

1 which they were entitled, but instead misappropriated or misapplied
2 the funds for their own direct or indirect benefit.

3 63. By advancing funds to Boardwalk prior to a proper
4 closing, and by circumventing the protective devices normally
5 established through such an organized closing, General Cellular,
6 Boardwalk and the Individual Defendants negligently and carelessly
7 disregarded that plaintiffs were unlikely to collect their
8 commissions from Boardwalk or TFW.

9 64. Likewise, by misappropriating General Cellular's
10 commission advances, Boardwalk, Welch, Krsek, Dinehart, Massie and
11 Broad negligently and carelessly disregarded that plaintiffs would
12 likely be unable to collect commissions from Boardwalk.

13 65. As a proximate result of the above, plaintiffs have
14 received but a fraction of the commissions due them from Boardwalk,
15 General Cellular and TFW and consequently have suffered damages in
16 an amount according to proof at trial.

17 66. As a further result, plaintiffs have been forced to incur
18 attorney's fees defending themselves in the Interpleader Action.

19 FIFTH CAUSE OF ACTION

20 (Civil Conspiracy against all defendants except TFW)

21 67. Plaintiffs incorporate all of the allegations of this
22 Complaint and bring this Fifth Cause of Action for Civil Conspiracy
23 against all defendants except TFW.

24 68. Said defendants, and each of them, conspired and agreed
25 amongst themselves to have General Cellular advance commissions to
26 Boardwalk, and to arrange for the Bank Loan, in an improper fashion
27 which breached the Boardwalk and TFW Agreements and interfered with
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1 plaintiffs' contractual relations and prospective economic
2 advantages.

3 69. This agreement among said defendants, made at a time when
4 they knew that Boardwalk was virtually if not actually insolvent
5 and would be unable to pay commissions to TFW and hence plaintiffs
6 in accordance with the TFW and Registered Representative
7 Agreements, resulted in plaintiffs' failure to receive substantial
8 commissions from Shares sold or exchanged by them through the
9 Offering.

10 70. As a result of the aforementioned conspiracy, plaintiffs
11 have sustained damages in an amount according to proof at trial,
12 including attorney's fees in defending themselves in the
13 Interpleader Action, mental anguish and emotional distress.

14 71. The acts of the defendants against whom this cause of
15 action is brought were deliberate in that their economic welfare
16 was placed ahead of plaintiffs' by breaching relevant contracts and
17 interfering with plaintiffs' contractual relationships and
18 prospective economic advantages, each with the intent to cause harm
19 to plaintiffs or with a reckless disregard for their interests.
20 Such misconduct constitutes a malicious and oppressive indifference
21 to the rights of plaintiffs and justifies the imposition of
22 punitive damages.

23 SIXTH CAUSE OF ACTION
24 (Fraud and Deceit Against All
25 Defendants Except TFW)

26 72. Plaintiffs incorporate paragraphs 1 through 71 and bring
27 this Sixth Cause of Action against all defendants except TFW for
28 Fraud and Deceit.

1 and was intended to induce the Bank Loan to be made to the
2 detriment of plaintiffs.

3 79. As a proximate result of said conduct, plaintiffs are
4 entitled to recover general and special damages in amounts
5 according to proof at trial.

6 EIGHTH CAUSE OF ACTION

7 (Breach of Fiduciary Duty Against All Defendants)

8 80. Plaintiffs incorporate paragraphs 1 through 79 and assert
9 this Eighth Cause of Action for Breach of Fiduciary Duty against
10 all defendants.

11 81. By virtue of defendants' positions of trust as respects
12 plaintiffs, and by virtue of plaintiffs' vulnerability to and
13 reliance on the good faith of defendants as respects the Offering
14 and payment of salaries and commissions as alleged herein,
15 defendants owed plaintiffs fiduciary duties of loyalty, honesty and
16 due care.

17 82. In making the misrepresentations and omissions
18 hereinabove alleged, and in carrying out the negligent, reckless
19 and intentional misconduct also alleged herein, defendants breached
20 their fiduciary duties of loyalty, honesty and care owed to
21 plaintiffs on both negligent and intentional bases.

22 83. As a proximate result thereof, plaintiffs have suffered
23 general and special damages in amounts according to proof at trial.
24 Moreover, because aspects of defendants' conduct were fraudulent
25 and grossly indifferent to plaintiffs' interests, plaintiffs are
26 entitled to an award of punitive damages in an amount according to
27 proof at trial.
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NINTH CAUSE OF ACTION

(Negligence Against All Defendants)

84. Plaintiffs incorporate paragraphs 1 through 83 and bring this Ninth Cause of Action for Negligence against all defendants.

