writing relating to Centex specifically for inclusion in the Proxy Statement (or any Amendment thereto), any other solicitation materials or any oral solicitation of proxies or any report or document filed by CXP with the Commission.

“Code” means the Internal Revenue Code of 1986, as amended, and the Treasury regulations promulgated thereunder, including any successor legislation.

“Commission” means the Securities and Exchange Commission.

“CXP Business” means each and every business conducted at any time prior to, on or after the Distribution Date by CXP or any current, former or future Subsidiary of CXP, whether or not such Subsidiary is a Subsidiary of CXP on the date hereof.

“CXP Certificate of Incorporation” means the Restated Certificate of Incorporation of CXP as in effect immediately after the Reclassification.

“CXP Group” means CXP and each Person that is a Subsidiary of CXP immediately prior to the Distribution Date.

“CXP Indemnites” means CXP, each member of the CXP Group, each of their respective present and former directors, officers, employees and agents and each of the heirs, executors, successors and assigns of any of the foregoing.

“CXP Liabilities” means any and all Liabilities whatsoever that arise out of, result from or are related to the operation of the CXP Business or the ownership of the Assets of the CXP Business by CXP, any predecessor entity of CXP (and all predecessors thereto) or any current, former or future Subsidiary of CXP or any such predecessor, whether such Liabilities arise before, on or after the Distribution Date and whether known or unknown, fixed or contingent, and shall include, without limitation:

(a) any and all Liabilities to which Centex or any of its predecessors or successors may become subject arising from or based upon its status or alleged status as a “controlling person” (as defined under Section 15 of the Securities Act and Section 20 of the Exchange Act) of CXP or a stockholder of CXP relating to (i) the Proxy Statement (or any amendment thereto) or any other solicitation materials or any oral solicitations of proxies (except for liabilities which CXP incurs as a result of, and to the extent resulting from, information provided by Centex in writing relating to Centex specifically for inclusion in the Proxy Statement (or any amendment thereto) or any such other solicitation materials or oral solicitation); or (ii) any other report or document filed by CXP with the Commission at any time before, on or after the Distribution Date (except for liabilities which CXP incurs as a result of, and to the extent resulting from, information provided by Centex in writing relating to Centex specifically for inclusion in such report or document);

(b) any Liabilities for a breach by CXP of any representation, warranty or covenant herein or in the Merger Agreement; and

(c) any and all Liabilities which Centex incurs as a result of, and to the extent resulting from, information provided in writing by CXP relating to CXP specifically for inclusion in any proxy or information statement provided by Centex to its stockholders or any related solicitation materials or other similar communications or any report or document filed by Centex with the Commission.

“Declaration Date” means the date on which (a) the Centex Board of Directors shall authorize and declare the Distribution and (b) the CXP Board of Directors shall authorize and declare the Cash Dividend.

“DGCL” means the General Corporation Law of the State of Delaware.

“Distribution Agent” means the distribution agent selected by Centex to effect the Distribution, which may be Centex’s stock transfer agent.

“Distribution Date” means a Business Day determined by the Board of Directors of Centex, which shall be after the payment of the Cash Dividend and the consummation of the Reclassification, for the mailing of certificates evidencing Distributable Shares to stockholders of Centex in the Distribution.

“Distribution Record Date” means a Business Day determined by the Board of Directors of Centex as the record date for the determination of the holders of record of Centex Common Stock entitled to receive the Distributable Shares in the Distribution.

“Established Liability” means, with respect to each Centex stockholder, the amount of Tax Liability (including interest and penalties) resulting directly from the Distribution, as evidenced by (i) an amended tax return of such Centex stockholder reflecting the amount of such Tax Liability, together with proof of payment of such amount, or (ii) a deficiency notice received by such Centex stockholder from the IRS setting forth the amount of such Tax Liability, together with proof of payment of such amount.

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

“Form 8-A” means a registration statement on Form 8-A of CXP pursuant to which the Class B Common Stock is to be registered under the Exchange Act, including all amendments thereto.

“Governance Proposals” has the meaning set forth in the Merger Agreement.

“Governmental Entity” means any federal, state, local, or foreign government or any court, tribunal, administrative agency or commission or other governmental or regulatory authority or agency, domestic, foreign or supranational.

“Intellectual Property Agreement” means the Intellectual Property Agreement to be entered into prior to or on the Distribution Date between Centex and CXP, which shall be substantially in the form of Exhibit B hereto, with such changes thereto as Centex and CXP shall mutually agree.

“IRS” means the Internal Revenue Service.

“Liabilities” shall mean any and all losses, claims, charges, debts, demands, actions, causes of action, suits, damages, obligations, payments, costs and expenses, sums of money, accounts, reckonings, bonds, specialties, indemnities and similar obligations, exonerations, covenants, contracts, controversies, agreements, promises, doings, omissions, variances, guarantees, make whole agreements and similar obligations, and other liabilities, including all contractual obligations, whether absolute or contingent, matured or unmatured, liquidated or unliquidated, accrued or unaccrued, known or unknown, whenever arising, and including those arising under any law, rule, regulation, Action, threatened or contemplated Action (including the costs and expenses of demands, assessments, judgments, settlements and compromises relating thereto and attorneys’ fees and any and all costs and expenses, whatsoever reasonably incurred in investigating, preparing or defending against any such Actions or threatened or contemplated Actions), order or consent decree of any governmental or other regulatory or administrative agency, body or commission or any award of any arbitrator or mediator of any kind, and those arising under any contract, commitment or undertaking, including those arising under this Agreement or the Merger Agreement, in

each case, whether or not recorded or reflected or required to be recorded or reflected on the books and records or financial statements of any Person.

“Material Adverse Effect” means, with respect to any Person, any change, effect, event, occurrence or development that is, individually or in the aggregate, materially adverse to the business, operations, assets, liabilities, condition (financial or otherwise), results of operations or prospects of such Person.

“Name Change Proposal” has the meaning set forth in the Merger Agreement.

“NYSE” means the New York Stock Exchange, Inc.

“NYSE Listing Application” shall mean the application to be submitted by CXP to the NYSE for the listing of the Class B Common Stock.

“Person” means any individual, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, Governmental Entity or other entity of any kind or nature.

“Proxy Statement” has the meaning set forth in the Merger Agreement.

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

“Stockholder Rights Plan Proposal” has the meaning set forth in the Merger Agreement.

“Stockholders Meeting” has the meaning set forth in the Merger Agreement.

“Subsidiary” means, with respect to any Person, (i) any corporation of which at least a majority of the securities or other ownership interests having by their terms ordinary voting power to elect a majority of the board of directors are directly or indirectly owned or controlled by such Person and its Subsidiaries, (ii) any partnership of which such Person or one of its Subsidiaries is a general partner or as to which such Person and its Subsidiaries are entitled to receive at least a majority of the assets upon the liquidation thereof or (iii) any limited liability company of which such Person or one of its Subsidiaries is a manager (or is entitled as a member to exercise management rights over the conduct of the business of such limited liability company) or as to which such Person and its Subsidiaries are entitled to receive at least a majority of the assets upon the liquidation thereof.

“Tax” or “Taxes” means taxes of any kind, levies or other like assessments, customs, duties, imposts, charges or fees, including income, gross receipts, ad valorem, value added, excise, real or personal property, asset, sales, use, license, payroll, transaction, capital, net worth and franchise taxes, withholding, employment, social security, workers compensation, utility, severance, production, unemployment compensation, occupation, premium, windfall profits, transfer and gains taxes or other governmental taxes imposed or payable to the United States, or any state, county, local or foreign government or subdivision or agency thereof, and in each instance such term shall include any interest, penalties, additions to tax or additional amounts attributable to any such tax.

“Transaction Agreements” means this Agreement, the Merger Agreement and the Ancillary Agreements.

“Transactions” means the Reclassification, the Cash Dividend, the Distribution and the other transactions contemplated by the Transaction Agreements.

SECTION 1.2 *Other Defined Terms.* The following terms have the meanings assigned to them in the provisions of this Agreement referred to in the table below:

Term	Section
355 Failure	5.1(b)
Acquisition Proposal	4.4(a)
Additional Shares	Recitals
Cash Dividend	2.2(a)
Centex	Preamble
Centex Common Stock	Recitals
Centex Failure	5.2(b)
Centex Member	5.1(b)
Centex Tax Liability	5.1(c)
Common Stock	Recitals
CXP	Preamble
CXP Failure	5.1(b)
CXP Member	5.2(b)
Distribution	Recitals
Distributable Shares	Recitals
Final Determination	5.3(b)
Indemnifying Party	5.3(a)
Indemnitee	5.3(a)
IRS Ruling	2.1(b)(i)
Merger	Recitals
Merger Agreement	Recitals
Merger Sub	Recitals
Required Consents	4.7
Ruling Request	Recitals
Target Date	4.1(c)
Tax Claim	5.3(b)
Third Party Claim	5.3(a)

ARTICLE II.

THE DISTRIBUTION AND CASH DIVIDEND

SECTION 2.1 *The Distribution.*

(a) *The Distribution.* Subject to the conditions set forth in Section 2.1(b), on the Declaration Date, the Board of Directors of Centex shall declare the Distribution. In addition, in order to effect the Distribution, on the Distribution Date, if the Cash Dividend shall have been paid and the Reclassification shall have been consummated and subject to the other conditions set forth in Section 2.1(b), Centex shall cause the Distribution Agent to distribute the Distributable Shares to the holders of record of Centex Common Stock as of the Distribution Record Date, on a pro rata basis and taking into account the provisions of Section 2.1(c). Upon receipt by Centex of certificates representing the Class B Shares as a result of the Reclassification, Centex shall deliver such certificates and its certificate evidencing the Additional Shares to the Distribution Agent. Until such time as the certificates representing the Distributable Shares are mailed to holders of record of Centex Common Stock on the Distribution Record Date or on which fractional Distributable Shares are sold on behalf of such holders, the Distribution Agent shall hold the certificates representing the Distributable Shares on behalf of such holders. Centex shall

enter into an agreement with the Distribution Agent in connection with the foregoing, and shall agree, among other things, to reimburse the Distribution Agent for its reasonable costs, expenses and fees in connection with the Distribution.

(b) *Conditions to the Distribution.* The obligations of Centex to declare the Distribution on the Declaration Date and to cause the Distribution to be effected on the Distribution Date are subject to the satisfaction or waiver by Centex, as determined by Centex in its sole discretion, of the conditions set forth below (which conditions must be satisfied or waived on or prior to the Declaration Date unless any such condition by its terms can only be satisfied after the Declaration Date, in which case such condition must be satisfied or waived on or prior to the Distribution Date):

(i) a private letter ruling from the IRS shall have been obtained, and shall continue in effect, providing that, among other things, the Reclassification and the Distribution will qualify as tax-free transactions for federal income tax purposes under Sections 368(a), 354 and 355 of the Code (the "IRS Ruling"), which ruling shall be in form and substance satisfactory to Centex in its sole discretion; and Centex and CXP shall have complied with all conditions set forth in such ruling that are required to be complied with prior to the Declaration Date and the Distribution Date;

(ii) any material governmental approvals and consents necessary for Centex to declare and effect the Distribution and the other Transactions shall have been obtained and shall be in full force and effect;

(iii) no order, injunction or decree issued by any court or agency of competent jurisdiction or other legal restraint or prohibition preventing the declaration and effectuation of the Distribution or the consummation of the other Transactions shall be in effect and no other event outside the control of Centex shall have occurred or failed to occur that prevents the lawful declaration and effectuation of the Distribution or the consummation of the other Transactions;

(iv) the Distribution and the other Transactions shall be in compliance with applicable federal and state securities and other applicable laws;

(v) all of the Required Consents shall have been obtained;

(vi) in the case of the obligation to declare the Distribution, (A) all conditions to the payment of the Cash Dividend shall have been satisfied or waived by CXP; (B) the Cash Dividend shall have been declared by the Board of Directors of CXP and (C) no circumstances shall exist that, in the reasonable judgment of Centex, could be expected to prevent the payment of the Cash Dividend prior to the Distribution; and, in the case of the obligation to effect the Distribution, the Cash Dividend shall have been paid to the stockholders of CXP (including Centex);

(vii) in the case of the obligation to declare the Distribution, (A) all conditions to the obligations of Centex to consummate the Reclassification set forth in the Merger Agreement (other than the conditions set forth in Section 4.2(d) and the conditions set forth in Section 4.2(e) to the extent it requires that the Cash Dividend have been paid) shall have been satisfied or waived by Centex; and (B) no circumstances shall exist that, in the reasonable judgment of Centex, could be expected to prevent the consummation of the Reclassification immediately prior to the Distribution; and, in the case of the obligation to effect the Distribution, the Reclassification shall have been consummated;

(viii) the Form 8-A shall have been filed with the Commission;

(ix) the Class B Shares shall have been approved for listing on the NYSE, subject to official notice of issuance;

(x) all representations and warranties of CXP set forth in this Agreement and the Merger Agreement that are qualified as to materiality shall be true and correct, and any such representations and warranties that are not so qualified shall be true and correct in all material respects, as of the Distribution Date; and

(xi) all covenants to have been performed at or prior to the Distribution Date by CXP pursuant to this Agreement or the Merger Agreement shall have been performed at or prior to the Distribution Date by CXP in all material respects.

The foregoing conditions are solely for the benefit of Centex and shall not give rise to or create any duty on the part of Centex to waive or not waive any such condition.

(c) *Sale of Fractional Shares.* Centex shall appoint the Distribution Agent as agent for each holder of record of Centex Common Stock who would otherwise be entitled to receive in the Distribution any fractional Distributable Share. The Distribution Agent shall aggregate all such fractional shares and sell them in an orderly manner after the Distribution Date in the open market and, after completion of such sales, distribute a pro rata portion of the net proceeds from such sales, based upon the gross selling price of all such fractional shares, to each shareholder of Centex who would otherwise have received a fractional share. Centex shall reimburse the Distribution Agent for its reasonable costs, expenses and fees (other than selling expenses) in connection with the sale of fractional Distributable Shares and the distribution of the proceeds thereof in accordance with this Section 2.1(c).

(d) *Other Actions.*

(i) Centex shall prepare and mail, at such time as determined by Centex, to the holders of Centex Common Stock, such information concerning CXP, its business, operations and management, the Distribution and the tax consequences thereof and such other matters as Centex shall reasonably determine or as may be required by law. Centex shall give CXP and its counsel reasonably appropriate advance opportunity to review and comment upon such documents and shall consider in good faith any comments CXP timely delivers to Centex with respect to such information. CXP agrees to cooperate with Centex in the preparation of, and provide any information reasonably requested by Centex for inclusion in, such mailing. CXP represents that all information provided to Centex for such mailing shall be true and correct in all material respects. Centex and CXP will prepare, and CXP will, to the extent required under applicable law, file with the Commission any such documentation, including any no action letters or other requests for interpretive or regulatory assistance, if any, which Centex reasonably determines are necessary or desirable to effectuate the Distribution and the other transactions contemplated hereby and by the Merger Agreement and Centex and CXP shall each use its reasonable best efforts to obtain all necessary approvals from the Commission with respect thereto as soon as practicable.

(ii) CXP and Centex shall take all such action as may be necessary or appropriate under the securities or blue sky laws of the United States (and any comparable laws under any foreign jurisdiction) in connection with the Distribution and the other Transactions.

(iii) CXP shall prepare and file, and shall use its reasonable best efforts to have approved, subject to official notice of issuance, the NYSE Listing Application.

(iv) CXP shall prepare and file the Form 8-A (which may include or incorporate by reference information contained in the Proxy Statement) with the Commission as promptly as practicable following the execution hereof, and shall use its reasonable best efforts to cause the Form 8-A to become effective under the Exchange Act immediately following the consummation of the Reclassification or as soon as practicable thereafter.

(v) On or prior to the Distribution Date, CXP shall from time to time, as and to the extent reasonably requested by Centex or requested by the IRS, provide any documentation, certifications or other information necessary to enable Centex to obtain the IRS Ruling.

(vi) Centex shall keep CXP informed regarding the status of the IRS Ruling and any significant requests made by the IRS for changes or undertakings in connection with the Transactions and shall provide CXP with copies of any additional submissions by Centex to the IRS related to the IRS Ruling.

(vii) Subject to the terms and conditions of this Agreement, on or prior to the Distribution Date, each of Centex and CXP shall consummate the transactions in connection with the Distribution that are contemplated by the IRS Ruling, the Ruling Request and any related submissions by Centex to the IRS.

(viii) Centex shall give CXP and its counsel reasonably appropriate advance opportunity to review and comment upon filings to be made by Centex with the Commission with respect to this Agreement, the Merger Agreement or any of the Transactions and shall consider in good faith any comments CXP timely delivers to Centex with respect to such filing.

(ix) In addition to those matters specifically set forth above, Centex and CXP shall each take such other reasonable steps as are necessary and appropriate to cause the conditions set forth in Section 2.1(b) to be satisfied and to effect the Distribution on the Distribution Date.

(x) CXP agrees that it shall not file with the Commission any report or other document that contains any disclosure relating to the Transaction Agreements or the Transactions without the prior written consent of Centex with respect to such disclosure, which consent shall not be unreasonably withheld. Centex will review all such draft reports and other documents promptly and will provide any comments to CXP within a reasonable period of time.

(xi) Prior to the Distribution Date, CXP shall not amend, and the CXP Board of Directors shall not approve any amendment to, CXP's Restated Certificate of Incorporation or CXP's Amended and Restated Bylaws, other than the Governance Proposals, the Authorized Capital Increase Proposal, the Name Change Proposal and the amendments to the Certificate of Incorporation, which will take effect upon the filing of the certificate of merger with the Secretary of State of the State of Delaware in connection with the Reclassification in accordance with the terms of the Merger Agreement.

(xii) On or prior to the Distribution Date, each of Centex (or, in the case of the Administrative Services Agreement, Centex Service Company) and CXP shall enter into the Administrative Services Agreement and the Intellectual Property Agreement.

(xiii) Except as expressly provided otherwise herein, all agreements and arrangements existing on the date hereof between Centex or any of its Subsidiaries on the one hand and CXP and any of its Subsidiaries on the other hand, whether written or oral, shall continue in full force and effect in accordance with their terms and consistent with past practice from the date hereof, through the Distribution Date and thereafter.

(xiv) On or prior to the Distribution Date, each of Centex and CXP, as the case may be, shall, from time to time and to the extent reasonably requested by the other, provide any documentation, certifications or other information to make required filings in connection with the transactions contemplated by this Agreement and the Merger Agreement.

SECTION 2.2 *The Cash Dividend.*

(a) *The Cash Dividend.* Subject to the conditions set forth in Section 2.2(b), on the Declaration Date, the Board of Directors of CXP shall declare a pro rata cash dividend to the holders of record of CXP Common Stock as of the Cash Dividend Record Date in the amount of \$6.00 per share (the "Cash Dividend"). In addition, subject to the conditions set forth in Section 2.2(b), on the Cash Dividend Date, CXP shall pay the Cash Dividend to the holders of record of CXP Common Stock as of the Cash Dividend Record Date, on a pro rata basis.

(b) *Conditions of the Cash Dividend.* The obligations of CXP to declare the Cash Dividend on the Declaration Date and to cause the Cash Dividend to be paid on the Cash Dividend Date are subject to the satisfaction or waiver by CXP, as determined by CXP in its sole discretion, of the conditions set forth below (which conditions must be satisfied or waived on or prior to the Declaration Date unless any such

condition by its terms can only be satisfied after the Declaration Date, in which case such condition must be satisfied or waived on or prior to the Cash Dividend Distribution Date):

(i) any material governmental approvals and consents necessary for CXP to declare and pay the Cash Dividend and consummate the other Transactions shall have been obtained and shall be in full force and effect;

(ii) no order, injunction or decree issued by any court or agency of competent jurisdiction or other legal restraint or prohibition in each case preventing the declaration or payment by CXP of the Cash Dividend or the consummation of the other Transactions shall be in effect and no other event outside the control of CXP shall have occurred or failed to occur that prevents the declaration or the lawful payment of the Cash Dividend or consummation of the other Transactions;

(iii) the Cash Dividend and the other Transactions shall be in compliance with applicable federal and state securities and other applicable laws;

(iv) all of the Required Consents shall have been obtained ;

(v) in the case of the obligation to declare the Cash Dividend, all conditions to the Distribution (other than the declaration and payment of the Cash Dividend) shall have been satisfied or waived by Centex; in the case of the declaration and the payment of the Cash Dividend, the Distribution shall have been declared by the Board of Directors of Centex substantially simultaneously with the declaration of the Cash Dividend and no circumstances shall exist that would reasonably be expected to prevent the prompt consummation of the Distribution following payment of the Cash Dividend;

(vi) in the case of the obligation to declare the Cash Dividend, all conditions to the obligations on the part of CXP to consummate the Reclassification set forth in the Merger Agreement shall have been satisfied or waived; in the case of the payment of the Cash Dividend, no circumstances shall exist that would reasonably be expected to prevent the prompt consummation of the Reclassification following payment of the Cash Dividend;

(vii) the Form 8-A shall have been filed with the Commission;

(viii) the Class B Common Stock shall have been approved for listing on the NYSE, subject to official notice of issuance;

(ix) all representations and warranties of Centex set forth in this Agreement and the Merger Agreement that are qualified as to materiality shall be true and correct, and any such representations and warranties that are not so qualified shall be true and correct in all material respects as of the Declaration Date and the Cash Dividend Date;

(x) all covenants to have been performed at or prior to the Distribution Date by Centex pursuant to this Agreement or the Merger Agreement shall have been performed by Centex at or prior to the Distribution Date in all material respects;

(xi) CXP shall have entered into definitive loan agreements for financing which, when added to CXP's available cash and reasonably anticipated cash flow through the Declaration Date, will permit the payment of the Cash Dividend, with sufficient cash available, in the reasonable judgment of the Board of Directors of CXP, to meet the needs of CXP's business, and which are subject only to customary conditions. CXP shall provide copies of such loan agreements to Centex and shall provide such other documents and information in connection therewith as Centex shall reasonably request; and

(xii) the payment of the Cash Dividend shall be permitted by the applicable provisions of the DGCL, and the Board of Directors of CXP shall have obtained such reasonable and customary assurances as the Board of Directors of CXP deems necessary for the authorization of such dividend.

The foregoing conditions are solely for the benefit of CXP and shall not give rise to or create any duty on the part of CXP to waive or not waive any such condition.

(c) *Certain Limitations on Expenditures by CXP.* Until such time as the Cash Dividend has been paid, CXP shall not, and shall not permit any of its Subsidiaries to, without the prior written consent of Centex, (i) pay any other cash dividends on any of its capital stock other than regular quarterly cash dividends not in excess of \$0.05 per share of Common Stock, or (ii) repurchase any shares of its capital stock, except purchases necessary to offset exercises of employee stock options that are outstanding on the date hereof.

(d) *Financing.* CXP agrees that it will use its commercially reasonable efforts to secure financing which, when added to its available cash and reasonably anticipated cash flow through the Declaration Date, will permit payment of the Cash Dividend, with sufficient cash available, in the reasonable judgment of the Board of Directors of CXP, to meet the needs of CXP's business.

SECTION 2.3 *Declaration Date; Further Assurances.*

(a) The parties agree that the Declaration Date shall occur as soon as reasonably practicable following the satisfaction or waiver of the conditions to the declaration of the Distribution set forth in Section 2.1(b) (other than the declaration of the Cash Dividend) and the conditions to the declaration of the Cash Dividend set forth in Section 2.2(b). The parties shall cause their respective Boards of Directors (or in the case of Centex, a duly authorized committee thereof) to meet in person or telephonically on the Declaration Date and each shall take such corporate action at such meeting as shall be required to (in the case of CXP) declare the Cash Dividend and (in the case of Centex) declare the Distribution. Following such meetings, the parties shall take all actions required to consummate the Reclassification in accordance with the terms of the Merger Agreement, including the filing of the certificate of merger relating to the Reclassification with the Secretary of State of the State of Delaware.

(b) Subject to each of Centex's and CXP's right to terminate this Agreement in accordance with Section 6.11, if at any time after the date hereof any further action is reasonably necessary or desirable to carry out the Transactions or any other purpose of the Transaction Agreements, the proper officers of each party to this Agreement shall take all such necessary action. Without limiting the foregoing, and subject as aforesaid, Centex and CXP shall use all reasonable efforts to obtain the IRS Ruling and all consents and approvals, to enter into all amendatory agreements to make all filings and applications that may be required for the consummation of the transactions contemplated by this Agreement and the Merger Agreement, including all applicable governmental and regulatory filings.

ARTICLE III.

REPRESENTATIONS AND WARRANTIES

SECTION 3.1 *Representations and Warranties of CXP.* CXP hereby represents and warrants to Centex as follows:

(a) *Organization; Good Standing.* CXP is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has all corporate power required to consummate the Transactions.

(b) *Authorization.* The execution, delivery and performance by CXP of the Transaction Agreements and the consummation by CXP of the Transactions have been duly authorized by all necessary corporate action on the part of CXP, other than the formal declaration of the Cash Dividend by the Board of Directors of CXP and the approval of the Reclassification, the Governance Proposals the Authorized Capital Increase Proposal, the Name Change Proposal and the Stockholder Rights Plan Proposal by the stockholders of CXP. Each of this Agreement and the Merger Agreement constitutes, and each other Transaction Agreement executed and delivered or to be executed and delivered by CXP will, upon such execution and delivery, constitute a legal, valid and binding obligation of CXP, enforceable against CXP in accordance with its terms, except insofar as enforcement may be limited by (i) any bankruptcy, reorganization, insolvency, fraudulent conveyance

or transfer, moratorium or similar laws affecting creditors' rights generally and (ii) general principles of equity (regardless of whether such is considered in a proceeding at law or in equity).

(c) *Consents and Filings.* Except (i) for the filing of a certificate of merger in connection with the Reclassification and any other filings required to be made with the Secretary of State of the State of Delaware, (ii) for the IRS Ruling, (iii) for the filing of the Proxy Statement and the Form 8-A and any other reports or documents required to be filed under the Exchange Act and (iv) the NYSE Listing Application, no consent of, or filing with, any Governmental Entity which has not been obtained or made is required for or in connection with the execution and delivery of the Transaction Agreements by CXP or the consummation by CXP of the Transactions.

(d) *Noncontravention.* Except in the case of any consents that CXP will use its reasonable best efforts to obtain prior to the Distribution Date (which consents are listed on Schedule 3.1(d)), the execution, delivery and performance of the Transaction Agreements by CXP do not, and the consummation by CXP of the Transactions will not, (i) violate any applicable federal, state or local statute, law, rule or regulation, (ii) violate any provision of the Restated Certificate of Incorporation or the Amended and Restated Bylaws of CXP or (iii) violate any provision of, or result in the termination or acceleration of, or entitle any party to accelerate any obligation or indebtedness under, any mortgage, lease, franchise, license, permit, agreement, instrument, order, arbitration award, judgment or decree to which CXP or any of its Subsidiaries is a party or by which any of them are bound, except for, in the case of clauses (i) and (iii) above, such violations as would not result in a Material Adverse Effect with respect to CXP or prevent the parties from complying with the terms and provisions of the Transaction Agreements in any material respect.

(e) *Litigation.* There are no actions or suits against CXP pending, or to the knowledge of CXP, threatened which seek to, and CXP is not subject to any judgments, decrees or orders which, enjoin or rescind the Transactions or otherwise prevent CXP from complying with the terms and provisions of the Transaction Agreements.

(f) *Change of Control Adjustments.* None of the Transactions will (i) constitute a "change of control" or otherwise result in the increase or acceleration of any benefits, including to employees of CXP, under any agreement to which CXP or any of its Subsidiaries is a party or by which it or any of its Subsidiaries is bound, or (ii) result in any adjustment of the number of shares subject to, or the terms of, including exercise price, any outstanding employee stock options of CXP (except for any adjustment that may be approved by the Board of Directors of CXP or any committee thereof for the purpose of preserving, without increasing, the value of such options in light of the effect of the payment of the Cash Dividend).

(g) *Certain Transactions.* Except for transactions or other actions that occurred prior to January 1, 2002 or that are described in Schedule 3.1(g), neither CXP nor any other member of the CXP Group has engaged in any transaction or taken any other action, or engaged in any negotiations or discussions, involving or relating to any sale of CXP or a substantial portion of its business in a single transaction or series of related transactions (whether in the form of an asset sale, stock sale, merger or otherwise) or the issuance of any substantial portion of the capital stock of CXP or options, warrants or other rights to acquire capital stock of CXP (other than compensatory stock plan issuances). None of the transactions or other actions, negotiations or discussions described in Schedule 3.1(g) were undertaken by CXP in contemplation of the Distribution or are related to the Distribution.

SECTION 3.2 *Representations and Warranties of Centex.* Centex hereby represents and warrants to CXP as follows:

(a) *Organization; Good Standing.* Centex is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Nevada and has all corporate power required to consummate the Transactions.

(b) *Authorization.* The execution, delivery and performance by Centex of the Transaction Agreements and the consummation by Centex of the Transactions have been duly authorized by all necessary corporate action on the part of Centex, other than the formal declaration of the Distribution by the Board of Directors of Centex (or a committee thereof). Each of this Agreement and Merger Agreement constitutes, and each other Transaction Agreement executed and delivered or to be executed and delivered by Centex pursuant to this Agreement will, upon such execution and delivery, constitute, a legal, valid and binding obligation of Centex, enforceable against Centex in accordance with its terms, except insofar as enforcement may be limited by (i) any bankruptcy, reorganization, insolvency, fraudulent conveyance or transfer, moratorium or similar laws affecting creditors' rights generally and (ii) general principles of equity (regardless of whether such is considered in a proceeding at law or in equity).

(c) *Consents and Filings.* Except (i) for the filing of a certificate of merger in connection with the Reclassification and any other filings required to be made with the Secretary of State of the State of Delaware, (ii) for the IRS Ruling and (iii) for any reports or documents required to be filed under the Exchange Act, no material consent of, or filing with, any Governmental Entity which has not been obtained or made is required for or in connection with the execution and delivery of the Transaction Agreements by Centex or the consummation by Centex of the Transactions.

(d) *Noncontravention.* The execution, delivery and performance of the Transaction Agreements do not, and the consummation by Centex of the Transactions will not, (i) violate any applicable federal, state or local statute, law, rule or regulation, (ii) violate any provision of the Restated Articles of Incorporation or the Amended and Restated By-Laws of Centex or (iii) violate any provision of, or result in the termination or acceleration of, or entitle any party to accelerate any obligation or indebtedness under, any mortgage, lease, franchise, license, permit, agreement, instrument, order, arbitration award, judgment or decree to which Centex or any of its Subsidiaries is a party or by which any of them are bound, except for, in the case of clause (iii) above, such violations that would not prevent Centex from complying with the terms and provisions of the Transaction Agreements in any material respect.

(e) *Litigation.* There are no actions or suits against Centex pending, or to the knowledge of Centex, threatened which seek to, and Centex is not subject to any judgments, decrees or orders which, enjoin or rescind the Transactions or otherwise prevent Centex from complying with the terms and provisions of the Transaction Agreements.

ARTICLE IV.

COVENANTS

SECTION 4.1 *Access to Information.*

(a) Other than in circumstances in which indemnification is sought pursuant to Article V (in which event the provisions of such Article will govern), from and after the Distribution Date, each of CXP and Centex shall afford to the other and its authorized accountants, counsel and other designated representatives reasonable access during normal business hours, subject to appropriate restrictions for classified, privileged or confidential information, to the personnel, properties, books and records of such party and its Subsidiaries insofar as such access is reasonably required by the other party and relates to such other party's performance of its obligations under the Transaction Agreements or such party's financial, tax and other reporting obligations.

(b) A party providing information or access to information to the other party under this Article IV shall be entitled to receive from the recipient, upon the presentation of invoices therefor, payments for such amounts, relating to supplies, disbursements and other out-of-pocket expenses, as may be reasonably incurred in providing such information or access to information.

(c) For a period of two years following the Distribution Date, CXP shall provide to Centex: (i) promptly following the date (the “Target Date”) as of which there has been an aggregate change in the outstanding equity or capital structure of CXP (measured during the period beginning on the Distribution Date and ending on the Target Date and not taking into account the Reclassification or transfers of shares by CXP stockholders, unless CXP participates in such transfers or such transfers are reported on a Schedule 13D or 13G under the Exchange Act) that accounts for at least 10% of the total outstanding equity of CXP as of the Distribution Date written notice of such change and (ii) after the Target Date, reasonably detailed reports delivered promptly following the occurrence of each additional change or changes (if any) in the outstanding equity or capital structure of CXP that, individually or in the aggregate (not taking into account the Reclassification or transfers of shares by CXP stockholders, unless CXP participates in such transfers or such transfers are reported on a Schedule 13D or 13G under the Exchange Act), account for at least 5% of the total outstanding equity of CXP as of the Distribution Date.

SECTION 4.2 *Confidentiality.* Each of CXP and its Subsidiaries and Centex and its Subsidiaries shall keep, and shall cause its employees, consultants, agents and advisors to keep, confidential all information concerning the other parties in its possession, its custody or under its control (except to the extent that (a) such information has been in the public domain through no fault of such party, (b) such information has been later lawfully acquired from other sources by such party or (c) the Transaction Agreements permit the use or disclosure of such information), and each party shall not (without the prior written consent of the other) otherwise release or disclose such information to any other person, except such party’s auditors and attorneys, unless compelled to disclose such information by judicial or administrative process or unless such disclosure is required by law and such party has used commercially reasonable efforts to consult with the other affected party or parties prior to such disclosure, and in each such case shall exercise all reasonable efforts to obtain reliable assurance that such information will be accorded confidential treatment.

SECTION 4.3 *Litigation Cooperation.* Each of Centex and CXP shall use reasonable efforts to make available to the other party, upon written request and at the expense of the other party, its officers, directors, employees and agents as witnesses to the extent that such persons may reasonably be required in connection with any Action arising out of the business of such other party and its predecessors, if any, in which the requesting party may from time to time be involved; provided, that such Action does not involve a claim between either of Centex or CXP against the other.

