As filed with the Securities and Exchange Commission on May 10, 2013

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

(Exact name of registrant as specified in its charter)

Delaware	**86-0748362**
(State or Other Jurisdiction of Incorporation or Organization)	**(I.R.S. Employer Identification No.)**
7420 S. Kyrene Road., Suite 101 Tempe, Arizona	**85283**
(Address of Principal Executive Offices)	**(Zip Code)**

Employment Inducement Award
(Full Title of the Plan)

Christopher J. Miner, Senior Vice President & General Counsel
Mobile Mini, Inc.
7420 S. Kyrene Road., Suite 101
Tempe, Arizona 85283
(480) 894-6311
(Name, Address and Telephone Number, including Area Code, of Agent for Service)

With a copy to:
Gregory R. Hall
DLA Piper LLP (US)
2525 East Camelback Road, Suite 1000
Phoenix, Arizona 85016
(480) 606-5100

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer	☒	Accelerated Filer	☐
Non-accelerated filer	☐	Smaller reporting company	☐

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common stock, $0.01 par value	2,000,000 (2)	$31.45 (3)	$62,900,000 (3)	$8,579.56

(1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the "***Securities Act***"), this registration statement also covers an indeterminate number of shares of securities that may be offered or issued by reason of stock splits, stock dividends or similar transactions.

(2) Represents shares of common stock, par value $0.01 per share ("***Common Stock***") of Mobile Mini, Inc. (the "***Company***") issuable upon exercise of stock options granted to Mr. Olsson.

(3) Calculated pursuant to Rule 457(h) under the Securities Act, solely for the purpose of computing the registration fee, based upon the weighted average exercise price of stock options granted to Mr. Olsson on March 18, 2018.

EXPLANATORY NOTE

To induce Mr. Erik Olsson to accept employment with the Company as its President and Chief Executive Officer, the Company proposes to offer and sell shares of its Common Stock pursuant to the following equity awards (collectively, the "***Employment Inducement Award***"):

(i) options granted to Mr. Olsson on March 18, 2013 to purchase 1,000,000 shares of Common Stock of the Company at $28.27 per share, which vest over a three (3) year period in equal annual installments commencing on the one year anniversary of the grant date and on each one year anniversary thereafter, subject to the Company's achievement of performance targets; and

(ii) options granted to Mr. Olsson on March 18, 2013 to purchase 500,000 shares of Common Stock of the Company at $32.51 per share and 500,000 shares of Common Stock of the Company at $36.75 per share, of which thirty-three (33%) will vest on March 18, 2014 with the remainder vesting in equal annual installments over the following twenty-four (24) months, subject to Mr. Olsson's continuing employment with the Company on each vesting date.

The Employment Inducement Award, which were approved by the Compensation Committee of the Board of Directors of the Company, will be granted outside of the terms of the Company's 2006 Equity Incentive Plan, as amended, and will be granted pursuant to NASDAQ Marketplace Rule 5635(c)(4). This Registration Statement on Form S-8 (this "***Registration Statement***") registers shares of Common Stock issuable pursuant to the Employment Inducement Award.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Information required to be contained in the Section 10(a) prospectus is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act of 1933, as amended (the "***Securities Act***"), and the Note to Part I of Form S-8.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, which the Company has previously filed with the Securities and Exchange Commission (the "***Commission***"), are incorporated herein by reference:

(a) The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2012, filed with the Commission on March 1, 2013;

(b) The Company's amended Annual Report on Form 10-K/A for the fiscal year ended December 31, 2012, filed with the Commission on April 30, 2013;

(c) The Company's Quarterly Report on Form 10-Q for the period ended March 31, 2013, filed with the Commission on May 9, 2013;

(d) Each of the Company's Current Reports on Form 8-K filed with the Commission on February 22, 2013, March 20, 2013, April 9, 2013, and May 6, 2013, in each case only to the extent filed and not furnished;

(e) The description of the Company's Common Stock contained in the Company's Registration Statement on Form 8-A (File No. 001-12804), filed with the Commission on February 14, 1994, including any amendment or report filed for the purpose of updating such description; and

(f) The description of the Company's Common Stock contained in the Company's Registration Statement on Form 8-A (File No. 000-27870), filed with the Commission on September 24, 1997, including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered hereby have been sold, or which deregisters all securities remaining unsold, shall be deemed to be incorporated by reference in and made a part of this Registration Statement from the date of filing of such documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 102(b) of the Delaware General Corporation Law authorizes a corporation to provide in its Certificate of Incorporation that a director of the corporation shall not be personally liable to a corporation or its stockholders for monetary damages for breach or alleged breach of the director's "duty of care." While this statute does not change directors' duty of care, it enables corporations to limit available relief to equitable remedies such as injunction or rescission. The statute has no effect on a director's duty of loyalty or liability for acts or omissions not in good faith or involving intentional misconduct or knowing violations of law, illegal payment of dividends or stock redemptions or repurchases, or for any transaction from which the director derives an improper personal benefit. As permitted by the statute, the Company has adopted provisions in its Certificate of Incorporation which eliminate, to the fullest extent permissible under Delaware law, the personal liability of its directors to the Company and its stockholders for monetary damages for breach or alleged breach of their duty of care.