85. Each defendant owed plaintiffs duties of reasonable and due care in light of their contractual obligations to plaintiffs and their awareness of plaintiffs' participation in the Offering and known reliance on defendants' fair and reasonable actions in assuring plaintiffs the payment of their commissions.

86. In committing the errors and omissions hereinabove alleged, defendants breached said duties owed plaintiffs in that their conduct fell below the standard of care to which parties in like circumstances would have reasonably adhered. As a result thereof, defendants have proximately caused plaintiffs to suffer damages in an amount according to proof at trial. Plaintiffs have also suffered mental anguish and distress in an amount according to proof at trial.

TENTH CAUSE OF ACTION

(Breach of Implied Contract Against General Cellular)

87. Plaintiffs incorporate paragraphs 1 through 86 and bring this Tenth Cause of Action for Breach of Implied Contract against General Cellular.

88. Through novation or modification, or both, the Sales Staff Plaintiffs and General Cellular impliedly agreed that during the Noneffective Period of the Offering the Sales Staff Plaintiffs would be paid a salary of approximately \$2,000 per month each as employees of General Cellular.

1 General Cellular by performing employee services during the
2 Noneffective Period of the Offering.

3 96. General Cellular and Boardwalk knowingly accepted these
4 benefits at all relevant times.

5 97. It would be unjust and inequitable for General Cellular
6 or Boardwalk to retain these benefits without compensating
7 plaintiffs in accordance with the benefits conferred by them upon
8 General Cellular and Boardwalk. As such, plaintiffs are entitled
9 to an award of damages in an amount according to proof at trial.

10 TWELFTH CAUSE OF ACTION
11 (Breach of Contract against TFW)

12 98. Plaintiffs incorporate paragraphs 1 through 97 and bring
13 this Twelfth Cause of Action for Breach of Contract against TFW.

14 99. Plaintiffs have fully performed under the terms of their
15 Registered Representative Agreements with TFW.

16 100. The Registered Representative Agreements include implied
17 covenants (1) of good faith and fair dealing and (2) that TFW would
18 undertake reasonable efforts to protect, collect and distribute to
19 plaintiffs their commissions generated through the Offering.

20 101. TFW has breached such covenants of the Registered
21 Representative Agreements by failing to reasonably or adequately
22 protect, collect or distribute the commissions generated for the
23 benefit of plaintiffs through the Offering.

24 102. As a result of TFW's breaches, plaintiffs have been
25 damaged in an amount according to proof at trial, including by
26 incurring attorneys fees in the Interpleader Action.

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1 as defendants. TFW denies any such responsibility and instead has
2 sought to impose costs of defense on plaintiffs.

3 107. Plaintiffs have no plain, speedy and adequate remedy at
4 law with respect to the aforementioned controversies. Plaintiffs
5 therefore pray that the Court declare, and that judgment be entered
6 against TFW, as set forth in the Prayer for Relief below.

7 FOURTEENTH CAUSE OF ACTION

8 (Accounting against General Cellular,
9 Boardwalk and TFW)

10 108. Plaintiffs incorporate paragraphs 1 through 107 and bring
11 this Fourteenth Cause of Action for an Accounting against General
12 Cellular, Boardwalk and TFW.

13 109. As intended beneficiaries under the Boardwalk, TFW and
14 Registered Representative Agreements, plaintiffs are entitled to an
15 accounting as to the number of Shares sold or exchanged pursuant to
16 the Offering and commissions earned by all parties thereto.
17 Plaintiff Kearney is further entitled to an accounting with respect
18 to the Private Offering.

19 110. Plaintiffs request that these accountings be made and
20 that appropriate disbursements be ordered and adjudged by the Court
21 and made by and between the parties to satisfy their respective
22 obligations.

23 FIFTEENTH CAUSE OF ACTION

24 (Breach of Oral Contract Against General Cellular)

25 111. Plaintiffs incorporate paragraphs 1 through 110 and bring
26 this Fifteenth Cause of Action for an Accounting against General
27 Cellular, Boardwalk and TFW.