SECTION 4.4 *No Solicitation.*

(a) Subject to Sections 4.4(b) and 4.4(c), neither Centex nor CXP shall, directly or indirectly, through any officer, director, employee, representative, securityholder or agent solicit, initiate or encourage any inquiries, offers or proposals or any indication of interest or the commencement of negotiations or continue any current negotiations or conduct any negotiations or enter into any agreement with respect to, or provide any nonpublic information regarding or in connection with, any proposal for the acquisition by any third party of any shares of capital stock of CXP from CXP or Centex (other than issuances of common stock by CXP pursuant to existing employee stock plans in the ordinary course of business) or the acquisition of, or business combination with, CXP or its businesses or operations through any other means, including a merger or purchase of assets (an “Acquisition Proposal”), until the earlier to occur of the termination of this Agreement or the time at which the Distribution is consummated; provided, however, that Centex and CXP may respond to any unsolicited inquiries or proposals solely to indicate that it is bound by this Section 4.4. If either of CXP or Centex receives any such inquiry or proposal, then CXP or Centex, as the case may be, shall inform the other of the terms and conditions, if any, of such inquiry or proposal and the identity of the Person making the proposal and shall keep such party promptly advised of all further communications relating to such inquiry or proposal.

(b) Centex shall be relieved of its obligations under Section 4.4(a) (in the case of clause (iii) below, only to the extent set forth therein) if:

(i) the Board of Directors of CXP shall or shall resolve to (A) not recommend, or withdraw its approval or recommendation of, the Transactions or the Transaction Agreements, (B) modify any such approval or recommendation in a manner adverse to Centex or (C) approve, recommend or enter into any agreement for any Acquisition Proposal;

(ii) CXP breaches or fails to comply with any of its material obligations set forth in this Agreement or the Merger Agreement and fails to cure such breach or failure within 30 days following written notice from Centex; or

(iii) after receipt of a bona fide written Acquisition Proposal, the Board of Directors of Centex determines reasonably and in good faith that it would be inconsistent with the Board's fiduciary duties to stockholders of Centex not to commence discussions or negotiations with, or not to provide nonpublic information (other than nonpublic information with respect to CXP) to, the person making such Acquisition Proposal; provided, however, that Centex shall only be released from its obligations under Section 4.4(a) pursuant to this Section 4.4(b)(iii) with respect to such Acquisition Proposal.

(c) CXP shall be relieved of its obligations under Section 4.4(a) (to the extent specifically set forth in this Section 4.4(c)) if (i) after receipt of a bona fide written Acquisition Proposal, the Board of Directors of CXP determines reasonably and in good faith that it would be inconsistent with the Board's fiduciary duties to stockholders of CXP not to commence discussions or negotiations with, or provide nonpublic information to, the person making such Acquisition Proposal; provided, however, that CXP shall only be released from its obligations under Section 4.4(a) pursuant to this Section 4.4(c) with respect to such Acquisition Proposal, or (ii) if Centex breaches or fails to comply with any of its material obligations set forth in this Agreement or the Merger Agreement and fails to cure such breach or failure within 30 days following written notice from CXP.

SECTION 4.5 *Certain Post-Distribution Transactions.*

(a) CXP and Centex shall each comply with, and shall cause its respective Subsidiaries to comply with, and otherwise not take, and prevent its respective Subsidiaries from taking, any action inconsistent with each representation and statement made by such respective party to the IRS in connection with the request by Centex for the IRS Ruling. Without limiting the generality of the foregoing, until two years after the Distribution Date, CXP will maintain its status as a company engaged in the active conduct of a trade or business, as defined in Section 355(b) of the Code.

(b) CXP agrees that, prior to the second anniversary of the Distribution Date, it will not (i) merge or consolidate with or into any other corporation, which would have the effect of causing or permitting one or more persons to acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of Section 355(e) of the Code) in CXP, (ii) liquidate or partially liquidate, (iii) sell or transfer all or substantially all of its assets (within the meaning of Rev. Proc. 77-37, 1977-2 C.B. 568) in a single transaction or series of transactions, (iv) redeem or otherwise repurchase any CXP stock (other than as described in Section 4.05(1)(b) of Rev. Proc. 96-30, 1996-1 C.B. 696), or (v) take any other action or actions which in the aggregate (and taking into account the Reclassification) would have the effect of causing or permitting one or more persons to acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of Section 355(e) of the Code) in CXP, unless prior to taking any such action set forth in the foregoing clauses (i) through (v), CXP has obtained (and provided to Centex) a written opinion in form and substance reasonably acceptable to Centex of a law firm reasonably acceptable to Centex, or Centex has obtained (at the reasonable request and at the expense of CXP) a supplemental ruling from the IRS, that such action or actions will not result in (i) the Distribution failing to qualify under Section 355(a) of the Code or (ii) the CXP shares failing to qualify as qualified property for purposes of Section 355(c)(2) of the Code by reason of Section 355(e) of the Code. CXP further agrees that, prior to the second anniversary of the Distribution Date, it shall not initiate or support, or call any meeting of its stockholders with respect to, any action that would in any way

alter the ability of the holders of the Class B Common Stock to (i) elect at least 85% of the members of the Board of Directors of the Company (to the extent and in the manner set forth in the CXP Certificate of Incorporation) or (ii) otherwise possess at least 85% of the total combined voting power of all classes of capital stock of CXP entitled to vote for directors (as described in Section 368(c) of the Code), unless prior to taking any such action set forth in the foregoing clauses (i) and (ii), CXP has obtained (and provided to Centex) a written opinion in form and substance reasonably acceptable to Centex of a law firm reasonably acceptable to Centex, or Centex has obtained (at the reasonable request and at the expense of CXP) a supplemental ruling from the IRS, that such action or actions will not result in (i) the Distribution failing to qualify under Section 355(a) of the Code or (ii) the CXP shares failing to qualify as qualified property for purposes of Section 355(c)(2) of the Code by reason of Section 355(e) of the Code. Centex agrees (i) to cooperate with CXP in obtaining any opinion contemplated by this Section 4.5(b), including, where appropriate, by providing written representations as to factual events that transpired prior to the Distribution Date, and (ii) if requested by CXP as provided herein, to seek in good faith to obtain a supplemental ruling from the IRS contemplated by this Section 4.5(b).

SECTION 4.6 Public Announcements. No public release or announcement concerning the Transactions shall be issued by either party without the prior written consent of the other (which shall not be unreasonably withheld), except as such release or announcement may be required by law or the rules or regulations of any United States securities exchange, in which case the party required to make the release or announcement shall use its commercially reasonable efforts to allow each other party reasonable time to comment on each release or announcement in advance of such issuance.

SECTION 4.7 Required Consents. Each of Centex and CXP shall use commercially reasonable efforts to obtain all of the consents, waivers or authorizations required to be obtained by it in connection with the Transactions completion that are listed on Schedule 4.7 (the "Required Consents").

SECTION 4.8 Stockholder Rights Plan. The Special Committee has recommended that the Board of Directors of CXP consider the adoption of a stockholder rights plan. CXP agrees to use its reasonable best efforts to have its Board of Directors give due consideration to the adoption of a stockholders right plan to be effective upon the consummation of the Distribution, subject to ratification by the stockholders at the Stockholders Meeting as contemplated by the Merger Agreement.

ARTICLE V.

INDEMNIFICATION

SECTION 5.1 Indemnification by CXP.

(a) CXP shall, to the fullest extent permitted by law, indemnify, defend and hold harmless the Centex Indemnitees from and against any and all CXP Liabilities or third party allegations of CXP Liabilities.

(b) CXP shall, to the fullest extent permitted by law, indemnify, defend and hold harmless (i) Centex, (ii) each member of the consolidated group of corporations of which Centex is the common parent corporation (within the meaning of Section 1504 of the Code) and (iii) each direct or indirect Subsidiary of Centex (each Person referred to in clauses (ii) and (iii), a "Centex Member") from and against (A) any actual Liability of Centex or any Centex Member (including any actual Liability for Taxes to the extent that, in the absence of any Liability for Taxes resulting from a determination that the Distribution fails to qualify under Section 355(a) of the Code or Section 355(e) of the Code or that the CXP shares fail to qualify as qualified property for purposes of Section 355(c)(2) of the Code (each, a "355 Failure"), such Liability would otherwise have been reduced or eliminated by a net operating loss deduction (within the meaning of Section 172 of the Code and the Treasury regulations thereunder)), and (B) any Established Liability of any stockholder of Centex (it being understood that any Established Liability of any stockholder of Centex shall be deemed to be an actual Liability of Centex for purposes of determining CXP's indemnification obligation hereunder, regardless of whether such stockholder actually has or pursues a valid claim for such Established Liability against Centex), in each case arising from any

inaccuracy in, or failure by CXP to comply with, any representation or undertaking made by CXP to the IRS or based upon information provided by CXP to Centex and made by Centex to the IRS in connection with the Ruling Request if such inaccuracy or failure was intentional or resulted from gross negligence on the part of CXP (referred to herein as an "CXP Failure"); provided, however, that, notwithstanding the foregoing, CXP shall not indemnify Centex or any Centex Member for any Liability or Established Liability that results solely from a Centex Failure (except to the extent that any such Centex Failure is in respect of a representation based in whole or in part upon inaccurate information provided by CXP if such inaccuracy was intentional or resulted from gross negligence on the part of CXP); and provided, further, that if any Liability or Established Liability described in this clause (b) arises as a result of both an CXP Failure and a Centex Failure, and each such failure is an independent cause of such Liability or Established Liability, then CXP and Centex shall allocate such Liability or Established Liability between themselves in such proportion as is appropriate to reflect the relative fault of CXP on the one hand and Centex on the other with respect to such Liability or Established Liability.

(c) If CXP (or any of its Subsidiaries) fails to comply with any of its obligations under Section 4.5(a) or (b) or takes any action or fails to take any action, and such failure to comply, action or omission is the direct and primary or exclusive cause of a 355 Failure, then CXP shall, to the fullest extent permitted by law, indemnify, defend and hold harmless Centex and each Centex Member from and against (i) any and all federal, state and local Taxes, including any interest, penalties or additions to Tax, imposed upon or incurred by Centex and any Centex Member and (ii) any Established Liability of any stockholder of Centex (it being understood that any Established Liability of any stockholder of Centex shall be deemed to be a Centex Tax Liability (as defined below) for purposes of determining CXP's indemnification obligation hereunder, regardless of whether such stockholder actually has or pursues a valid claim for such Established Liability against Centex), in each case arising from such 355 Failure (any such Tax, interest, penalty or addition to Tax, together with any such Established Liability, a "Centex Tax Liability").

(d) Any indemnity payment made by CXP pursuant to either clause (b) or (c) above shall be made on an after-tax basis, based on the actual tax position of Centex, the Centex Member or Centex stockholder, as the case may be, in the taxable year such indemnity payment is received and taking into account the deductibility for federal income tax purposes of any state taxes.

SECTION 5.2 *Indemnification by Centex.*

(a) Centex shall, to the fullest extent permitted by law, indemnify, defend and hold harmless the CXP Indemnitees from and against any and all Centex Liabilities or third party allegations of Centex Liabilities.

(b) Centex shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CXP and each member of the consolidated group of corporations of which CXP is the common parent corporation (within the meaning of Section 1504 of the Code) (each an "CXP Member") from and against any actual Liability of CXP or any CXP Member arising from any inaccuracy in, or failure by Centex to comply with, any representation or undertaking made by Centex to the IRS in connection with the request by Centex for the IRS Ruling (referred to herein as a "Centex Failure"); provided, however, that, notwithstanding the foregoing, Centex shall not indemnify CXP or any CXP Member for any liability that results solely from a CXP Failure or a failure on the part of CXP to comply with its obligations under Section 4.5(a) or (b) (except to the extent that any such failure is in respect of a representation based in whole or in part upon information provided by Centex); and provided, further, that if any Liability described in this clause (b) arises as a result of both a Centex Failure and a CXP Failure or a failure on the part of CXP to comply with its obligations under Section 4.5(a) or (b), and each such failure is an independent cause of such Liability, then Centex and CXP shall allocate such Liability between themselves in such proportion as is appropriate to reflect the relative fault of Centex on the one hand and CXP on the other with respect to such Liability.

SECTION 5.3 *Procedures for Indemnification.*

(a) *Third Party Claims.* If a claim or demand is made against a CXP Indemnitee or a Centex Indemnitee (each, an “Indemnitee”) by any person who is not a party to this Agreement (a “Third Party Claim”) as to which such Indemnitee is entitled to indemnification pursuant to this Agreement, such Indemnitee shall notify the party which is or may be required pursuant to the terms hereof to make such indemnification (the “Indemnifying Party”) in writing, and in reasonable detail, of the Third Party Claim promptly (and in any event within five Business Days) after receipt by such Indemnitee of written notice of the Third Party Claim; provided, however, that failure to give such notification shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party shall have been actually prejudiced as a result of such failure. Thereafter, the Indemnitee shall deliver to the Indemnifying Party, promptly (and in any event within two Business Days) after the Indemnitee’s receipt thereof, copies of all notices and documents (including court papers) received by the Indemnitee relating to the Third Party Claim.

If a Third Party Claim is made against an Indemnitee with respect to which a claim for indemnification is made pursuant to Section 5.1 or Section 5.2 hereof, the Indemnifying Party shall be entitled to participate in the defense thereof and, if it so chooses and acknowledges in writing its obligation to indemnify the Indemnitee therefor, to assume the defense thereof with counsel selected by the Indemnifying Party; provided that the Indemnitee does not reasonably object to such counsel. Should the Indemnifying Party so elect to assume the defense of a Third Party Claim, the Indemnifying Party shall, within 30 days (or sooner if the nature of the Third Party Claim so requires), notify the Indemnitee of its intent to do so, and the Indemnifying Party shall thereafter not be liable to the Indemnitee for legal or other expenses subsequently incurred by the Indemnitee in connection with the defense thereof; provided, that such Indemnitee shall have the right to employ counsel to represent such Indemnitee if, in such Indemnitee’s reasonable judgment, a conflict of interest between such Indemnitee and such Indemnifying Party exists in respect of such claim which would make representation of both such parties by one counsel inappropriate, and in such event the fees and expenses of such separate counsel shall be paid by such Indemnifying Party.

If the Indemnifying Party assumes the defense of a Third-Party Claim, the Indemnitee shall have the right to participate in the defense thereof and to employ counsel, but the fees and expenses of such counsel shall, subject to the proviso of the preceding sentence, be at its own expense, it being understood that the Indemnifying Party shall control such defense. If the Indemnifying Party assumes the defense of a Third Party Claim, all of the Indemnitees shall cooperate with the Indemnifying Party in the defense or prosecution thereof, including by providing or causing to be provided, records and witnesses as soon as reasonably practicable after receiving any request therefor from or on behalf of the Indemnifying Party.

If the Indemnifying Party assumes the defense of a Third Party Claim, then in no event will the Indemnitee admit any liability with respect to, or settle, compromise or discharge, any Third Party Claim without the Indemnifying Party’s prior written consent (which shall not be unreasonably withheld); provided, however, that the Indemnitee shall have the right to settle, compromise or discharge such Third Party Claim without the consent of the Indemnifying Party if the Indemnitee releases the Indemnifying Party from its indemnification obligation hereunder with respect to such Third Party Claim and such settlement, compromise or discharge would not otherwise adversely affect the Indemnifying Party. If the Indemnifying Party assumes the defense of a Third Party Claim, the Indemnifying Party shall be permitted to enter into, and the Indemnitee shall agree to, any settlement, compromise or discharge of a Third Party Claim that the Indemnifying Party may recommend and that by its terms obligates the Indemnifying Party to pay the full amount of the liability in connection with such Third Party Claim and releases the Indemnitee completely in connection with such Third Party Claim and that would not otherwise adversely affect the Indemnitee or subject the Indemnitee to any equitable remedy.

If an Indemnifying Party elects not to assume the defense of a Third Party Claim, or fails to notify an Indemnitee of its election to do so as provided herein, such Indemnitee may compromise, settle or defend

such Third Party Claim. In such case, the Indemnifying Party shall be responsible for the cost of such compromise, settlement or defense.

Notwithstanding the foregoing, the Indemnifying Party shall not be entitled to assume the defense of any Third Party Claim (and shall be liable for the reasonable fees and expenses of counsel incurred by the Indemnitee in defending such Third Party Claim) if the Third Party Claim seeks an order, injunction or other equitable relief or relief for other than money damages against the Indemnitee which the Indemnitee reasonably determines, after conferring with its counsel, cannot be separated from any related claim for money damages. If such equitable relief or other relief portion of the Third Party Claim can be so separated from that for money damages, the Indemnifying Party shall be entitled to assume the defense of the portion relating to money damages.

(b) In the event any Tax Claim is disposed of pursuant to the provisions of this Section 5.3 or a Final Determination has been made in circumstances that give rise to a Tax Liability or an Established Liability on the part of Centex, any Centex Member or any Centex stockholder, as the case may be, then CXP shall pay to Centex all amounts in respect of any Tax Claim within twenty (20) business days after such Tax Claim is disposed of or such Final Determination has been made. For purposes of this Section 5.3(b), (i) "Tax Claim" shall mean any notice of deficiency, proposed adjustment, adjustment, assessment, audit, examination, suit, dispute or other written claim which is commenced or initiated against Centex, any Centex Member or any Centex stockholder with respect to Taxes that are attributable to the Reclassification or Distribution and which result from any act or acts of CXP or its Subsidiaries described in Section 4.5 or the breach by CXP of any representation or warranty set forth in this Agreement and (ii) "Final Determination" shall mean (A) the entry of a decision of a court of competent jurisdiction at such time as an appeal may no longer be taken from such decision or (B) the execution of a closing agreement or its equivalent between the particular taxpayer and the particular relevant taxing authority.

SECTION 5.4 *Subrogation.* In the event of payment by an Indemnifying Party to any Indemnitee in connection with any Third-Party Claim, such Indemnifying Party shall be subrogated to and shall stand in the place of such Indemnitee as to any events or circumstances in respect of which such Indemnitee may have any right or claim relating to such Third-Party Claim against any claimant or plaintiff or other person or entity asserting such Third-Party Claim, or any other person who is not a party to this Agreement. Such Indemnitee shall cooperate with such Indemnifying Party in a reasonable manner, and at the cost and expense of such Indemnifying Party, in prosecuting any subrogated right or claim.

SECTION 5.5 *Remedies Not Exclusive.* The remedies provided in this Article V shall be cumulative and shall not preclude assertion by any Indemnitee of any other rights or the seeking of any and all other remedies against any Indemnifying Party; provided, however, that upon the consummation of the Distribution, the Indemnification Agreement, dated as of April 19, 1994, among CXP, Centex and the other parties named therein shall be terminated and be of no further force or effect.

SECTION 5.6 *Indemnification Payments.* Indemnification required by this Article V shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or loss, liability, claim, damage or expense is incurred.

ARTICLE VI.

MISCELLANEOUS

SECTION 6.1 *Notices.* All notices and other communications hereunder shall be in writing and hand delivered or mailed by registered or certified mail (return receipt requested) or sent by any means of electronic message transmission with delivery confirmed (by voice or otherwise), or by overnight courier service to the parties at the following addresses (or at such other addresses for a party as shall be specified by like notice) and will be deemed given on the date on which such notice is received:

To Centex:

Centex Corporation
2728 North Harwood
Dallas, Texas 75201
Fax No.: (214) 981-6859
Attn: Chief Executive Officer

with a copy to:

Baker Botts L.L.P.
2001 Ross Avenue
Dallas, Texas 75201
Fax No.: (214) 953-6503
Attn: Geoffrey L. Newton

To CXP:

Centex Construction Products, Inc.
2728 North Harwood
Dallas, Texas 75201
Fax No.: (214) 981-6559
Attn: Chief Operating Officer

and:

The Special Committee of the Board of Directors
c/o The Secretary of Centex Construction Products, Inc.
Centex Construction Products, Inc.
2728 North Harwood
Dallas, Texas 75201
Fax No.: (214) 981-6559

with a copy to:

Haynes and Boone, LLP
901 Main Street, Suite 3100
Dallas, Texas 75202
Attention: Michael M. Boone
Fax No.: (214) 651-5940
and
Attention: William L. Boeing
Fax No.: (972) 692-9053

SECTION 6.2 *Interpretation.*

(a) The article, section and paragraph headings contained herein are for the purposes of convenience only and are not intended to define or limit the contents of said articles, sections or paragraphs. Whenever the words "include," "includes" and "including" are used in this Agreement, they shall be deemed followed by the words "without limitation." Whenever a reference is made in this Agreement to a "party" or "parties," such reference shall be to a party or parties to this Agreement unless otherwise indicated.

Whenever the context requires, the use of any gender herein shall be deemed to be or include the other genders and the use of the singular herein shall be deemed to include the plural (and vice versa). Unless the context otherwise requires, references in this Agreement to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement. The use of the words “hereof” and “herein” and words of similar import shall refer to this entire Agreement and not to any particular article, section, subsection, clause, paragraph or other subdivision of this Agreement, unless the context otherwise requires.

(b) Each party hereto stipulates and agrees that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement to favor any party against the other, and that no party, including any drafting party, shall have the benefit of any legal presumption (including “meaning of the authors”) or the detriment of any burden of proof by reason of any ambiguity or uncertain meaning contained in this Agreement.

SECTION 6.3 *Amendments; No Waivers.* Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by each party, or in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

SECTION 6.4 *Assignment.* This Agreement shall not be assignable, in whole or in part, directly or indirectly, by any party hereto without the prior written consent of the other party hereto, and any attempt to assign any rights or obligations arising under this Agreement without such consent shall be void.

SECTION 6.5 *Successors and Assigns.* The provisions to this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and permitted assigns. Nothing contained in this Agreement is intended to confer upon any Person other than the parties hereto and their respective successors and permitted assigns, any benefit, right or remedies under or by reason of this Agreement, except that the provisions of Article V shall inure to the benefit of the Centex Indemnitees and the CXP Indemnitees. In addition, the provisions of this Agreement shall be binding upon any person that acquires, directly or indirectly, 50% or more of the (a) voting power, in an election of directors or otherwise, represented by the outstanding common stock, (b) shares of outstanding common stock or (c) assets of CXP on or after the Distribution Date, but CXP shall not enter into any agreement with respect to the foregoing or permit to be consummated any such transaction unless and until a writing shall be signed by any such person and delivered to Centex whereby such person agrees to assume the obligations of CXP hereunder.

SECTION 6.6 *Governing Law.* Except insofar as mandatory conflicts of law principles require that the Distribution be governed by Nevada law, this Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware applicable to contracts made and to be performed in the State of Delaware.

SECTION 6.7 *Counterparts; Effectiveness.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto.

SECTION 6.8 *Exhibits and Schedules.* The Exhibits and Schedules shall be construed with and as an integral part of this Agreement to the same extent as if the same had been set forth verbatim herein.

SECTION 6.9 *Entire Agreement.* This Agreement and the other Transaction Agreements constitute the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements, understandings and negotiations, both written and oral, between the parties with respect to the subject matter hereof and thereof. No representation, inducement, promise, understanding,

condition or warranty not set forth in the Transaction Agreements has been made or relied upon by any party hereto.

SECTION 6.10 *Severability*. If any one or more of the provisions contained in this Agreement should be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a declaration, the parties shall modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner so that the transactions contemplated hereby are consummated as originally contemplated to the fullest extent possible.

SECTION 6.11 *Termination*. This Agreement may be terminated and the Transactions may be amended, modified or abandoned at any time prior to the payment of the Cash Dividend by and in the sole discretion of Centex without the approval of CXP or the stockholders of CXP. This Agreement may be terminated by CXP only upon (i) a material breach by Centex of a representation, warranty or covenant contained in this Agreement, which breach is reasonably expected to result in a Material Adverse Effect with respect to CXP after giving effect to the Distribution and has not been substantially cured (so that no Material Adverse Effect would result therefrom) within 30 days after written notice thereof has been given to Centex or (ii) the termination of the Merger Agreement pursuant to Section 5.1(a)(iv) thereof. This Agreement shall terminate automatically without any action on the part of Centex or CXP in the event that the Merger Agreement is terminated in accordance with its terms. In the event of termination of this Agreement by either party hereto, except as set forth in Section 6.13, no party shall have any liability of any kind to any other party or any other person. After the payment of the Cash Dividend, this Agreement may not be terminated except by an agreement in writing signed by both parties and approved by a majority of the directors of CXP that are not affiliated with Centex.

SECTION 6.12 *Survival of Agreements*. Except as otherwise contemplated by this Agreement, all covenants and agreements of the parties contained in this Agreement shall survive the Distribution Date.

SECTION 6.13 *Expenses*. Except as otherwise set forth in this Agreement or in the Merger Agreement, all costs and expenses incurred in connection with the preparation, execution and delivery and the consummation of the Transactions shall be charged to and borne by the party incurring such costs and expenses. Notwithstanding the foregoing, if this Agreement is terminated for any reason without the Distribution having been consummated, Centex shall pay all out-of-pocket expenses of CXP incurred in connection with the Transaction Agreements. The provisions of this Section 6.13 shall survive any termination of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

CENTEX CORPORATION

By: /s/ LAURENCE E. HIRSCH

Name: Laurence E. Hirsch

Title: Chairman & CEO

CENTEX CONSTRUCTION PRODUCTS, INC.

By: /s/ STEVEN R. ROWLEY

Name: Steven R. Rowley

Title: President & CEO

Exhibit A

ADMINISTRATIVE SERVICES AGREEMENT

This Administrative Services Agreement ("Agreement") is made and entered into as of _____, 2003 by and between EAGLE MATERIALS, INC., formerly known as Centex Construction Products, Inc., a Delaware corporation ("Eagle"), and CENTEX SERVICE COMPANY, a Nevada corporation ("Service Company").

R E C I T A L S

Eagle desires to engage Service Company to perform certain services for Eagle as hereinafter set forth, and Service Company desires to accept such engagement, upon the terms and subject to the conditions set forth in this Agreement.

A G R E E M E N T

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Eagle and Service Company do hereby agree as follows.

1. **Term of Agreement.** The initial term of this Agreement shall extend from the date hereof to the close of business on December 31, 2005, provided that this Agreement may be sooner terminated in accordance with the provisions of Section 8 hereof.
 2. **Services.** Service Company shall provide to Eagle such services as are described in Exhibit A hereto. Following the conclusion of the first six months of the two year term of this Agreement, the parties will implement a mutual plan to discontinue all of the Services provided hereunder by Service Company to Eagle incrementally over the next eighteen months so that by the end of the two year term all of such services will be provided internally by Eagle, or to Eagle by third parties not affiliated with Service Company.
 3. **Insurance Coverage.** At the commencement of this Agreement, Service Company will provide consultation to Eagle, on reasonable terms, as to all of Eagle's insurance and bonding programs, including general liability, primary and excess umbrella, automobile, and workers' compensation, for the benefit of Eagle.
 4. **Liability of Service Company.** Service Company shall not be liable, responsible or accountable in damages or otherwise to Eagle for any act performed by Service Company on behalf of Eagle in a manner reasonably believed by Service Company to be within the scope of the authority granted to it by this Agreement and in the interest of Eagle, provided that Service Company was not guilty of gross negligence or willful or wanton misconduct.
 5. **Indemnification.** Eagle shall indemnify, save harmless and defend Service Company and each of Service Company's shareholders, directors, officers, employees, agents, attorneys and insurers (individually, an "Indemnitee") against any and all losses, damages, liabilities, judgments, fines, penalties, amounts paid in settlement and expenses, including reasonable attorneys' fees, incurred as the result of the negligence of any Indemnitee, or otherwise, arising out of or in connection with anything done or omitted by such Indemnitee in connection with the performance by Service Company of its duties and obligations under this
-

Agreement, provided that such Indemnitee's conduct did not constitute gross negligence or willful or wanton misconduct. Notwithstanding anything in this Agreement to the contrary, the obligation of Eagle to indemnify, save harmless and defend each Indemnitee will survive the expiration or termination of this Agreement, no matter what the reason thereof, and such obligation to indemnify, defend and hold harmless will remain binding upon Eagle thereafter.

6. Compensation. Service Company shall receive a fee for its services under this Agreement of \$21,125 per month, which shall be paid by Eagle to the Service Company within five (5) days after the end of each month, which amount is intended to represent the cost to Service Company of providing such services, and the parties hereto hereby agree that such amount represents such cost. If Eagle fails to make such monthly payment within ten (10) days following the first of any month, the amount so owing by Eagle shall bear interest from and after the first day of such month until such amount has been paid in full at a rate equal to the lesser of the prime rate announced or published by Bank of America or the maximum rate of interest allowed by law.

In addition to the monthly compensation described above, Eagle will reimburse Service Company for all out-of-pocket expenses incurred by Service Company in connection with the performance of services described above in Section 2. Out-of-pocket expenses will not include general and administrative services.

7. Assignment and Delegation. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that this Agreement may not be assigned by either party without the prior written consent of the other party hereto. Any consent granted by either party to an assignment by the other party shall not be deemed a consent to any subsequent assignment. Notwithstanding the foregoing, Service Company may, without the consent of Eagle, assign and delegate the performance of and the responsibility for any duties and obligations of Service Company hereunder to any corporation, firm, joint venture or partnership fifty percent (50%) or more of whose voting stock (or its equivalent) is owned directly or indirectly by, or which is otherwise controlled by, Centex Corporation. Upon execution of any such assignment and delegation, notice thereof in the form of an executed copy of the document or instrument effecting such assignment and delegation shall be delivered promptly by Service Company to Eagle and Service Company shall be released from any further obligation or responsibility under this Agreement for the performance of the duties and obligations so assigned and delegated.

8. Termination. This Agreement may be terminated by any of the following methods:

(a) This Agreement may be terminated at any time by written agreement of the parties hereto.

(b) If either party fails to make any payment due hereunder or breaches any of the other terms of this Agreement in any material respect, the other party hereto shall give the breaching party written notice of such breach. If the breaching party fails to remedy the breach within thirty (30) days after receiving such notice, the other party may terminate this Agreement; provided, however, that if at the expiration of such thirty (30) day period the breaching party is diligently using its best efforts to remedy the breach, the other party may not terminate this Agreement on account of such breach during the additional period,

not to exceed sixty (60) days, in which the breaching party continues without interruption to use its best efforts to remedy the breach.

(c) If either party hereto shall be dissolved and its business terminated, this Agreement shall automatically terminate upon the effectiveness of such dissolution.

(d) This Agreement may be terminated by notice of Eagle to Service Company delivered no less than thirty (30) days prior to the effective date of termination, and such notice may be delivered for any reason.

No termination of this Agreement shall have the effect of terminating Service Company's right to collect any amounts owed to it under this Agreement.

Within thirty (30) days following the termination of this Agreement, Service Company shall deliver to Eagle all instruments, documents, reports, books, accounts and records, and copies thereof, that Service Company has received from Eagle, or is holding on the behalf of Eagle, in connection with the rendering of services hereunder.

9. Confidentiality. Service Company agrees that any information regarding Eagle that Service Company obtains or is furnished in connection with the performance of its duties and obligations under this Agreement, including, but not limited to, information regarding Eagle's business and operations, is confidential and proprietary, and Service Company agrees to maintain the confidentiality of such information and not to disclose such information to any other party without prior written consent of Eagle, except to the extent that such disclosure is necessary to enable Service Company to perform its duties and obligations under this Agreement or to comply with its legal obligations. Information that is generally known in the industry or to the public or was known by Service Company prior to disclosure by Eagle pursuant to this Agreement shall not be deemed confidential or proprietary information for purposes of this Section 9. The terms of this Section 9 shall survive, and remain in effect following, the termination of this Agreement.

10. Notices. Any notice, statement or demand required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, sent by mail, sent by nationally known overnight courier service or sent by facsimile transmission, confirmed by letter, addressed to the party in the manner and at the address shown below, or at such other address as the party shall have designated in writing to the other party:

To Eagle:

Attention: President
Fax:

To Service Company:

2728 North Harwood
Dallas, Texas 75201
Attention: Secretary
Fax: (214) _____

11. Nature of Relationship. The parties hereto intend that Service Company's relationship to Eagle shall be that of an independent contractor. Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between Service Company and Eagle or their successors or assigns, and neither Service Company nor any officer or employee of Service Company shall be considered at any time to be an employee of Eagle.

12. Amendments. This Agreement cannot be amended, changed or modified except by another agreement in writing, duly signed by both parties hereto.

13. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof.

14. Headings. The section headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope or intent of any provision of this agreement.

15. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas.

16. Severability. Any provision of this Agreement that is prohibited or unenforceable under the laws of any jurisdiction shall be ineffective in such jurisdiction to the extent necessary to render such provision valid and enforceable, and if such provision cannot be rendered valid and enforceable in such jurisdiction by limitation it shall be ineffective therein. The invalidity or unenforceability of any provision of this Agreement shall not render invalid or unenforceable any other provision of this Agreement, unless the Agreement without the invalid or unenforceable provisions would be manifestly unfair to either party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

EAGLE MATERIALS, INC

By: _____

President

CENTEX SERVICE COMPANY

By: _____

Vice President

Services to be Provided by Centex Service Company**1. Legal and Corporate Secretary.**

- a. Management of intellectual property rights in protected names and marks used by Eagle
- b. Paralegal management of litigation and claims with consultation by Centex Law Department attorneys as requested
- c. Assistance with public company reporting issues and required filings with and reports to stock exchanges and the Securities and Exchange Commission, and assistance with corporate governance matters
- d. Maintenance of minute books, foreign qualifications and other corporate secretarial matters
- e. Assistance and advice as required in carrying out Eagle's corporate compliance program.
- f. Administration of stock plans

2. Public and Investor Relations.

- a. Review and distribution of press releases
- b. Advice on an as-needed basis

3. Accounting. Advice and assistance with technical questions on an as-needed basis**4. Benefits Administration.** Management of Eagle's health and welfare and retirement benefit plans together with a 401-K plan and an ESOP owned by Skywalker, for which plans Eagle will assume administrative responsibility**5. Internal Audit.**

- a. Assistance as required in the development of Eagle internal audit program to comply with stock exchange and Securities and Exchange Commission requirements
- b. Assistance and advice as required in carrying out Eagle's internal audit

6. IT

- a. Cash management
- b. Tax reporting
- c. Stock plans
- d. Payroll
- e. Telephone lines
- f. Secretariat
- g. Equity Edge
- h. CLD

7. Finance, Treasury and Cash Management

- a. Monitor cash sweeps and related work
- b. Advice and assistance as needed

8. Tax

- a. Filings of form 5500 in calendar year 2004
- b. Advice and assistance as needed

9. Administrative Services

- a. Switchboard, mail, other central services
- b. Advice and assistance as needed

Exhibit B

TRADEMARK LICENSE AND DOMAIN NAME AGREEMENT

THIS AGREEMENT (this "Agreement") is entered into as of _____, 2003 (the "Effective Date") by and between Centex Corporation, a corporation organized under the laws of the State of Nevada ("Centex"); Eagle Materials Inc. (formerly known as Centex Construction Products, Inc., or "CXP"), a corporation organized under the laws of the State of Delaware ("Eagle"); and Centex Materials, LLC, a limited liability company organized under the laws of the state of Delaware ("CM"). Centex, Eagle and CM are sometimes hereinafter referred to collectively as the "Parties."