Section 145 of the General Corporation Law of the State of Delaware provides for the indemnification of officers, directors, employees and agents of a corporation. The Company's Bylaws provide for indemnification of its directors, officers, employees and agents to the full extent permitted by Delaware law, including those circumstances in which indemnification would otherwise be discretionary under Delaware law. The Company's Bylaws also empower it to enter into indemnification agreements with its directors and officers and to purchase insurance on behalf of any person whom it is required or permitted to indemnify. The Company has purchased insurance on behalf of its directors and officers against certain liabilities that may be asserted against, or incurred by, such persons in their capacities as directors or officers of the Company, or that may arise out of their status as directors or officers of the Company, including liabilities under the federal and state securities laws. The Company has also entered into agreements with its directors and officers that require the Company to indemnify such persons to the fullest extent permitted under Delaware law against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred (including expenses of a derivative action) in connection with any proceeding, whether actual or threatened, to which any such person may be made a party by reason of the fact that such person is or was a director or an officer of the Company or any of its affiliated enterprises. The indemnification agreements also set forth certain procedures that will apply in the event of a claim for indemnification thereunder.

Section 145 of the General Corporation Law of the State of Delaware provides for indemnification in terms sufficiently broad to indemnify such individuals, under certain circumstances, for liabilities (including reimbursement of expenses incurred) arising under the Securities Act.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

See Exhibit Index.

Item 9. Undertakings.

The undersigned Company hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement, any;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided however, that paragraphs (l)(i) and (l)(ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Company pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

The undersigned Company hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Company's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Company of expenses incurred or paid by a director, officer or controlling person of the Company in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Company will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Tempe, State of Arizona, on May 10, 2013.

MOBILE MINI, INC.

Date: May 10, 2013

By: /s/ Mark E. Funk
Mark E. Funk
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

Date: May 10, 2013

By: /s/ Deborah K. Keeley
Deborah K. Keeley
Senior Vice President and Chief Accounting Officer
(Principal Accounting Officer)

POWER OF ATTORNEY

Each director and officer whose signature appears below hereby appoints Christopher J. Miner and Mark E. Funk and each of them, the true and lawful agents and attorneys-in-fact to sign in his name and behalf, in any and all capacities stated below, and to file with the Securities and Exchange Commission, any and all amendments, including post-effective amendments, exhibits thereto, and other documents in connection therewith, to this Registration Statement, and with full power of substitution; hereby ratifying and confirming all that each of said attorneys-in-fact, or his substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement on Form S-8 has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Michael L. Watts Michael L. Watts	Chairman of the Board of Directors	May 10, 2013
/s/ Erik Olsson Erik Olsson	President, Chief Executive Officer and Director (Principal Executive Officer)	May 10, 2013
/s/ James T. Martell James T. Martell	Director	May 10, 2013
/s/ Jeffrey S. Goble Jeffrey S. Goble	Director	May 10, 2013
/s/ Stephen A McConnell Stephen A McConnell	Director	May 10, 2013
/s/ Sanjay Swani Sanjay Swani	Director	May 10, 2013
/s/ Lawrence Trachtenberg Lawrence Trachtenberg	Director	May 10, 2013
/s/ Frederick G. McNamee, III Frederick G. McNamee, III	Director	May 10, 2013