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1 that plaintiffs were at relevant times (including during the
2 Noneffective Period) employees of General Cellular and thus are
3 entitled under the TFW Agreement to a defense and indemnity by TFW
4 in the Interpleader Action; and (3) that TFW is not entitled to
5 impose or deduct from any recovery made herein, in the Interpleader
6 Action, or in any other actions relating to the subject matter of
7 this action, costs and fees in the approximate amount of one-third,
8 or in any amount.

9 5. For an accounting from General Cellular, Boardwalk and
10 TFW of all sums due and owing plaintiffs and all parties under the
11 Boardwalk, TFW and Registered Representative Agreements and under
12 the Private Offering, and that the appropriate parties be ordered
13 and adjudged to pay funds to plaintiffs in accordance with the
14 accounting.

15 6. For attorney's fees under statute,

16 7. For costs of suit.

17 8. For such other and further relief as the Court deems just
18 and proper.

19 Notwithstanding anything to the contrary contained in any
20 portion of the complaint, plaintiffs do not assert claims or
21 entitlement to equitable or legal relief against General Cellular

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with respect to any sums paid out to the named defendants in the
Interpleader Action.

Dated: April 4, 1991 BOWLES & VERNA

By Jeff Salisbury
JEFFREY S. SALISBURY
Attorneys for Plaintiffs
DENNIS B. ADAMS, B. ALLEN,
IV, DEBORAH BAKER, WILLIAM E.
KEARNEY and BRIAN LINSLEY

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EXHIBIT A

SECOND AMENDED AND RESTATED
) AGENCY ASSIST AGREEMENT (
BETWEEN
GENERAL CELLULAR CORPORATION,
A Delaware Corporation, and
BOARDWALK CAPITAL CORPORATION,
A California Corporation

THIS AGREEMENT is made as of the 4th day of April, 1989, between General Cellular Corporation, a Delaware corporation (the "Company"), and Boardwalk Capital Corporation, a California corporation ("Boardwalk").

RECITALS OF FACT

The Company and Boardwalk have entered into an understanding involving the assisted sale of up to 11,000,000 Shares of the Company's Class A Common Stock (the "Shares") (par value \$0.01).

The parties hereto desire to formalize their understanding as to the sale of the Shares in this Boardwalk Agreement which shall constitute the entire agreement among the parties.

The Company is a corporation duly organized under the laws of the State of Delaware by virtue of the Articles of Incorporation dated January 28, 1988, which are recorded in the office of the Secretary of State for the State of Delaware.

The Company proposes to offer and sell up to eleven million (11,000,000) of its Class A Common Stock to qualified investors, pursuant to a public offering (the "Offering") of the Shares which shall be registered with the Securities and Exchange Commission (the "Commission").

Boardwalk is a corporation incorporated in and presently in good standing in the State of California, is a member presently in good standing of the National Association of Securities Dealers, Inc. (the "NASD"), is presently licensed as a broker-dealer qualified to offer and sell to qualified investors securities of the type offered by the Company, and is presently with the Commission as a broker-dealer.

The Company has filed with the Commission a registration statement on Form S-1 (No. 33-20781), including a preliminary prospectus, in connection with the registration of the Shares under the Securities Act of 1933, as amended (the "1933 Act"). Such registration statement, as it may be amended, and the prospectus and exhibits filed as a part of such registration statement and any amendments thereto on file with the Commission at the time the registration statement becomes effective with the Commission (the "Effective Date"), including any post-effective

amendments which become effective after the effective date, are herein referred to as the "Registration Statement" and the "Prospectus". Capitalized terms used herein and not otherwise defined shall have the meanings given them in the Prospectus.

The offer and sale of the Shares shall be made pursuant to the terms and conditions of the Registration Statement and the Prospectus and, shall be subject to all applicable securities laws of all states in which the Shares are offered and sold.

The Company desires to retain Boardwalk to assist the Company in selling the Shares and Boardwalk is willing and desires to assist the Company in the sale of its Shares.

NOW, THEREFORE, in consideration of the premises and terms and conditions thereof, it is agreed by the Company and Boardwalk as follows:

1. Engagement.

(a) Subject to the terms and conditions herein set forth, the Company hereby engages Boardwalk to assist the Company in selling its Shares pursuant to the Registration Statement and Prospectus. Boardwalk hereby accepts such engagement and covenants, warrants, and agrees to assist the Company in the sale of its Shares according to all of the terms and conditions of the Registration Statement, the Rules of Fair Practice of the NASD, all applicable state and federal laws, including the 1933 Act, as amended, and any and all regulations and rules pertaining thereto heretofore or hereafter issued by the Commission. Neither Boardwalk nor any other person shall have any authority, give any information, or make representations in connection with any offer or sale of the Shares other than as contained in the Prospectus, as amended and supplemented, and as is otherwise expressly authorized in writing by the Company, provided however, that Boardwalk shall use only such sales literature and/or advertising in connection with the sale of the Shares as shall conform in all respects to any restrictions of local law and the applicable requirements of the 1933 Act, as amended, and which shall be approved in advance of such use by the Company.