WHEREAS, CXP was a wholly-owned subsidiary of Centex prior to completing an initial public offering of 51% of its common stock on April 19, 1994; and

WHEREAS, in connection with the initial public offering, Centex and CXP entered into a Trademark License Agreement dated April 19, 1994 (the "Predecessor Agreement") pursuant to which Centex licensed the use of the CENTEX trademark and certain other trademarks owned by Centex to CXP, and which remains in full force and effect; and

WHEREAS, CXP and Centex entered into an Agreement and Plan of Merger with ARG Merger Corporation dated as of July 21, 2003 (the "Merger Agreement"), pursuant to which a portion of the shares of CXP's common stock owned by Centex will be exchanged for an equal number of shares of CXP Class B Common Stock, the purpose of which is to facilitate the tax-free distribution by Centex to its stockholders of its approximately 65% equity ownership interest in CXP; and

WHEREAS, CXP and Centex also entered into a Distribution Agreement dated as of July 21, 2003 (the "Distribution Agreement") pursuant to which (i) CXP will pay a cash dividend to all of the holders of CXP's common stock immediately prior to the reclassification and distribution; (ii) Centex will distribute all of its holdings of CXP Class B Common Stock and all of its holdings of CXP's common stock to Centex's stockholders on a pro rata basis; and (iii) CXP changed its corporate name to Eagle Materials, Inc.; and

WHEREAS, Eagle and Centex mutually desire to terminate the Predecessor Agreement; and

WHEREAS, as a related company of Centex, CXP used certain trademarks in connection with its business, and the Parties desire to enter into this Agreement to govern the continued use of those trademarks after the termination of the Predecessor Agreement and the transactions described above.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS

1.1 “Centex Materials Marks” means the combined term “Centex Materials” and the marks set forth in Exhibit 1.1 hereto.

1.2 “CXP Domain Name” means *www.centex-cxp.com*.

1.3 “Domain Names” means the domain names set forth in Exhibit 1.2 hereto and any other domain names that incorporate the Licensed Marks and are owned by Centex.

1.4 “Eagle Business” means each and every business conducted at any time prior to, on or after the Effective Date by Eagle, CXP or any current or future Subsidiary of Eagle, whether or not such Subsidiary is a subsidiary of Eagle as of the Effective Date.

1.5 “Eagle Group” means Eagle, CXP and each entity that is a current or future Subsidiary of Eagle, whether or not such Subsidiary is a subsidiary of Eagle as of the Effective Date.

1.6 “Eagle Marks” means the marks set forth in Exhibit 1.5 hereto.

1.7 “Licensed Marks” means the marks set forth in Exhibit 1.6 hereto.

1.8 “Subsidiary” means, with respect to any entity, (i) any corporation of which at least fifty percent (50%) of the securities, or fifty percent (50%) of other ownership interests, or at least fifty percent (50%) of the ordinary voting power are directly or indirectly owned or controlled by such entity or its Subsidiaries; (ii) any partnership of which such entity or one of its Subsidiaries is a general partner or as to which such entity or its Subsidiaries are entitled to receive at least fifty percent (50%) of the assets upon the liquidation thereof; or (iii) any limited liability company of which such entity or one of its Subsidiaries is a manager or is entitled to exercise management rights over the conduct of the business of such limited liability company, or as to which such entity or its Subsidiaries are entitled to receive at least fifty percent (50%) of the assets upon the liquidation thereof.

2. THE PREDECESSOR AGREEMENT

2.1 The Predecessor Agreement shall terminate automatically upon the Effective Date, and Eagle hereby waives the right to receive the notice required by Paragraph 1.b. of the Predecessor Agreement.

2.2 Notwithstanding Paragraphs 9 and 10 of the Predecessor Agreement, Eagle shall have the right to continue use of the trademarks that were the subject of the Predecessor Agreement for a period of six (6) months after the Effective Date. However, Eagle agrees (i) not to order after the Effective Date any additional supplies and documents which have imprinted thereon the trademarks that were the subject of the Predecessor Agreement; and (ii) as soon as practicable during said six-month period, to remove all signs and identifiers used in the Eagle Business that refer to Centex.

2.3 Eagle acknowledges and agrees that six months after the Effective Date, it can no longer use or display the name “Centex” or any variations thereof, or other trademarks, tradenames, logos or identifiers using the name “Centex” or otherwise owned by or licensed to Centex which have not been assigned or licensed to Eagle without the prior written consent of Centex. However, nothing contained in this Agreement shall prevent Eagle from using the “Centex” name in public filings with governmental authorities, materials intended for distribution to Eagle stockholders, or any other communication in any medium which describes the current or former relationship between Centex, CXP and/or Eagle.

3. THE CENTEX MATERIALS MARKS

3.1 License Grant. Centex hereby grants to CM, and CM hereby accepts, a non-sublicensable, exclusive, perpetual, and royalty-free license to use the Centex Materials Marks in connection with its ready-mix concrete and aggregates operations within the State of Texas, subject to the limitations set forth in this Agreement. The grant of the license hereunder to the Centex Materials Marks is non-transferable and non-assignable, except that CM may transfer and/or assign the license to a Subsidiary that is the surviving company of a merger, reorganization or consolidation with CM or another Subsidiary of the Eagle Group. Except as expressly set forth herein, no rights or licenses are granted to CM by Centex with respect to any other trademark, service mark, and/or trade name other than the Centex Materials Marks.

3.2 Ownership. CM acknowledges that Centex owns the Centex Materials Marks and all rights therein and that nothing in this Agreement shall give CM any right, title or interest in or to the Centex Materials Marks other than pursuant to the license granted hereby.

3.3 No Challenge. CM agrees that it will do nothing inconsistent with Centex’s ownership of the Centex Materials Marks and shall not claim adversely to Centex, or assist any third party in attempting to claim adversely to Centex, with regards to such ownership. CM agrees that it will not challenge the title of Centex to the Centex Materials Marks, oppose any registration thereof, or challenge the validity of this Agreement or the licenses granted herein.

3.4 Maintenance. All costs associated with maintaining or renewing the Centex Materials Marks shall be borne by CM. CM, in its discretion, shall have the sole authority to decide whether to maintain and renew registrations for the Centex Materials Marks. At CM’s request and cost, Centex shall cooperate with CM and shall in general take such actions as are necessary to facilitate the maintenance and renewal of the Centex Materials Marks, including timely executing all documents necessary to do so, including without limitation powers of attorney, declarations, and affidavits. CM shall provide Centex any reasonably required information requested by Centex to facilitate its timely execution of such documents.

3.5 Quality Control.

(a) CM and Centex acknowledge and agree that Centex is intimately familiar with CM's abilities and expertise in the manufacture of readymix concrete and aggregates (including without limitation sand, gravel and other like material).

(b) CM agrees that all goods sold under the Centex Materials Marks will be of high quality, standard and skill. CM and Centex acknowledge and agree that due to the longstanding close working relationship between them, the fact that officer(s) of Centex are on Eagle's Board of Directors, and given the high degree of Centex's familiarity with CM's abilities and expertise in the conduct of its business, Centex is entitled to rely upon CM's own efforts to control the quality of the goods and services offered under the Centex Materials Marks.

(c) Notwithstanding the foregoing, Centex shall have the right to impose on CM, as necessary, other specifications or requirements not provided for in this Agreement to ensure the requisite quality standards with respect to products manufactured or sold by CM that display the Centex Materials Marks. Further, CM shall, on reasonable request and notice from Centex, make available to CM samples of goods or materials displaying the Centex Materials Marks.

3.6 Protection; enforcement.

(a) CM shall promptly notify Centex of any and all infringements, imitations, simulations or other illegal use or misuse of the Centex Materials Marks that come to CM's attention. As the sole owner of the Centex Materials Marks, Centex shall determine whether to take any action to prevent the infringement, imitation, simulation or other illegal use or misuse of the Centex Materials Marks.

(b) CM shall render Centex all reasonable assistance in connection with any matter pertaining to the protection, enforcement or infringement of the Centex Materials Marks, whether in the courts, administrative or quasi-judicial agencies, or otherwise.

3.7 Termination. Centex shall have the right to terminate this license upon the occurrence of one or more of the following: (a) any material breach by CM of its obligations under this Agreement which remains uncured for thirty (30) days or more following written notice of such breach from Centex, or (b) CM abandons the use of the Centex Materials Marks, or provides notice to Centex of its desire to terminate the license. Upon termination of the license, CM agrees it shall immediately cease any and all use of the Centex Materials Marks.

4. THE LICENSED MARKS

4.1 License Grant. Centex hereby grants to Eagle, and Eagle hereby accepts, an exclusive, perpetual, worldwide, royalty-free license to use the Licensed Marks in connection with the Eagle Business, subject to the limitations set forth in this Agreement. Eagle conducts the Eagle Business through the Eagle Group. The grant of the license hereunder to the Licensed Marks (i) includes the Eagle Group's right to use the Licensed Marks in connection with the Eagle Business, and (ii) is non-transferable and non-assignable during the two-year period following the Effective Date, except that the

license may be transferred and/or assigned to a Subsidiary that is the surviving company of a merger, reorganization or consolidation with another Subsidiary of the Eagle Group during such two-year period. Notwithstanding the licenses granted herein and any of the provisions hereof, no rights or licenses are granted to Eagle by Centex with respect to any other trademark, service mark, and/or trade name other than the Licensed Marks.

4.2 Ownership. Eagle acknowledges that Centex owns the Licensed Marks and all rights therein and that nothing in this Agreement shall give Eagle or the Eagle Group any right, title or interest in or to the Licensed Marks other than pursuant to the license granted hereby.

4.3 No Challenge. Eagle agrees that it will do nothing inconsistent with Centex's ownership of the Licensed Marks and shall not claim adversely to Centex, or assist any third party in attempting to claim adversely to Centex, with regards to such ownership. Eagle agrees that it will not challenge the title of Centex to the Licensed Marks, oppose any registration thereof, or challenge the validity of this Agreement or the licenses granted herein.

4.4 Maintenance. All costs associated with maintaining or renewing the Licensed Marks shall be borne by Eagle. Eagle, in its discretion, shall have the sole authority to decide whether to maintain and renew registrations for the Licensed Marks. At Eagle's request and cost, Centex shall cooperate with Eagle and shall in general take such actions as are necessary to facilitate the maintenance and renewal of the Licensed Marks, including timely executing all documents necessary to do so, including without limitation all powers of attorney, declarations and affidavits. Eagle shall provide Centex any reasonably required information requested by Centex to facilitate its timely execution of such documents.

4.5 No Liens. Centex represents and warrants that the Licensed Marks are not currently encumbered by any liens, security interests, or any rights of others; and further, Centex will not permit or allow the Licensed Marks to be sold, transferred, assigned or encumbered in any way without the prior written consent of Eagle.

4.6 Option to Purchase. After two (2) years from the Effective Date, Eagle shall have the right to purchase any or all of the right, title and interest in and to the Licensed Marks for a price to be mutually agreed to between Eagle and Centex, such price to take into account the fact that Eagle will already have the perpetual and exclusive right to use, maintain and enforce the Licensed Marks pursuant to this Agreement.

4.7 Quality Control.

(a) Centex and Eagle acknowledge and agree that Centex is intimately familiar with Eagle's abilities and expertise in the Eagle Business and the manufacture of construction products, including without limitation cement, clinker, readymix concrete, aggregates (i.e., sand, gravel and other like material), paperboard and gypsum wallboard.

(b) Eagle agrees that all goods sold under the Licensed Marks will be of high quality, standard and skill. Centex and Eagle acknowledge and agree that due to the

longstanding close working relationship between them, the fact that officer(s) of Centex are on Eagle's Board of Directors, and given the high degree of Centex's familiarity with Eagle's abilities and expertise in the Eagle Business, Centex is entitled to rely upon Eagle's own efforts to control the quality of the goods and services offered under the Licensed Marks.

(c) Notwithstanding the foregoing, Centex shall have the right to impose on Eagle, as necessary, other specifications or requirements not provided for in this Agreement to ensure the requisite quality standards with respect to products manufactured or sold by Eagle that display the Licensed Marks. Further, Eagle shall, on reasonable request and notice from Centex, make available to Centex samples of goods or materials displaying the Licensed Marks.

4.8 Protection; Enforcement.

(a) In the event of any unauthorized application, registration, use or infringement of or for the Licensed Marks by third parties, Eagle may institute legal proceedings against such third parties, in its sole discretion and at its own cost, and may retain any recovery obtained. Eagle may also, at any time, without obtaining the consent or approval of Centex, request that any third party cease and desist from any unauthorized use or infringement of any of the Licensed Marks.

(b) Centex shall render all reasonable assistance to Eagle in connection with any matter pertaining to the protection, enforcement or infringement of the Licensed Marks, whether in the courts, administrative or quasi-judicial agencies, or otherwise.

5. THE EAGLE MARKS

5.1 Ownership. Centex acknowledges and agrees that Eagle (or an Eagle Group Subsidiary) owns all right, title and interest in and to the Eagle Marks, and will do nothing inconsistent with the ownership of the Eagle Marks.

5.2 Unregistered marks; common law rights. Centex acknowledges and agrees that Eagle (or an Eagle Group Subsidiary) may have developed common law rights in certain unregistered marks in the conduct of the Eagle Business. Centex hereby disclaims any and all right, title and interest that it may have in and to such marks, if any.

6. DOMAIN NAMES

6.1 Right to Use. Centex hereby grants to Eagle, and Eagle hereby accepts, an exclusive, perpetual, worldwide, royalty-free right to use the Domain Names in connection with the Eagle Business, subject to the limitations set forth in this Agreement. Eagle conducts the Eagle Business through the Eagle Group. The rights hereunder to use the Domain Names include the Eagle Group's right to use the Domain Names in connection with the Eagle Business.

6.2 CXP Domain Name. Centex shall maintain the registration for the CXP Domain Name for a period of two (2) years following the Effective Date. Not later than

thirty (30) days following the Effective Date, Centex will take such steps to ensure that the CXP Domain Name resolves to the new Eagle website. Eagle agrees to provide Centex with the information necessary to do so. At the end of the two-year period, Centex will no longer be obligated to maintain the CXP Domain Name.

6.3 The Parties agree that the registration information for the CXP Domain Name and the Domain Names shall list Centex as the Registrant of record; however, Centex shall cause Eagle's designated person's contact information to be listed as the Technical Contact and the Administrative Contact.

6.4 All costs associated with maintaining or renewing the CXP Domain Name and Domain Names shall be borne by Eagle. Eagle, in its discretion, shall have the sole authority to decide whether to maintain and renew registrations for the Domain Names. At Eagle's request and cost, Centex shall cooperate with Eagle and shall in general take such actions as are necessary to facilitate the maintenance and renewal of the Domain Names. Eagle agrees to provide Centex with any reasonably required information requested by Centex to maintain the Domain Names.

6.5 Option to Purchase. After two (2) years from the Effective Date, Eagle shall have the right to purchase all right, title and interest in and to the Domain Names for a price to be mutually agreed to between Eagle and Centex, such price to take into account the fact that Eagle will already have the perpetual and exclusive right to use and maintain the Domain Names pursuant to this Agreement.

7. GENERAL

7.1 Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and hand delivered or mailed by registered or certified mail (return receipt requested) or sent by any means of electronic message transmission with delivery confirmed (by voice or otherwise), or by overnight courier service to the Parties at the following addresses (or at such other addresses for a Party as shall be specified by like notice) and will be deemed given on the date on which such notice is received:

If to Centex: Centex Corporation
2728 North Harwood
Dallas, Texas 75201-9000
Facsimile: _____
Attn: _____

If to Eagle: Eagle Materials Inc.
2728 North Harwood
Dallas, Texas 75201-9000
Facsimile: _____
Attn: _____

If to CM: Centex Materials, LLC

2728 North Harwood
Dallas, Texas 75201-9000
Facsimile:

Attn: _____

7.2 Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and to the extent that this agreement is inconsistent with any prior agreement(s) between the Parties, the terms of this agreement will control.

7.3 Amendment. This Agreement shall not be amended or otherwise modified except by a written agreement dated subsequent to the date of this Agreement and signed on behalf of Centex, CM and Eagle by their respective duly authorized representatives.

7.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

7.5 Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and the Parties' respective successors and assigns.

7.6 No Waiver. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

7.7 Savings Clause. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

7.8 Further Assurances. The Parties agree to take such further action and execute, deliver and/or file such documents or instruments as are necessary to carry out the terms and purposes of this Agreement.

7.9 Section Headings. The section headings used in this Agreement are intended for convenience only and shall not be deemed to supersede or modify any provisions.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CENTEX CORPORATION

EAGLE MATERIALS INC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

CENTEX MATERIALS,LLC

By: _____

Name: _____

Title: _____

TRADEMARK LICENSE AND DOMAIN NAME AGREEMENT

Page 9 of 9

EXHIBIT 1.1

CENTEX MATERIALS MARKS

UNITED STATES

Mark	Registration No.	Registration Date
CENTEX MATERIALS, LP	1,968,670	April 16, 1996
[CENTEX CONSTRUCTION PRODUCTS LOGO]	1,932,900	November 7, 1995

UNITED KINGDOM

Mark	Registration No.	Registration Date
[CENTEX CONSTRUCTION PRODUCTS LOGO]	2,044,516	October 11, 1996

EXHIBIT 1.2

DOMAIN NAMES

americangypsum.biz
americangypsum.info
centexmaterials.com
centexmaterials.biz
centexmaterials.info
illinoiscement.com
illinoiscement.biz
illinoiscement.info
mathewsreadymix.com
mathewsreadymix.biz
mathewsreadymix.info
mountaincement.com
mountaincement.biz
mountaincement.info
mountaincementcompany.biz
mountaincementcompany.info
nevadacement.com
nevadacement.biz
nevadacement.info
nevadacement.net
nevadacementco.com
nevadacementco.net
smoothroc.biz
westernaggregates.com
westernaggregates.biz
westernaggregates.info
wisconsincement.biz
wisconsincement.info
wisconsincementco.biz
wisconsincementco.info
riograndedrywallsupply.biz
republicgypsum.biz
republicgypsum.info
republicgypsumcompany.biz
republicpaperboard.biz
republicpaperboard.info
republicpaperboardcompany.biz
republicpaperboardcompany.info
republicfiber.biz
republicfiber.info
republicfibercompany.biz
republicfibercompany.info

EXHIBIT 1.5

EAGLE MARKS

UNITED STATES

Mark	Registration No.	Registration Date
FIRE-ROC (owner: Centex Construction Products, Inc.)	U.S. Reg. No. 2,555,028	April 2, 2002
N Design (owner: Nevada Cement Co.) [N DESIGN LOGO]	Nevada State Registration	September 18, 1996
R REPUBLIC & Design (owner: Centex Construction Products, Inc.) [R REPUBLIC LOGO]	1,023,975	October 28, 1975
REPUBLIC FIBER COMPANY (owner: Centex Construction Products, Inc.)	2,606,288	August 13, 2002
REPUBLIC 54 (owner: Centex Construction Products, Inc.)	1,869,593	December 27, 1994
REPUBLIC GYPSUM (owner: Centex Construction Products, Inc.)	971,145	October 23, 1973
REPUBLIC GYPSUM COMPANY (owner: Centex Construction Products, Inc.)	2,627,276	October 1, 2002
REPUBLIC PAPERBOARD COMPANY (owner: Centex Construction Products, Inc.)	2,651,115	November 19, 2002
REPUBLIC PAPERBOARD COMPANY & Design (owner: Centex Construction Products, Inc.) [REPUBLIC PAPERBOARD COMPANY LOGO]	2,616,542	September 10, 2002
Star Design (owner: Centex Construction Products, Inc.) [R REPUBLIC LOGO]	1,543,501	June 13, 1989
TEXAS-LEHIGH (owner: Texas-Lehigh Cement Company, LP)	2,057,265	April 29, 1997
WATERSHIELD (owner: Centex Construction Products, Inc.)	1,287,951	July 31, 1984

EXHIBIT 1.6

LICENSED MARKS

UNITED STATES

Mark	Registration No.	Registration Date
AMERICAN GYPSUM	2,171,076	July 7, 1998
AQUABLOC	971,158	October 23, 1973
EAGLEROC	2,222,618	February 9, 1999
FIREBLOC	735,175	July 31, 1962
ILLINOIS CEMENT CO	2,023,201	December 17, 1996
ILLINOIS CEMENT CO. & DESIGN [ILLINOIS CEMENT CO. LOGO]	2,023,266	December 17, 1996
M & DESIGN [M & DESIGN LOGO]	1,973,081	May 7, 1996
MATHEWS READYMIX, INC.	2,023,202	December 17, 1996
MISC. DESIGN (EAGLE LOGO)	2,213,119	December 22, 1998
MOUNTAIN CEMENT COMPANY	1,971,499	April 30, 1996
N & DESIGN (Nevada Cement Logo)	2,005,807	October 8, 1996
NEVADA CEMENT	2,023,203	December 17, 1996
SMOOTHROC	2,648,202	November 12, 2002
TL & Design [TL& DESIGN LOGO]	2,004,137	October 1, 1996
WA & DESIGN [WA & DESIGN LOGO]	1,973,080	May 7, 1996
WESTERN AGGREGATES	1,967,105	April 9, 1996

Mark	Registration No.	Registration Date
WISCONSIN CEMENT CO.	2,023,200	December 17, 1996
WISCONSIN CEMENT CO. & Design [WISCONSIN CEMENT CO. LOGO]	2,021,819	December 10, 1996

CANADA

Mark	Registration No.	Registration Date
AMERICAN GYPSUM	542,536	March 16, 2001
AQUABLOC	542,533	March 16, 2001
EAGLEROC	TMA544134	April 25, 2001
FIREBLOC	563,215	June 10, 2002
FIRE-BLOC	266,900	February 26, 1982
MISC. DESIGN (EAGLE LOGO)	TMA544122	April 25, 2001

EUROPEAN COMMUNITY

Mark	Registration No.	Registration Date
AQUABLOC	TMA645515	March 18, 2002

MEXICO

Mark	Registration No.	Registration Date
AMERICAN GYPSUM	692,140	March 30, 2001
AQUABLOC	567,033	December 15, 1997
EAGLEROC	579,960	June 29, 1998
FIREBLOC	567,034	December 15, 1997
MISC. DESIGN (EAGLE LOGO)	592,961	November 24, 1998

NEW MEXICO

Mark

Registration No.

Registration Date

RIO GRANDE DRYWALL SUPPLY CO.

TK99052001

May 20, 1999

TRADEMARK LICENSE AGREEMENT — EXHIBIT 2

Page 4 of 1

CENTEX CONSTRUCTION PRODUCTS, INC.

AND

MELLON INVESTOR SERVICES LLC

AS RIGHTS AGENT

RIGHTS AGREEMENT

DATED AS OF [_____, 2003]

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- Exhibit 1 Certificate of Designation, Preferences and Rights of Series A Preferred Stock of Centex Construction Products, Inc.
- Exhibit 2 Certificate of Designation, Preferences and Rights of Series B Preferred Stock of Centex Construction Products, Inc.
- Exhibit 3 Form of Class A Rights Certificate
- Exhibit 4 Form of Class B Rights Certificate
- Exhibit 5 Letter to Stockholders

RIGHTS AGREEMENT

RIGHTS AGREEMENT, dated as of [_____, 2003], between CENTEX CONSTRUCTION PRODUCTS, INC., a Delaware corporation (the "COMPANY"), and MELLON INVESTOR SERVICES LLC, a New Jersey limited liability company, as rights agent (the "RIGHTS AGENT").

RECITALS

On [_____, 2003] (the "RIGHTS DIVIDEND DECLARATION DATE"), the Board of Directors of the Company (i) (A) authorized and declared a dividend distribution of one preferred share purchase right (a "CLASS A RIGHT") for each share of Common Stock (as hereinafter defined) of the Company outstanding at the close of business on [_____, 2003] (the "RECORD DATE"), each Class A Right initially representing the right to purchase one one-thousandth of a share of Series A Preferred Stock, par value \$.01 per share, of the Company having the rights, powers and preferences set forth in the Certificate of Designation, Preferences and Rights of Series A Preferred Stock attached hereto as Exhibit 1, upon the terms and subject to the conditions hereinafter set forth, and (B) further authorized the issuance of one Class A Right (as such number may be hereafter adjusted as provided herein) for each share of Common Stock of the Company issued between the Record Date (whether originally issued or delivered from the Company's treasury) and the Distribution Date and (ii) (A) authorized and declared a dividend distribution of one preferred share purchase right (a "CLASS B RIGHT") for each share of Class B Common Stock (as hereinafter defined) of the Company outstanding at the close of business on the Record Date, each Class B Right initially representing the right to purchase one one-thousandth of a share of Series B Preferred Stock, par value \$.01 per share, of the Company having the rights, powers and preferences set forth in the Certificate of Designation, Preferences and Rights of Series B Preferred Stock attached hereto as Exhibit 2, upon the terms and subject to the conditions hereinafter set forth, and (B) further authorized the issuance of one Class B Right (as such number may be hereafter adjusted as provided herein) for each share of Class B Common Stock of the Company issued between the Record Date (whether originally issued or delivered from the Company's treasury) and the Distribution Date;

AGREEMENT

In consideration of the premises and the mutual agreements herein set forth, the parties hereby agree as follows:

Section 1. Certain Definitions. For purposes of this Agreement, the following terms have the meanings indicated:

(a) "ACQUIRING PERSON" shall mean any Person (as such term is hereinafter defined) who or which, together with all Affiliates and Associates of such Person, shall be the Beneficial Owner (as such term is hereinafter defined) of shares of Company Common Stock (as such term is hereinafter defined), representing, in the aggregate, 15% or more of the total number of votes entitled to be cast generally (other than in an election of directors) by the holders of the

shares of Company Common Stock then outstanding, voting together as a class, but shall not include (i) the Company, (ii) any Subsidiary of the Company, (iii) any employee benefit plan of the Company or of any Subsidiary of the Company, or any Person or entity organized, appointed or established by the Company for or pursuant to the terms of any such plan, or (iv) any Person who becomes an Acquiring Person solely as a result of a reduction in the number of shares of Company Common Stock outstanding due to the repurchase of shares of Company Common Stock by the Company, unless and until such Person shall purchase or otherwise become (as a result of actions taken by such Person or its Affiliates or Associates) the Beneficial Owner of additional shares of Company Common Stock representing, in the aggregate, 1% or more of the total number of votes entitled to be cast generally (other than in an election of directors) by the holders of the shares of Company Common Stock then outstanding, voting together as a class. Notwithstanding the foregoing, if (i) the Board of Directors of the Company determines in good faith that a Person who would otherwise be an Acquiring Person, as defined pursuant to the foregoing provisions of this paragraph, has become such inadvertently (including, without limitation, because (A) such Person was unaware that it beneficially owned a percentage of Company Common Stock that would otherwise cause such Person to be an Acquiring Person, or (B) such Person was aware of the extent of its Beneficial Ownership of Company Common Stock but had no actual knowledge of the consequences of such Beneficial Ownership under this Agreement) and without any intention of changing or influencing control of the Company, and (ii) within ten Business Days of being requested by the Company to advise it regarding the same, such Person certifies to the Company that such Person acquired shares of Company Common Stock representing, in the aggregate, in excess of 14.99% of the total number of votes entitled to be cast generally (other than in an election of directors) by the holders of the shares of Company Common Stock then outstanding, voting together as a class, inadvertently or without knowledge of the terms of the Rights (as such term is hereinafter defined) and who, together with all Affiliates and Associates, thereafter does not acquire additional shares of Company Common Stock and within ten Business Days of being requested by the Company to do so disposes of the portion of such shares of Company Common Stock representing, in the aggregate, in excess of 14.99% of the total number of votes entitled to be cast generally (other than in an election of directors) by the holders of the shares of Company Common Stock then outstanding, voting together as a class, then such Person shall not be deemed to be or to have become an Acquiring Person for any purposes of this Agreement; provided, however, that if the Person requested to so certify fails to do so within ten Business Days of the Company's request or such Person fails to dispose of such shares of Company Common Stock representing, in the aggregate, in excess of 14.99% of the total number of votes entitled to be cast generally (other than in an election of directors) by the holders of the shares of Company Common Stock then outstanding, voting together as a class, within ten Business Days of the Company's request, then such Person shall become an Acquiring Person immediately after such ten Business Day period. The phrase "then outstanding," when used with reference to a Person's Beneficial Ownership of securities of the Company, shall mean the number of such securities then issued and outstanding together with the number of such securities not then actually issued and outstanding which such Person would be deemed to own beneficially hereunder.

(b) "ACT" shall mean the Securities Act of 1933, as amended and in effect from time to time.

(c) "ADJUSTMENT SHARES" shall have the meaning set forth in Section 11(a)(ii) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Certain Adjustments)

(d) "AFFILIATE" and "ASSOCIATE" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Exchange Act.

(e) "AGREEMENT" shall mean this Rights Agreement as originally executed or as it may from time to time be supplemented or amended pursuant to the applicable provisions hereof.

(f) A Person shall be deemed the "BENEFICIAL OWNER" of, and shall be deemed to "BENEFICIALLY OWN," any securities:

(i) which such Person or any of such Person's Affiliates or Associates, directly or indirectly, has the right to acquire (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding (whether or not in writing) or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise; provided, however, that a Person shall not, for purposes of this paragraph (i), be deemed the "Beneficial Owner" of or to "beneficially own," (A) securities tendered pursuant to a tender or exchange offer made by such Person or any of such Person's Affiliates or Associates until such tendered securities are accepted for purchase or exchange, or (B) securities issuable upon exercise of Rights at any time prior to the occurrence of a Triggering Event, or (C) securities issuable upon exercise of Rights from and after the occurrence of a Triggering Event, which Rights were acquired by such Person or any of such Person's Affiliates or Associates prior to the Distribution Date or pursuant to Section 3(a) (Issuance of Rights Certificates -- Distribution Date; Rights Certificates) or Section 22 (Issuance of New Rights Certificates) (the "ORIGINAL RIGHTS") or pursuant to Section 11(i) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Adjustment of Number of Rights) in connection with an adjustment made with respect to any Original Rights;

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

(iii) which are "beneficially owned," directly or indirectly, by any other Person (or any Affiliate or Associate thereof) with which such Person (or any of such Person's Affiliates or Associates) has any agreement, arrangement or understanding (whether or not in writing), for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy as described in the proviso to subparagraph (ii) of this paragraph (f)) or disposing of any voting securities of the Company;

provided, however, that nothing in this paragraph (f) shall cause a Person engaged in business as an underwriter of securities to be the "Beneficial Owner" of or to "beneficially own," any securities acquired through such Person's participation in good faith in a firm commitment underwriting until the expiration of forty (40) calendar days after the date of such acquisition.

(g) "BOARD" means the Board of Directors of the Company.

(h) "BUSINESS DAY" shall mean any day other than a Saturday, Sunday or a day on which banking institutions in the State of New York or New Jersey or Texas are authorized or obligated by law or executive order to close.

(i) "CLASS A RIGHT" shall have the meaning set forth in the Recital at the beginning of the Agreement.

(j) "CLASS A RIGHT CERTIFICATE" shall have the meaning set forth in Section 3(a) (Issuance of Rights Certificates -- Distribution Date; Rights Certificates).

(k) "CLASS B COMMON STOCK" shall mean the Class B Common Stock, par value \$0.01 per share, of the Company.

(l) "CLASS B RIGHT" shall have the meaning set forth in the Recital at the beginning of the Agreement.

(m) "CLASS B RIGHT CERTIFICATE" shall have the meaning set forth in Section 3(a) (Issuance of Rights Certificates -- Distribution Date; Rights Certificates).

(n) "CLOSE OF BUSINESS" on any given date shall mean 5:00 P.M., New York, New York time, on such date; provided, however, that if such date is not a Business Day it shall mean 5:00 P.M., New York, New York time, on the next succeeding Business Day.

(o) "COMMON STOCK" shall mean the common stock, par value \$0.01 per share, of the Company, except that "Common Stock" when used with reference to any Person other than the Company shall mean the capital stock of such Person with the greatest voting power, or the equity securities or other equity interest having power to control or direct the management, of such Person.

(p) "COMPANY COMMON STOCK" shall mean collectively or severally, as the context shall require, the Common Stock and/or the Class B Common Stock.

(q) "COMPANY COMMON STOCK EQUIVALENTS" shall have the meaning set forth in Section 11(a)(iii) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Certain Adjustments).

(r) "COMPANY" shall mean the Person named as the "Company" in the first paragraph of this Agreement until a successor corporation shall have become such, or until a Principal Party shall assume, and thereafter be liable for, all obligations and duties of the Company hereunder, pursuant to the applicable provisions of this Agreement, and thereafter "Company" shall mean such successor corporation or Principal Party.

(s) "CURRENT MARKET PRICE" shall have the meaning set forth in Section 11(d) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Current Market Price).

(t) "CURRENT VALUE" shall have the meaning set forth in Section 11(a)(iii) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Certain Adjustments).

(u) "DISTRIBUTION DATE" shall have the meaning set forth in Section 3(a) (Issuance of Rights Certificates -- Distribution Date; Rights Certificates).

(v) "EQUIVALENT PREFERRED STOCK" shall have the meaning set forth in Section 11(b) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Purchase Price Adjustment -- Capital Stock).

(w) "EXCHANGE ACT" shall mean the Securities Exchange Act of 1934, as amended and in effect on the date of this Agreement.

(x) "EXCHANGE NUMBER" shall mean one share of Common Stock (or one one-thousandth of a share of Series A Preferred Stock) per Class A Right and one share of Class B Common Stock (or one one-thousandth of a share of Series B Preferred Stock) per Class B Right, or one half the number of shares or other units of other property for which a Right is exercisable immediately prior to the time of the action of the Board to exchange the Rights, appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring with respect to the applicable class of Company Common Stock after the date hereof.

(y) "EXPIRATION DATE" shall have the meaning set forth in Section 7(a) (Exercise of Rights; Purchase Price; Expiration Date of Rights -- Exercise).