EXHIBIT INDEX

Exhibit Number	Description
4.1	Amended and Restated Certificate of Incorporation of the Company (incorporated by reference to Exhibit 3.1 to the Company's Report on Form 10-K for the fiscal year ended December 31, 1997, File No. 001-12804).
4.2	Certificate of Amendment, dated July 20, 2000, to the Amended and Restated Certificate of Incorporation of the Company (Incorporated by reference to Exhibit 3.1A to the Company's Report on Form 10-Q for the quarter ended June 30, 2000, File No. 001-12804).
4.3	Certificate of Designation, Preferences and Rights of Series C Junior Participating Preferred Stock of the Company, dated December 17, 1999 (Incorporated by reference to Exhibit A to Exhibit 1 to the Company's Registration Statement on Form 8-A filed on December 13, 1999, File No. 000-27870).
4.4	Certificate of Amendment of the Amended and Restated Certificate of Incorporation of the Company, dated June 26, 2008 (Incorporated by reference to Exhibit 3.2 to the Company's Report on Form 8-K filed on July 1, 2008, File No. 001-12804).
4.5	Certificate of Designation of the Company's Series A Convertible Redeemable Participating Preferred Stock, dated June 27, 2008 (Incorporated by reference to Exhibit 3.1 to the Company's Report on Form 8-K filed on July 1, 2008, File No. 001-12804).
4.6	Amended and Restated By-laws of the Company, as amended and restated through May 2, 2007 (Incorporated by reference to Exhibit 3.2 to the Company's Report on Form 10-K for the fiscal year ended December 31, 2007, as amended, File No. 001-12804).
4.7	Form of Common Stock Certificate (Incorporated by reference to Exhibit 4.1 of the Company's Report on Form 10-K for the fiscal year ended December 31, 2003, as amended, File No. 001-12804).
4.8	Rights Agreement, dated as of December 9, 1999, between the Company and Norwest Bank Minnesota, NA, as Rights Agent (Incorporated by reference to the Company's Registration Statement on Form 8-A filed on December 13, 1999, File No. 000-27870).
4.9	Indenture dated as of May 7, 2007 among the Company, Law Debenture Trust Company of New York, as Trustee, and Deutsche Bank Trust Company Americas, as Paying Agent and Registrar ((Incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-4 filed on June 26, 2007, File No. 333-144038) (the Mobile Mini Indenture)).
4.10	Supplemental Indenture, dated as of June 27, 2008, among the Company, Mobile Storage Group, Inc., A Better Mobile Storage Company, Mobile Storage Group (Texas), LP, the guarantors party to the Mobile Mini Indenture and Law Debenture Trust Company of New York, as trustee (Incorporated by reference to Exhibit 4.3 to the Company's Report on Form 8-K filed on July 1, 2008, File No. 001-12804).
4.11	Indenture, dated as of August 1, 2006, by and among Mobile Services Group, Inc., Mobile Storage Group, Inc., the subsidiary guarantors named therein and Wells Fargo Bank, N.A., as trustee ((Incorporated by reference to Exhibit 4.1 to Mobile Storage Group, Inc.'s Form S-4 filed on September 18, 2007, as amended, File No. 333-146157-03) (the MSG Indenture)).
4.12	Supplemental Indenture, dated as of June 27, 2008, among the Company, Mobile Storage Group, Inc., A Better Mobile Storage Company, Mobile Storage Group (Texas), LP, the guarantors party to the Mobile Mini Indenture and Law Debenture Trust Company of New York, as trustee (Incorporated by reference to Exhibit 4.3 to the Company's Report on Form 8-K filed on July 1, 2008, File No. 001-12804).
4.13	Indenture, dated as of November 23, 2010, among the Company, the Guarantor parties thereto, Law Debenture Trust Company of New York, as trustee, and Deutsche Bank Trust Company Americas, as paying agent, registrar and transfer agent (Incorporated by reference to Exhibit 4.1 to the Company's Report on Form 8-K filed on November 29, 2010, File No. 001-12804).

4.14	Second Supplemental Indenture, dated as of November 22, 2010, among the Company, the Guarantor parties thereto and Wells Fargo Bank, N.A., as trustee (Incorporated by reference to Exhibit 4.2 to the Company's Report on Form 8-K filed on November 29, 2010, File No 001-12804).
5.1	Opinion of DLA Piper LLP (US), counsel for the Company (filed herewith).
23.1	Consent of Counsel (included in Exhibit 5.1).
23.2	Consent of Independent Registered Public Accounting Firm (filed herewith).
24.1	Power of Attorney (included in the signature page to this Registration Statement).
99.1	Executive Employment Agreement between the Company and Erik Olsson, dated March 18, 2013 (incorporated by reference to the Company's Report on Form 8-K filed on March 20, 2013, File No. 001-12804).
99.2	Form of Stock Option Agreement between Mobile Mini, Inc. and Erik Olsson (filed herewith).

Exhibit 5.1

[DLA Piper LLP (US) Letterhead]

May 10, 2013

Mobile Mini, Inc.
7420 S. Kyrene Road., Suite 101
Tempe, Arizona 85283

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as counsel for Mobile Mini, Inc., a Delaware corporation (the "***Company***"), in connection with the preparation and filing of the Registration Statement on Form S-8 (the "***Registration Statement***") filed by the Company with the Securities and Exchange Commission (the "***Commission***") under the Securities Act of 1933, as amended (the "***Securities Act***"), with respect to the issuance from time to time of up to 2,000,000 shares of the Company's Common Stock, par value $0.01 per share (the "***Shares***") pursuant to employment inducement awards granted to Mr. Erik Olsson (collectively, the "***Employment Inducement Award***").

In connection herewith, we have examined and relied without independent investigation as to matters of fact upon such certificates of public officials, such statements and certificates of officers of the Company and originals or copies certified to our satisfaction of the Registration Statement, the grant agreements relating to the Employment Inducement Award, the Certificate of Incorporation, and the Amended and Restated Bylaws of the Company as now in effect and minutes of all pertinent meetings and actions of the Board of Directors of the Company and of the Compensation Committee of the Board of Directors of the Company.