Boardwalk shall assist the Company in the sale of its Shares until the closing date of the Offering (the "Closing Date") as defined in the Prospectus, or the termination date which is the earlier of either the termination of this Agreement in accordance with Section 9 hereof or written notification from the Company that the Offering has been terminated.

(b) During the Offering, Boardwalk shall instruct cash subscribers to make checks payable to Bank of America, N.A. & S.T., San Francisco, California and all monies received for purchase of any of the Shares shall immediately be promptly

forwarded by Boardwalk to be deposited in a segregated bank account (the "Escrow and Exchange Account") established for the Company by the Escrow and Exchange Agreement solely for such subscriptions.

(i) where Boardwalk's internal supervisory procedures provide for internal supervisory review at the same location at which subscription documents and checks are received from subscribers, checks will be transmitted by the end of the next business day following receipt by Boardwalk.

(ii) where Boardwalk's internal supervisory procedure for final internal supervisory review is to be conducted at a different location, checks will be transmitted by the end of the next business day following receipt by Boardwalk to the office of Boardwalk concluding such final review (the "Final Review Office"). The Final Review Office will, by the end of the next business day following receipt thereof, transmit such checks to the Escrow and Exchange Account. Should Boardwalk engage other Brokers ("Participating Brokers") to assist or otherwise participate in this offering, such participating Brokers shall be required to comply with the requirements of this section of the Agreement, such that, whether subscription documents and checks are received from subscribers by either Boardwalk or a Participating Broker, in all cases the Final Review Office of Boardwalk shall, by the end of the next business day following receipt of subscription documents ("Offering Documents") as defined in the Registration Statement and checks, transmit such checks to the Escrow and Exchange Account.

(c) Boardwalk shall instruct Cellular Interest holders and CHI Shareholders exchanging their Cellular Interests or CHI shares for Shares pursuant to the Exchange Offer to tender such Cellular Interests or shares along with completed Offering Documents to Boardwalk, who will in turn immediately forward the Cellular Interests or CHI shares and Offering Documents to Boardwalk's Final Review Office or if such Offering Documents are sent directly to Boardwalk's Final Review Office, to the Escrow and Exchange Agent.

(d) The Shares shall be offered and sold only where the Shares may be legally offered and sold, and only to such persons who meet certain suitability standards discussed in the Prospectus and who shall be legally qualified to purchase the Shares.

(e) Notwithstanding anything herein to the contrary, Boardwalk shall have no obligation under this Agreement to purchase any of the Shares for its own account.

(f) Boardwalk shall have reasonable grounds to believe, based on information made available to it by the Company through

the prospectus or other materials, that all material facts are adequately and accurately disclosed and provide a basis for evaluating the program.

2. Representations, Warranties, and Agreements of the COMPANY.

The Company represents and warrants to and agrees with Boardwalk that:

(a) A registration statement on Form S-1 (File No. 33-20781) with respect to the Shares, including a preliminary prospectus, has been carefully prepared by the Company in conformity with the requirements of the 1933 Act, and the applicable rules and regulations (the "Rules and Regulations") of the Commission under the 1933 Act and has been filed with the Commission; and such amendments to such Registration Statement as may have been required prior to the date hereof have been similarly prepared and filed with the Commission. Copies of such Registration Statement and Prospectus have been delivered to Boardwalk. The Company has prepared in the same manner, and has filed or proposes to file prior to the effectiveness of such Registration Statement, a further amendment to such Registration Statement incorporating a final form of prospectus. The Company will not at any time hereafter file any amendments to such Registration Statement as to which Boardwalk shall not have been previously advised and furnished a copy or to which Boardwalk shall reasonably object in writing.