(z) "FINAL EXPIRATION DATE" shall mean the Close of Business on [____, 2013].

(aa) "FLIP-IN EVENT" shall mean any event described in Section 11(a)(ii) (A) or (B) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Certain Adjustments).

(bb) "FLIP-IN TRIGGER DATE" shall have the meaning set forth in Section 11(a)(iii) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Certain Adjustments).

(cc) "FLIP-OVER EVENT" shall mean any event described in clauses (x), (y) or (z) of Section 13(a) (Consolidation, Merger or Sale or Transfer of Assets or Earning Power -- Flip-over Event).

(dd) "ORIGINAL RIGHTS" shall have the meaning set forth in Section 1(f)(i) (Certain Definitions).

(ee) "PERSON" shall mean any individual, firm, corporation, limited liability company, partnership, trust or other entity and shall include any successor (by merger or otherwise) thereof or thereto.

(ff) "PREFERRED STOCK" shall mean collectively or severally, as the context shall require, (i) shares of Series A Preferred Stock, par value \$.01 per share, of the Company (the "SERIES A PREFERRED STOCK") and/or (ii) the Series B Preferred Stock, par value \$.01 per share, of the Company (the "SERIES B PREFERRED STOCK"), and, to the extent that there is not a sufficient number of shares of Series A Preferred Stock or Series B Preferred Stock authorized to permit the full exercise of the Rights, any other series of Preferred Stock, par value \$.01 per share, of the Company designated for such purpose containing terms substantially similar to the terms of the Series A Preferred Stock or the Series B Preferred Stock, as the case may be.

(gg) "PRINCIPAL PARTY" shall have the meaning set forth in Section 13(b) (Consolidation, Merger or Sale or Transfer of Assets or Earning Power -- Principal Party).

(hh) "PURCHASE PRICE" shall have the meaning set forth in Section 4(a) (Form of Rights Certificates -- Form; Date).

(ii) "RECORD DATE" shall have the meaning set forth in the Recital at the beginning of the Agreement.

(jj) "REDEMPTION DATE" shall have the meaning set forth in Section 23(a) (Redemption and Termination -- Redemption).

(kk) "REDEMPTION PRICE" shall have the meaning set forth in Section 23(a) (Redemption and Termination -- Redemption).

(ll) "RIGHTS" shall mean collectively or severally, as the context shall require, the Class A Rights and/or the Class B Rights.

(mm) "RIGHTS AGENT" shall mean the Person named as the "Rights Agent" in the first paragraph of this Agreement until a successor Rights Agent shall have become such pursuant to the applicable provisions hereof and thereafter "Rights Agent" shall mean such

successor Rights Agent. If at any time there is more than one Person appointed by the Company as Rights Agent pursuant to the applicable provisions of this Agreement, "Rights Agent" shall mean and include each such Person.

(nn) "RIGHTS CERTIFICATES" shall have the meaning set forth in Section 3(a) (Issuance of Rights Certificates -- Distribution Date; Rights Certificates).

(oo) "RIGHTS DIVIDEND DECLARATION DATE" shall have the meaning set forth in the Recital at the beginning of the Agreement.

(pp) "SPREAD" shall have the meaning set forth in Section 11(a)(iii) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Certain Adjustments).

(qq) "STOCK ACQUISITION DATE" shall mean the first date of public announcement (which, for purposes of this definition, shall include, without limitation, a report filed or amended pursuant to Section 13(d) under the Exchange Act) by the Company or an Acquiring Person that an Acquiring Person has become such.

(rr) "SUBSIDIARY" shall mean, with reference to any Person, any corporation or other entity of which a majority of the voting power of equity securities or majority of the equity interest is beneficially owned, directly or indirectly, by such Person, or otherwise controlled by such Person.

(ss) "SUBSTITUTION PERIOD" shall have the meaning set forth in Section 11(a)(iii) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Certain Adjustments).

(tt) "TRADING DAY" shall have the meaning set forth in Section 11(d)(i) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Current Market Price).

(uu) "TRIGGERING EVENT" shall mean any Flip-in Event or any Flip-over Event.

Section 2. Appointment of Rights Agent. The Company hereby appoints the Rights Agent to act as agent for the Company in accordance with the terms and conditions hereof, and the Rights Agent hereby accepts such appointment. The Company may from time to time appoint such Co-Rights Agents as it may deem necessary or desirable. Notwithstanding the foregoing, the Rights Agents shall have no duty to supervise, and in no event, shall be liable for, the acts or omissions of any such co-Rights Agent.

Section 3. Issuance of Rights Certificates.

(a) Distribution Date; Rights Certificates. Until the earlier of (i) the Close of Business on the tenth Business Day after the Stock Acquisition Date (or, if the tenth Business Day after the Stock Acquisition Date occurs before the Record Date, the Close of Business on

the Record Date), or (ii) the Close of Business on the tenth Business Day (or such later date as the Board shall determine prior to such time as any Person becomes an Acquiring Person) after the date that a tender or exchange offer by any Person (other than the Company, any Subsidiary of the Company, any employee benefit plan of the Company or of any Subsidiary of the Company, or any Person or entity organized, appointed or established by the Company for or pursuant to the terms of any such plan) is first published or sent or given within the meaning of Rule 14d-2(a) of the General Rules and Regulations under the Exchange Act, if upon consummation thereof such Person would be the Beneficial Owner of shares of Company Common Stock representing, in the aggregate, 15% or more of the total number of votes entitled to be cast generally (other than in an election of directors) by the holders of the shares of Company Common Stock then outstanding, voting together as a class (the earlier of (i) and (ii) being herein referred to as the "DISTRIBUTION DATE"), (x) the Rights will be evidenced (subject to the provisions of paragraph (b) of this Section 3) by the certificates for Company Common Stock registered in the names of the holders of the Company Common Stock (which certificates for Company Common Stock shall be deemed also to be certificates for Rights) and not by separate certificates, and (y) the Rights will be transferable only in connection with the transfer of the underlying shares of Company Common Stock (including a transfer to the Company, except pursuant to the provision of Section 23 (Redemption and Termination)). As soon as practicable after the Distribution Date, the Company will prepare and execute, the Rights Agent will countersign, and the Company will send or cause to be sent (and the Rights Agent will, if requested and provided with all necessary information, send) by first-class, insured, postage prepaid mail, (A) to each record holder of the Common Stock as of the Close of Business on the Distribution Date, at the address of such holder shown on the records of the Company or the transfer agent or registrar for the Common Stock, one or more Class A Rights Certificates, in substantially the form of Exhibit 3 hereto (the "CLASS A RIGHTS CERTIFICATES"), evidencing one Class A Right for each share of Common Stock so held, subject to adjustment as provided herein, and (B) to each record holder of the Class B Common Stock as of the Close of Business on the Distribution Date, at the address of such holder shown on the records of the Company or the transfer agent or registrar for the Common Stock, one or more Class B Rights Certificates, in substantially the form of Exhibit 4 hereto (the "CLASS B RIGHTS CERTIFICATES," and collectively with the Class A Rights Certificates or severally, as the context shall require, the "RIGHTS CERTIFICATES"), evidencing one Class B Right for each share of Class B Common Stock so held, subject to adjustment as provided herein. In the event that an adjustment in the number of Rights per share of Company Common Stock has been made pursuant to Section 11(p) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Company Common Stock Adjustments) at the time of distribution of the Rights Certificates, the Company shall make the necessary and appropriate rounding adjustments (in accordance with Section 14(a) (Fractional Rights and Fractional Shares -- Fractional Rights)) so that Rights Certificates representing only whole numbers of Rights are distributed and cash is paid in lieu of any fractional Rights. As of and after the Distribution Date, the Rights will be evidenced solely by such Rights Certificates. The Company will promptly notify the Rights Agent in writing upon the occurrence of the Distribution Date and, if such notification is given orally, the Company shall confirm same in writing on or prior to the Business Day next following. Until such notice is received by the Rights Agent, the Rights Agent may presume conclusively for all purposes that the Distribution Date has not occurred.

(b) Company Common Stock Certificates; Summary of Rights. With respect to certificates for the Company Common Stock outstanding as of the Record Date, until the Distribution Date, the Rights associated with the Company Common Stock (a Class A Right in the case of Common Stock and a Class B Right in the case of Class B Common Stock) represented by such certificates will be evidenced by such certificates alone and the registered holders of such Company Common Stock shall also be the registered holders of the associated Rights. Until the earlier of the Distribution Date or the Expiration Date, the transfer of any certificates representing shares of Company Common Stock in respect of which Rights have been issued shall also constitute the transfer of the Rights associated with such shares of Company Common Stock. On the Record Date, or as soon as practicable thereafter, the Company will send a copy of a Summary of Rights to Purchase Preferred Stock, in substantially the form of Exhibit 5 hereto (the "SUMMARY OF RIGHTS"), by first-class, postage-prepaid mail, to each record holder of shares of Company Common Stock as of the close of business of the Record Date, at the address of such holder shown on the records of the Company or transfer agent or registrar for the Common Stock.

(c) Legend. Rights shall be issued in respect of all certificates for shares of Company Common Stock which are issued (whether originally issued or from the Company's treasury) after the Record Date but prior to the earliest of the (i) Distribution Date, (ii) the Expiration Date, or (iii) the Redemption Date, or, in certain circumstances provided in Section 22 (Issuance of New Rights Certificates) after the Distribution Date. Certificates representing such shares of Company Common Stock shall also be deemed to be certificates for Rights, and shall bear the following legend:

This certificate also evidences and entitles the holder hereof to certain Rights as set forth in the Rights Agreement dated as of [_____, 2003], by and between Centex Construction Products, Inc. (the "COMPANY") and Mellon Investor Services LLC, as Rights Agent (the "RIGHTS AGREEMENT"), the terms of which are hereby incorporated herein by reference and a copy of which is on file at the principal offices of the Company. Under certain circumstances, as set forth in the Rights Agreement, such Rights will be evidenced by separate certificates and will no longer be evidenced by this certificate. The Company will mail to the holder of this certificate a copy of the Rights Agreement, as in effect on the date of mailing, without charge promptly after receipt of a written request therefor. Under certain circumstances set forth in the Rights Agreement, Rights issued to, or held by, any Person who is, was or becomes an Acquiring Person or any Affiliate or Associate thereof (as such terms are defined in the Rights Agreement), whether currently held by or on behalf of such Person or by any subsequent holder, may become null and void.

With respect to such certificates containing the foregoing legend, until the earliest of (i) the Distribution Date, (ii) the Expiration Date, and (iii) the Redemption Date, (x) the Rights associated with the Company Common Stock represented by such certificates shall be evidenced by such certificates alone, (y) the registered holders of such Company Common Stock shall also be the registered holders of the associated Rights, and (z) the transfer of any of such certificates shall also constitute the transfer of the Rights associated with such shares of Company Common

Stock. In the event that the Company purchases, or acquires any shares of Company Common Stock after the Record Date but prior to the Distribution Date, any rights associated with such shares of Company Common Stock shall be deemed canceled and retired so that the Company shall not be entitled to exercise any Rights associated with shares of Company Common Stock which are no longer outstanding. Notwithstanding this Section 3(c), the omission of a legend shall not affect the enforceability of any part of this Agreement or the rights of any holder of the Rights.

Section 4. Form of Rights Certificates.

(a) Form; Date. The Class A Rights Certificates and the Class B Rights Certificates (and the forms of election to purchase and of assignment to be printed on the reverse thereof) shall each be substantially in the form set forth in Exhibit 3 and Exhibit 4 hereto, respectively, and may have such marks of identification or designation and such legends, summaries or endorsements printed thereon as the Company may deem appropriate (but which do not affect the rights, duties or responsibilities of the Rights Agent) and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any applicable law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Rights may from time to time be listed or any securities association on whose interdealer quotation system the Rights may be from time to time authorized for quotation, or to conform to usage. Subject to the provisions of Section 11 (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights) and Section 22 (Issuance of New Rights Certificates), the Rights Certificates, whenever distributed, shall be dated as of the Record Date and on their face shall entitle the holders thereof to purchase such number of one one-thousandths of a share of the applicable series of Preferred Stock as shall be set forth therein at the price set forth therein (such exercise price per one one-thousandth of a share is referred to herein as the "PURCHASE PRICE"), but the amount and type of securities purchasable upon the exercise of each Right and the Purchase Price thereof shall be subject to adjustment as provided herein.

(b) Acquiring Person Legend. Any Rights Certificate issued pursuant to Section 3(a) (Issuance of Rights Certificates -- Distribution Date; Rights Certificates) or Section 22 (Issuance of New Rights Certificates) that represents Rights beneficially owned by (i) an Acquiring Person or any Associate or Affiliate of an Acquiring Person, (ii) a transferee of an Acquiring Person (or of any such Associate or Affiliate) who becomes a transferee after the Acquiring Person becomes such, or (iii) a transferee of an Acquiring Person (or of any such Associate or Affiliate) who becomes a transferee prior to or concurrently with the Acquiring Person becoming such and receives such Rights pursuant to either (A) a transfer (whether or not for consideration) from the Acquiring Person to holders of equity interests in such Acquiring Person or to any Person with whom such Acquiring Person has any continuing agreement, arrangement or understanding regarding the transferred Rights or (B) a transfer which is part of a plan, arrangement or understanding which has as a primary purpose or effect avoidance of Section 7(e) (Exercise of Rights; Purchase Price; Expiration Date of Rights -- Termination of Acquiring Person's Rights) and any Rights Certificate issued pursuant to Section 6 (Transfer, Split Up, Combination and Exchange of Rights Certificates; Mutilated, Destroyed, Lost or Stolen Rights Certificates), Section 11 (Adjustment of Purchase Price; Number and Kind of Shares or

Number of Rights) or Section 22 (Issuance of New Rights Certificates) upon transfer, exchange, replacement or adjustment of any other Rights Certificate referred to in this sentence, shall contain (to the extent feasible) the following legend:

The Rights represented by this Rights Certificate are or were beneficially owned by a Person who was or became an Acquiring Person or an Affiliate or Associate of an Acquiring Person (as such terms are defined in the Rights Agreement dated as of [_____, 2003], by and between Centex Construction Products, Inc. and Mellon Investor Services LLC, as Rights Agent). Accordingly, this Rights Certificate and the Rights represented hereby may become null and void in the circumstances specified in Section 7(e) (Exercise of Rights; Purchase Price; Expiration Date of Rights -- Termination of Acquiring Person's Rights) of such Agreement.

Section 5. Countersignature and Registration.

(a) Signatures. The Rights Certificates shall be executed on behalf of the Company by its Chairman of the Board, its President or any Vice President, either manually or by facsimile signature, and shall have affixed thereto the Company's seal or a facsimile thereof which shall be attested to by the Secretary or an Assistant Secretary of the Company, either manually or by facsimile signature. The Rights Certificates shall be countersigned by the Rights Agent, either manually or by facsimile signature, and shall not be valid for any purpose unless so countersigned. In case any officer of the Company who shall have signed any of the Rights Certificates shall cease to be such officer of the Company before countersignature by the Rights Agent and issuance and delivery by the Company, such Rights Certificates, nevertheless, may be countersigned by the Rights Agent and issued and delivered by the Company with the same force and effect as though the person who signed such Rights Certificates had not ceased to be such officer of the Company; and any Rights Certificates may be signed on behalf of the Company by any person who, at the actual date of the execution of such Rights Certificate, shall be a proper officer of the Company to sign such Rights Certificate, although at the date of the execution of this Rights Agreement any such person was not such an officer.

(b) Registration and Transfer. Following the Distribution Date, receipt by the Rights Agent of notice to that effect and all other relevant information referred to in Section 3(a), the Rights Agent will keep or cause to be kept, at its principal office or offices designated as the appropriate place for surrender of Rights Certificates upon exercise or transfer, books for registration and transfer of the Rights Certificates issued hereunder. Such books shall show the names and addresses of the respective holders of the Rights Certificates, the number of Rights evidenced on its face by each of the Rights Certificates and the date of each of the Rights Certificates.

Section 6. Transfer, Split Up, Combination and Exchange of Rights Certificates; Mutilated, Destroyed, Lost or Stolen Rights Certificates.

(a) Procedure. Subject to the provisions of Section 4(b) (Form of Rights Certificates -- Acquiring Person Legend), Section 7(e) (Exercise of Rights; Purchase Price;

Expiration Date of Rights -- Termination of Acquiring Person's Rights) and Section 14 (Fractional Rights and Fractional Shares), at any time after the Close of Business on the Distribution Date, and at or prior to the Close of Business on the Expiration Date, any Rights Certificate or Certificates may be transferred, split up, combined or exchanged for another Rights Certificate or Certificates, entitling the registered holder to purchase a like number of one one-thousandths of a share of the applicable series of Preferred Stock (or, following a Triggering Event, Common Stock, Class B Common Stock, other securities, cash or other assets, as the case may be) as the Rights Certificate or Certificates surrendered then entitled such holder (or former holder in the case of a transfer) to purchase. Any registered holder desiring to transfer, split up, combine or exchange any Rights Certificate or Certificates shall make such request in writing delivered to the Rights Agent, and shall surrender the Rights Certificate or Certificates to be transferred, split up, combined or exchanged at the principal office or offices of the Rights Agent designated for such purpose. Neither the Rights Agent nor the Company shall be obligated to take any action whatsoever with respect to the transfer of any such surrendered Rights Certificate until the registered holder shall have completed and signed the certificate contained in the form of assignment on the reverse side of such Rights Certificate and shall have provided such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) or Affiliates or Associates thereof as the Company shall reasonably request. Thereupon, the Rights Agent shall, subject to Section 4(b), Section 7(e) and Section 14, countersign and deliver to the Person entitled thereto a Rights Certificate or Rights Certificates, as the case may be, as so requested. The Company may require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer, split up, combination or exchange of Rights Certificates. The Rights Agent shall have no duty or obligation under this Section 6 or under any provision of this Agreement which requires the payment by a Rights holder of applicable taxes or governmental charges unless and until it is satisfied that all such taxes and/or charges have been paid in full.

(b) Issuance of New Rights Certificates. Upon receipt by the Company and the Rights Agent of evidence reasonably satisfactory to them of the loss, theft, destruction or mutilation of a Rights Certificate, and, in case of loss, theft or destruction, of indemnity or security satisfactory to them, and reimbursement to the Company and the Rights Agent of all reasonable expenses incidental thereto, and upon surrender to the Rights Agent and cancellation of the Rights Certificate if mutilated, the Company will execute and deliver a new Rights Certificate of like tenor to the Rights Agent for countersignature and delivery to the registered owner in lieu of the Rights Certificate so lost, stolen, destroyed or mutilated.

Section 7. Exercise of Rights; Purchase Price; Expiration Date of Rights.

(a) Exercise. Subject to Section 7(e) (Exercise of Rights; Purchase Price; Expiration Date of Rights -- Termination of Acquiring Person's Rights), the registered holder of any Rights Certificate may exercise the Rights evidenced thereby (except as otherwise provided herein, including, without limitation, the restrictions on exercisability set forth in Section 9(c) (Reservation and Availability of Capital Stock -- Registration under the Act), Section 11(a)(iii) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Certain Adjustments), Section 23(a) (Redemption and Termination -- Redemption), and Section 24(b) (Exchange -- Effect of Exchange; Procedure)) in whole or in part at any time after the

Distribution Date upon surrender of the Rights Certificate, with the form of election to purchase and the certificate on the reverse side thereof duly executed, to the Rights Agent at the principal office or offices of the Rights Agent designated for such purpose, together with payment of the aggregate Purchase Price with respect to the total number of one one-thousandths of a share of the applicable series of Preferred Stock (or other securities, cash or other assets, as the case may be) as to which such surrendered Rights are then exercisable and an amount equal to any applicable transfer tax or charge, at or prior to the earliest of (i) the Final Expiration Date, (ii) the Redemption Date, or (iii) the expiration of the Rights pursuant to Section 13(d) (Consolidation, Merger or Sale or Transfer of Assets or Earning Power -- Exceptions) (the earliest of (i), (ii) and (iii) being herein referred to as the "EXPIRATION DATE"). The payment of the Purchase Price and the applicable transfer tax, if any (as such amount may be reduced pursuant to Section 11(a)(iii) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Certain Adjustments)), may be made (x) in cash, (y) by certified check, cashier's check or money order payable to the order of the Company, or (z) by delivery of a certificate or certificates (with appropriate stock powers executed in blank attached thereto) evidencing a number of shares of Company Common Stock equal to the then Purchase Price divided by the closing price (as determined pursuant to Section 11(d) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Current Market Price)) per share of Company Common Stock on the Trading Day immediately preceding the date of such exercise. In the event that the Company is obligated to issue other securities (including Company Common Stock) of the Company, pay cash and/or distribute other property pursuant to Section 11(a) the Company will make all arrangements necessary so that such other securities, cash and/or other property are available for distribution by the Rights Agent, if and when appropriate. The Company reserves the right to require prior to the occurrence of a Triggering Event that upon any exercise of Rights, a number of Rights be exercised so that only whole shares of Preferred Stock would be issued.

(b) Purchase Price. The Purchase Price shall initially be (i) with respect to each Class A Right, \$140.00 for each one one-thousandth of a share of Series A Preferred Stock and (ii) with respect to each Class B Right, \$140.00 for each one one-thousandth of a share of Series B Preferred Stock, in each case purchasable upon the exercise of a Right, and shall be subject to adjustment from time to time as provided in Section 11 (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights) and Section 13(a) (Consolidation, Merger or Sale or Transfer of Assets or Earning Power -- Flip-over Event) and shall be payable in accordance with paragraph (a) of this Section 7.

(c) Rights Agent Actions. Upon receipt of a Rights Certificate representing exercisable Rights and the compliance by the holder of such Rights Certificate with paragraph (a) of this Section 7, the Rights Agent shall, subject to Section 20(k) (Duties of Rights Agent -- Exercise of Rights; Consultation with Company), thereupon promptly (i) (A) requisition from any transfer agent of the shares of Preferred Stock (or make available, if the Rights Agent is the transfer agent for such shares) certificates for the total number of one one-thousandths of a share of the applicable series of Preferred Stock to be purchased and the Company hereby irrevocably authorizes its transfer agent to comply with all such requests, or (B) if the Company shall have elected to deposit the total number of shares of Preferred Stock issuable upon exercise of the Rights hereunder with a depository agent, requisition from the depository agent depository receipts representing such number of one one-thousandths of a share of the applicable series of

Preferred Stock as are to be purchased (in which case certificates for the shares of Preferred Stock represented by such receipts shall be deposited by the transfer agent with the depository agent) and the Company will direct the depository agent to comply with such request, (ii) requisition from the Company the amount of cash, if any, to be paid in lieu of fractional shares in accordance with Section 14 (Fractional Rights and Fractional Shares), (iii) after receipt thereof, deliver such certificates or depository receipts to or upon the order of the registered holder of such Rights Certificate, registered in such name or names as may be designated by such holder, and (iv) after receipt thereof, deliver such cash, if any, to or upon the order of the registered holder of such Rights Certificate.

(d) Partial Exercise. In case the registered holder of any Rights Certificate shall exercise less than all the Rights evidenced thereby, a new Rights Certificate evidencing Rights equivalent to the Rights remaining unexercised shall be issued by the Rights Agent and delivered to, or upon the order of the registered holder of such Rights Certificate, registered in such name or names as may be designated by such holder, subject to the provisions of Section 14 (Fractional Rights and Fractional Shares).

(e) Termination of Acquiring Person's Rights. Notwithstanding anything in this Agreement to the contrary, from and after the first occurrence of a Flip-in Event, any Rights beneficially owned by (i) an Acquiring Person, or an Associate or Affiliate of an Acquiring Person, (ii) a transferee of an Acquiring Person (or of any such Associate or Affiliate) who becomes a transferee after such Acquiring Person becomes such, or (iii) a transferee of an Acquiring Person (or of any such Associate or Affiliate) who becomes a transferee prior to or concurrently with the Acquiring Person becoming such and receives such Rights pursuant to either (A) a transfer (whether or not for consideration) from the Acquiring Person to holders of equity interests in such Acquiring Person or to any Person with whom the Acquiring Person has any continuing agreement, arrangement or understanding regarding the transferred Rights or (B) a transfer which is part of a plan, arrangement or understanding which has as a primary purpose or effect the avoidance of this Section 7(e), shall become null and void without any further action and no holder of such Rights shall have any rights whatsoever with respect to such Rights, whether under any provision of this Agreement or otherwise. The Company shall use all reasonable efforts to ensure that the provisions of this Section 7(e) and Section 4(b) (Form of Rights Certificates -- Acquiring Person Legend) are complied with, but neither the Company nor the Rights Agent shall have no liability to any holder of Rights Certificates or other Person as a result of its failure to make any determinations with respect to an Acquiring Person or any of its respective Affiliates, Associates or transferees hereunder. The Company shall notify the Rights Agent when this Section 7(e) applies and shall give the Rights Agent written notice of the identity of such Acquiring Person, Associate or Affiliate, or the nominee of any of the foregoing. The Rights Agent may rely on such notice in carrying out its duties under this Agreement and shall be deemed not to have any knowledge of the identity of any such Acquiring Person, Associate or Affiliate, or the nominee of any of the foregoing unless and until it shall have received such notice.

(f) Surrender of Rights Certificates; Identity of Beneficial Owner. Notwithstanding anything in this Agreement to the contrary, neither the Rights Agent nor the Company shall be obligated to undertake any action with respect to a registered holder upon the

occurrence of any purported exercise as set forth in this Section 7 unless such registered holder shall have (i) completed and signed the certificate contained in the form of election to purchase set forth on the reverse side of the Rights Certificate surrendered for such exercise, (ii) tendered the Purchase Price (and an amount equal to any applicable tax or charge required to be paid by the holder of such Right Certificate in accordance with Section 9(e)) to the Company in the manner set forth in Section 7(a), and (iii) provided such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) or Affiliates or Associates thereof as the Company shall reasonably request.

Section 8. Cancellation and Destruction of Rights Certificates. All Rights Certificates surrendered for the purpose of exercise, transfer, split up, combination or exchange shall, if surrendered to the Company or any of its agents, be delivered to the Rights Agent for cancellation or in canceled form, or, if surrendered to the Rights Agent, shall be canceled by it, and no Rights Certificates shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Agreement. The Company shall deliver to the Rights Agent for cancellation and retirement, and the Rights Agent shall so cancel and retire, any other Rights Certificate purchased or acquired by the Company otherwise than upon the exercise thereof. The Rights Agent shall deliver all canceled Rights Certificates to the Company, or shall, at the written request of the Company, destroy such canceled Rights Certificates, and in such case shall deliver a certificate of destruction thereof to the Company.

Section 9. Reservation and Availability of Capital Stock.

(a) Reservation of Capital Stock. The Company will use its best efforts to reserve and keep available out of its authorized and unissued shares of Preferred Stock (and, following the occurrence of a Triggering Event, out of its authorized and unissued shares of Company Common Stock and/or other securities or out of its authorized and issued shares of Company Common Stock held in its treasury), the number of shares of Preferred Stock (and, following the occurrence of a Triggering Event, Company Common Stock and/or other securities) that, as provided in this Agreement, including the rights of the Company under Section 11(a)(iii) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Certain Adjustments) to otherwise fulfill its obligations, will be sufficient to permit the exercise in full of all outstanding Rights.

(b) Listing. So long as the shares of Preferred Stock (and, following the occurrence of a Triggering Event, Company Common Stock and/or other securities) issuable and deliverable upon the exercise of the Rights may be listed on any national securities exchange or authorized for quotation on any interdealer quotation system of any securities association, the Company shall use its best efforts to cause, from and after such time as the Rights become exercisable, all shares reserved for such issuance to be listed on such exchange or quoted on such system upon official notice of issuance upon such exercise.

(c) Registration under the Act. The Company will use its best efforts to (i) file, as soon as practicable following the earliest date after the first occurrence of a Flip-in Event on which the consideration to be delivered by the Company upon exercise of the Rights has been determined in accordance with Section 11(a)(iii) (Adjustment of Purchase Price; Number and

Kind of Shares or Number of Rights -- Certain Adjustments), or as soon as is required by law following the Distribution Date, as the case may be, a registration statement on an appropriate form under the Act with respect to the securities purchasable upon exercise of the Rights, (ii) cause such registration statement to become effective as soon as practicable after such filing, and (iii) cause such registration statement to remain effective (with a prospectus at all times meeting the requirements of the Act) until the earlier of (A) the date as of which the Rights are no longer exercisable for such securities, and (B) the Expiration Date. The Company will also take such action as may be appropriate under, or to ensure compliance with, the securities or "blue sky" laws of the various states in connection with the exercisability of the Rights. The Company may temporarily suspend, for a period of time not to exceed ninety (90) calendar days after the date set forth in clause (i) of the first sentence of this Section 9(c), the exercisability of the Rights in order to prepare and file such registration statement and permit it to become effective. Upon any such suspension, the Company shall issue a public announcement (with prompt written notice to the Rights Agent) stating that the exercisability of the Rights has been temporarily suspended, as well as a public announcement (with prompt written notification to the Rights Agent) at such time as the suspension is no longer in effect. In addition, if the Company shall determine that a registration statement is required following the Distribution Date, the Company may temporarily suspend the exercisability of the Rights until such time as a registration statement has been declared effective. Notwithstanding any provision of this Agreement to the contrary, the Rights shall not be exercisable in any jurisdiction if the requisite qualification in such jurisdiction shall not have been obtained, the exercise thereof shall not be permitted under applicable law or a registration statement shall not have been declared effective.

(d) Covenant Regarding Capital Stock. The Company will take all such action as may be necessary to ensure that all one one-thousandths of a share of Preferred Stock (and, following the occurrence of a Triggering Event, Company Common Stock and/or other securities) delivered upon exercise of Rights shall, at the time of delivery of the certificates for such shares (subject to payment of the Purchase Price), be duly and validly authorized and issued and fully paid and nonassessable.

(e) Transfer Taxes and Charges. The Company will pay when due and payable any and all taxes and charges which may be payable in respect of the issuance or delivery of the Rights Certificates and of any certificates for a number of one one-thousandths of a share of Preferred Stock (or Company Common Stock and/or other securities, as the case may be) upon the exercise of Rights. The Company shall not, however, be required to pay any tax or charge which may be payable in respect of any transfer or delivery of Rights Certificates to a Person other than, or the issuance or delivery of a number of one one-thousandths of a share of Preferred Stock (or Company Common Stock and/or other securities, as the case may be) in respect of a name other than, that of the registered holder of the Rights Certificates evidencing Rights surrendered for exercise or to issue or deliver any certificates for a number of one one-thousandths of a share of Preferred Stock (or Company Common Stock and/or other securities, as the case may be) in a name other than that of the registered holder upon the exercise of any Rights until such tax or charge shall have been paid (any such tax or charge being payable by the holder of such Rights Certificate at the time of surrender) or until it has been established to the Company's and the Rights Agent's satisfaction that no such tax is due.

Section 10. Preferred Stock Record Date. Each Person in whose name any certificate for a number of one one-thousandths of a share of Preferred Stock (or Company Common Stock and/or other securities, as the case may be) is issued upon the exercise of Rights shall for all purposes be deemed to have become the holder of record of such fractional shares of Preferred Stock (or Company Common Stock and/or other securities, as the case may be) represented thereby on, and such certificate shall be dated as of, the date upon which the Rights Certificate evidencing such Rights was duly surrendered and payment of the Purchase Price (and all applicable taxes or charges) was made; provided, however, that if the date of such surrender and payment is a date upon which the Preferred Stock (or Company Common Stock and/or other securities, as the case may be) transfer books of the Company are closed, such Person shall be deemed to have become the record holder of such shares (fractional or otherwise) on, and such certificate shall be dated, the next succeeding Business Day on which the Preferred Stock (or Company Common Stock and/or other securities, as the case may be) transfer books of the Company are open. Prior to the exercise of the Rights evidenced thereby, the holder of a Rights Certificate shall not be entitled to any rights of a stockholder of the Company with respect to shares for which the Rights shall be exercisable, including, without limitation, the right to vote, to receive dividends or other distributions or to exercise any preemptive rights, and shall not be entitled to receive any notice of any proceedings of the Company, except as provided herein.

Section 11. Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights. The Purchase Price, the number and kind of shares covered by each Right and the number of Rights outstanding are subject to adjustment from time to time as provided in this Section 11.

(a) Certain Adjustments.

(i) In the event the Company shall at any time after the date of this Agreement (A) declare a dividend on either series of Preferred Stock payable in shares of Preferred Stock, (B) subdivide or split either series of the outstanding Preferred Stock, (C) combine the shares of either series of the outstanding Preferred Stock into a smaller number of shares, or (D) issue any shares of its capital stock in a reclassification of either series of Preferred Stock (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing or surviving corporation), except as otherwise provided in this Section 11(a) and Section 7(e) (Exercise of Rights; Purchase Price; Expiration Date of Rights -- Termination of Acquiring Person's Rights), the Purchase Price in effect at the time of the record date for such dividend or of the effective date of such subdivision, split, combination or reclassification, and the number and kind of shares of Preferred Stock or capital stock, as the case may be, issuable on such date, shall be proportionately adjusted so that the holder of any Right exercised after such time shall be entitled to receive, upon payment of the aggregate adjusted Purchase Price then in effect necessary to exercise a Right in full, the aggregate number and kind of shares of Preferred Stock or capital stock, as the case may be, which, if such Right had been exercised immediately prior to such date and at a time when the Preferred Stock (or other capital stock, as the case may be) transfer books of the Company were open, such holder would have owned upon such exercise and been entitled to receive by virtue of such dividend, subdivision, split, combination or

reclassification. So long as any Rights are outstanding, the Company shall not effect any of the actions set forth in Clauses (A), (B), (C) or (D) of this paragraph with respect to either series of Preferred Stock unless the Company shall also contemporaneously effect a like transaction with respect to the other such series of Preferred Stock; provided, however, that in the event that such a transaction is effected with respect to one such series but no shares of the other series of Preferred Stock are outstanding, the Purchase Price in effect at the time of the record date for such dividend or of the effective date of such subdivision, combination or reclassification, and the number and kind of shares of capital stock issuable upon such date, shall be proportionately adjusted with respect to the holders of Rights exercisable for shares of the series of Preferred Stock that are not outstanding as if such a dividend, subdivision, combination or reclassification had been effected with respect to the shares of such series of Preferred Stock. If an event occurs which would require an adjustment under both this Section 11(a)(i) and Section 11(a)(ii) the adjustment provided for in this Section 11(a)(i) shall be in addition to, and shall be made prior to, any adjustment required pursuant to Section 11(a)(ii).