In rendering this opinion, we have assumed the genuineness of all signatures on all documents examined by us, the due authority of the parties signing such documents, the authenticity of all documents submitted to us as originals, the conformity to the originals of all documents submitted to us as copies and that the offer and sale of the Shares complies in all respects with the terms, conditions and restrictions set forth in the Registration Statement and the grant agreements relating to the Employment Inducement Award. We have relied upon the Company's representation to us that the Company has reserved from its duly authorized capital stock a sufficient number of shares of Common Stock. We have also assumed that it will at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue the Shares in accordance with the Employment Inducement Award, the number of Shares which are then issuable and deliverable upon the settlement of awards under the Employment Inducement Award.

We do not express any opinion herein concerning any law other than the Delaware General Corporation Law (including the statutory provisions, all applicable provisions of the Delaware Constitution and the reported judicial decisions interpreting the foregoing). We have based our opinion solely upon our examination of such laws and the rules and regulations of the authorities administering such laws, all as reported in standard, unofficial compilations. No opinion is expressed herein with respect to the qualification of the Shares under the securities or blue sky laws of any state or any foreign jurisdiction.

This opinion speaks only at and as of its date and is based solely on the facts and circumstances known to us and as of such date. In addition, in rendering this opinion, we assume no obligation to revise, update or supplement this opinion (i) should the present aforementioned laws of the State of Delaware be changed by legislative action, judicial decision or otherwise, or (ii) to reflect any facts or circumstances which may hereafter come to our attention.

Based upon, subject to and limited by the foregoing, we are of the opinion and so advise you that the issuance of the Shares which may be issued pursuant to the Employment Inducement Award has been duly authorized and, when issued against receipt of the consideration therefor, delivered and fully paid for in accordance with the terms of the Registration Statement and grant agreements relating to the Employment Inducement Award, such Shares will be validly issued, fully paid and nonassessable.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement and the use of our name wherever it appears in the Registration Statement. In giving this consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

This opinion letter is given to you solely for use in connection with the issuance of the Shares in accordance with the Registration Statement and is not to be relied upon for any other purpose. Our opinion is expressly limited to the matters set forth above, and we render no opinion, whether by implication or otherwise, as to any other matters relating to the Company, the Shares or the Registration Statement.

Very truly yours,

DLA Piper LLP (US)

/s/ DLA Piper LLP (US)

Exhibit 23.2

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statement (Form S-8), pertaining to the Employment Inducement Award of Mobile Mini, Inc., of our reports dated March 1, 2013, with respect to the consolidated financial statements and schedule of Mobile Mini, Inc. and subsidiaries and to the effectiveness of internal control over financial reporting of Mobile Mini, Inc. and subsidiaries, included in its Annual Report (Form 10-K) of Mobile Mini, Inc. for the year ended December 31, 2012 filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP
Phoenix, Arizona

May 10, 2013

FORM OF

MOBILE MINI, INC.
STOCK OPTION AGREEMENT

Mobile Mini, Inc. has granted to the Participant named in the *Notice of Grant of Stock Options* (the "***Grant Notice***") to which this Stock Option Agreement (the "***Option Agreement***") is attached an option (the "***Option***") to purchase certain shares of Stock upon the terms and conditions set forth in the Grant Notice and this Option Agreement. The Option has not been granted pursuant to the Mobile Mini, Inc. 2006 Equity Incentive Plan (the "***Plan***"), but rather is a stand-alone award intended to constitute an inducement grant under NASDAQ Listing Rule 5635(c)(4). However, unless otherwise defined herein or in the Grant Notice, capitalized terms shall have the meaning set forth in the Plan (the "***Applicable Plan Provisions***"). By signing the Grant Notice, the Participant: (a) acknowledges receipt of and represents that the Participant has read and is familiar with the Grant Notice, this Option Agreement, the Plan and a prospectus for the Option prepared in connection with the registration with the Securities and Exchange Commission of shares issuable pursuant to the Option (the "***Option Prospectus***"), (b) accepts the Option subject to all of the terms and conditions of the Grant Notice, this Option Agreement and the Applicable Plan Provisions and (c) agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Grant Notice, this Option Agreement or the Applicable Plan Provisions.