(b) The Commission has not issued any order preventing the use of any preliminary Prospectus. Each preliminary Prospectus has complied in all material respects with the requirements of the 1933 Act and the Rules and Regulations, and no preliminary Prospectus has included any untrue statement of a material or omitted to state a material fact necessary to make the statements therein not misleading. When the Registration Statement becomes effective and at all times thereafter up to and at the Closing Date, (i) the Registration Statement and Prospectus, and any amendments or supplements thereto, will contain all statements and information which are required to be included therein in accordance with the 1933 Act and the Rules and Regulations and will in all material respects conform to the requirements of the 1933 Act and the Rules and Regulations and (ii) neither the Registration Statement nor the Prospectus, nor any amendment or supplement thereto, will include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statement therein not misleading; provided, however, that the Company makes no representations and warranties as to information contained in or omitted from the Registration Statement or the Prospectus or any such amendment or supplement in reliance upon and in

conformity with written information furnished to the Company by Boardwalk specifically for use in the preparation thereof.

(c) This Agreement has been duly authorized, executed, and delivered by an authorized officer of the Company and is binding upon the Company in accordance with its terms; the performance of this Agreement and the consummation of the transactions herein contemplated will not result in a breach or violation of any of the terms and provisions of, or constitute a default under the Company's Articles of Incorporation or Bylaws, or any statute or any order, rule, or regulation of any court or governmental agency or body having jurisdiction over the Company; and no consent, approval, authorization, or order of any court or governmental agency or body is required for the consummation by the Company of the transactions on its part contemplated herein, except such as may be required under the 1933 Act or under state or other securities laws.

(d) Except as set forth in the Prospectus, there is not now, and at or prior to the Closing Date there will not be any action, suit, or proceeding, at law or equity, against the Company by a private litigant, by any federal, state or other commission, board or agency wherein any unfavorable result or decision could materially adversely affect the business, property, financial condition or income or earnings of the Company, or prevent consummation of the transactions contemplated hereby; and there are no contracts or documents of the Company which would be required to be filed as exhibits to the Registration Statement by the 1933 Act or by any Rules and Regulations promulgated thereunder which have not been filed as exhibits to the Registration Statement.

(e) Ernst & Whinney, who have audited and reviewed the financial statements filed with the Commission as a part of the Registration Statement and included in the Prospectus, are independent public accountants within the meaning of the 1933 Act and the Rules and Regulations promulgated thereunder; the financial statements filed as a part of the Registration Statement and included in the Prospectus fairly present the financial position and the results of operations of the Company at the respective dates and for the respective periods to which they apply and have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods involved.

(f) Subsequent to the respective dates as of which the information is given in the Registration Statement and Prospectus, and except as may be otherwise stated in the Registration Statement and Prospectus, there has not been and on the Closing Date there will not have been (i) material adverse changes in the business, business prospects, results of operations, or condition (financial or otherwise) of the Company,

(ii) any transaction entered into by the Company which is material to the Company, except transactions in the ordinary course of business, and (iii) any obligation, direct or contingent, incurred by the Company which is material to the Company, except for obligations incurred in the ordinary course of business.

(g) Prior to the Closing Date, the Company will supply and deliver to Boardwalk or its legal counsel at their respective offices, all information required to enable them to make such investigation of the Company and its business prospects as they shall desire and shall make available to them such persons they deem reasonably necessary or appropriate in order to verify or substantiate any information regarding the Company. In addition, the Company shall have the right to review any materials prepared in connection with any offering of securities of the Company conducted prior to the Offering for compliance with applicable federal and state securities laws.

(h) From and after the date of the audited financial statements of the Company contained in the Prospectus through the Closing Date, the Company will furnish Boardwalk unaudited quarterly financial statements in addition to any other reports which may be required by this Agreement to be furnished to Boardwalk.

(i) The Company is not aware of the occurrence of likelihood or occurrence of any event or events which would cause it to use the proceeds of the Offering in a way materially different from that stated in the Prospectus and shall notify Boardwalk and Prospectus if it becomes aware.