(ii) In the event:

(A) (1) any Acquiring Person or any Associate or Affiliate of any Acquiring Person, at any time after the date of this Agreement, directly or indirectly, shall merge into the Company or otherwise combine with the Company and the Company shall be the continuing or surviving corporation of such merger or combination and each class of the Company Common Stock shall remain outstanding and unchanged, or (2) subject to Section 23 (Redemption and Termination), any Person (other than the Company, any Subsidiary of the Company, any employee benefit plan of the Company or of any Subsidiary of the Company, or any Person or entity organized, appointed or established by the Company for or pursuant to the terms of any such plan), alone or together with its Affiliates and Associates, shall, at any time after the Rights Dividend Declaration Date, become an Acquiring Person, unless the event causing such Person to become an Acquiring Person is a Flip-over Event, or is an acquisition of shares of Company Common Stock pursuant to a tender offer or an exchange offer for all outstanding shares of Company Common Stock at a price and on terms determined by the Board, prior to the public announcement of such tender offer or exchange offer, after receiving advice from one or more investment banking firms selected by the Board, to be (a) at a price which is fair to the stockholders of the Company (taking into account all factors which the Board deems relevant including, without limitation, prices which could reasonably be achieved if the Company or its assets were sold on an orderly basis designed to realize maximum value) and (b) otherwise in the best interests of the Company and its stockholders, other than such Acquiring Person, its Affiliates and its Associates; or

(B) during such time as there is an Acquiring Person, there shall be any reclassification of securities (including any reverse stock split), or recapitalization of the Company, or any merger or consolidation of the Company with any of its Subsidiaries or any other transaction or series of transactions

involving the Company or any of its Subsidiaries, other than a transaction or transactions to which the provisions of Section 13(a) (Consolidation, Merger or Sale or Transfer of Assets or Earning Power -- Flip-over Event) apply (whether or not with or into or otherwise involving an Acquiring Person) which has the effect, directly or indirectly, of increasing by more than 1%, the total number of votes entitled to be cast generally (other than in an election of directors) by the holders of the shares of Company Common Stock then outstanding, voting together as a class, which is directly or indirectly beneficially owned by any Acquiring Person or any Associate or Affiliate of any Acquiring Person,

then, promptly following the occurrence of any such Flip-in Event (whether described in Section 11(a)(ii)(A) or (B)), proper provision shall be made so that (1) each holder of a Class A Right (except as provided below and in Section 7(e) (Exercise of Rights; Purchase Price; Expiration Date of Rights -- Termination of Acquiring Person's Rights)) shall thereafter have the right to receive, upon exercise thereof at the then current Purchase Price in accordance with the terms of this Agreement, in lieu of the number of one one-thousandths of a share of Series A Preferred Stock, such number of shares of Common Stock as shall equal the result obtained by (x) multiplying the then current applicable Purchase Price by the then number of one one-thousandths of a share of Series A Preferred Stock for which a Class A Right was exercisable immediately prior to the first occurrence of a Flip-in Event, and (y) dividing that product (which, following such first occurrence, shall thereafter be referred to as the "Purchase Price" for each Class A Right and for all purposes of this Agreement) by 50% of the Current Market Price per share of Common Stock on the date of such first occurrence and (2) each holder of a Class B Right (except as provided below and in Section 7(e) (Exercise of Rights; Purchase Price; Expiration Date of Rights -- Termination of Acquiring Person's Rights)) shall thereafter have the right to receive, upon exercise thereof at the then current Purchase Price in accordance with the terms of this Agreement, in lieu of the number of one one-thousandths of a share of Series B Preferred Stock, such number of shares of Class B Common Stock as shall equal the result obtained by (x) multiplying the then current applicable Purchase Price by the then number of one one-thousandths of a share of Series B Preferred Stock for which a Class B Right was exercisable immediately prior to the first occurrence of a Flip-in Event, and (y) dividing that product (which, following such first occurrence, shall thereafter be referred to as the "Purchase Price" for each Class B Right and for all purposes of this Agreement) by 50% of the Current Market Price per share of Class B Common Stock on the date of such first occurrence (such number of shares calculated pursuant to clause (1) and/or clause (2) being referred to as the "ADJUSTMENT SHARES").

(iii) In the event that the number of shares of the applicable class of Company Common Stock that are authorized by the Company's Certificate of Incorporation but not outstanding or reserved for issuance for purposes other than upon exercise of the Rights is not sufficient to permit the exercise in full of the Rights in accordance with the foregoing subparagraph (ii) of this Section 11(a), the Company shall: (A) determine the excess of (1) the value of the Adjustment Shares issuable upon the exercise of a Right (the "CURRENT VALUE") over (2) the Purchase Price (such excess, the

"SPREAD"), and (B) with respect to each Right, subject to Section 7(e)(Exercise of Rights; Purchase Price; Expiration Date of Rights -- Termination of Acquiring Person's Rights), make adequate provision to substitute for the Adjustment Shares, upon payment of the applicable Purchase Price, (1) cash, (2) a reduction in the Purchase Price, (3) Company Common Stock or other equity securities of the Company (including, without limitation, shares, or units of shares, of preferred stock which the Board has deemed to have substantially the same dividend, voting and liquidation rights as shares of the applicable class of Company Common Stock and are deemed in good faith by the Board of Directors to have substantially the same value as the shares of Common Stock (in the case of a Class A Right) or Class B Common Stock (in the case of a Class B Right) (such shares of preferred stock being referred to as "COMPANY COMMON STOCK EQUIVALENTS")), (4) debt securities of the Company, (5) other assets, or (6) any combination of the foregoing, having an aggregate value equal to the Current Value (less the amount of any reduction in the Purchase Price), where such aggregate value has been determined by the Board based upon the advice of a nationally recognized investment banking firm selected by the Board; provided, however, that if the Company shall not have made adequate provision to deliver value pursuant to clause (B) above within thirty (30) calendar days following the first occurrence of a Flip-in Event (the date of such Flip-in Event being referred to herein as the "FLIP-IN TRIGGER DATE"), then the Company shall be obligated to deliver, upon the surrender for exercise of a Right and without requiring payment of the applicable Purchase Price, shares of Common Stock (in the case of a Class A Right) or Class B Common Stock (in the case of a Class B Right) (to the extent available) and then, if necessary, cash, which shares and/or cash have an aggregate value equal to the Spread. If the Board shall determine in good faith that it is likely that sufficient additional shares of the applicable class of Company Common Stock or other equity securities could be authorized for issuance upon exercise in full of the Rights, the thirty (30) calendar day period set forth above may be extended to the extent necessary, but not more than ninety (90) calendar days after the Flip-in Trigger Date, in order that the Company may seek stockholder approval for the authorization of such additional shares (such period, the "SUBSTITUTION PERIOD"). To the extent that the Company determines that some action need be taken pursuant to the first and/or second sentences of this Section 11(a)(iii), the Company (x) shall provide, subject to Section 7(e), that such action shall apply uniformly to all outstanding Class A Rights and/or Class B Rights, as applicable, and (y) may suspend the exercisability of the Class A Rights and/or the Class B Rights, as applicable, until the expiration of the Substitution Period in order to seek any authorization of additional shares and/or to decide the appropriate form of distribution to be made pursuant to such first sentence and to determine the value thereof. In the event of any such suspension, the Company shall issue a public announcement (with prompt written notification to the Rights Agent) stating that the exercisability of the Class A Rights and/or Class B Rights, as applicable, has been temporarily suspended, as well as a public announcement (with prompt written notification to the Rights Agent) at such time as the suspension is no longer in effect. For purposes of this Section 11(a)(iii), the value of the shares of Common Stock (in the case of a Class A Right) and the Class B Common Stock (in the case of a Class B Right) shall be the Current Market Price per share of the Common Stock (in the case of a Class A Right) and the Class B Common Stock (in the case of a Class B Right) on the Flip-in Trigger Date and the value of any Company

Common Stock Equivalent shall be deemed to have the same value as the Common Stock (in the case of a Class A Right) and the Class B Common Stock (in the case of a Class B Right) on such date.

(iv) If the rules of the national securities exchange, registered as such pursuant to Section 6 of the Exchange Act, or of the national securities association, registered as such pursuant to Section 15A of the Exchange Act, on which a class of the Company Common Stock is principally traded or quoted would prohibit such exchange or association from listing or continuing to list, or from authorizing for or continuing quotation and/or transaction reporting through an inter-dealer quotation system, the applicable class of Company Common Stock or other equity securities of the Company if the Rights were to be exercised for shares of the applicable class of Company Common Stock in accordance with subparagraph (ii) of this Section 11(a) because such issuance would nullify, restrict or disparately reduce the per share voting rights of holders of the applicable class of Company Common Stock, the Company shall: (A) determine the Spread, and (B) with respect to each Right, make adequate provision to substitute for the Adjustment Shares, upon payment of the applicable Purchase Price, (1) cash, (2) a reduction in the applicable Purchase Price, (3) equity securities of the Company, including, without limitation, Company Common Stock Equivalents, other than securities which would have the effect of nullifying, restricting or disparately reducing the per share voting rights of holders of Company Common Stock, (4) debt securities of the Company, (5) other assets, or (6) any combination of the foregoing, having an aggregate value equal to the Current Value, where such aggregate value has been determined by the Board based upon the advice of a recognized investment banking firm selected by the Board; provided, however, if the Company shall not have made adequate provision to deliver value pursuant to clause (B) above within thirty (30) calendar days following the Flip-in Trigger Date, then the Company shall be obligated to deliver, upon the surrender for exercise of a Right and without requiring payment of the applicable Purchase Price, cash having an aggregate value equal to the Spread. To the extent that the Company determines that some action need be taken pursuant to the first sentence of this Section 11(a)(iv), the Company (x) shall provide, subject to Section 7(e) (Exercise of Rights; Purchase Price; Expiration Date of Rights -- Termination of Acquiring Person's Rights), that such action shall apply uniformly to all outstanding Rights and (y) may suspend the exercisability of the Rights, but not longer than ninety (90) calendar days after the Flip-in Trigger Date, in order to decide the appropriate form of distribution to be made pursuant to such first sentence and to determine the value thereof. In the event of any such suspension, the Company shall issue a public announcement (with prompt written notification to the Rights Agent) stating that the exercisability of the Rights has been temporarily suspended, as well as a public announcement (with prompt written notification) at such time as the suspension is no longer in effect. For purposes of this Section 11(a)(iv), the value of the shares of Common Stock (in the case of a Class A Right) and the Class B Common Stock (in the case of a Class B Right) shall be the Current Market Price per share of the Common Stock (in the case of a Class A Right) and the Class B Common Stock (in the case of a Class B Right) on the Flip-in Trigger Date and the value of any Company Common Stock Equivalent shall be deemed to have the

same value as the Common Stock (in the case of a Class A Right) and the Class B Common Stock (in the case of a Class B Right) on such date.

(b) Purchase Price Adjustment -- Capital Stock. In case the Company shall fix a record date for the issuance of rights, options or warrants to all holders of either series of Preferred Stock entitling them to subscribe for or purchase (for a period expiring within forty-five (45) calendar days after such record date) shares of the applicable series of Preferred Stock (or shares having the same rights, privileges and preferences as the shares of the applicable series of Preferred Stock ("EQUIVALENT PREFERRED STOCK")) or securities convertible into the applicable series of Preferred Stock or Equivalent Preferred Stock at a price per share of the applicable series of Preferred Stock or per share of Equivalent Preferred Stock (or having a conversion price per share, if a security convertible into shares of the applicable series of Preferred Stock or Equivalent Preferred Stock) less than the Current Market Price per share of the applicable series of Preferred Stock on such record date, the applicable Purchase Price to be in effect after such record date shall be determined by multiplying the applicable Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the number of shares of such series of Preferred Stock outstanding on such record date, plus the number of shares of such series of Preferred Stock which the aggregate offering price of the total number of shares of such series of Preferred Stock and/or Equivalent Preferred Stock so to be offered (and/or the aggregate initial conversion price of the convertible securities so to be offered) would purchase at such Current Market Price, and the denominator of which shall be the number of shares of such series of Preferred Stock outstanding on such record date, plus the number of additional shares of such series of Preferred Stock and/or Equivalent Preferred Stock to be offered for subscription or purchase (or into which the convertible securities so to be offered are initially convertible). In case such subscription price may be paid by delivery of consideration part or all of which may be in a form other than cash, the value of such consideration shall be as determined in good faith by the Board, whose determination shall be described in a statement filed with the Rights Agent. Shares of Preferred Stock owned by or held for the account of the Company shall not be deemed outstanding for the purpose of any such computation. Such adjustment shall be made successively whenever such a record date is fixed, and in the event that such rights or warrants are not so issued, the applicable Purchase Price shall be adjusted to be the applicable Purchase Price which would then be in effect if such record date had not been fixed. So long as any Rights are outstanding, the Company shall not effect any of the actions set forth in this paragraph with respect to either series of Preferred Stock unless the Company shall also contemporaneously effect a like transaction with respect to the other series of Preferred Stock; provided, however, that in the event that such a transaction is effected with respect to one such series but no shares of the other series of Preferred Stock are outstanding, the Purchase Price in effect at the time of the record date for such issuance of rights, options or warrants shall be proportionately adjusted with respect to the holders of Rights exercisable for shares of the series of Preferred Stock that are not outstanding as if such issuance of rights, options or warrants had been effected with respect to the shares of such series of Preferred Stock.

(c) Purchase Price Adjustment -- Cash, Assets, etc. In case the Company shall fix a record date for a distribution to all holders of either series of Preferred Stock (including any such distribution made in connection with a consolidation or merger in which the Company is the continuing corporation) of evidences of indebtedness, cash (other than a regular

quarterly cash dividend out of the earnings or retained earnings of the Company), assets (other than a dividend payable in Preferred Stock, but including any dividend payable in stock other than Preferred Stock) or subscription rights or warrants (excluding those referred to in Section 11(b) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights Purchase Price Adjustment -- Capital Stock)), the applicable Purchase Price to be in effect after such record date shall be determined by multiplying the applicable Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the Current Market Price per share of the applicable series of Preferred Stock on such record date, less the fair market value (as determined in good faith by the Board, whose determination shall be described in a statement filed with the Rights Agent) of the portion of the cash, assets or evidences of indebtedness so to be distributed or of such subscription rights or warrants applicable to a share of such series of Preferred Stock and the denominator of which shall be such Current Market Price per share of such series of Preferred Stock. Such adjustments shall be made successively whenever such a record date is fixed, and in the event that such distribution is not so made, the applicable Purchase Price shall be adjusted to be the applicable Purchase Price which would have been in effect if such record date had not been fixed. So long as any Rights are outstanding, the Company shall not effect any of the actions set forth in this paragraph with respect to either series of Preferred Stock unless the Company shall also contemporaneously effect a like transaction with respect to the other series of Preferred Stock; provided, however, that in the event that such a transaction is effected with respect to one such series but no shares of the other series of Preferred Stock are outstanding, the Purchase Price in effect at the time of the record date for such distribution shall be proportionately adjusted with respect to the holders of Rights exercisable for shares of the series of Preferred Stock that are not outstanding as if such distribution had been effected with respect to the shares of such series of Preferred Stock.

(d) Current Market Price.

(i) For the purpose of any computation hereunder, other than computations made pursuant to Section 11(a)(iii) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Certain Adjustments), the Current Market Price per share of a class of Company Common Stock on any date shall be deemed to be the average of the daily closing prices per share of such class of Company Common Stock for the thirty (30) consecutive Trading Days immediately prior to such date, and for purposes of computations made pursuant to Section 11(a)(iii) the Current Market Price per share of a class of Company Common Stock on any date shall be deemed to be the average of the daily closing prices per share of such class of Company Common Stock for the ten (10) consecutive Trading Days immediately following such date; provided, however, that in the event that the Current Market Price per share of a class of the Company Common Stock is determined during a period following the announcement by the issuer of such class of Company Common Stock of (A) a dividend or distribution on such class of Company Common Stock payable in shares of such class of Company Common Stock or securities convertible into shares of such class of Company Common Stock (other than the Rights), or (B) any subdivision, combination or reclassification of such class of Company Common Stock and the ex-dividend date for such dividend or distribution, or the record date for such subdivision, combination or reclassification shall not have occurred prior to the commencement of the requisite thirty (30) Trading Day or

ten (10) Trading Day period, as set forth above, then, and in each such case, the Current Market Price shall be properly adjusted to take into account ex-dividend trading. The closing price for each Trading Day shall be the last sale price, regular way, or, in case no such sale takes place on such Trading Day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the American Stock Exchange or, if the shares of the class of Company Common Stock are not listed or admitted to trading on the American Stock Exchange, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the shares of the class of Company Common Stock are listed or admitted to trading or, if the shares of the class of Company Common Stock are not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System or such other system then in use, or, if on any such date the shares of the class of Company Common Stock are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the class of Company Common Stock selected by the Board. If on any such date no market maker is making a market in the class of Company Common Stock, the fair value of such shares on such date as determined in good faith by the Board shall be used. The term "TRADING DAY" shall mean a day on which the principal national securities exchange on which the shares of the class of Company Common Stock are listed or admitted to trading is open for the transaction of business or, if the shares of the class of Company Common Stock are not listed or admitted to trading on any national securities exchange, a Business Day. If the class of Company Common Stock is not publicly held or not so listed or traded, Current Market Price per share shall mean the fair value per share as determined in good faith by the Board, whose determination shall be described in a statement filed with the Rights Agent and shall be conclusive for all purposes.

(ii) For the purpose of any computation hereunder, the Current Market Price per share of each series of Preferred Stock shall be determined in the same manner as set forth above for the Company Common Stock in clause (i) of this Section 11(d) (other than the last sentence thereof). If the Current Market Price per share of the applicable series of Preferred Stock cannot be determined in the manner provided above or if the series of Preferred Stock is not publicly held or listed or traded in a manner described in clause (i) of this Section 11(d), the Current Market Price per share of such series of Preferred Stock shall be conclusively deemed to be an amount equal to 1,000 (as such number may be appropriately adjusted for such events as stock splits, stock dividends and recapitalizations with respect to the Common Stock (in the case of the Series A Preferred Stock) and Class B Common Stock (in the case of Series B Preferred Stock) occurring after the date of this Agreement) multiplied by the Current Market Price per share of the Common Stock (in the case of the Series A Preferred Stock) and Class B Common Stock (in the case of Series B Preferred Stock). If neither class of the Company Common Stock nor the corresponding series of Preferred Stock is publicly held or so listed or traded, Current Market Price per share of the applicable series of Preferred Stock

shall mean the fair value per share as determined in good faith by the Board, whose determination shall be described in a statement filed with the Rights Agent and shall be conclusive for all purposes. For all purposes of this Agreement, the Current Market Price of one one-thousandth of a share of the applicable series of Preferred Stock shall be equal to the Current Market Price of one share of such series of Preferred Stock divided by 1,000.

(e) Purchase Price Adjustment Threshold. Anything herein to the contrary notwithstanding, no adjustment in the applicable Purchase Price shall be required unless such adjustment would require an increase or decrease of at least one percent (1%) in the applicable Purchase Price; provided however, that any adjustments which by reason of this Section 11(e) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Section 11 (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights) shall be made to the nearest cent or to the nearest hundredth of a share of the applicable class of Company Common Stock or other share or one-hundred-thousandth of a share of the applicable series of Preferred Stock, as the case may be. Notwithstanding the first sentence of this Section 11(e), any adjustment required by this Section 11 shall be made no later than the earlier of (i) three (3) years from the date of the transaction which mandates such adjustment, or (ii) the Expiration Date.

(f) Equivalent Adjustments. If as a result of an adjustment made pursuant to Section 11(a)(ii) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Certain Adjustments) or Section 13(a) (Consolidation Merger or Sale or Transfer of Assets or Earning Power -- Flip-over Event) the holder of any Right thereafter exercised shall become entitled to receive any shares of capital stock other than the applicable series of Preferred Stock, thereafter the number of such other shares so receivable upon exercise of any Right and the applicable Purchase Price thereof shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the applicable series of Preferred Stock contained in Sections 11(a), (b), (c), (e), (g), (h), (i), (j), (k) and (m), and the provisions of Sections 7, 9, 10, 13 and 14 with respect to the applicable series of Preferred Stock shall apply on like terms to any such other shares.

(g) Post-Adjustment Rights Issuances. All Rights originally issued by the Company subsequent to any adjustment made to the applicable Purchase Price hereunder shall evidence the right to purchase, at the adjusted Purchase Price, the number of one one-thousandths of a share of the applicable series of Preferred Stock purchasable from time to time hereunder upon exercise of the Rights, all subject to further adjustment as provided herein.

(h) Preferred Stock Anti-Dilution. Unless the Company shall have exercised its election as provided in Section 11(i) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Adjustment of Number of Rights), upon each adjustment of the applicable Purchase Price as a result of the calculations made in Section 11(b) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Purchase Price Adjustment -- Capital Stock) and Section 11(c) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Purchase Price Adjustment -- Cash, Assets, etc.), each Right outstanding immediately prior to the making of such adjustment shall thereafter evidence the right to

purchase, at the adjusted applicable Purchase Price, that number of one one-thousandths of a share of the applicable series of Preferred Stock (calculated to the nearest one-hundred-thousandth) obtained by (i) multiplying (x) the number of one one-thousandths of a share covered by a Right immediately prior to this adjustment, by (y) the applicable Purchase Price in effect immediately prior to such adjustment of such Purchase Price, and (ii) dividing the product so obtained by the applicable Purchase Price in effect immediately after such adjustment of such Purchase Price.

(i) Adjustment of Number of Rights. The Company may elect on or after the date of any adjustment of the applicable Purchase Price to adjust the number of Rights, in lieu of any adjustment in the number of one one-thousandths of a share of the applicable series of Preferred Stock purchasable upon the exercise of a Right. Each of the Rights outstanding after the adjustment in the number of Rights shall be exercisable for the number of one one-thousandths of a share of the applicable series of Preferred Stock for which such Right was exercisable immediately prior to such adjustment. Each Right held of record prior to such adjustment of the number of Rights shall become that number of Rights (calculated to the nearest one-thousandth) obtained by dividing the applicable Purchase Price in effect immediately prior to adjustment of the Purchase Price by the applicable Purchase Price in effect immediately after adjustment of such Purchase Price. The Company shall make a public announcement (with prompt written notification to the Rights Agent) of its election to adjust the number of Rights, indicating the record date for the adjustment, and, if known at the time, the amount of the adjustment to be made. This record date may be the date on which the applicable Purchase Price is adjusted or any day thereafter, but, if the applicable Rights Certificates have been issued, shall be at least ten (10) calendar days later than the date of the public announcement. If the applicable Rights Certificates have been issued, upon each adjustment of the number of Rights pursuant to this Section 11(i), the Company shall, as promptly as practicable, cause to be distributed to holders of record of the applicable Rights Certificates on such record date the applicable Rights Certificates evidencing, subject to Section 14 (Fractional Rights and Fractional Shares) the additional Rights to which such holders shall be entitled as a result of such adjustment, or, at the option of the Company, shall cause to be distributed to such holders of record in substitution and replacement for the applicable Rights Certificates held by such holders prior to the date of adjustment, and upon surrender thereof, if required by the Company, new Rights Certificates evidencing all the Rights to which such holders shall be entitled after such adjustment. Rights Certificates so to be distributed shall be issued, executed and countersigned in the manner provided for herein (and may bear, at the option of the Company, the adjusted Purchase Price) and shall be registered in the names of the holders of record of the applicable Rights Certificates on the record date specified in the public announcement.

(j) Rights Certificates. Irrespective of any adjustment or change in the applicable Purchase Price or the number of one one-thousandths of a share of the applicable series of Preferred Stock issuable upon the exercise of the Rights, the applicable Rights Certificates theretofore and thereafter issued may continue to express the applicable Purchase Price per one one-thousandth of a share of the applicable series of Preferred Stock and the number of one one-thousandths of a share of such series of Preferred Stock which were expressed in the initial Rights Certificates issued hereunder.

(k) Adjustment Below Par Value. Before taking any action that would cause an adjustment reducing the applicable Purchase Price below the then par or stated value, if any, of the number of one one-thousandths of a share of the applicable series of Preferred Stock issuable upon exercise of the Rights, the Company shall take any corporate action which is or may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue fully paid and nonassessable such number of one one-thousandths of a share of the applicable series of Preferred Stock at such adjusted Purchase Price.

(l) Adjustment Effective as of Future Date; Exercise. In any case in which this Section 11 (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights) shall require that an adjustment in the applicable Purchase Price be made effective as of a record date for a specified event, the Company may elect to defer until the occurrence of such event the issuance to the holder of any Right exercised after such record date the number of one one-thousandths of a share of the applicable series of Preferred Stock and other capital stock or securities of the Company, if any, issuable upon such exercise over and above the number of one one-thousandths of a share of the applicable series of Preferred Stock and other capital stock or securities of the Company, if any, issuable upon such exercise on the basis of the applicable Purchase Price in effect prior to such adjustment; provided, however, that the Company shall deliver to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional shares (fractional or otherwise) or securities upon the occurrence of the event requiring such adjustment.

(m) Tax Adjustments. Anything in this Section 11 (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights) to the contrary notwithstanding, the Company shall be entitled to make such reductions in the applicable Purchase Price, in addition to those adjustments expressly required by this Section 11, as and to the extent that in its good faith judgment the Board shall determine to be advisable in order that any (i) consolidation or subdivision of either series of Preferred Stock, (ii) issuance wholly for cash of any shares of either series of Preferred Stock at less than the Current Market Price, (iii) issuance wholly for cash of shares of either series of Preferred Stock or securities which by their terms are convertible into or exchangeable for shares of either series of Preferred Stock, (iv) stock dividends or (v) issuance of rights, options or warrants referred to in this Section 11, hereafter made by the Company to holders of either series of its Preferred Stock shall not be taxable to such stockholders.

(n) Restriction on Certain Transactions. The Company shall not, at any time after the earlier of the Stock Acquisition Date or the Distribution Date, (i) consolidate with any other Person (other than a Subsidiary of the Company in a transaction which complies with Section 11(o) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Restriction Against Diminishing Benefits of the Rights)), (ii) merge with or into any other Person (other than a Subsidiary of the Company in a transaction which complies with Section 11(o)), (iii) enter into a statutory share exchange or similar transaction with any other Person (other than a Subsidiary of the Company in a transaction which complies with Section 11(o)), or (iv) sell or transfer (or permit any Subsidiary to sell or transfer), in one transaction, or a series of related transactions, assets, cash flow or earning power aggregating more than 50% of the assets, cash flow or earning power of the Company and its Subsidiaries (taken as a whole) to any other

Person or Persons (other than the Company and/or any of its Subsidiaries in one or more transactions each of which complies with Section 11(o)), if (x) at the time of or immediately after such consolidation, merger, statutory share exchange or similar transaction, or sale there are any rights, warrants or other instruments or securities outstanding or agreements in effect which would substantially diminish or otherwise eliminate the benefits intended to be afforded by the Rights or (y) prior to, simultaneously with or immediately after such consolidation, merger, statutory share exchange or similar transaction, or sale, the stockholders of the Person who constitutes, or would constitute, the "Principal Party" for purposes of Section 13(a) (Consolidation, Merger or Sale or Transfer of Assets or Earning Power -- Flip-over Event) shall have received a distribution of Rights previously owned by such Person or any of its Affiliates and Associates.

(o) Restriction Against Diminishing Benefits of the Rights.

The Company covenants and agrees that, after the earlier of the Stock Acquisition Date or the Distribution Date, it will not, except as permitted by Section 23 (Redemption and Termination) or Section 27 (Supplements and Amendments) take (or permit any Subsidiary to take) any action if at the time such action is taken it is reasonably foreseeable that such action will diminish substantially or otherwise eliminate the benefits intended to be afforded by the Rights.

(p) Company Common Stock Adjustments. Anything in this

Agreement to the contrary notwithstanding, in the event that the Company shall at any time after the Rights Dividend Declaration Date and prior to the Distribution Date (i) declare a dividend on the outstanding shares of either class of Company Common Stock payable in shares of such class of Company Common Stock, (ii) subdivide or split the outstanding shares of either class of Company Common Stock, or (iii) combine the outstanding shares of either class of Company Common Stock into a smaller number of shares, the number of Rights associated with each share of the applicable class of Company Common Stock then outstanding, or issued or delivered thereafter but prior to the Distribution Date, shall be proportionately adjusted so that the number of Rights thereafter associated with each share of the applicable class of Company Common Stock following any such event shall equal the result obtained by (A) in the case of the Class A Rights, multiplying the number of Class A Rights associated with each share of Common Stock immediately prior to such event by a fraction, the numerator of which shall be the total number of shares of Common Stock outstanding immediately prior to the occurrence of the event and the denominator of which shall be the total number of shares of Common Stock outstanding immediately following the occurrence of such event and (B) in the case of the Class B Rights, multiplying the number of Class B Rights associated with each share of Class B Common Stock immediately prior to such event by a fraction, the numerator of which shall be the total number of shares of Class B Common Stock outstanding immediately prior to the occurrence of the event and the denominator of which shall be the total number of shares of Class B Common Stock outstanding immediately following the occurrence of such event. The adjustments provided for in this Section 11(p) shall be made successively to either class of Company Common Stock (but without duplication with respect to such class of Company Common Stock) whenever such a dividend is declared or paid or such subdivision, combination or consolidation is effected on such class of Company Common Stock.

Section 12. Certificate of Adjusted Purchase Price or Number of Shares. Whenever an adjustment is made or any event affecting the Rights or their exercisability (including without limitation an event which causes Rights to become null and void) occurs as provided in Section 11 (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights) and Section 13 (Consolidation, Merger or Sale or Transfer of Assets or Earning Power) the Company shall (a) promptly prepare a certificate setting forth such adjustment or describing such event and a brief reasonably detailed statement of the facts, computations and methodology accounting for such adjustment, (b) promptly file with the Rights Agent, and with each transfer agent for the applicable series of Preferred Stock and the applicable class of Company Common Stock, a copy of such certificate, and (c) mail or cause the Rights Agent to mail a brief summary thereof to each holder of a Rights Certificate (or, if prior to the Distribution Date, to each holder of a certificate representing shares of Company Common Stock) in accordance with Section 26 (Notices). The Rights Agent shall be fully protected in relying on any such certificate and on any adjustment or statement therein contained and shall have no duty or liability with respect to, and shall not be deemed to have knowledge of, any adjustment or any such event unless and until it shall have received such a certificate.

Section 13. Consolidation, Merger or Sale or Transfer of Assets or Earning Power.

(a) Flip-over Event. In the event that, following the Stock Acquisition Date, directly or indirectly, (x) the Company shall consolidate with, or merge with and into, or enter into a statutory stock exchange or similar transaction with, any other Person (other than a Subsidiary of the Company in a transaction which complies with Section 11(o)(Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Restriction Against Diminishing Benefits of the Rights)), and the Company shall not be the continuing or surviving corporation of such consolidation, merger or statutory share exchange or similar transaction, (y) any Person (other than a Subsidiary of the Company in a transaction which complies with Section 11(o)) shall consolidate with, or merge with or into, or enter into a statutory stock exchange or similar transaction with, the Company, and the Company shall be the continuing or surviving corporation of such consolidation, merger or statutory share exchange or similar transaction and, in connection with such consolidation, merger or statutory share exchange or similar transaction, all or part of the outstanding shares of either class of Company Common Stock shall be changed into or exchanged for stock or other securities of any other Person or cash or any other property, or (z) the Company shall sell or otherwise transfer (or one or more of its Subsidiaries shall sell or otherwise transfer), in one transaction or a series of related transactions, assets, cash flow or earning power aggregating more than 50% of the assets, cash flow or earning power of the Company and its Subsidiaries (taken as a whole) to any Person or Persons (other than the Company or any Subsidiary of the Company in one or more transactions each of which complies with Section 11(o)), then, and in each such case (except as may be contemplated by Section 13(d) (Consolidation, Merger or Sale or Transfer of Assets or Earning Power -- Exceptions)), (1) proper provision shall be made so that: each holder of a Right, except as provided in Section 7(e) (Exercise of Rights; Purchase Price; Expiration Date of Rights -- Termination of Acquiring Person's Rights) shall thereafter have the right to receive, upon the exercise thereof at the then current applicable Purchase Price in accordance with the terms of this Agreement, such number of validly authorized and issued, fully paid, nonassessable and freely tradeable shares of Common Stock of the Principal Party, not subject to any liens, encumbrances,

rights of first refusal or other adverse claims, as shall be equal to the result obtained by (A) multiplying the then current applicable Purchase Price by the number of one one-thousandths of a share of the applicable series of Preferred Stock for which a Right is exercisable immediately prior to the first occurrence of a Flip-over Event (or, if a Flip-in Event has occurred prior to the first occurrence of a Flip-over Event, multiplying the number of such one one-thousandths of a share for which a Right was exercisable immediately prior to the first occurrence of a Flip-in Event by the applicable Purchase Price in effect immediately prior to such first occurrence), and (B) dividing that product (which, following the first occurrence of a Flip-over Event, shall be referred to as the "Purchase Price" for each Right and for all purposes of this Agreement) by 50% of the Current Market Price per share of the Common Stock of such Principal Party on the date of consummation of such Flip-over Event; (ii) such Principal Party shall thereafter be liable for, and shall assume, by virtue of such Flip-over Event, all the obligations and duties of the Company pursuant to this Agreement; (iii) the term "Company" shall thereafter be deemed to refer to such Principal Party, it being specifically intended that the provisions of Section 11 (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights) shall apply only to such Principal Party following the first occurrence of a Flip-over Event; (iv) such Principal Party shall take such steps (including, but not limited to, the reservation of a sufficient number of shares of its Common Stock) in connection with the consummation of any such transaction as may be necessary to assure that the provisions hereof shall thereafter be applicable, as nearly as reasonably may be, in relation to its shares of Common Stock thereafter deliverable upon the exercise of the Rights; and (v) the provisions of Section 11(a)(ii) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Certain Adjustments) hereof shall be of no effect following the first occurrence of any Flip-over Event. Notwithstanding anything in this Agreement to the contrary, if a Flip-over Event shall occur prior to the Distribution Date, then (i) the Rights shall survive such Flip-over Event and shall not as a result thereof be cancelled, terminated or otherwise cease to exist and (ii) the Distribution Date shall be deemed to have occurred on the day immediately prior to the date of such Flip-over Event.