1. **DEFINITIONS AND CONSTRUCTION.**

1.1 **Definitions.** Unless otherwise defined herein, capitalized terms shall have the meanings assigned to such terms in the Grant Notice or the Plan. Whenever used herein, the following terms shall have their respective meanings set forth below:

(a) "***Cause***" means, unless such term or an equivalent term is otherwise defined by the a written agreement between the Participant and a Participating Company that is applicable to the Option, any of the following: (i) the Participant's theft, dishonesty, willful misconduct, breach of fiduciary duty for personal profit, or falsification of any Participating Company documents or records; (ii) the Participant's material failure to abide by a Participating Company's code of conduct or other policies (including, without limitation, policies relating to confidentiality and reasonable workplace conduct); (iii) the Participant's unauthorized use, misappropriation, destruction or diversion of any tangible or intangible asset or corporate opportunity of a Participating Company (including, without limitation, the Participant's improper use or disclosure of a Participating Company's confidential or proprietary information); (iv) any intentional act by the Participant which has a material detrimental effect on a Participating Company's reputation or business; (v) the Participant's repeated failure or inability to perform any reasonable assigned duties after written notice from a Participating Company of, and a reasonable opportunity to cure, such failure or inability; (vi) any material breach by the Participant of any employment, service, non-disclosure, non-competition, non-solicitation or other similar agreement between the Participant and a Participating Company, which breach is not cured pursuant to the terms of such agreement; or (vii) the Participant's conviction (including any plea of guilty or nolo contendere) of any criminal act involving fraud, dishonesty, misappropriation or moral turpitude, or which impairs the Participant's ability to perform his or her duties with a Participating Company.

(b) *"**Change of Control**"* means the occurrence of any of the following:

(i) an acquisition (other than directly from the Company) of any voting securities of the Company (the "***Voting Securities***") by any "***Person***" (as the term person is used for purposes of Section 13(d) or 14(d) of the Securities Exchange Act of 1934, as amended (the "***Exchange Act***")), immediately after which such Person has "***Beneficial Ownership***" (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of thirty-five percent (35%) or more of the then outstanding Shares of the combined voting power of the Company's then outstanding Voting Securities; provided, however, in determining whether a Change in Control has occurred, Shares or Voting Securities which are acquired in a "Non-Control Acquisition" (as hereinafter defined) shall not constitute an acquisition which would cause a Change in Control. A "***Non-Control Acquisition***" shall mean an acquisition by (A) an employee benefit plan (or a trust forming a party thereof) maintained by (1) the Company or (2) any corporation or other Person of which all of its voting power or its voting equity securities or equity interest is owned, directly or indirectly, by the Company prior to such acquisition (for purposes of this definition, a "***Subsidiary***", (B) the Company or its Subsidiaries, or (C) any Person in connection with a "Non-Control Transaction" (as hereinafter defined).

(ii) the individuals who, as of the date of this Agreement are members of the Board (the "***Incumbent Board***"), cease for any reason to constitute at least two-thirds of the members of the Board of Directors of the Company; provided, however, that if the election, or nomination for election by the Company's common stockholders, of any new director was approved by a vote of at least two-thirds of the Incumbent Board, such new director shall, for purposes of this Agreement, be considered as a member of the Incumbent Board; provided, further, however, that no individual shall be considered a member of the Incumbent Board if such individual initially assumed officer as a result of either an actual or threatened "***Election Contest***" (as described in Rule 14a-11 promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board (a "***Proxy Contest***") including by reason of any agreement intended to avoid or settle any Election Contest or Proxy Contest; or

(iii) the consummation of:

(A) a merger, consolidation or reorganization involving the Company, unless such merger, consolidation or reorganization is a "Non-Control Transaction." A "***Non-Control Transaction***" shall mean a merger consolidation or reorganization of the Company where (1) the stockholders of the Company, immediately before such merger, consolidation or reorganization, own directly or indirectly immediately following such merger, consolidation or reorganization, at least fifty-one percent (51%) of the combined voting power of the outstanding voting securities of the corporation resulting from such merger or consolidation or reorganization (the "***Surviving Corporation***") in substantially the same proportion as their ownership of the Voting Securities immediately before such merger, consolidation or reorganization, (2) the individuals who were members of the Incumbent Board immediately prior to the execution of the agreement providing for such merger, consolidation or reorganization constitute at least two-thirds of the members of the board of directors of the Surviving Corporation, or a corporation beneficially directly or indirectly owning a majority of the Voting Securities of the Surviving Corporation, and (3) no Person other than (i) the Company, (ii) any Subsidiary, or (iii) any employee benefit plan (or any trust forming a part thereof) that, immediately prior to such merger, consolidation or reorganization, was maintained by the Company, or any Subsidiary;

(B) a complete liquidation or dissolution of the Company; or

(C) the sale or disposition of all or substantially all of the assets of the Company to any Person (other than a transfer to a Subsidiary).