3. Compensation to Boardwalk.

(a) The Company shall pay Boardwalk as compensation for all services to be rendered by Boardwalk hereunder in connection with Boardwalk's assist to the Company in the selling of its Shares pursuant to the Registration Statement, a commission equal to (i) two and ninety-five one-hundredths of a percent (2.95%) of the selling price of each Share exchanged for Cellular Interests or shares of Cellular Holdings, Inc. ("CHI") Class A common stock, exclusive of CHI Class A common stock described in Sections 3(a)(iii) and 3(a)(iv) of this Agreement; (ii) five percent (5.0%) of the selling price of each Share sold for cash by Boardwalk; (iii) fifty-five one-hundredths of a percent (.55%) of the selling price of each Share exchanged for shares of CHI Class A common stock held by shareholders identified in Exhibit A to this Agreement; and (iv) no commissions shall be paid by the Company for Shares exchanged for shares of CHI Class A common stock attributed to shares of or rights to CHI Class B common stock. Such commission rates in this Section 3 shall remain in effect during the full term of this Agreement unless otherwise changed by a written agreement between the Company and Boardwalk. As a non-

refundable advance for sales commissions payable to Boardwalk, the Company has paid Boardwalk \$56,004.27 for the period of December 1, 1988 to April 1, 1989 for registered representatives employed by Boardwalk during such period and such amount shall be credited against any commissions due to Boardwalk from the Company under this Section 3(a). A sale of a Share shall be deemed to be completed only after the Company has received a properly completed subscription agreement together with a payment of the full purchase price of each purchased Share from a buyer, or in the case of an exchange, Offering Documents from a buyer, who satisfies each of the terms and conditions of the Registration Statement and Prospectus, and only after such subscription agreement or Offering Documents have been accepted, in its sole discretion, in writing by the Company. Compensation shall be payable to Boardwalk by the Company in connection with the Exchange Offer on the Closing Date. Compensation shall be payable to Boardwalk by the Company in connection with the Cash Offer within ten business days after acceptance of the subscription agreement by the Company, provided, however, that no compensation or commission shall be paid to Boardwalk until the Company has received and accepted tenders of Cellular Interests and Cellular Holdings, Inc. Class A and Class B Common Stock and Cash Subscriptions for the purchase of Common Stock representing at least 3 million Shares.

(b) Upon the execution of this Agreement, the Company shall pay to Boardwalk a sum of \$112,000; \$50,000 which shall be nonrefundable and credited against commissions due to Boardwalk from the Company under Sections 3(a)(i) and 3(a)(iii) and \$62,000 which shall be nonrefundable and shall be credited only against commissions due to Boardwalk from the Company under Section 3(a)(ii) for Shares sold for cash in excess of \$15 million by Boardwalk and Participating Brokers engaged by Boardwalk.

(c) Boardwalk, for itself alone, shall also be entitled to receive from the Company reimbursement for reasonable expenses incurred by Boardwalk and approved in advance by the Company in connection with the offering, including expenses incurred by Boardwalk in establishing and maintaining its San Francisco branch office.

(d) The Company shall supply Boardwalk, at the Company's cost, with three (3) bound volumes of the underwriting materials and other closing documents within a reasonable time after the Closing Date.

(e) The Company has sought to register or qualify the shares under the securities or Blue Sky laws of those states in which Boardwalk intends to offer and sell such Shares the Company will use its best efforts to effect such registrations or to obtain such qualifications. The Company shall pay for all Blue Sky filing fees in seeking clearance of the Offering in the

various states, and will file such consents to service of process or other documents as may be necessary to effect such clearance and continue the same in effect for as long a period as Boardwalk may reasonably request.

4. Association of Other Broker/Dealers. It is expressly understood between the parties hereto that Boardwalk may cooperate with and engage other broker/dealers who are licensed members of the NASD ("Participating Brokers"), registered with the Commission, and licensed by the appropriate regulatory agency of each state in which they will offer and sell the Shares of the Company. Such other Participating Brokers shall be engaged on terms and conditions that Boardwalk deems appropriate, provided, however, that such terms and conditions shall be evidenced by a sales agreement whose terms shall be subject to the prior approval of counsel for the Company; provided, further, that Boardwalk may allot so much of its commission to such other NASD Broker as it shall deem appropriate, up to and including a commission equal to the amount set forth in Section 3(a) of this Agreement, but all commissions due to Participating Brokers shall be payable by Boardwalk.

5. Further Agreements of the Company. The Company agrees that:

(a) The Company will use its best efforts to cause the Registration Statement to become effective and will advise Boardwalk promptly and, if requested by Boardwalk, will confirm such advice in writing (i) when the Registration Statement has become effective and when any amendment thereto becomes effective, (ii) of any request by the Commission or other governmental authority or any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose, and (iii) of any event which makes any statement made in the Registration Statement or the Prospectus untrue or which requires the making of any additions to or changes in the Registration Statement or the Prospectus in order to make the statements therein not misleading or lacking in reference to a material fact. If at any time the Commission or other governmental authority issues any stop order suspending the effectiveness of the Registration Statement, the Company will make every reasonable effort to obtain the withdrawal of such order at the earliest possible moment.