(b) Principal Party. "PRINCIPAL PARTY" shall mean

(i) in the case of any transaction described in clause (x) or (y) of the first sentence of Section 13(a) (Consolidation, Merger or Sale or Transfer of Assets or Earning Power -- Flip-over Event), the Person that is the issuer of any securities into which the shares of either one or both of the classes of Company Common Stock are converted in such consolidation, merger or statutory share exchange or similar transaction, or, if there is more than one such issuer, the issuer of the shares of Common Stock of which have the greatest aggregate market value of shares outstanding and if no securities are so issued, (x) the Person that is the other party to such consolidation, merger or statutory share exchange or similar transaction if the Person survives the merger, or, if there is more than one such Person, the Person the shares of Common Stock of which have the greatest aggregate market value of shares outstanding, or (y) if the Person that is the other party to the merger does not survive the merger, the Person that does survive the merger or (z) the Person resulting from the consolidation, and

(ii) in the case of any transaction described in clause (z) of the first sentence of Section 13(a) (Consolidation, Merger or Sale or Transfer of Assets or Earning Power -- Flip-over Event), the Person that is the party receiving the greatest portion of the assets, cash flow or earning power transferred pursuant to such transaction or transactions, or, if each Person that is a party to such transaction or transactions receives that same portion of the assets, cash flow or earning power so transferred or if the Person receiving the greatest portion of the assets or earning power cannot be determined, whichever of such Persons as is the issuer of Common Stock having the greatest aggregate market value of shares outstanding;

provided, however, that in any such case, (1) if the Common Stock of such Person is not at such time and has not been continuously over the preceding twelve (12) month period registered under Section 12 of the Exchange Act, and such Person is a direct or indirect Subsidiary of another Person the Common Stock of which is and has been so registered, "Principal Party" shall refer to such other Person; and (2) in case such Person is a Subsidiary, directly or indirectly, of more than one Person, the Common Stocks of two or more of which are and have been so registered, "Principal Party" shall refer to whichever of such Persons is the issuer of the total outstanding Common Stock having the greatest aggregate market value.

(c) Supplemental Agreement. The Company shall not consummate a Flip-over Event unless the Principal Party shall have a sufficient number of authorized shares of its Common Stock which have not been issued or reserved for issuance to permit the exercise in full of the Rights in accordance with this Section 13 (Consolidation, Merger or Sale or Transfer of Assets or Earning Power) and unless prior thereto the Company and such Principal Party shall have executed and delivered to the Rights Agent a supplemental agreement providing for the terms set forth in paragraphs (a) and (b) of this Section 13 and further providing that, as soon as practicable after the date of such Flip-over Event, the Principal Party will

(i) prepare and file a registration statement under the Act, with respect to the Rights and the securities purchasable upon exercise of the Rights on an appropriate form, and will use its best efforts to cause such registration statement to (A) become effective as soon as practicable after such filing and (B) remain effective (with a prospectus at all times meeting the requirements of the Act) until the Expiration Date and take all such other action as may be necessary to enable the Principal Party to issue the securities purchasable upon exercise of the Rights, including but not limited to the registration or qualification of such securities under all requisite securities laws or jurisdictions of the various states and the listing of such securities on such exchange and trading markets as may be necessary or appropriate;

(ii) use its best efforts, if the Common Stock of the Principal Party shall be listed or admitted to trading on the New York Stock Exchange or on another national securities exchange, to list or admit to trading (or continue the listing of) the Rights and the securities purchasable upon exercise of the Rights on the New York Stock Exchange or such securities exchange, or, if the Common Stock of the Principal Party shall not be listed or admitted to trading on the New York Stock Exchange or a national

securities exchange, to cause the Rights and the securities receivable upon exercise of the Rights to be reported by such other system then in use;

(iii) will deliver to holders of the Rights historical financial statements for the Principal Party and each of its Affiliates which comply in all respects with the requirements for registration on Form 10 (or any successor form) under the Exchange Act; and

(iv) obtain waivers of any rights of first refusal or preemptive rights in respect of the Common Stock of the Principal Party subject to purchase upon exercise of outstanding Rights.

The provisions of this Section 13 (Consolidation, Merger or Sale or Transfer of Assets or Earning Power) shall similarly apply to successive consolidations, mergers or statutory share exchanges or similar transactions or sales or other transfers. In the event that a Flip-over Event shall occur at any time after the occurrence of a Flip-in Event, the Rights which have not theretofore been exercised shall thereafter become exercisable in the manner described in Section 13(a) (Consolidation, Merger or Sale or Transfer of Assets or Earning Power -- Flip-over Event).

(d) Exceptions. Notwithstanding anything in this Agreement to the contrary, Section 13 (Consolidation, Merger or Sale or Transfer of Assets or Earning Power) shall not be applicable to a transaction described in subparagraphs (x) and (y) of Section 13(a) (Consolidation, Merger or Sale or Transfer of Assets or Earning Power -- Flip-over Event) if (i) such transaction is consummated with a Person or Persons who acquired shares of either class of Company Common Stock pursuant to a tender offer or exchange offer for all outstanding shares of Company Common Stock which complies with the provisions of Section 11(a)(ii)(A) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Certain Adjustments) (or a wholly-owned subsidiary of any such Person or Persons), (ii) the price per share of Company Common Stock offered in such transaction is not less than the price per share of Company Common Stock paid to all holders of shares of Company Common Stock whose shares were purchased pursuant to such tender or exchange offer and (iii) the form of consideration being offered in such transaction is the same as the form of consideration paid to all holders of shares of Company Common Stock whose shares were purchased pursuant to such tender offer or exchange offer. Upon consummation of any such transaction contemplated by this Section 13(d), all Rights hereunder shall expire.

Section 14. Fractional Rights and Fractional Shares.

(a) Fractional Rights. The Company shall not be required to issue fractions of Rights, except prior to the Distribution Date as provided in Section 11(p) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Company Common Stock Adjustments), or to distribute Rights Certificates which evidence fractional Rights. In lieu of such fractional Rights, there shall be paid to the registered holders of the Rights Certificates with regard to which such fractional Rights would otherwise be issuable, an amount in cash equal to the same fraction of the current market value of a whole Right. For purposes of this

Section 14(a), the current market value of a whole Right shall be the closing price of the Rights for the Trading Day immediately prior to the date on which such fractional Rights would have been otherwise issuable. The closing price of the Rights for any Trading Day shall be the last sale price, regular way, or, in case no such sale takes place on such Trading Day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the American Stock Exchange or, if the Rights are not listed or admitted to trading on the American Stock Exchange, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Rights are listed or admitted to trading, or if the Rights are not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market as reported by the National Association of Securities Dealers, Inc. Automated Quotation System or such other system then in use or, if on any such date the Rights are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Rights selected by the Board. If on any such date no such market maker is making a market in the Rights, the fair value of the Rights on such date as determined in good faith by the Board shall be used.

(b) Fractional Shares of Preferred Stock. The Company shall not be required to issue fractions of shares of either series of Preferred Stock (other than fractions which are integral multiples of one one-thousandth of a share of such series of Preferred Stock which may at the option of the Company, be evidenced by depositary receipts) upon exercise of the Rights or to distribute certificates which evidence fractional shares of either series of Preferred Stock (other than fractions which are integral multiples of one one-thousandth of a share of such series of Preferred Stock). Interests in fractions of either series of Preferred Stock in integral multiples of one one-thousandth of a share of such series of Preferred Stock may, at the election of the Company, be evidenced by depositary receipts, pursuant to an appropriate agreement between the Company and a depositary selected by it; provided, however, that such agreement shall provide that the holders of such depositary receipts shall have all the rights, privileges and preferences to which they are entitled as beneficial owners of the series of Preferred Stock represented by such depositary receipts. In lieu of fractional shares of either series of Preferred Stock that are not integral multiples of one one-thousandth of a share of such series of Preferred Stock, the Company may pay to the registered holders of the applicable Rights Certificates at the time such Rights are exercised as herein provided an amount in cash equal to the same fraction of the current market value of one one-thousandth of a share of the applicable series of Preferred Stock. For purposes of this Section 14(b), the current market value of one one-thousandth of a share of the applicable series of Preferred Stock shall be one one-thousandth of the closing price of a share of the applicable series of Preferred Stock (as determined pursuant to Section 11(d)(ii) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Current Market Price) for the Trading Day immediately prior to the date of such exercise.

(c) Fractional Shares of Company Common Stock Following the occurrence of a Triggering Event, the Company shall not be required to issue fractions of shares of either class of Company Common Stock upon exercise of the Rights or to distribute certificates which evidence fractional shares of Company Common Stock. In lieu of fractional shares of Company

Common Stock, the Company may pay to the registered holders of the applicable Rights Certificates at the time such Rights are exercised as herein provided an amount in cash equal to the same fraction of the current market value of one (1) share of the applicable class of Company Common Stock. For purposes of this Section 14(c), the current market value of one share of the applicable class of Company Common Stock shall be the closing price of one share of such class of Company Common Stock (as determined pursuant to Section 11(d)(i) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Current Market Price) for the Trading Day immediately prior to the date of such exercise.

(d) Waiver of Fractional Rights and Shares. The holder of a Right by the acceptance of the Right expressly waives his or her right to receive any fractional Rights or any fractional shares upon exercise of a Right, except as permitted by this Section 14 (Fractional Rights and Fractional Shares).

(e) Payment and Rights Agent. Whenever a payment for fractional Rights or fractional shares is to be made by the Rights Agent, the Company shall (i) promptly prepare and deliver to the Rights Agent a certificate setting forth in reasonable detail the facts related to such payments and the prices and/or formulas utilized in calculating such payments, and (ii) provide sufficient monies to the Rights Agent in the form of fully collected funds to make such payments. The Rights Agent shall be fully protected in relying upon such a certificate and shall have no duty with respect to, and shall not be deemed to have knowledge of any payment for fractional Rights or fractional shares under any Section of this Agreement relating to the payment of fractional Rights or fractional shares unless and until the Rights Agent shall have received such a certificate and sufficient monies.

Section 15. Rights of Action. All rights of action in respect of this Agreement are vested in the respective registered holders of the Rights Certificates (and, prior to the Distribution Date, the registered holders of the Company Common Stock); and any registered holder of any Rights Certificate (or, prior to the Distribution Date, of the Company Common Stock), without the consent of the Rights Agent or of the holder of any other Rights Certificate (or, prior to the Distribution Date, of the Company Common Stock), may, in his or her own behalf and for his or her own benefit, enforce, and may institute and maintain any suit, action or proceeding against the Company to enforce, or otherwise act in respect of, his or her right to exercise the Rights evidenced by such Rights Certificate in the manner provided in such Rights Certificate and in this Agreement. Without limiting the foregoing or any remedies available to the holders of Rights, it is specifically acknowledged that the holders of Rights would not have an adequate remedy at law for any breach of this Agreement and shall be entitled to specific performance of the obligations hereunder and injunctive relief against actual or threatened violations of the obligations hereunder of any Person subject to this Agreement. Notwithstanding anything in this Agreement to the contrary, neither the Company nor the Rights Agent shall have any liability to any holder of a Right or other Person as a result of its inability to perform any of its obligations under this Agreement by reason of any preliminary or permanent injunction or other order, judgment, decree or ruling (whether interlocutory or final) issued by a court or by a governmental, regulatory, self-regulatory or administrative agency or commission, or any statute, rule, regulation or executive order promulgated or enacted by any governmental authority, prohibiting or otherwise restraining performance of such obligation;

provided, however, that the Company must use all reasonable efforts to have any such injunction, order, judgment, decree or ruling lifted or otherwise overturned as soon as possible.

Section 16. Agreement of Rights Holders. Every holder of a Right by accepting the same consents and agrees with the Company and the Rights Agent and with every other holder of a Right that:

(a) prior to the Distribution Date, the Rights will be transferable only in connection with the transfer of the applicable class of Company Common Stock;

(b) after the Distribution Date, the Rights Certificates are transferable only on the registry books of the Rights Agent if surrendered at the principal office or offices of the Rights Agent designated for such purposes, duly endorsed or accompanied by a proper instrument of transfer and with the appropriate forms and certificates fully executed;

(c) subject to Section 6(a) (Transfer, Split Up, Combination and Exchange of Rights Certificates; Mutilated, Destroyed, Lost or Stolen Rights Certificates -- Procedure) and Section 7(f) (Exercise of Rights; Purchase Price; Expiration Date of Rights -- Surrender of Rights Certificates; Identity of Beneficial Owner), the Company and the Rights Agent may deem and treat the person in whose name a Rights Certificate (or, prior to the Distribution Date, the associated Company Common Stock certificate) is registered as the absolute owner thereof and of the Rights evidenced thereby (notwithstanding any notations of ownership or writing on the Rights Certificates or the associated Company Common Stock certificate made by anyone other than the Company or the Rights Agent) for all purposes whatsoever, and neither the Company nor the Rights Agent, subject to the last sentence of Section 7(e) (Exercise of Rights; Purchase Price; Expiration Date of Rights -- Termination of Acquiring Person's Rights), shall be required to be affected by any notice to the contrary; and

(d) notwithstanding anything in this Agreement to the contrary, neither the Company nor the Rights Agent shall have any liability to any holder of a Right or other Person as a result of its inability to perform any of its obligations under this Agreement by reason of any preliminary or permanent injunction or other order, decree or ruling issued by a court of competent jurisdiction or by a governmental, regulatory or administrative agency or commission, or any statute, rule, regulation or executive order promulgated or enacted by any governmental authority, prohibiting or otherwise restraining performance of such obligation; provided, however, the Company must use its best efforts to have any such order, decree or ruling lifted or otherwise overturned as soon as possible.

Section 17. Rights Certificate Holder Not Deemed a Stockholder. No holder, as such, of any Rights Certificate shall be entitled to vote, receive dividends or be deemed for any purpose the holder of the number of one one-thousandths of a share of either series of Preferred Stock or any other securities of the Company which may at any time be issuable on the exercise of the Rights represented thereby, nor shall anything contained herein or in any Rights Certificate be construed to confer upon the holder of any Rights Certificate, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to

any corporate action, or to receive notice of meetings or other actions affecting stockholders (except as provided in Section 25 (Notice of Certain Events)), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by such Rights Certificate shall have been exercised in accordance with the provisions hereof.

Section 18. Concerning the Rights Agent.

(a) Compensation. The Company shall pay to the Rights Agent reasonable compensation for all services rendered by it hereunder and, from time to time, on demand of the Rights Agent, its reasonable expenses and counsel fees and other disbursements incurred in the preparation, delivery, amendment, administration and execution of this Agreement and the exercise and performance of its duties hereunder. The Company agrees to indemnify the Rights Agent for, and to hold it harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost or expense (including, without limitation, the reasonable fees and expenses of legal counsel), incurred without gross negligence or bad faith on the part of the Rights Agent (which gross negligence or bad faith must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction), for any action taken, suffered or omitted by the Rights Agent in connection with the acceptance, administration, exercise and performance of its duties under this Agreement. The costs and expenses incurred in enforcing this right of indemnification shall be paid by the Company. The provisions of this Section 18 and Section 20 below shall survive the termination of this Agreement, the exercise or expiration of the Rights and the resignation, replacement or removal of the Rights Agent.

(b) Reliance. The Rights Agent shall be protected and shall incur no liability for or in respect of any action taken, suffered or omitted by it in connection with its acceptance and administration of this Agreement and the exercise and performance of its duties hereunder in reliance upon any Rights Certificate or certificate for Company Common Stock or for other securities of the Company, instrument of assignment or transfer, power of attorney, endorsement, affidavit, letter, notice, direction, consent, certificate, statement or other paper or document believed by it to be genuine and to be signed, executed and, where necessary, verified or acknowledged, by the proper Person or Persons, or otherwise upon the advice of counsel as set forth in Section 20 (Duties of Rights Agent). The Rights Agent shall not be deemed to have knowledge of any event of which it was supposed to receive notice thereof hereunder, and the Rights Agent shall be fully protected and shall incur no liability for failing to take any action in connection therewith unless and until it has received such notice in writing.

Section 19. Merger or Consolidation or Change of Name of Rights Agent.

(a) Successor. Any Person into which the Rights Agent or any successor Rights Agent may be merged or with which it may be consolidated, or any Person resulting from any merger or consolidation to which the Rights Agent or any successor Rights Agent shall be a party, or any Person succeeding to the shareholder business of the Rights Agent or any successor Rights Agent, shall be the successor to the Rights Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto; provided, however, that such Person would be eligible for appointment as a successor Rights Agent under the provisions of Section 21 (Change of Rights Agent). In case at the time such successor Rights Agent shall succeed to the agency created by this Agreement, any of the Rights

Certificates shall have been countersigned but not delivered, any such successor Rights Agent may adopt the countersignature of a predecessor Rights Agent and deliver such Rights Certificates so countersigned; and in case at that time any of the Rights Certificates shall not have been countersigned, any successor Rights Agent may countersign such Rights Certificates either in the name of the predecessor or in the name of the successor Rights Agent; and in all such cases such Rights Certificates shall have the full force provided in the Rights Certificates and in this Agreement.

(b) Prior Countersignatures. In case at any time the name of the Rights Agent shall be changed and at such time any of the Rights Certificates shall have been countersigned but not delivered, the Rights Agent may adopt the countersignature under its prior name and deliver Rights Certificates so countersigned; and in case at that time any of the Rights Certificates shall not have been countersigned, the Rights Agent may countersign such Rights Certificates either in its prior name or in its changed name; and in all such cases such Rights Certificates shall have the full force provided in the Rights Certificates and in this Agreement.

Section 20. Rights and Duties of Rights Agent. The Rights Agent undertakes to perform only the duties and obligations expressly imposed by this Agreement (and no implied duties or obligations) upon the following terms and conditions, by all of which the Company and the holders of Rights Certificates, by their acceptance thereof, shall be bound:

(a) Legal Counsel. The Rights Agent may consult with legal counsel (who may be legal counsel for the Company or an employee of the Rights Agent), and the advice or opinion of such counsel shall be full and complete authorization and protection to the Rights Agent and the Rights Agent shall incur no liability for or in respect of any action taken, suffered or omitted by it and in accordance with such advice or opinion.

(b) Certification by the Company. Whenever in the performance of its duties under this Agreement the Rights Agent shall deem it necessary or desirable that any fact or matter (including, without limitation, the identity of any Acquiring Person and the determination of Current Market Price) be proved or established by the Company prior to taking or suffering or omitting to take any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer or any Assistant Treasurer of the Company and delivered to the Rights Agent; and such certificate shall be full and complete authorization and protection to the Rights Agent and the Rights Agent shall incur no liability for or in respect of any action taken, suffered or omitted by it under the provisions of this Agreement in reliance upon such certificate.

(c) Liability for Negligence, etc. The Rights Agent shall be liable hereunder only for its own gross negligence or bad faith (which gross negligence or bad faith must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction). Anything to the contrary notwithstanding, in no event shall the Rights Agent be liable for special, punitive, indirect, consequential or incidental loss or damage of any kind

whatsoever (including but not limited to lost profits), even if the Rights Agent has been advised of the likelihood of such loss or damage.

(d) Statements of Fact or Recitals. The Rights Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or in the Rights Certificates or be required to verify the same (except as to its countersignature on such Rights Certificates), but all such statements and recitals are and shall be deemed to have been made by the Company only.

(e) Agreement; Adjustments. The Rights Agent shall not have any liability for or be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution hereof by the Rights Agent) or in respect of the validity or execution of any Rights Certificate (except its countersignature); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Agreement or in any Rights Certificate; nor shall it be responsible for any adjustment required under the provisions of Section 11 (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights) or Section 13 (Consolidation, Merger or Sale or Transfer of Assets or Earning Power) or responsible for the manner, method or amount of any such adjustment or the ascertaining of the existence of facts that would require any such adjustment (except with respect to the exercise of Rights evidenced by Rights Certificates after receipt of the certificate described in Section 12 hereof, upon which the Rights Agent may rely); nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of either class of Company Common Stock or either series of Preferred Stock to be issued pursuant to this Agreement or any Rights Certificate or as to whether any shares of either class of Company Common Stock or either series of Preferred Stock will, when so issued, be validly authorized and issued, fully paid and nonassessable.

(f) Further Assurances. The Company will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Rights Agent for the carrying out or performing by the Rights Agent of the provisions of this Agreement.

(g) Instructions. The Rights Agent is hereby authorized and directed to accept instructions with respect to the performance of its duties hereunder from any one of the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer or any Assistant Treasurer of the Company and to apply to such persons for advice or instructions in connection with its duties, and such instruction shall be full authorization and protection to the Rights Agent and the Rights Agent shall not be liable for or in respect of any action taken, suffered or omitted by it in accordance with the instructions of any such officer or for any delay in acting while waiting for those instructions. The Rights Agent shall be fully authorized and protected in relying upon the most recent instructions received by any such officer. Any application by the Rights Agent for written instructions from the Company may, at the option of the Rights Agent, set forth in writing any action proposed to be taken, suffered or omitted by the Rights Agent under this Agreement and the date on and/or after which such action shall be taken or suffered or such omission shall be effective. The Rights Agent shall not be liable for any action taken or suffered by, or omission of, the Rights Agent in accordance with a proposal

included in any such application on or after the date specified in such application (which date shall not be less than five Business Days after the date any officer of the Company actually receives such application, unless any such officer shall have consented in writing to an earlier date) unless, prior to taking or suffering any such action (or the effective date in the case of an omission), the Rights Agent shall have received written instructions in response to such application specifying the action to be taken, suffered or omitted.

(h) Dealing in Rights. The Rights Agent and any stockholder, affiliate, director, officer or employee of the Rights Agent may buy, sell or deal in any of the Rights or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though the Rights Agent were not Rights Agent under this Agreement. Nothing herein shall preclude the Rights Agent or any such stockholder, affiliate, director, officer or employee from acting in any other capacity for the Company or for any other Person.

(i) Agents; Reasonable Care. The Rights Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself (through its directors, officers and employees) or by or through its attorneys or agents, and the Rights Agent shall not be answerable or accountable for any act, default, neglect or misconduct of any such attorneys or agents or for any loss to the Company or any other Person resulting from any such act, default, neglect or misconduct, absent gross negligence or bad faith in selection and continued employment thereof (which gross negligence or bad faith must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction).

(j) Expenses; Repayment Assurances. No provision of this Agreement shall require the Rights Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of its rights if there shall be reasonable grounds for believing that repayment of such funds or adequate indemnification against such risk or liability is not reasonably assured to it.

(k) Exercise of Rights; Consultation with Company. If, with respect to any Rights Certificate surrendered to the Rights Agent for exercise or transfer, the certificate attached to the form of assignment or form of election to purchase, as the case may be, has either not been completed or indicates an affirmative response to clause 1 and/or 2 thereof, the Rights Agent shall not take any further action with respect to such requested exercise of transfer without first consulting with the Company.

Section 21. Change of Rights Agent. The Rights Agent or any successor Rights Agent may resign and be discharged from its duties under this Agreement upon thirty (30) calendar days' notice in writing mailed to the Company, and to each transfer agent of each class of Company Common Stock and each series of Preferred Stock known to the Rights Agent, by registered or certified mail, and to the holders of the Rights Certificates by first-class mail. The Company may remove the Rights Agent or any successor Rights Agent upon thirty (30) calendar days' notice in writing, mailed to the Rights Agent or successor Rights Agent, as the case may be, and to each transfer agent of each class of Company Common Stock and each series of

Preferred Stock, by registered or certified mail, and to the holders of the Rights Certificates by first-class mail. If the Rights Agent shall resign or be removed or shall otherwise become incapable of acting, the Company shall appoint a successor to the Rights Agent. If the Company shall fail to make such appointment within a period of thirty (30) calendar days after giving notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent or by the holder of a Rights Certificate (who shall, with such notice, submit his Rights Certificate for inspection by the Company), then the registered holder of any Rights Certificate may apply to any court of competent jurisdiction for the appointment of a new Rights Agent. Any successor Rights Agent, whether appointed by the Company or by such a court, shall be (a) a Person organized and doing business under the laws of the United States or of any State of the United States, which is authorized under such laws to exercise stock transfer powers, is subject to supervision or examination by federal or state authority and has at the time of its appointment as Rights Agent a combined capital and surplus of at least \$50,000,000 or (b) an Affiliate of a Person described in clause (a) of this sentence. After appointment, the successor Rights Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Rights Agent without further act or deed; but the predecessor Rights Agent shall deliver and transfer to the successor Rights Agent any property at the time held by it hereunder, and execute and deliver any further assurance, conveyance, act or deed necessary for the purpose. Not later than the effective date of any such appointment, the Company shall file notice thereof in writing with the predecessor Rights Agent and each transfer agent of each class of Company Common Stock and each series of Preferred Stock, and mail a notice thereof in writing to the registered holders of the Rights Certificates. Failure to give any notice provided for in this Section 21 (Change of Rights Agent), or any defect therein, shall not affect the legality or validity of the resignation or removal of the Rights Agent or the appointment of the successor Rights Agent, as the case may be.

Section 22. Issuance of New Rights Certificates. Notwithstanding any of the provisions of this Agreement or of the Rights to the contrary, the Company may, at its option, issue new Rights Certificates evidencing Rights in such form as may be approved by the Board to reflect any adjustment or change in the applicable Purchase Price and the number or kind or class of shares or other securities or property purchasable under the Rights Certificates made in accordance with the provisions of this Agreement. In addition, in connection with the issuance or sale of shares of each class of Company Common Stock following the Distribution Date and prior to the redemption or expiration of the Rights, the Company (a) shall, with respect to shares of each class of Company Common Stock so issued or sold pursuant to the exercise of stock options or under any employee plan or arrangement, or upon the exercise, conversion or exchange of securities hereafter issued by the Company, in either case outstanding as of the Distribution Date, and (b) may, in any other case, if deemed necessary or appropriate by the Board, issue Rights Certificates representing the appropriate number of Rights in connection with such issuance or sale; provided, however, that (i) no such Rights Certificate shall be issued if, and to the extent that, the Company shall be advised by counsel that such issuance would create a significant risk of material, adverse tax consequences to the Company or the Person to whom such Rights Certificate would be issued, and (ii) no such Rights Certificate shall be issued if, and to the extent that, appropriate adjustment shall otherwise have been made in lieu of the issuance thereof.

Section 23. Redemption and Termination.

(a) Redemption. The Company may, at its option, at any time prior to the earlier of (i) the Stock Acquisition Date, or (ii) the Final Expiration Date, redeem (the date of such redemption being referred to herein as the "REDEMPTION DATE") all but not less than all of the then outstanding Rights at a redemption price of \$0.001 per Right, as such amount may be appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring after the date hereof (such redemption price being hereinafter referred to as the "REDEMPTION PRICE"). The redemption of the Rights by the Company may be made effective at such time, on such basis and with such conditions as the Board in its sole discretion may establish. The Company may, at its option, pay the Redemption Price in cash, shares of Company Common Stock (based on the Current Market Price of the Company Common Stock at the time of redemption) or any other form of consideration deemed appropriate by Board.

(b) Effect of Redemption; Procedure. Immediately upon the action of the Company ordering the redemption of the Rights and without any further action and without any notice, the right to exercise the Rights will terminate and the only right thereafter of the holders of Rights shall be to receive the Redemption Price for each Right so held. Promptly after the Redemption Date, the Company shall (i) give written notice of such redemption to the Rights Agent, (ii) give public notice of such redemption; provided, however, that the failure to give, or any defect in, such notice shall not affect the validity of such redemption, and (iii) mail notice of such redemption to the holders of the then outstanding Rights at their last addresses as they appear upon the registry books of the Rights Agent or, prior to the Distribution Date, on the registry books of the Transfer Agent for the Company Common Stock. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of redemption will state the method by which the payment of the Redemption Price will be made. Amounts payable shall be rounded down to the nearest \$0.01.

Section 24. Exchange.

(a) Right to Exchange. The Company may, at its option, at any time and from time to time after the first occurrence of a Flip-in Event, exchange all or part of the then outstanding and exercisable Rights (other than Rights which have become void as provided in Section 7(e) (Exercise of Rights; Purchase Price; Expiration Date of Rights -- Termination of Acquiring Person's Rights)) for the Exchange Number of shares of the applicable class of Company Common Stock, shares or units of the applicable series of Preferred Stock which the Board has determined to be a Company Common Stock Equivalent, units of other property or any combination thereof as determined by the Board. Notwithstanding the foregoing, the Company shall not be empowered to effect such exchange at any time after any Person (other than the Company, any Subsidiary of the Company, any employee benefit plan of the Company or any such Subsidiary or any entity holding shares of Company Common Stock for or pursuant to any such plan), together with all Affiliates and Associates of such Person, becomes the Beneficial Owner of shares of Company Common Stock representing, in the aggregate, 50% or more of the total number of votes entitled to be cast generally (other than in an election of directors) by the holders of Company Common Stock then outstanding. The exchange of the

Rights by the Company may be made effective at such time, on such basis and with such conditions as the Board in its sole discretion may establish.

(b) Effect of Exchange; Procedure. Immediately upon the action of the Company ordering the exchange of any Rights pursuant to paragraph (a) of this Section 24, evidence of which shall have been filed with the Rights Agent and without any further action and without any notice, the right to exercise such Rights will terminate and the only right thereafter of a holder of such Rights shall be to receive that number of shares of the applicable class of Company Common Stock, Company Common Stock Equivalents or units of other property equal to the number of such Rights held by such holder multiplied by the Exchange Number. Promptly after the action of the Company ordering the exchange of the Rights, the Company shall (i) file written notice of such action with the Rights Agent, (ii) give public notice of such exchange; provided, however, that the failure to give, or any defect in, such notice shall not affect the validity of such exchange, and (iii) mail notice of such exchange to the holders of such Rights at their last addresses as they appear upon the registry books of the Rights Agent. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of exchange will state the method by which the exchange will be effected and, in the event of any partial exchange, the number of Rights which will be exchanged. Any partial exchange of (a) Class A Rights shall be effected pro rata based on the number of Class A Rights (other than Class A Rights which have become void as provided in Section 7(e) (Exercise of Rights; Purchase Price; Expiration Date of Rights -- Termination of Acquiring Person's Rights)) held by each holder of Class A Rights and (b) Class B Rights shall be effected pro rata based on the number of Class B Rights (other than Class B Rights which have become void as provided in Section 7(e) (Exercise of Rights; Purchase Price; Expiration Date of Rights -- Termination of Acquiring Person's Rights)) held by each holder of Class B Rights.

(c) Company Common Stock Equivalents. In any exchange pursuant to this Section 24, the Company, at its option, may substitute Company Common Stock Equivalents for the applicable class of Company Common Stock exchangeable for Rights, at the initial rate of one share of Company Common Stock Equivalent for each share of the applicable class of Company Common Stock, as appropriately adjusted to reflect adjustments in the voting rights of the applicable class of Company Common Stock pursuant to the Company's Certificate of Incorporation, so that the share of Company Common Stock Equivalent delivered in lieu of each share of the applicable class of Company Common Stock shall have the same voting rights as one share of the applicable class of Company Common Stock.

(d) Insufficient Company Common Stock. In the event that the number of shares of Common Stock or Class B Common Stock, as the case may be, which are authorized by the Company's Certificate of Incorporation but not outstanding or reserved for issuance for purposes other than upon exercise of the Class A Rights or the Class B Rights, as the case may be, is not sufficient to permit any exchange of such Class A Rights or such Class B Rights, for Common Stock or Class B Common Stock in accordance with this Section 24, the Company may, at its option, take all such action as may be necessary to authorize additional shares of Common Stock or Class B Common Stock for issuance upon such exchange.

(e) Fractional Shares. Upon the action of the Company ordering the exchange of any Rights pursuant to paragraph (a) of this Section 24, the Company shall not be required to issue fractions of shares or to distribute certificates which evidence fractional shares. In lieu of such fractional shares, the Company may pay to the registered holders of the Rights Certificates with regard to which such fractional shares would otherwise be issuable an amount in cash equal to the same fraction of the current market value of one share of the applicable class of Company Common Stock. For purposes of this Section 24, the current market value of one share of Common Stock or Class B Common Stock, as applicable, shall be the closing price of one share of Common Stock or Class B Common Stock (as determined pursuant to Section 11(d)(i) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Current Market Price)), as applicable, for the Trading Day immediately prior to the date of exchange pursuant to this Section 24, and the value of any Company Common Stock Equivalent shall be deemed to have the same current market value as the Common Stock or the Class B Common Stock, as applicable, on such date.

Section 25. Notice of Certain Events.

(a) Preferred Stock Transactions, etc. In case the Company shall propose, at any time after the Distribution Date, (i) to pay any dividend payable in stock of any class to the holders of either series of its Preferred Stock or to make any other distribution to the holders of either series of its Preferred Stock (other than a regular quarterly cash dividend out of earnings or retained earnings of the Company); (ii) to offer to the holders of either series of its Preferred Stock rights or warrants to subscribe for or to purchase any additional shares of either series of Preferred Stock or shares of stock of any class or any other securities, rights or options; (iii) to effect any reclassification of either series of its Preferred Stock (other than a reclassification involving only the subdivision of an outstanding series of Preferred Stock); (iv) to effect any consolidation with, merger into or with, or statutory share exchange or similar transaction with, any other Person (other than a Subsidiary of the Company in a transaction which complies with Section 11(o) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Restriction against Diminishing Benefits of the Rights)), or to effect any sale or other transfer (or to permit one or more of its Subsidiaries to effect any sale or other transfer), in one transaction or a series of related transactions, of more than 50% of the assets, cash flow or earning power of the Company and its Subsidiaries (taken as a whole) to any other Person or Persons (other than the Company and/or any of its Subsidiaries in one or more transactions each of which complies with Section 11(o)); (v) to effect the liquidation, dissolution or winding up of the Company, or (vi) to declare or pay any dividend on the shares of either class of Company Common Stock payable in either class of Company Common Stock or to effect a subdivision, combination or consolidation of the shares of either class of Company Common Stock (by reclassification or otherwise than by payment of dividends in Company Common Stock), then, in each such case, the Company shall give to the Rights Agent and to each holder of a Rights Certificate, to the extent feasible and in accordance with Section 26 (Notices), a notice of such proposed action, which shall specify the record date for the purposes of such stock dividend, distribution of rights or warrants, or the date on which such reclassification, consolidation, merger, statutory share exchange or similar transaction, sale, transfer, liquidation, dissolution, or winding up is to take place and the date of participation therein by the holders of the shares of either series of Preferred Stock, if any such date is to be fixed, and such notice shall be so given

in the case of any action covered by clause (i) or (ii) above at least twenty (20) calendar days prior to the record date for determining holders of the shares of the applicable series of Preferred Stock for purposes of such action, and in the case of any such other action, at least twenty (20) calendar days prior to the date of the taking of such proposed action or the date of participation therein by the holders of the shares of such series of Preferred Stock, whichever shall be the earlier.