Notwithstanding the foregoing, a Change in Control shall not be deemed to occur solely because any Person (the "***Subject Person***") acquired Beneficial Ownership of more than the permitted amount of the then outstanding Shares or Voting Securities as a result of the acquisition of Shares or Voting Securities by the Company which, by reducing the number of Shares or Voting Securities then outstanding, increases the proportional number of shares Beneficially Owned by the Subject Persons, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of Shares or Voting Securities by the Company, and after such share acquisition by the Company, the Subject Person becomes the Beneficial Owner of any additional Shares or Voting Securities which increases the percentage of the then outstanding Shares or Voting Securities Beneficially Owned by the Subject Person, then a Change in Control shall occur.

(c) "***Date of Option Grant***" means the effective date of grant of the Option as set forth in the Grant Notice.

(d) "***Exercise Price***" means the purchase price per share of Stock as set forth in the Grant Notice and as adjusted from time to time pursuant to Section 9.

(e) "***Number of Option Shares***" means the total number of shares of Stock subject to the Option as set forth in the Grant Notice and as adjusted from time to time pursuant to Section 9.

(f) "***Option Expiration Date***" means the date ten (10) years from the Date of Option Grant.

(g) "***Participating Company***" means the Company or any present or future Affiliate of Subsidiary.

(h) *"**Service**"* means the Participant's continuous, uninterrupted and unterminated status as an Employee. The Participant's continuous status as an Employee shall not be deemed interrupted or terminated if the Participant takes any military leave, sick leave or other bona fide leave of absence approved by a Participating Company. However, unless otherwise approved by the Committee, if any such leave exceeds ninety (90) days, then the Participant's continuous status as an Employee shall be deemed to have terminated on the ninety-first (91st) day following the commencement of such leave, unless the Participant's right to resume his or her status as an Employee is guaranteed by statute or contract. Notwithstanding the foregoing, an unpaid leave of absence shall be treated as continuation of Employee status for purposes of vesting of the Option only to the extent provided by the Company's leave of absence policy or the written terms of the Participant's leave of absence. The Participant's continuous status as an Employee shall be deemed to have terminated either upon an actual termination of employment or upon the business entity (if other than the Company) by which the Participant is employed ceasing to be Participating Company. Subject to the foregoing, the Company, in its discretion, shall determine whether the Participant's continuous status as an Employee has terminated, the reason for such termination and the termination date.

(i) *"**Vested Shares**"* mean, on any relevant date, that portion of the Number of Option Shares which has vested in accordance with vesting schedule set forth in the Grant Notice. Provided that the Participant's Service has not terminated prior to the relevant date, an initial installment of shares will become Vested Shares on the initial "Full Vest" date set forth in the Grant Notice, and thereafter the remaining shares will become Vested Shares in substantially equal installments at the periodic rate set forth in the Grant Notice, with the last such installment vesting on the last "Full Vest" date set forth in the Grant Notice.

1.2 **Construction.** Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of this Option Agreement. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term "or" is not intended to be exclusive, unless the context clearly requires otherwise.

2. **TAX CONSEQUENCES.**

This Option is intended to be a Nonqualified Stock Option and shall not be treated as an Incentive Stock Option within the meaning of Section 422(b) of the Code.

3. **ADMINISTRATION.**

All questions of interpretation concerning this Option Agreement shall be determined by the Committee. All determinations by the Committee shall be final and binding upon all persons having an interest in the Option. Any Officer shall have the authority to act on behalf of the Company with respect to any matter, right, obligation, or election which is the responsibility of or which is allocated to the Company herein, provided the Officer has actual authority with respect to such matter, right, obligation, or election.

4. **EXERCISE OF THE OPTION.**

4.1 **Right to Exercise.** Except as otherwise provided herein, the Option shall be exercisable prior to the termination of the Option (as provided in Section 6) in an amount not to exceed the number of Vested Shares less the number of shares previously acquired upon exercise of the Option. In no event shall the Option be exercisable for more shares than the Number of Option Shares, as adjusted pursuant to Section 9.

4.2 **Method of Exercise.** Exercise of the Option shall be by means of electronic or written notice (the *"**Exercise Notice**"*) in a form authorized by the Company. An electronic Exercise Notice must be digitally signed or authenticated by the Participant in such manner as required by the notice and transmitted to the Company or an authorized representative of the Company (including a third-party administrator designated by the Company). In the event that the Participant is not authorized or is unable to provide an electronic Exercise Notice, the Option shall be exercised by a written Exercise Notice addressed to the Company, which shall be signed by the Participant and delivered in person, by certified or registered mail, return receipt requested, by confirmed facsimile transmission, or by such other means as the Company may permit, to the Company, or an authorized representative of the Company (including a third-party administrator designated by the Company). Each Exercise Notice, whether electronic or written, must state the Participant's election to exercise the Option, the number of whole shares of Stock for which the Option is being exercised and such other representations and agreements as to the Participant's investment intent with respect to such shares as may be required pursuant to the provisions of this Option Agreement. Further, each Exercise Notice must be received by the Company prior to the termination of the Option as set forth in Section 6 and must be accompanied by full payment of the aggregate Exercise Price for the number of shares of Stock being purchased. The Option shall be deemed to be exercised upon receipt by the Company of such electronic or written Exercise Notice and the aggregate Exercise Price.