(b) The Company will pay all expenses in connection with the delivery, if any, to Participating Brokers of the Shares and all expenses in connection with the printing, preparation and filing of the Registration Statement (including this Agreement all other exhibits to the Registration Statement) and the Prospectus and any amendments or supplements thereto.

(c) The Company will furnish to Boardwalk without charge copies of the Registration Statement as originally filed and each amendment thereto, including financial statements and all exhibits thereto, and will also furnish, to Boardwalk, if necessary, without charge, for transmittal to each Participating Broker and to various federal or state securities regulatory authorities, conformed copies of the Registration Statement as originally filed and of any amendment thereto, including exhibits.

(d) The Company will not file any amendment to the Registration Statement or make any amendment or supplement to the Prospectus to which Boardwalk shall not previously have been advised or with respect to which Boardwalk, after being so advised, shall promptly and reasonably object in writing.

(e) Prior to the Effective Date, the Company has delivered or will deliver to each Participating Broker without charge, in such quantities as each Participating Broker shall have requested or may hereafter reasonably request, copies of each form of preliminary Prospectus. The Company consents to the use prior to the Effective Date, in accordance with the provisions of the 1933 Act and with the securities laws of the jurisdictions in which the Shares are offered by each Participating Broker, of each Preliminary Prospectus so furnished by the Company pursuant to the terms of this Agreement and to the terms of the Participating Broker Agreement to which such Participating Broker shall be a party.

(f) On the Effective Date and thereafter from time to time for such period as in the opinion of counsel for Boardwalk the Prospectus is required by law to be delivered in connection with sales by an underwriter or broker-dealer, the Company will deliver to each Participating Broker, if any, without charge, as many copies of the Prospectus (and of any amendments or supplements thereto) as such Participating Broker may reasonably request. The Company consents to the use of the Prospectus (and of any amendment or supplements thereto) in accordance with the provisions of the 1933 Act and with the securities laws of the jurisdictions in which the Shares are offered by Boardwalk and by Participating Brokers, both in connection with the offering or sale of the Shares and for such period of time thereafter as the Prospectus is required by law to be delivered in connection therewith. If during such period of time any event occurs which in the judgment of the Company or in the opinion of counsel for Boardwalk should be set forth in the Prospectus in order to make the statements therein, in light of the circumstances in which they were made, not misleading, or if it is necessary to amend or supplement the Prospectus to comply with the 1933 Act or any other law, the Company will forthwith prepare and file with the Commission an appropriate amendment or supplement thereto and will furnish to Boardwalk without charge a reasonable number of copies

thereof, which Boardwalk shall use thereafter pursuant to the terms of this Agreement.

(g) During the period of three years from the date hereof, the Company will furnish to Boardwalk (i) as soon as available, a copy of each report of the Company mailed to its stockholders or filed with the Commission and (ii) from time to time, such other information concerning the business and financial condition of the Company as Boardwalk may reasonably request.

(h) The Company will apply the net proceeds from the sale of the Shares in the manner set forth under the caption "Use of Proceeds" in the Prospectus, except where, as a result of events brought to its attention after the Closing Date, it is determined that such application would not be in the best interest of the Company and that application of such net proceeds in a manner different from that set forth in the Prospectus would not violate any applicable law.

6. Conditions to Boardwalk's Obligation. The obligation of Boardwalk to sell the Shares hereunder is subject to the accuracy of and compliance with the representations and warranties and agreements of the Company contained herein on and as of the Closing Date and to the following further conditions:

(a) That the Registration Statement shall have become effective; that no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been or to the knowledge of the Company shall be contemplated by the Commission at or prior to the Closing Date, and

(b) That subsequent to the Effective Date and prior to the Closing Date there shall not have occurred any of the following conditions, events or occurrences, as to the presence of which Boardwalk shall be the sole determinant:

(i) any material adverse change in the Company's business, business prospects, earnings, or condition, financial or otherwise;

(ii) any material change in the market for securities in general or in political, financial or economic conditions from those reasonably foreseeable as to render it impracticable in Boardwalk's sole judgment to make a public offering of the Shares, or in Boardwalk's sole judgment a material adverse change in market levels for securities in general or financial or economic conditions which render it inadvisable to proceed with a public offering of the Shares;

(iii) any action, suit or proceeding, at law or equity, initiated or threatened against the Company by a private

litigant, by any federal, state or other commission, board or agency wherein any unfavorable result or decision could materially adversely affect the business, property, financial condition or income or earnings of the Company;

(iv) any war or Act of God or other calamity which would have a substantial adverse effect on or result in a substantial loss to the Company; and

(v) any qualification as to a material matter in the opinions of the Company's independent public accountants or legal counsel, which opinions are required as a condition of the execution of this Agreement.