(b) Other Transactions. In case any of the events set forth in Section 11(a)(ii) (Adjustment of Purchase Price; Number and Kind of Shares or Number of Rights -- Certain Adjustments) shall occur, then, in any such case, (i) the Company shall as soon as practicable thereafter give to the Rights Agent and to each holder of a Rights Certificate, to the extent feasible and in accordance with Section 26 (Notices), a notice of the occurrence of such event, which shall specify the event and the consequences of the event to holders of Rights under Section 11(a)(ii), and (ii) all references in the preceding paragraph to the applicable series of Preferred Stock shall be deemed thereafter to refer to the applicable class of Company Common Stock and/or, if appropriate, other securities.

Section 26. Notices. Notices or demands authorized by this Agreement to be given or made by the Rights Agent or by the holder of any Rights Certificate to or on the Company shall be sufficiently given or made if sent by facsimile (with receipt confirmed) or by first-class mail, postage prepaid, addressed (until another address is filed in writing with the Rights Agent) as follows:

Centex Construction Products, Inc.
2728 North Harwood
Dallas, Texas 75201
Attention: Chief Operating Officer
Fax: (214) 981-6559

Subject to the provisions of Section 21 (Change of Rights Agent), any notice or demand authorized by this Agreement to be given or made by the Company or by the holder of any Rights Certificate to or on the Rights Agent shall be sufficiently given or made if sent by facsimile (with receipt confirmed) or by first-class mail, postage prepaid, addressed (until another address is filed in writing with the Company) as follows:

[_____]
[_____]
Attention: [_]
Fax: [_]

Notices or demands authorized by this Agreement to be given or made by the Company or the Rights Agent to the holder of any Rights Certificate (or, if prior to the Distribution Date, to the holder of certificates representing shares of Company Common Stock) shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed to such holder at the address of such holder as shown on the registry books of the Company.

Section 27. Supplements and Amendments. For so long as the Rights are redeemable, and subject to the penultimate sentence of this Section 27, the Company may, and the Rights Agent shall, if the Company so directs, supplement or amend any provision of this Agreement without the approval of any holders of certificates representing shares of Company Common Stock or, on and after the Distribution Date, the holders of Rights Certificates. At any time when the Rights are no longer redeemable and subject to the penultimate sentence of this Section 27, the Company and the Rights Agent shall, if the Company so directs, supplement or amend this Agreement without the approval of any holders of Rights Certificates; provided, however, that no such supplement or amendment may (i) adversely affect the interests of the holders of Rights Certificates (other than an Acquiring Person or an Affiliate or Associate of any such Person) or, prior to the Distribution Date, holders of certificates representing shares of Company Common Stock; (ii) cause this Agreement again to become amendable other than in accordance with this sentence; or (iii) cause the Rights again to become redeemable. Upon the delivery of a certificate from an appropriate officer of the Company and if, requested by the Rights Agent, an opinion of counsel, which states that the proposed supplement or amendment is in compliance with the terms of this Section 27, the Rights Agent shall execute such supplement or amendment. Notwithstanding anything contained in this Agreement to the contrary, the Rights Agent may, but shall not be obligated to, enter into any supplement or amendment that affects the Rights Agent's own rights, duties, obligations or immunities under this Agreement, and no supplement or amendment shall be made which changes the Redemption Price, the Final Expiration Date, the applicable Purchase Price, or the number of one one-thousandths of a share of the applicable series of Preferred Stock for which a right is exercisable; provided, however, that at any time prior to (i) a Stock Acquisition Date or (ii) the date that a tender or exchange offer by any Person (other than the Company, any Subsidiary of the Company, any employee benefit plan of the Company or any Subsidiary of the Company, or any Person or entity organized, appointed or established by the Company for or pursuant to the terms of any such plan) is first published or sent or given within the meaning of Rule 14d-2(a) of the General Rules and Regulations under the Exchange Act, if upon consummation thereof, such Person would be the Beneficial Owner of shares of Company Common Stock representing, in the aggregate, 15% or more of the total number of votes entitled to be cast generally (other than in an election of directors) by the holders of the shares of Company Common Stock then outstanding, voting together as a class, the Board may amend this Agreement to increase the Purchase Price or extend the Final Expiration Date. Prior to the Distribution Date, the interests of the holders of Rights shall be deemed coincident with the interests of the holders of the applicable class of Company Common Stock.

Section 28. Successors. All the covenants and provisions of this Agreement by or for the benefit of the Company or the Rights Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

Section 29. Determinations and Actions by the Board of Directors, etc. For all purposes of this Agreement, any calculation of the number of shares of any class of Company Common Stock outstanding at any particular time, including for purposes of determining the particular percentage of such outstanding shares of the class of Company Common Stock of which any Person is the Beneficial Owner, shall be made in accordance with the last sentence of Rule 13d-3(d)(1)(i) of the General Rules and Regulations under the Exchange Act. The Board

shall have the exclusive power and authority to administer this Agreement and to exercise all rights and powers specifically granted to the Board or to the Company, or as may be necessary or advisable in the administration of this Agreement, including, without limitation, the right and power to (i) interpret the provisions of this Agreement, and (ii) make all determinations deemed necessary or advisable for the administration of this Agreement (including a determination to redeem or not redeem the Rights or to amend the Agreement). All such actions, calculations, interpretations and determinations (including, for purposes of clause (y) below, all omissions with respect to the foregoing) which are done or made by the Board in good faith shall (x) be final, conclusive and binding on the Company, the Rights Agent, the holders of the Rights and all other parties, and (y) not subject the Board to any liability to the holders of the Rights.

Section 30. Periodic Review. The TIDE Committee (as hereinafter defined) of the Board of Directors of the Company shall review and evaluate this Rights Agreement in order to consider whether the maintenance of this Rights Agreement continues to be in the best interests of the Company and its stockholders, at least every three (3) years, or sooner if any Person shall have made a proposal to the Company, or taken any other action, that, if effective, could cause such Person to become an Acquiring Person hereunder, if a majority of the members of the TIDE Committee shall deem such review and evaluation appropriate after giving due regard to all relevant circumstances. Following each such review, the TIDE Committee will communicate its conclusions to the full Board of Directors of the Company, including any recommendation in light thereof as to whether this Rights Agreement should be modified or the Rights should be redeemed. The "TIDE COMMITTEE" shall be appointed by the Board of Directors of the Company and shall be comprised of at least three (3) directors of the Company who are not officers, employees or Affiliates of the Company.

Section 31. Benefits of this Agreement. Nothing in this Agreement shall be construed to give to any Person other than the Company, the Rights Agent and the registered holders of the Rights Certificates (and, prior to the Distribution Date, registered holders of the Company Common Stock) any legal or equitable right, remedy or claim under this Agreement; but this Agreement shall be for the sole and exclusive benefit of the Company, the Rights Agent and the registered holders of the Rights Certificates (and, prior to the Distribution Date, registered holders of the Company Common Stock).

Section 32. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated; provided, however, that notwithstanding anything in this Agreement to the contrary, if any such term, provision, covenant or restriction is held by such court or authority to be invalid, void or unenforceable and the Board determines in its good faith judgment that severing the invalid language from this Agreement would adversely affect the purpose or effect of this Agreement, the right of redemption set forth in Section 23 (Redemption and Termination) shall be reinstated and shall not expire until the Close of Business on the tenth Business Day following the date of such determination by the Board.

Section 33. Governing Law. This Agreement, each Right and each Rights Certificate issued hereunder shall be deemed to be a contract made under the laws of the State of Delaware and for all purposes shall be governed by and construed in accordance with the laws of such State applicable to contracts made and to be performed entirely within such State; provided, however, that all provisions regarding the rights, duties, responsibilities and obligations of the Rights Agent shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such State.

Section 34. Counterparts. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

Section 35. Descriptive Headings. Descriptive headings of the several Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and their respective corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

CENTEX CONSTRUCTION PRODUCTS, INC.

By: _____
Name: _____
Title: _____

[-----]

By: _____
Name: _____
Title: _____

CERTIFICATE OF
DESIGNATION, PREFERENCES AND RIGHTS OF
SERIES A PREFERRED STOCK
OF
CENTEX CONSTRUCTION PRODUCTS, INC.

Pursuant to Section 151 of the General Corporation Law of the State of Delaware

I, _____, Secretary of Centex Construction Products, Inc. (the "CORPORATION"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "GCL"), in accordance with the provisions of Section 103 of the GCL, DO HEREBY CERTIFY

That pursuant to the authority conferred upon the Board of Directors (the "BOARD") by the Restated Certificate of Incorporation of the Corporation, as amended, the said Board on [_____, 2003], adopted the following resolutions creating a series of 20,000 shares of Preferred Stock, par value \$.01 per share, designated as Series A Preferred Stock:

RESOLVED, that, pursuant to the authority vested in the Board in accordance with the provisions of its Restated Certificate of Incorporation, the Board does hereby create, authorize and provide for the issuance upon the exercise of the Corporation's Preferred Stock Purchase Rights, of a series of Preferred Stock of the Corporation, and does hereby fix and state that the designations, amounts, powers, preferences and relative and other special rights and the qualifications, limitations or restrictions thereof are as follows:

Series A Preferred Stock

Section 1. Designation and Amount. The shares of such series shall be designated as Series A Preferred Stock and the number of shares constituting such series shall be 20,000.

Section 2. Dividends and Distributions.

(A) Subject to the prior and superior rights of the holders of any shares of any series of Preferred Stock ranking prior and superior to the shares of Series A Preferred Stock with respect to dividends, the holders of shares of Series A Preferred Stock in preference to the holders of Common Stock, par value \$0.01 per share (the "COMMON STOCK"), and Class B Common Stock, par value \$0.01 per share (the "CLASS B COMMON STOCK," and, together with the Common Stock, the "COMPANY COMMON STOCK"), and of any other stock of the Corporation ranking junior to the Series A Preferred Stock with respect to dividends, and on a pari passu basis with the Series B Preferred Stock, par value \$.01 per share (the "SERIES B PREFERRED STOCK"), shall be entitled to receive, when, as and if declared by the Board out of funds legally available for that purpose, quarterly dividends payable in cash on the 1st day of March, June, September and December in each year commencing _____, 2004 (each such date being referred to herein as

a "QUARTERLY DIVIDEND PAYMENT DATE"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$0.001 or (b) subject to the provision for adjustment hereinafter set forth, one thousand (1,000) times the aggregate per share amount of all cash dividends, and one thousand (1,000) times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock, since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred Stock. In the event the Corporation shall at any time after [_____, 2003] (the "RIGHTS DECLARATION DATE") (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the Series A Preferred Stock as provided in paragraph (A) above immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$0.001 per share on the Series A Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series A Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board may fix a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than sixty (60) days prior to the date fixed for the payment thereof.

Section 3. Voting Rights. The holders of shares of Series A Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series A Preferred Stock shall entitle the holder thereof to one thousand (1,000) votes which each share of Common Stock is entitled to vote. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the number of votes per share to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein or by law, the holders of shares of Series A Preferred Stock and the holders of shares of Common Stock shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation. Except as otherwise provided herein or by law, the holders of the shares of Series A Preferred Stock shall not be entitled to vote as a separate class on any matters submitted to a vote of the stockholders.

(C) Except as set forth herein, holders of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

Section 4. Certain Restrictions.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series A Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to, the Series A Preferred Stock;

(ii) declare or pay dividends on, or make any other distributions on, any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except dividends paid ratably on the Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or

winding up) with the Series A Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Preferred Stock; or

(iv) purchase or otherwise acquire for consideration any shares of Series A Preferred Stock, or any shares of stock ranking on a parity with the Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board) to all holders of such shares upon such terms as the Board, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Series A Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board, subject to the conditions and restrictions on issuance set forth herein.

Section 6. Liquidation, Dissolution or Winding Up. Upon any liquidation (voluntary or otherwise), dissolution or winding up of the Corporation, no distribution shall be made (1) to the holders of Company Common Stock or of shares of any other stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock unless, prior thereto, the holders of shares of Series A Preferred Stock shall have received an amount equal to the greater of (i) \$1,000 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment and (ii) an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount to be distributed per share to holders of shares of Common Stock (the "SERIES A LIQUIDATION PREFERENCE") or (2) to the holders of shares of stock ranking on a parity upon liquidation, dissolution or winding up with the Series A Preferred Stock, except distributions made ratably on the Series A Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the aggregate amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under the proviso in clause (1) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding

immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 7. Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock, securities, cash or any other property, then in any such case the shares of Series A Preferred Stock shall at the same time be similarly exchanged for or changed into an amount per share (subject to the provision for adjustment hereinafter set forth) equal to one thousand (1,000) times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. Redemption. The outstanding shares of Series A Preferred Stock may be redeemed at the option of the Board as a whole, but not in part, at any time, or from to time to time, at a cash price per share equal to one hundred five percent (105%) of (i) the product of the Adjustment Number (as such term is hereinafter defined) times the Average Market Value (as such term is hereinafter defined) of the Common Stock, plus (ii) all dividends which on the redemption date have accrued on the shares to be redeemed and have not been paid, or declared and a sum sufficient for the payment thereof set apart, without interest. The "Adjustment Number" is one thousand (1,000) (as appropriately adjusted as set forth in the last sentence of Section 6 to reflect such events as stock splits, stock dividends and recapitalizations with respect to the Common Stock). The "Average Market Value" is the average of the closing sale prices of the Common Stock during the thirty (30) day period immediately preceding the date before the redemption date on the New York Stock Exchange, or, if such stock is not listed on such Exchange, on the Composite Tape for American Stock Exchange Listed Stocks, or, if such stock is not quoted on the Composite Tape, on the principal United States securities exchange registered under the Securities Exchange Act of 1934, as amended, on which such stock is listed, or, if such stock is not listed on any such exchange, the average of the closing sale prices with respect to a share of Common Stock during such thirty (30) day period, as quoted on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or if no such quotations are available, the fair market value of the Common Stock as determined by the Board in good faith.

Section 9. Ranking. The Series A Preferred Stock shall rank (a) on a parity with the Series B Preferred Stock with respect to the payment of dividends and the distribution of assets upon liquidation, dissolution or winding up of the Corporation (b) senior to all Company Common Stock and (c) junior to all series of preferred stock other than the Series B Preferred Stock, unless the terms of any such series shall provide otherwise.

Section 10. Amendment. The Restated Certificate of Incorporation of the Corporation, as amended, shall not be further amended in any manner which would materially alter or change the powers, preferences or special rights of the Series A Preferred Stock so as to affect them adversely without the affirmative vote of the holders of a majority or more of the outstanding shares of Series A Preferred Stock, voting separately as a class.

Section 11. Fractional Shares. At the Corporation's sole discretion, Series A Preferred Stock may be issued in fractions of a share which shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Preferred Stock.

IN WITNESS WHEREOF, I have executed and subscribed this Certificate of Designation and do affirm the foregoing as true as of [_____, 2003].

_____, Secretary

CERTIFICATE OF
DESIGNATION, PREFERENCES AND RIGHTS OF
SERIES B PREFERRED STOCK
OF
CENTEX CONSTRUCTION PRODUCTS, INC.

Pursuant to Section 151 of the General Corporation Law of the State of Delaware

I, _____, Secretary of Centex Construction Products, Inc. (the "CORPORATION"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "GCL"), in accordance with the provisions of Section 103 of the GCL, DO HEREBY CERTIFY

That pursuant to the authority conferred upon the Board of Directors (the "BOARD") by the Restated Certificate of Incorporation of the Corporation, as amended, the said Board on [_____, 2003], adopted the following resolutions creating a series of 20,000 shares of Preferred Stock, par value \$.01 per share, designated as Series B Preferred Stock:

RESOLVED, that, pursuant to the authority vested in the Board in accordance with the provisions of its Restated Certificate of Incorporation, the Board does hereby create, authorize and provide for the issuance upon the exercise of the Corporation's Preferred Stock Purchase Rights, of a series of Preferred Stock of the Corporation, and does hereby fix and state that the designations, amounts, powers, preferences and relative and other special rights and the qualifications, limitations or restrictions thereof are as follows:

Series B Preferred Stock

Section 1. Designation and Amount. The shares of such series shall be designated as Series B Preferred Stock and the number of shares constituting such series shall be 20,000.

Section 2. Dividends and Distributions.

(A) Subject to the prior and superior rights of the holders of any shares of any series of Preferred Stock ranking prior and superior to the shares of Series B Preferred Stock with respect to dividends, the holders of shares of Series B Preferred Stock in preference to the holders of Common Stock, par value \$0.01 per share (the "COMMON STOCK"), and Class B Common Stock, par value \$0.01 per share (the "CLASS B COMMON STOCK," and, together with the Common Stock, the "COMPANY COMMON STOCK"), and of any other stock of the Corporation ranking junior to the Series B Preferred Stock with respect to dividends, and on a pari passu basis with the Series A Preferred Stock, par value \$.01 per share (the "SERIES A PREFERRED STOCK"), shall be entitled to receive, when, as and if declared by the Board out of funds legally available for that purpose, quarterly dividends payable in cash on the 1st day of March, June, September and December in each year commencing _____, 2004 (each such date being referred to herein as

a "QUARTERLY DIVIDEND PAYMENT DATE"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series B Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$0.001 or (b) subject to the provision for adjustment hereinafter set forth, one thousand (1,000) times the aggregate per share amount of all cash dividends, and one thousand (1,000) times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in shares of Class B Common Stock or a subdivision of the outstanding shares of Class B Common Stock (by reclassification or otherwise), declared on the Class B Common Stock, since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series B Preferred Stock. In the event the Corporation shall at any time after [_____, 2003] (the "RIGHTS DECLARATION DATE") (i) declare any dividend on Class B Common Stock payable in shares of Class B Common Stock, (ii) subdivide the outstanding Class B Common Stock, or (iii) combine the outstanding Class B Common Stock into a smaller number of shares, then in each such case the amount to which holders of shares of Series B Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Class B Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Class B Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the Series B Preferred Stock as provided in paragraph (A) above immediately after it declares a dividend or distribution on the Class B Common Stock (other than a dividend payable in shares of Class B Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Class B Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$0.001 per share on the Series B Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series B Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series B Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series B Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series B Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board may fix a record date for the determination of holders of shares of Series B Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than sixty (60) days prior to the date fixed for the payment thereof.

Section 3. Voting Rights. The holders of shares of Series B Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series B Preferred Stock shall entitle the holder thereof to one thousand (1,000) votes which each share of Class B Common Stock is entitled to vote. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Class B Common Stock payable in shares of Class B Common Stock, (ii) subdivide the outstanding Class B Common Stock, or (iii) combine the outstanding Class B Common Stock into a smaller number of shares, then in each such case the number of votes per share to which holders of shares of Series B Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction the numerator of which is the number of shares of Class B Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Class B Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein or by law, the holders of shares of Series B Preferred Stock and the holders of shares of Class B Common Stock shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation. Except as otherwise provided herein or by law, the holders of the shares of Series B Preferred Stock shall not be entitled to vote as a separate class on any matters submitted to a vote of the stockholders.

(C) Except as set forth herein, holders of Series B Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Class B Common Stock as set forth herein) for taking any corporate action.

Section 4. Certain Restrictions.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series B Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series B Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to, the Series B Preferred Stock;

(ii) declare or pay dividends on, or make any other distributions on, any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series B Preferred Stock, except dividends paid ratably on the Series B Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series B Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series B Preferred Stock; or

(iv) purchase or otherwise acquire for consideration any shares of Series B Preferred Stock, or any shares of stock ranking on a parity with the Series B Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board) to all holders of such shares upon such terms as the Board, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. **Reacquired Shares.** Any shares of Series B Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board, subject to the conditions and restrictions on issuance set forth herein.

Section 6. **Liquidation, Dissolution or Winding Up.** Upon any liquidation (voluntary or otherwise), dissolution or winding up of the Corporation, no distribution shall be made (1) to the holders of Company Common Stock or of shares of any other stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series B Preferred Stock unless, prior thereto, the holders of shares of Series B Preferred Stock shall have received an amount equal to the greater of (i) \$1,000 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment and (ii) an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount to be distributed per share to holders of shares of Class B Common Stock (the "SERIES B LIQUIDATION PREFERENCE") or (2) to the holders of shares of stock ranking on a parity upon liquidation, dissolution or winding up with the Series B Preferred Stock, except distributions made ratably on the Series B Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Class B Common Stock payable in shares of Class B Common Stock, (ii) subdivide the outstanding Class B Common Stock, or (iii) combine the outstanding Class B Common Stock into a smaller number of shares, then in each such case the aggregate amount to which holders of shares of Series B Preferred Stock were entitled immediately prior to such event under the proviso in clause (1) of

the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Class B Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Class B Common Stock that were outstanding immediately prior to such event.

Section 7. Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Class B Common Stock are exchanged for or changed into other stock, securities, cash or any other property, then in any such case the shares of Series B Preferred Stock shall at the same time be similarly exchanged for or changed into an amount per share (subject to the provision for adjustment hereinafter set forth) equal to one thousand (1,000) times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Class B Common Stock is changed or exchanged. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Class B Common Stock payable in shares of Class B Common Stock, (ii) subdivide the outstanding Class B Common Stock, or (iii) combine the outstanding Class B Common Stock into a smaller number of shares, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series B Preferred Stock shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Class B Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Class B Common Stock that were outstanding immediately prior to such event.

Section 8. Redemption. The outstanding shares of Series B Preferred Stock may be redeemed at the option of the Board as a whole, but not in part, at any time, or from to time to time, at a cash price per share equal to one hundred five percent (105%) of (i) the product of the Adjustment Number (as such term is hereinafter defined) times the Average Market Value (as such term is hereinafter defined) of the Class B Common Stock, plus (ii) all dividends which on the redemption date have accrued on the shares to be redeemed and have not been paid, or declared and a sum sufficient for the payment thereof set apart, without interest. The "Adjustment Number" is one thousand (1,000) (as appropriately adjusted as set forth in the last sentence of Section 6 to reflect such events as stock splits, stock dividends and recapitalizations with respect to the Class B Common Stock). The "Average Market Value" is the average of the closing sale prices of the Class B Common Stock during the thirty (30) day period immediately preceding the date before the redemption date on the New York Stock Exchange, or, if such stock is not listed on such Exchange, on the Composite Tape for American Stock Exchange Listed Stocks, or, if such stock is not quoted on the Composite Tape, on the principal United States securities exchange registered under the Securities Exchange Act of 1934, as amended, on which such stock is listed, or, if such stock is not listed on any such exchange, the average of the closing sale prices with respect to a share of Class B Common Stock during such thirty (30) day period, as quoted on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or if no such quotations are available, the fair market value of the Class B Common Stock as determined by the Board in good faith.

Section 9. Ranking. The Series B Preferred Stock shall rank (a) on a parity with the Series A Preferred Stock with respect to the payment of dividends and the distribution of assets

upon liquidation, dissolution or winding up of the Corporation (b) senior to all Company Common Stock and (c) junior to all series of preferred stock other than the Series A Preferred Stock, unless the terms of any such series shall provide otherwise.

Section 10. Amendment. The Restated Certificate of Incorporation of the Corporation, as amended, shall not be further amended in any manner which would materially alter or change the powers, preferences or special rights of the Series B Preferred Stock so as to affect them adversely without the affirmative vote of the holders of a majority or more of the outstanding shares of Series B Preferred Stock, voting separately as a class.

Section 11. Fractional Shares. At the Corporation's sole discretion, Series B Preferred Stock may be issued in fractions of a share which shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series B Preferred Stock.

IN WITNESS WHEREOF, I have executed and subscribed this Certificate of Designation and do affirm the foregoing as true as of [_____, 2003].

, Secretary

[FORM OF CLASS A RIGHTS CERTIFICATE]

Certificate No. R _____ Rights

NOT EXERCISABLE AFTER THE EARLIER OF [_____, 2013], OR SUCH DATE AS THE CLASS A RIGHTS REPRESENTED HEREBY ARE REDEEMED BY CENTEX CONSTRUCTION PRODUCTS, INC. (THE "CORPORATION"). THE CLASS A RIGHTS REPRESENTED BY THIS CLASS A RIGHTS CERTIFICATE ARE SUBJECT TO REDEMPTION, AT THE OPTION OF THE CORPORATION, AT \$0.001 PER CLASS A RIGHT ON THE TERMS SET FORTH IN THE RIGHTS AGREEMENT DATED AS OF [_____, 2003], BY AND BETWEEN THE CORPORATION AND MELLON INVESTOR SERVICES LLC, AS RIGHTS AGENT (THE "RIGHTS AGREEMENT"). UNDER CERTAIN CIRCUMSTANCES, CLASS A RIGHTS BENEFICIALLY OWNED BY AN ACQUIRING PERSON (AS SUCH TERM IS DEFINED IN THE RIGHTS AGREEMENT) AND ANY SUBSEQUENT HOLDER OF SUCH CLASS A RIGHTS MAY BECOME NULL AND VOID. [THE CLASS A RIGHTS REPRESENTED BY THIS CLASS A RIGHTS CERTIFICATE ARE OR WERE BENEFICIALLY OWNED BY A PERSON WHO WAS OR BECAME AN ACQUIRING PERSON OR AN AFFILIATE OR ASSOCIATE OF AN ACQUIRING PERSON (AS SUCH TERMS ARE DEFINED IN THE RIGHTS AGREEMENT). ACCORDINGLY, THIS CLASS A RIGHTS CERTIFICATE AND THE CLASS A RIGHTS REPRESENTED HEREBY MAY BECOME NULL AND VOID IN THE CIRCUMSTANCES SPECIFIED IN SECTION 7(e) (EXERCISE OF RIGHTS; PURCHASE PRICE; EXPIRATION DATE OF RIGHTS -- TERMINATION OF ACQUIRING PERSON'S RIGHTS) OF SUCH AGREEMENT.](1)

CLASS A RIGHTS CERTIFICATE
CENTEX CONSTRUCTION PRODUCTS, INC.

This certifies that _____, or its, his or her registered assigns, is the registered owner of the number of Class A Rights set forth above, each of which entitles the owner thereof, subject to the terms, provisions and conditions of the Rights Agreement, dated as of [_____, 2003] (the "RIGHTS AGREEMENT"), between Centex Construction Products, Inc., a Delaware corporation (the "CORPORATION"), and Mellon Investor Services LLC, as rights agent (the "RIGHTS AGENT"), to purchase from the Corporation at any time prior to 5:00 P.M. (New York, New York time) on [_____, 2013] at the office or offices of the Rights Agent designated for such purpose, or its successors as Rights Agent, one one-thousandth (1/1,000) of a fully paid, nonassessable share of Series A Preferred Stock (the "SERIES A PREFERRED STOCK") of the Corporation, at a purchase price of \$140.00 per one one-thousandth (1/1,000) of a share (the

(1) The portion of the legend in brackets shall be inserted only if applicable and shall replace the preceding sentence.

"PURCHASE PRICE"), upon presentation and surrender of this Class A Rights Certificate with the Form of Election to Purchase and related Certificate duly executed. The number of Class A Rights evidenced by this Class A Rights Certificate (and the number of shares which may be purchased upon exercise thereof) set forth above, and the Purchase Price set forth above, are the number and Purchase Price as of _____, _____, based on the Series A Preferred Stock as constituted at such date. The Corporation reserves the right to require prior to the occurrence of a Triggering Event (as such term is defined in the Rights Agreement) that upon any exercise of Class A Rights, a number of Class A Rights be exercised so that only whole shares of Series A Preferred Stock would be issued.

Upon the occurrence of a Flip-in Event (as such term is defined in the Rights Agreement), if the Class A Rights evidenced by this Class A Rights Certificate are beneficially owned by (i) an Acquiring Person or an Associate or Affiliate or any such Person (as such terms are defined in the Rights Agreement), (ii) a transferee of an Acquiring Person or its Associate or Affiliate who becomes a transferee after such Acquiring Person or its Associate or Affiliate becomes such, or (iii) under certain circumstances specified in the Rights Agreement, a transferee of an Acquiring Person or its Associate or Affiliate who becomes a transferee prior to or concurrently with the Acquiring Person becoming such, such Class A Rights shall become null and void and no holder hereof shall have any right with respect to such Class A Rights from and after the occurrence of such Flip-in Event.

As provided in the Rights Agreement, the Purchase Price and the number and kind of shares of Series A Preferred Stock or other securities, which may be purchased upon the exercise of the Class A Rights evidenced by this Class A Rights Certificate are subject to modification and adjustment upon the happening of certain events, including Triggering Events (as such term is defined in the Rights Agreement).

This Class A Rights Certificate is subject to all of the terms, provisions and conditions of the Rights Agreement, which terms, provisions and conditions are hereby incorporated herein by reference and made a part hereof and to which Rights Agreement reference is hereby made for a full description of the rights, limitations of rights, obligations, duties and immunities hereunder of the Rights Agent, the Corporation and the holders of the Class A Rights Certificates, which limitations of rights include the temporary suspension of the exercisability of such Class A Rights under the specific circumstances set forth in the Rights Agreement. Copies of the Rights Agreement are on file at the above-mentioned office of the Rights Agent and are also available upon written request to the Rights Agent.

This Class A Rights Certificate, with or without other Class A Rights Certificates, upon surrender at the principal office or offices of the Rights Agent designated for such purpose, may be exchanged for another Class A Rights Certificate or Class A Rights Certificates of like tenor and date evidencing Class A Rights entitling the holder to purchase a like aggregate number of one one-thousandths of a share of Series A Preferred Stock as the Class A Rights evidenced by the Class A Rights Certificate or Class A Rights Certificates surrendered shall have entitled such holder to purchase. If this Class A Rights Certificate shall be exercised in part, the holder shall be entitled to receive upon surrender hereof another Class A Rights Certificate or Class A Rights

Certificates for the number of whole Class A Rights for which this Class A Rights Certificate is not exercised.

Subject to the provisions of the Rights Agreement, the Class A Rights evidenced by this Certificate (i) may be redeemed by the Corporation at its option at a redemption price of \$0.001 per Class A Right at any time prior to the earlier of (a) the Stock Acquisition Date (as such term is defined in the Rights Agreement) or (b) the Final Expiration Date (as such term is defined in the Rights Agreement) and (ii) may be exchanged in whole or in part for Series A Preferred Stock, shares of the Corporation's Common Stock, par value \$0.01 per share, other property or any combination thereof.

In addition, the Class A Rights may be exchanged, in whole or in part, for shares of the Common Stock, or shares of Common Stock equivalents of the Corporation having substantially the same dividend, voting and liquidation rights as shares of Common Stock and are deemed in good faith by the Board of Directors to have substantially the same value as the shares of Common Stock. Immediately upon the action of the Board of Directors of the Corporation authorizing any such exchange, and without any further action or any notice, the Class A Rights (other than Class A Rights which are not subject to such exchange) will terminate and the Class A Rights will only enable holders to receive the shares issuable upon such exchange.

No fractional shares of Series A Preferred Stock will be issued upon the exercise of any Class A Right or Class A Rights evidenced hereby (other than fractions which are integral multiples of one one-thousandth (1/1,000) of a share of Series A Preferred Stock, which may, at the election of the Corporation, be evidenced by depositary receipts), but a cash payment will be made in lieu thereof, as provided in the Rights Agreement.

No holder of this Class A Rights Certificate shall be entitled to vote, receive dividends or be deemed for any purpose the holder of shares of Series A Preferred Stock or of any other securities of the Corporation which may at any time be issuable on the exercise hereof, nor shall anything contained in the Rights Agreement or herein be construed to confer upon the holder hereof, as such, any of the rights of a stockholder of the Corporation or any right to vote for the election of directors or upon any matter submitted to stockholders of the Corporation at any meeting thereof, or to give or withhold consent to any corporate action or to receive notice of meetings or other actions affecting stockholders of the Corporation (except as provided in the Rights Agreement), or to receive dividends or subscription rights, or otherwise, until the Class A Right or Class A Rights evidenced by this Class A Rights Certificate shall have been exercised as provided in the Rights Agreement.

This Class A Rights Certificate shall not be valid or obligatory for any purpose until it shall have been countersigned by the Rights Agent.

WITNESS the facsimile signature of the proper officers of the Corporation and its corporate seal.

Dated as of _____

ATTEST:

CENTEX CONSTRUCTION PRODUCTS, INC.

By: _____
Secretary

By: _____
Title: _____

Countersigned:

RIGHTS AGENT

By: _____
Authorized Signature

[FORM OF REVERSE SIDE OF CLASS A RIGHTS CERTIFICATE]

FORM OF ASSIGNMENT

(To be executed by the registered holder if such holder desires to transfer the Class A Rights Certificate.)

FOR VALUE RECEIVED,

hereby sells, assigns and transfers unto

(PLEASE PRINT NAME AND ADDRESS OF TRANSFEREE)

this Class A Rights Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint _____ Attorney, to transfer the within Class A Rights Certificate on the books of the within-named Corporation, with full power of substitution.

Dated:

Signature

Signature Guaranteed:

CERTIFICATE

The undersigned hereby certifies by checking the appropriate boxes that:

(1) this Class A Rights Certificate [] is [] is not being sold, assigned and transferred by or on behalf of a Person who is or was an Acquiring Person or an Affiliate or Associate of an Acquiring Person (as such terms are defined in the Rights Agreement); and

(2) after due inquiry and to the best knowledge of the undersigned, it [] did [] did not acquire the Class A Rights evidenced by this Class A Rights Certificate from any Person who is, was or subsequently became an Acquiring Person or an Affiliate or Associate of an Acquiring Person.

Dated:

Signature

Signature Guaranteed:

NOTICE

The signature to the foregoing Assignment and Certificate must correspond to the name as written upon the face of this Class A Rights Certificate in every particular, without alteration or enlargement or any change whatsoever.

FORM OF ELECTION TO PURCHASE
(To be executed if holder desires to exercise
Class A Rights represented by the Class A Rights Certificate.)

To: CENTEX CONSTRUCTION PRODUCTS, INC.