4.3 **Payment of Exercise Price.**

(a) ***Forms of Consideration Authorized*.** Except as otherwise provided below, payment of the aggregate Exercise Price for the number of shares of Stock for which the Option is being exercised shall be made (i) in cash, by check or cash equivalent, (ii) if permitted by the Company, by tender to the Company, or attestation to the ownership, of whole shares of Stock owned by the Participant having a Fair Market Value not less than the aggregate Exercise Price, (iii) by means of a Cashless Exercise, as defined in Section 4.3(b), or (iv) by any combination of the foregoing.

(b) ***Limitations on Forms of Consideration.***

(i) **Tender of Stock.** Notwithstanding the foregoing, the Option may not be exercised by tender to the Company, or attestation to the ownership, of shares of Stock to the extent such tender or attestation would constitute a violation of the provisions of any law, regulation or agreement restricting the redemption of the Company's stock. If required by the Company, the Option may not be exercised by tender to the Company, or attestation to the ownership, of shares of Stock unless such shares either have been owned by the Participant for more than six (6) months or such other period, if any, required by the Company (and not used for another option exercise by attestation during such period) or were not acquired, directly or indirectly, from the Company.

(ii) **Cashless Exercise.** A *"**Cashless Exercise**"* means the delivery of a properly executed notice together with irrevocable instructions to a broker in a form acceptable to the Company providing for the assignment to the Company of the proceeds of a sale or loan with respect to some or all of the shares of Stock acquired upon the exercise of the Option pursuant to a program or procedure approved by the Company (including, without limitation, through an exercise complying with the provisions of Regulation T as promulgated from time to time by the Board of Governors of the Federal Reserve System). The Company reserves, at any and all times, the right, in the Company's sole and absolute discretion, to establish, decline to approve or terminate any such program or procedure, including with respect to the Participant notwithstanding that such program or procedures may be available to others.

4.4 **Tax Withholding.** At the time the Option is exercised, in whole or in part, or at any time thereafter as requested by the Company, the Participant hereby authorizes withholding from payroll and any other amounts payable to the Participant, and otherwise agrees to make adequate provision for (including by means of a Cashless Exercise to the extent permitted by the Company), any sums required to satisfy the federal, state, local and foreign tax withholding obligations of a Participating Company, if any, which arise in connection with the Option. The Company shall have no obligation to deliver shares of Stock until the tax withholding obligations of all Participating Companies have been satisfied by the Participant.

4.5 **Beneficial Ownership of Shares; Certificate Registration.** The Participant hereby authorizes the Company, in its sole discretion, to deposit for the benefit of the Participant with any broker with which the Participant has an account relationship of which the Company has notice any or all shares acquired by the Participant pursuant to the exercise of the Option. Except as provided by the preceding sentence, a certificate for the shares as to which the Option is exercised shall be registered in the name of the Participant, or, if applicable, in the names of the heirs of the Participant.

4.6 **Restrictions on Grant of the Option and Issuance of Shares.** The grant of the Option and the issuance of shares of Stock upon exercise of the Option shall be subject to compliance with all applicable requirements of federal, state or foreign law with respect to such securities. The Option may not be exercised if the issuance of shares of Stock upon exercise would constitute a violation of any applicable federal, state or foreign securities laws or other law or regulations or the requirements of any stock exchange or market system upon which the Stock may then be listed. In addition, the Option may not be exercised unless (i) a registration statement under the Securities Act shall at the time of exercise of the Option be in effect with respect to the shares issuable upon exercise of the Option or (ii) in the opinion of legal counsel to the Company, the shares issuable upon exercise of the Option may be issued in accordance with the terms of an applicable exemption from the registration requirements of the Securities Act. THE PARTICIPANT IS CAUTIONED THAT THE OPTION MAY NOT BE EXERCISED UNLESS THE FOREGOING CONDITIONS ARE SATISFIED. ACCORDINGLY, THE PARTICIPANT MAY NOT BE ABLE TO EXERCISE THE OPTION WHEN DESIRED EVEN THOUGH THE OPTION IS VESTED. The inability of the Company to obtain from any regulatory body having jurisdiction the authority, if any, deemed by the Company's legal counsel to be necessary to the lawful issuance and sale of any shares subject to the Option shall relieve the Company of any liability in respect of the failure to issue or sell such shares as to which such requisite authority shall not have been obtained. As a condition to the exercise of the Option, the Company may require the Participant to satisfy any qualifications that may be necessary or appropriate, to evidence compliance with any applicable law or regulation and to make any representation or warranty with respect thereto as may be requested by the Company.