(c) That the Company shall have delivered to Boardwalk such additional documents as it shall reasonably request in order to receive further assurance as to the accuracy of the Registration Statement and compliance with the Company's agreements hereunder.

7. Certain Agreements Relating to Expenses. The Company will pay all costs and expenses incident to the performance by the Company of its obligations hereunder, including (a) the preparation, printing, delivery and filing of the Registration Statement, each Preliminary Prospectus, and the Prospectus (including all amendments, supplements and exhibits thereto), (b) the preparation, printing, issuance and delivery of certificates representing the Shares, (c) state registration or qualification fees with respect to the matters referred to in Section 3(e) of this Agreement, (d) the fees and expenses of the Company's accountants and the fees and expenses of counsel for the Company, (e) furnishing such copies of the Prospectus, each Preliminary Prospectus, all amendments or supplements to the Prospectus as may be requested for use by Boardwalk in connection with the offering and sale of the Shares (including postage, air freight charges, and charges for counting and packaging), and (f) any filing fees for filings required with the NASD or the Commission with respect to the offering of and sale of the Shares.

If this Agency Assist Agreement is terminated pursuant to any of the provisions hereof, the Company agrees to reimburse Boardwalk for any amounts due and payable by the Company to Boardwalk as advanced commissions pursuant to Section 3(a) of this Agreement and for all out-of-pocket expenses incurred by Boardwalk in connection herewith as set forth in Section 3(c) but without any further obligation on the part of the Company for loss of profits or otherwise.

8. Indemnification.

(a) Boardwalk agrees to indemnify, defend and hold harmless the Company and its officers, directors, employees, and

agents against all losses, claims, demands, liabilities, and expenses, including reasonable legal and other expenses incurred in defending such claims or liabilities, whether or not resulting in any liability to the Company and its Affiliates and their officers, directors, employees, or agents which they or any of them may incur, arising out of the offer or sale, by Boardwalk or any other NASD Member acting on its behalf or any of the terms and conditions of this Agreement or any Participating Broker Agreement, including but not limited to alleged violations of the Securities Act of 1933, as amended, other than any claim, demand or liability arising from any untrue or alleged untrue statement of a material fact contained in the Prospectus or the Registration Statement, as filed and in effect with the Commission, or in any amendment or supplement thereto, or in any application prepared or approved in writing by counsel to the Company and filed with any state regulatory agency in order to register or qualify the Shares under the securities laws thereof (the "blue sky applications"), or any advertising material prepared by the Company and related to the sale of the Shares, or which shall arise out of or be based upon any omission or alleged omission to state therein a material fact required to be stated in the Prospectus or the Registration Statement, any blue sky applications, or advertising material or necessary to make the statements therein not misleading, which indemnity provision shall survive the termination of this Agreement.

(b) The Company agrees to indemnify, defend, and hold harmless Boardwalk, its officers, directors, employees, and agents, against all losses, claims, demands, liabilities, and expenses, including reasonable legal and other expenses incurred in defending such claims or liabilities, whether or not resulting in any liability to Boardwalk, its officers, directors, employees, or agents, that Boardwalk or any of them may incur, including but not limited to alleged violations of the Securities Act of 1933, as amended, and/or of the Securities Exchange Act of 1934, as amended, but only to the extent that such losses, claims, demands, liabilities, and expenses shall arise out of or be based upon any untrue statement of a material fact contained in the Prospectus or the Registration Statement, as filed and in effect with the SEC, or in any amendment or supplement thereto, in any of the blue sky applications or in advertising materials, or which shall arise out of or be based upon any omission or alleged omission to state therein a material fact required to be stated in the Prospectus or the Registration Statement, the blue sky applications or advertising materials or necessary to make the statements or a part thereof not misleading, which indemnity provision shall survive the termination of this Agreement. Notwithstanding anything to the contrary contained in this Section 8(b) the Company shall not indemnify, defend, and hold harmless any affiliate of the Company, who acts as a Broker/Dealer in connection with this offering.