The undersigned hereby irrevocably elects to exercise _____
Class A Rights represented by this Class A Rights Certificate to purchase the
shares of Series A Preferred Stock issuable upon the exercise of the Class A
Rights (or such other securities of the Corporation or of any other person which
may be issuable upon the exercise of the Class A Rights) and requests that
certificates for such shares be issued in the name of and delivered to:

Please insert social security or other identifying number

(PLEASE PRINT NAME AND ADDRESS)

If such number of Class A Rights shall not be all the Class A Rights
evidenced by this Class A Rights Certificate, a new Class A Rights Certificate
for the balance of such Class A Rights shall be registered in the name of and
delivered to:

Please insert social security or other identifying number

(PLEASE PRINT NAME AND ADDRESS)

Dated: _____

Signature

Signature Guaranteed:

CERTIFICATE

The undersigned hereby certifies by checking the appropriate boxes that:

(1) the Class A Rights evidenced by this Class A Rights Certificate [] are [] are not being acquired or exercised by or on behalf of a Person who is or was an Acquiring Person or an Affiliate or Associate of an Acquiring Person (as such terms are defined in the Rights Agreement); and

(2) after due inquiry and to the best knowledge of the undersigned, it [] did [] did not acquire the Class A Rights evidenced by this Class A Rights Certificate from any Person who is, was or became an Acquiring Person or an Affiliate or Associate of an Acquiring Person.

Dated: _____
Signature

Signature Guaranteed:

NOTICE

The signature to the foregoing Election to Purchase and Certificate must correspond to the name as written upon the face of this Class A Rights Certificate in every particular, without alteration or enlargement or any change whatsoever.

[FORM OF CLASS B RIGHTS CERTIFICATE]

Certificate No. R _____ Rights

NOT EXERCISABLE AFTER THE EARLIER OF [_____, 2013], OR SUCH DATE AS THE CLASS B RIGHTS REPRESENTED HEREBY ARE REDEEMED BY CENTEX CONSTRUCTION PRODUCTS, INC. (THE "CORPORATION"). THE CLASS B RIGHTS REPRESENTED BY THIS CLASS B RIGHTS CERTIFICATE ARE SUBJECT TO REDEMPTION, AT THE OPTION OF THE CORPORATION, AT \$0.001 PER CLASS B RIGHT ON THE TERMS SET FORTH IN THE RIGHTS AGREEMENT DATED AS OF [_____, 2003], BY AND BETWEEN THE CORPORATION AND MELLON INVESTOR SERVICES LLC, AS RIGHTS AGENT (THE "RIGHTS AGREEMENT"). UNDER CERTAIN CIRCUMSTANCES, CLASS B RIGHTS BENEFICIALLY OWNED BY AN ACQUIRING PERSON (AS SUCH TERM IS DEFINED IN THE RIGHTS AGREEMENT) AND ANY SUBSEQUENT HOLDER OF SUCH CLASS B RIGHTS MAY BECOME NULL AND VOID. [THE CLASS B RIGHTS REPRESENTED BY THIS CLASS B RIGHTS CERTIFICATE ARE OR WERE BENEFICIALLY OWNED BY A PERSON WHO WAS OR BECAME AN ACQUIRING PERSON OR AN AFFILIATE OR ASSOCIATE OF AN ACQUIRING PERSON (AS SUCH TERMS ARE DEFINED IN THE RIGHTS AGREEMENT). ACCORDINGLY, THIS CLASS B RIGHTS CERTIFICATE AND THE CLASS B RIGHTS REPRESENTED HEREBY MAY BECOME NULL AND VOID IN THE CIRCUMSTANCES SPECIFIED IN SECTION 7(e) (EXERCISE OF RIGHTS; PURCHASE PRICE; EXPIRATION DATE OF RIGHTS -- TERMINATION OF ACQUIRING PERSON'S RIGHTS) OF SUCH AGREEMENT.](2)

CLASS B RIGHTS CERTIFICATE
CENTEX CONSTRUCTION PRODUCTS, INC.

This certifies that _____, or its, his or her registered assigns, is the registered owner of the number of Class B Rights set forth above, each of which entitles the owner thereof, subject to the terms, provisions and conditions of the Rights Agreement, dated as of [_____, 2003] (the "RIGHTS AGREEMENT"), between Centex Construction Products, Inc., a Delaware corporation (the "CORPORATION"), and Mellon Investor Services LLC, as rights agent (the "RIGHTS AGENT"), to purchase from the Corporation at any time prior to 5:00 P.M. (New York, New York time) on [_____, 2013] at the office or offices of the Rights Agent designated for such purpose, or its successors as Rights Agent, one one-thousandth (1/1,000) of a fully paid, nonassessable share of Series B Preferred Stock (the "SERIES B PREFERRED STOCK") of the Corporation, at a purchase price of \$140.00 per one one-thousandth (1/1,000) of a share (the

(2) The portion of the legend in brackets shall be inserted only if applicable and shall replace the preceding sentence.

"PURCHASE PRICE"), upon presentation and surrender of this Class B Rights Certificate with the Form of Election to Purchase and related Certificate duly executed. The number of Class B Rights evidenced by this Class B Rights Certificate (and the number of shares which may be purchased upon exercise thereof) set forth above, and the Purchase Price set forth above, are the number and Purchase Price as of _____, _____, based on the Series B Preferred Stock as constituted at such date. The Corporation reserves the right to require prior to the occurrence of a Triggering Event (as such term is defined in the Rights Agreement) that upon any exercise of Class B Rights, a number of Class B Rights be exercised so that only whole shares of Series B Preferred Stock would be issued.

Upon the occurrence of a Flip-in Event (as such term is defined in the Rights Agreement), if the Class B Rights evidenced by this Class B Rights Certificate are beneficially owned by (i) an Acquiring Person or an Associate or Affiliate or any such Person (as such terms are defined in the Rights Agreement), (ii) a transferee of an Acquiring Person or its Associate or Affiliate who becomes a transferee after such Acquiring Person or its Associate or Affiliate becomes such, or (iii) under certain circumstances specified in the Rights Agreement, a transferee of an Acquiring Person or its Associate or Affiliate who becomes a transferee prior to or concurrently with the Acquiring Person becoming such, such Class B Rights shall become null and void and no holder hereof shall have any right with respect to such Class B Rights from and after the occurrence of such Flip-in Event.

As provided in the Rights Agreement, the Purchase Price and the number and kind of shares of Series B Preferred Stock or other securities, which may be purchased upon the exercise of the Class B Rights evidenced by this Class B Rights Certificate are subject to modification and adjustment upon the happening of certain events, including Triggering Events (as such term is defined in the Rights Agreement).

This Class B Rights Certificate is subject to all of the terms, provisions and conditions of the Rights Agreement, which terms, provisions and conditions are hereby incorporated herein by reference and made a part hereof and to which Rights Agreement reference is hereby made for a full description of the rights, limitations of rights, obligations, duties and immunities hereunder of the Rights Agent, the Corporation and the holders of the Class B Rights Certificates, which limitations of rights include the temporary suspension of the exercisability of such Class B Rights under the specific circumstances set forth in the Rights Agreement. Copies of the Rights Agreement are on file at the above-mentioned office of the Rights Agent and are also available upon written request to the Rights Agent.

This Class B Rights Certificate, with or without other Class B Rights Certificates, upon surrender at the principal office or offices of the Rights Agent designated for such purpose, may be exchanged for another Class B Rights Certificate or Class B Rights Certificates of like tenor and date evidencing Class B Rights entitling the holder to purchase a like aggregate number of one one-thousandths of a share of Series B Preferred Stock as the Class B Rights evidenced by the Class B Rights Certificate or Class B Rights Certificates surrendered shall have entitled such holder to purchase. If this Class B Rights Certificate shall be exercised in part, the holder shall be entitled to receive upon surrender hereof another Class B Rights Certificate or Class B Rights

Certificates for the number of whole Class B Rights for which this Class B Rights Certificate is not exercised.

Subject to the provisions of the Rights Agreement, the Class B Rights evidenced by this Certificate (i) may be redeemed by the Corporation at its option at a redemption price of \$0.001 per Class B Right at any time prior to the earlier of (a) the Stock Acquisition Date (as such term is defined in the Rights Agreement) or (b) the Final Expiration Date (as such term is defined in the Rights Agreement) and (ii) may be exchanged in whole or in part for Series B Preferred Stock, shares of the Corporation's Class B Common Stock, par value \$0.01 per share, other property or any combination thereof.

In addition, the Class B Rights may be exchanged, in whole or in part, for shares of the Class B Common Stock, or shares of Class B Common Stock equivalents of the Corporation having substantially the same dividend, voting and liquidation rights as shares of Class B Common Stock and are deemed in good faith by the Board of Directors to have substantially the same value as the shares of Class B Common Stock. Immediately upon the action of the Board of Directors of the Corporation authorizing any such exchange, and without any further action or any notice, the Class B Rights (other than Class B Rights which are not subject to such exchange) will terminate and the Class B Rights will only enable holders to receive the shares issuable upon such exchange.

No fractional shares of Series B Preferred Stock will be issued upon the exercise of any Class B Right or Class B Rights evidenced hereby (other than fractions which are integral multiples of one one-thousandth (1/1,000) of a share of Series B Preferred Stock, which may, at the election of the Corporation, be evidenced by depositary receipts), but a cash payment will be made in lieu thereof, as provided in the Rights Agreement.

No holder of this Class B Rights Certificate shall be entitled to vote, receive dividends or be deemed for any purpose the holder of shares of Series B Preferred Stock or of any other securities of the Corporation which may at any time be issuable on the exercise hereof, nor shall anything contained in the Rights Agreement or herein be construed to confer upon the holder hereof, as such, any of the rights of a stockholder of the Corporation or any right to vote for the election of directors or upon any matter submitted to stockholders of the Corporation at any meeting thereof, or to give or withhold consent to any corporate action or to receive notice of meetings or other actions affecting stockholders of the Corporation (except as provided in the Rights Agreement), or to receive dividends or subscription rights, or otherwise, until the Class B Right or Class B Rights evidenced by this Class B Rights Certificate shall have been exercised as provided in the Rights Agreement.

This Class B Rights Certificate shall not be valid or obligatory for any purpose until it shall have been countersigned by the Rights Agent.

WITNESS the facsimile signature of the proper officers of the Corporation and its corporate seal.

Dated as of _____

ATTEST: CENTEX CONSTRUCTION PRODUCTS, INC.

By: _____
Secretary

By: _____
Title: _____

Countersigned:

RIGHTS AGENT

By: _____
Authorized Signature

[FORM OF REVERSE SIDE OF CLASS B RIGHTS CERTIFICATE]

FORM OF ASSIGNMENT

(To be executed by the registered holder if such holder desires to transfer the Class B Rights Certificate.)

FOR VALUE RECEIVED,

hereby sells, assigns and transfers unto

(PLEASE PRINT NAME AND ADDRESS OF TRANSFEREE)

this Class B Rights Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint _____ Attorney, to transfer the within Class B Rights Certificate on the books of the within-named Corporation, with full power of substitution.

Dated:

Signature

Signature Guaranteed:

CERTIFICATE

The undersigned hereby certifies by checking the appropriate boxes that:

(1) this Class B Rights Certificate [] is [] is not being sold, assigned and transferred by or on behalf of a Person who is or was an Acquiring Person or an Affiliate or Associate of an Acquiring Person (as such terms are defined in the Rights Agreement); and

(2) after due inquiry and to the best knowledge of the undersigned, it [] did [] did not acquire the Class B Rights evidenced by this Class B Rights Certificate from any Person who is, was or subsequently became an Acquiring Person or an Affiliate or Associate of an Acquiring Person.

Dated:

Signature

Signature Guaranteed:

NOTICE

The signature to the foregoing Assignment and Certificate must correspond to the name as written upon the face of this Class B Rights Certificate in every particular, without alteration or enlargement or any change whatsoever.

FORM OF ELECTION TO PURCHASE
(To be executed if holder desires to exercise
Class B Rights represented by the Class B Rights Certificate.)

To: CENTEX CONSTRUCTION PRODUCTS, INC.

The undersigned hereby irrevocably elects to exercise _____
Class B Rights represented by this Class B Rights Certificate to purchase the
shares of Series B Preferred Stock issuable upon the exercise of the Class B
Rights (or such other securities of the Corporation or of any other person which
may be issuable upon the exercise of the Class B Rights) and requests that
certificates for such shares be issued in the name of and delivered to:

Please insert social security or other identifying number

(PLEASE PRINT NAME AND ADDRESS)

If such number of Class B Rights shall not be all the Class B Rights
evidenced by this Class B Rights Certificate, a new Class B Rights Certificate
for the balance of such Class B Rights shall be registered in the name of and
delivered to:

Please insert social security or other identifying number

(PLEASE PRINT NAME AND ADDRESS)

Dated: _____

Signature

Signature Guaranteed:

CERTIFICATE

The undersigned hereby certifies by checking the appropriate boxes that:

(1) the Class B Rights evidenced by this Class B Rights Certificate [] are [] are not being acquired or exercised by or on behalf of a Person who is or was an Acquiring Person or an Affiliate or Associate of an Acquiring Person (as such terms are defined in the Rights Agreement); and

(2) after due inquiry and to the best knowledge of the undersigned, it [] did [] did not acquire the Class B Rights evidenced by this Class B Rights Certificate from any Person who is, was or became an Acquiring Person or an Affiliate or Associate of an Acquiring Person.

Dated: _____
Signature

Signature Guaranteed:

NOTICE

The signature to the foregoing Election to Purchase and Certificate must correspond to the name as written upon the face of this Class B Rights Certificate in every particular, without alteration or enlargement or any change whatsoever.

[Letter to Stockholders]

-----, 2003

Dear Centex Construction Products Stockholder:

On [_____, 2003], your Board of Directors adopted a Stockholder Rights Plan designed to prevent a potential acquiror from gaining control of the Company without fairly compensating all of the Company's stockholders.

The Rights will initially trade with shares of the Company's Common Stock and Class B Common Stock and will have no impact on the way in which the Company's shares are traded. There are no separate certificates or market for the Rights.

The Rights will not become exercisable and trade separately from the Common Stock or the Class B Common Stock until the earlier of (1) ten business days after a public announcement that a person has acquired shares of Common Stock and/or Class B Common Stock representing, in the aggregate, 15% or more of the total number of votes entitled to be cast generally (other than in an election of directors) by the holders of the shares of Common Stock and/or Class B Common Stock then outstanding, voting together as a class, or (2) ten business days (or any later date determined by the Company's Board of Directors) after a person makes a tender or exchange offer for shares of Common Stock and/or Class B Common Stock representing, in the aggregate, 15% or more of the total number of votes entitled to be cast generally (other than in an election of directors) by the holders of the shares of Common Stock and/or Class B Common Stock then outstanding, voting together as a class.

Many other public companies have adopted similar plans, indicating widespread agreement that such plans can help Directors deflect coercive and inadequate offers.

A summary of the terms of the Rights is included with this letter.

Sincerely,

[_____]
President and Chief Executive Officer

SUMMARY OF RIGHTS TO PURCHASE
PREFERRED STOCK

On [_____, 2003], the Board of Directors (the "BOARD") of Centex Construction Products, Inc. ("CXP") declared a dividend distribution to its stockholders of record at the close of business on _____, 2003, of:

- o one preferred stock purchase right for each outstanding share of Common Stock, par value \$0.01 per share (the "COMMON STOCK"), that will entitle the registered holder to purchase from CXP one one-thousandth (1/1,000) of a share of Series A Preferred Stock, par value \$0.01 per share (the "SERIES A PREFERRED STOCK"), at a purchase price of \$140.00 per one one-thousandth (1/1,000) of a share, subject to adjustment (a "CLASS A RIGHT"); and
- o one preferred stock purchase right for each outstanding share of Class B Common Stock, par value \$0.01 per share (the "CLASS B COMMON STOCK," and, collectively with the Common Stock, the "COMPANY COMMON STOCK"), that will entitle the registered holder to purchase from CXP one one-thousandth (1/1,000) of a share of Series B Preferred Stock, par value \$0.01 per share (the "SERIES B PREFERRED STOCK," and, collectively with the Series A Preferred Stock, the "PREFERRED STOCK"), at a purchase price of \$140.00 per one one-thousandth (1/1,000) of a share, subject to adjustment (a "CLASS B RIGHT," and collectively with the Class A Rights, the "RIGHTS").

The description and terms of the Rights are set forth in a Rights Agreement (the "RIGHTS AGREEMENT") between CXP and Mellon Investor Services LLC, as Rights Agent (the "RIGHTS AGENT").

Separation and Distribution of Rights; Exercisability. Initially, the Class A Rights will be attached to all certificates representing shares of Common Stock then outstanding and the Class B Rights will be attached to all Class B certificates representing shares of Class B Common Stock then outstanding, and no separate Rights certificates will be distributed with respect to either the Class A Rights or the Class B Rights. The Class A Rights will separate from the Common Stock and the Class B Rights will separate from the Class B Common Stock, respectively, upon the earlier of:

- o ten (10) business days following a public announcement that a person or group of affiliated or associated persons has acquired, or obtained the right to acquire, beneficial ownership of shares of Common Stock and/or Class B Common Stock representing in the aggregate 15% or more of the total number of votes entitled to be cast generally (other than in an election of directors) by the holders of Common Stock and Class B Common Stock then outstanding, voting together as a class; or
- o ten (10) business days (or some later date as determined by the Board) following the commencement of a tender or exchange offer that would result in a person or

group beneficially owning shares of Common Stock and/or Class B Common Stock representing in the aggregate 15% or more of the total number of votes entitled to be cast generally (other than in an election of directors) by the holders of Common Stock and Class B Common Stock then outstanding, voting together as a class.

The date the Class A Rights separate from the Common Stock and the Class B Rights separate from the Class B Common Stock is referred to as the "DISTRIBUTION DATE."

Until the Distribution Date, (i) the Class A Rights will be evidenced by and transferred with and only with the Common Stock certificates and the Class B Rights will be evidenced by and transferred with and only with the Class B Common Stock certificates, (ii) new Common Stock certificates and new Class B Common Stock certificates issued after _____, 2003 will contain a notation incorporating the Rights Agreement by reference, and (iii) the surrender for transfer of any certificates for Common Stock outstanding will also constitute the transfer of the Class A Rights associated with the Common Stock represented by those certificates and the surrender for transfer of any certificates for Class B Common Stock outstanding will also constitute the transfer of the Class B Rights associated with the Class B Common Stock represented by those certificates. Pursuant to the Rights Agreement, CXP reserves the right to require prior to the occurrence of a Triggering Event (as hereinafter defined) that, upon any exercise of Rights, a number of Rights be exercised so that only whole shares of the applicable series of Preferred Stock will be issued.

The Rights are not exercisable until the Distribution Date and will expire at the close of business on _____, 2013, unless earlier redeemed by CXP as described below.

As soon as practicable after the Distribution Date, separate Class A Rights certificates will be mailed to the holders of record of Common Stock and separate Class B Rights certificates will be mailed to the holders of record of Class B Common Stock as of the close of business on the Distribution Date and, after that, the separate rights certificates will represent the Rights. Except in connection with shares of Common Stock or Class B Common Stock issued or sold pursuant to the exercise of stock options under any employee plan or arrangements, or upon the exercise, conversion or exchange of securities issued by CXP in the future, or as otherwise determined by the Board, only shares of Common Stock issued prior to the Distribution Date will be issued with Class A Rights and only shares of Class B Common Stock issued prior to the Distribution Date will be issued with Class B Rights.

Flip-in Events. Each holder of a Class A Right (other than the Acquiring Person (as such term is defined in the Rights Agreement) and any associate or affiliate thereof) will have the right to receive, upon exercise, Common Stock (or, in some circumstances, cash, property or other securities of CXP) and each holder of a Class B Right (other than the Acquiring Person and any associate or affiliate thereof) will have the right to receive, upon exercise, Class B Common Stock (or, in some circumstances, cash, property or other securities of CXP), in each case having a value equal to two times the purchase price of the Class A or Class B Right, as the case may be, if:

- o any person acquires beneficial ownership of shares of Common Stock and/or Class B Common Stock representing, in the aggregate, 15% or more of the total number of votes entitled to be cast generally (other than in an election of directors) by the holders of Common Stock and Class B Common Stock then outstanding, voting together as a class (except pursuant to specified exceptions, including an offer made for all outstanding shares of Common Stock and Class B Common Stock at a price and upon terms and conditions that the Board determines to be in the best interests of CXP and its stockholders);
- o CXP is the surviving corporation in a merger with an Acquiring Person and neither the Common Stock nor the Class B Common Stock is changed or exchanged; or
- o during the time that there is an Acquiring Person, an event occurs that results in increasing the Acquiring Person's total number of votes entitled to be cast generally (other than in an election of directors) by the holders of Common Stock and Class B Common Stock then outstanding, voting together as a class, by more than 1%.

Notwithstanding any of the foregoing, following the occurrence of any of the events described in this paragraph, all Rights that are, or (under some circumstances specified in the Rights Agreement) were, beneficially owned by any Acquiring Person will be null and void. The events described in this paragraph are referred to as "FLIP-IN EVENTS."

For example, at a purchase price of \$140.00 per Right, each Class A Right not owned by an Acquiring Person (or by some related parties or transferees) following an event set forth in the preceding paragraph would entitle its holder to purchase \$280.00 worth of Common Stock (or other consideration, as noted above) for \$140.00 and each Class B Right not owned by an Acquiring Person (or by some related parties or transferees) following an event set forth in the preceding paragraph would entitle its holder to purchase \$280.00 worth of Class B Common Stock (or other consideration, as noted above) for \$140.00.

Flip-over events. At any time following a public announcement that a person or group of affiliated or associated persons has acquired, or obtained the right to acquire beneficial ownership of shares of Common Stock and/or Class B Common Stock representing, in the aggregate, 15% or more of the total number of votes entitled to be cast generally (other than in an election of directors) by the holders of Common Stock and Class B Common Stock then outstanding, voting together as a class, each holder of a Class A Right or a Class B Right (except Rights which previously have been voided as set forth above) will have the right to receive, upon exercise, common stock of an acquiring company having a value equal to two times the purchase price of the Class A Right or the Class B Right, as the case may be, if any of the following occur:

- o CXP enters into a merger in which CXP is not the surviving corporation;
- o CXP is the surviving corporation in a merger pursuant to which all or part of either one or both of the outstanding shares of the Common Stock or Class B

Common Stock are changed into or exchanged for stock or other securities of any other person or cash or any other property; or

- o more than 50% of the combined assets, cash flow or earning power of CXP and its subsidiaries is sold or transferred (in each case other than some consolidations with, mergers with and into, or sales of assets, cash flow or earning power by or to subsidiaries of CXP as specified in the Rights Agreement).

The events described in this paragraph are referred to as "FLIP-OVER EVENTS." Flip-in events and Flip-over events are referred to collectively as "TRIGGERING EVENTS."

Anti-dilution Adjustments; Fractional Shares. The applicable purchase price payable, the number of shares of the applicable series of Preferred Stock or other securities or property issuable upon the exercise of the Rights, and the number of applicable Rights outstanding are subject to adjustment from time to time to prevent dilution:

- o in the event of a stock dividend on, or a subdivision, combination or reclassification of, the applicable series of Preferred Stock;
- o if the holders of the applicable series of Preferred Stock are granted rights, options or warrants to subscribe for the applicable Preferred Stock or securities convertible into the applicable Preferred Stock at less than the current market price of the applicable Preferred Stock; or
- o upon the distribution to holders of the applicable series of Preferred Stock of evidences of indebtedness, cash (excluding regular quarterly cash dividends), assets (other than dividends payable in Preferred Stock) or subscription rights or warrants (other than those referred to in the bullet point immediately above).

The number of outstanding Rights are also subject to adjustment in the event of a stock dividend on, or a subdivision or combination of the applicable class of Company Common Stock. With some exceptions, no adjustment in the purchase price relating to a Class A Right or a Class B Right will be required until cumulative adjustments amount to at least one percent (1%) of the purchase price relating to the Class A Right or the Class B Right.

No fractional shares of Series A Preferred Stock or Series B Preferred Stock are required to be issued (other than fractions which are integral multiples of one one-thousandth (1/1,000) of a share of the applicable Preferred Stock) and, in lieu of the issuance of fractional shares, CXP may make an adjustment in cash based on the market price of the Series A Preferred Stock or the Series B Preferred Stock, as the case may be, on the trading date immediately prior to the date of exercise.

Dividend, Liquidation and Redemption Rights of the Preferred Stock. Each share of the applicable series of Preferred Stock will be entitled, when, as and if declared, to a minimum preferential quarterly dividend payment equal to the greater of \$0.001 per share and an aggregate amount of 1,000 times the dividend declared per share of Common Stock or Class B Common

Stock, as the case may be (other than stock dividends payable in Common Stock or Class B Common Stock). Upon liquidation, the holders of each series of Preferred Stock will be entitled to the greater of (1) a minimum preferential liquidation payment of \$1,000 per share (plus any accrued but unpaid dividends) and (2) an aggregate payment equal to 1,000 times the payment to be made per share of Common Stock or Class B Common Stock, as the case may be. Each share of the applicable series of Preferred Stock will have 1,000 times the number of votes each share of the Common Stock or Class B Common Stock, as the case may be, has on matters the respective class is entitled to vote on, which will be voted together with the applicable class of Common Stock or Class B Common Stock. Upon any merger, consolidation or other transaction in which shares of Common Stock or Class B Common Stock are converted or exchanged, each share of the applicable series of Preferred Stock will be entitled to receive 1,000 times the amount received per share of Common Stock or Class B Common Stock, as the case may be. These rights are protected by customary antidilution provisions.

At any time, or from time to time, the Board may redeem the outstanding shares of Series A Preferred Stock or Series B Preferred Stock, in whole but not in part, at a cash price per share equal to one hundred five percent (105%) of (i) 1,000 (subject to adjustment) times the average market value of the applicable class of Company Common Stock plus (ii) all accrued and unpaid dividends of the Series A Preferred Stock or the Series B Preferred Stock, as the case may be, as of the redemption date.

Because of the nature of the dividend, liquidation and voting rights of each series of Preferred Stock, the value of the one one-thousandth interest in a share of Series A Preferred Stock purchasable upon exercise of each Class A Right and the value of the one one-thousandth interest in a share of Series B Preferred Stock purchasable upon exercise of each Class B Right, should approximate the value of one share of Common Stock and Class B Common Stock, respectively.

Exchange of the Rights. At any time after the occurrence of a Flip-in Event and prior to the acquisition by a person or group of shares of Common Stock and/or Class B Common Stock representing, in the aggregate, 50% or more of the total number of votes entitled to be cast generally (other than in an election of directors) by the holders of Common Stock and Class B Common Stock then outstanding, voting together as a class, the Board may, without payment of the purchase price by the holder, exchange the Class A Rights and the Class B Rights, in whole or in part, as follows:

- o one Class A Right (other than the Class A Rights owned by the Acquiring Person or group, which will become void) for one share of Common Stock, one one-thousandth of a share of Series A Preferred Stock or one-half of the shares or other units of other property for which a Class A Right is exercisable immediately prior to the time of the action of the Board to exchange the Class A Rights (subject to adjustment); and
- o one Class B Right (other than the Class B Rights owned by the Acquiring Person or group, which will become void) for one share of Class B Common Stock, one one-thousandth of a share of Series B Preferred Stock or one-half of the shares or

other units of other property for which a Class B Right is exercisable immediately prior to the time of the action of the Board to exchange the Class B Rights (subject to adjustment).

Redemption of the Rights. At any time until a public announcement that a person or group of affiliated or associated persons has acquired, or obtained the right to acquire beneficial ownership of shares of Common Stock and/or Class B Common Stock representing, in the aggregate, 15% or more of the total number of votes entitled to be cast generally (other than in an election of directors) by the holders of Common Stock and Class B Common Stock then outstanding, voting together as a class, CXP may redeem:

- o all, but not less than all, of the Class A Rights at a price of \$0.001 per Right (payable in cash, shares of Common Stock or other consideration deemed appropriate by the Board and subject to adjustment); and/or
- o all, but not less than all, of the Class B Rights at a price of \$0.001 per Right (payable in cash, shares of Class B Common Stock or other consideration deemed appropriate by the Board and subject to adjustment).

Immediately upon the action of the Board ordering redemption of the Class A Rights and/or the Class B Rights, the applicable Rights will terminate and the only right of the holders of these Rights will be to receive the \$0.001 redemption price.

No Rights as Stockholder. Until a Right is exercised, the holder will have no rights as a stockholder of CXP, including, without limitation, the right to vote or to receive dividends.

Amendment of the Rights Agreement. Other than those provisions relating to the principal economic terms of the Rights, any of the provisions of the Rights Agreement may be amended by the Board at any time during the period in which the Rights are redeemable. At any time when the Rights are no longer redeemable, the provisions of the Rights Agreement may be amended by the Board only if the amendment does not adversely affect the interest of holders of Rights (excluding the interest of any Acquiring Person) or cause the Rights to become redeemable again.

Periodic Review. The Board will appoint a committee (the "TIDE COMMITTEE") that is comprised of at least three (3) directors of CXP who are not officers, employees or affiliates of CXP, to review and evaluate the Rights Agreement, at least every three (3) years or sooner if any person shall become an Acquiring Person, in order to consider whether the maintenance of the Rights Agreement continues to be in the best interests of CXP and its stockholders. Following each such review, the TIDE Committee will communicate its conclusions to the full Board, including any recommendation as to whether the Rights Agreement should be modified or the Rights should be redeemed.

A copy of the Rights Agreement has been filed with the Securities and Exchange Commission as an Exhibit to a Registration Statement on Form 8-A filed on [_____, 2003]. A copy of the Rights Agreement is available free of charge from the Rights Agent. This summary

description of the Rights does not purport to be complete and is qualified in its entirety by reference to the Rights Agreement, which is incorporated herein by reference.



News For Immediate Release

**CENTEX CONSTRUCTION PRODUCTS
ANNOUNCES \$1.00 PER SHARE INCREASE IN ANNUAL DIVIDEND
EFFECTIVE UPON SPIN-OFF**

(Dallas, TX Nov. 5, 2003): Centex Construction Products, Inc. (NYSE: CXP) today announced that its Board of Directors has approved an increase in its annual cash dividend from \$0.20 per share to \$1.20 per share (representing an increase in the regular quarterly cash dividend from \$0.05 to \$0.30 per share), effective upon the completion of the proposed spin-off of CXP shares by Centex Corporation. This 500% increase reflects the Board's confidence in CXP's financial strength and ability to pay the enhanced dividend from its cash flow without materially impacting its ability to take advantage of future growth opportunities. In addition, the recent reduction in the federal tax rate on dividends makes the higher dividend a more attractive way of distributing earnings to its shareholders.

The dividend increase will not affect the previously announced quarterly cash dividend of \$0.05 per share payable on January 6, 2004 to shareholders of record on December 9, 2003. The increased cash dividend would become effective with the first quarterly cash dividend following the completion of the spin-off.

CXP also reported that the proposed spin-off of CXP shares by Centex Corporation was progressing towards completion, which is now anticipated to occur in January 2004. Under the terms of the previously announced agreement with Centex Corporation, CXP would reclassify 9,220,000 of the approximately 12 million shares of CXP common stock held by Centex into a new Class B common stock having the right to elect at least 85% of the directors of CXP. Centex would then distribute all of these Class B shares and the remaining shares of CXP common stock held by Centex to its stockholders. CXP would also pay a special one-time cash dividend of \$6.00 per share to all of its shareholders (including Centex) immediately prior to the spin-off.

The reclassification will require approval by the CXP stockholders (including the majority of CXP common stock not held by Centex), as well as approval by the IRS of the tax-free nature of the spin-off. The listing of the new Class B Common Stock of CXP will also require the approval of the New York Stock Exchange. Accordingly, there can be no assurance that the spin-off or any of the other transactions described above will occur on the terms described above, if at all.

Centex Construction Products is a Dallas-based company that manufactures and distributes Cement, Gypsum Wallboard, Recycled Paperboard and Concrete and Aggregates.

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Forward-Looking Statements. This press release contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, Section 21E of the Securities Exchange Act of 1934 and the Private Securities Litigation Reform Act of 1995. Forward-looking statements may be identified by the context of the statement and generally arise when the Company is discussing its beliefs, estimates or expectations. These statements are not guarantees of future performance and involve a number of risks and uncertainties. Actual results and outcomes may differ materially from what is expressed or forecast in such forward-looking statements. The principal risks and uncertainties that may affect the spin-off and related transactions include the fact that these transactions will be subject to obtaining stockholder and regulatory approvals as described above and satisfaction of other customary conditions. With respect to any discussion of the expected performance and results of operations of the Company, risks and uncertainties include, but are not limited to: the cyclical and seasonal nature of the Company's business; public infrastructure expenditures; adverse weather; availability of raw materials; unexpected operational difficulties; governmental regulation and changes in governmental and public policy; changes in economic conditions specific to any one or more of the Company's markets; competition; announced increases in capacity in the gypsum wallboard and cement industries; general economic conditions; and interest rates. These and other factors are described in the Annual Report on Form 10-K for Centex Construction Products, Inc. for the fiscal year ended March 31, 2003, in its Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2003, and the current Report on Form 8-K dated July 21, 2003. These reports are filed with the Securities and Exchange Commission.

Additional Information and Where to Find It. In connection with the recapitalization of its common stock, CXP has filed a preliminary proxy statement with the Securities and Exchange Commission. INVESTORS AND SECURITY HOLDERS ARE ADVISED TO READ SUCH PROXY STATEMENT WHEN IT BECOMES FINAL BECAUSE IT WILL CONTAIN IMPORTANT INFORMATION. Investors and other security holders can obtain copies of the definitive proxy statement free of charge when it becomes available and may also obtain other documents filed by CXP with the SEC by directing a request to Centex Construction Products, Inc., Investor Relations, 2728 North Harwood, Dallas, Texas 75201 Telephone: 214/981-6510. Individuals may also obtain free copies of the definitive proxy statement when it becomes available and other documents filed with the SEC by accessing the SEC's website at <http://www.sec.gov>. CXP, its directors, certain executive officers, and certain other employees may be deemed under the rules of the SEC to be "participants in the solicitation" of proxies from the security holders of CXP in favor of the reclassification. CXP's directors and executive officers beneficially own, in the aggregate, less than 2% of the outstanding shares of CXP common stock. Security holders of CXP may obtain additional information regarding the interests of the "participants in the solicitation" by reading the proxy statement relating to the recapitalization when it becomes available.

For additional information, contact at 214/981-5000:
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