4.7 **Fractional Shares.** The Company shall not be required to issue fractional shares upon the exercise of the Option.

5. **NONTRANSFERABILITY OF THE OPTION.**

During the lifetime of the Participant, the Option shall be exercisable only by the Participant or the Participant's guardian or legal representative. The Option shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. Following the death of the Participant, the Option, to the extent provided in Section 7, may be exercised by the Participant's legal representative or by any person empowered to do so under the deceased Participant's will or under the then applicable laws of descent and distribution.

6. **TERMINATION OF THE OPTION.**

The Option shall terminate and may no longer be exercised after the first to occur of (a) the close of business on the Option Expiration Date, (b) the close of business on the last date for exercising the Option following termination of the Participant's Service as described in Section 7, or (c) a Change of Control to the extent provided in Section 8.

7. **EFFECT OF TERMINATION OF SERVICE.**

7.1 **Option Exercisability.** The Option shall terminate immediately upon the Participant's termination of Service to the extent that it is then unvested and shall be exercisable after the Participant's termination of Service to the extent it is then vested only during the applicable time period as determined below and thereafter shall terminate.

(a) ***Disability*.** If the Participant's Service terminates because of the Disability of the Participant, the Option, to the extent unexercised and exercisable for Vested Shares on the date on which the Participant's Service terminated, may be exercised by the Participant (or the Participant's guardian or legal representative) at any time prior to the expiration of twelve (12) months after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date.

(b) ***Death.*** If the Participant's Service terminates because of the death of the Participant, the Option, to the extent unexercised and exercisable for Vested Shares on the date on which the Participant's Service terminated, may be exercised by the Participant's legal representative or other person who acquired the right to exercise the Option by reason of the Participant's death at any time prior to the expiration of twelve (12) months after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date. The Participant's Service shall be deemed to have terminated on account of death if the Participant dies within three (3) months after the Participant's termination of Service.

(c) ***Termination for Cause.*** Notwithstanding any other provision of the Option Agreement to the contrary, if the Participant's Service is terminated for Cause or if, following the Participant's termination of Service and during any period in which the Option otherwise would remain exercisable, the Participant engages in any act that would constitute Cause for termination of Service, the Option shall terminate in its entirety and cease to be exercisable immediately upon such termination of Service or act.

(d) ***Other Termination of Service.*** If the Participant's Service terminates for any reason, except Disability, death or Cause, the Option, to the extent unexercised and exercisable for Vested Shares by the Participant on the date on which the Participant's Service terminated, may be exercised by the Participant at any time prior to the expiration of three (3) months after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date.

7.2 **Extension if Exercise Prevented by Law.** Notwithstanding the foregoing other than termination of the Participant's Service for Cause, if the exercise of the Option within the applicable time periods set forth in Section 7.1 is prevented by the provisions of Section 4.6, the Option shall remain exercisable until the later of (a) thirty (30) days the date such exercise first would no longer be prevented by such provisions, or (b) the end of the applicable time period under Section 7.1, but in any event no later than the Option Expiration Date.

8. **EFFECT OF CHANGE OF CONTROL.**

In the event of a Change of Control, the surviving, continuing, successor, or purchasing entity or parent thereof, as the case may be (the "***Acquiror***"), may, without the consent of the Participant, (a) assume or continue in full force and effect the Company's rights and obligations under the Option, (b) substitute for the Option a substantially equivalent option for the Acquiror's stock or (c) provide for cancellation of the Option in exchange for a payment with respect to each share of Stock subject to such canceled Option in cash, stock of the Acquiror or other property which, in any such case, shall be in an amount having a Fair Market Value equal to the excess of the Fair Market Value of the consideration to be paid per share of Stock in the Change of Control over the exercise price per share under such Option (a "***Cash-Out***"), with payment with respect to the unvested portion of the canceled Option being made in accordance with the vesting schedule set forth in the Grant Notice. The Option shall terminate and cease to be outstanding effective as of the date of the Change of Control to the extent that the Option is neither assumed or continued by the Acquiror in connection with the Change of Control nor exercised as of the date of the Change of Control.

9. **ADJUSTMENTS FOR CHANGES IN CAPITAL STRUCTURE.**

Subject to any required action by the stockholders of the Company, in the event of any change in the Stock effected without receipt of consideration by the Company, whether through merger, consolidation, reorganization, reincorporation, recapitalization, reclassification, stock dividend, stock split, reverse stock split, split-up, split-off, spin-off, combination of shares, exchange of shares, or similar change in the capital structure of the Company, or in the event of payment of a dividend or distribution to the stockholders of the Company in a form other than Stock (excepting normal cash dividends) that has a material effect on the Fair Market Value of shares of Stock, appropriate adjustments shall be made in the number, Exercise Price and kind of shares subject to the Option, in order to prevent dilution or enlargement of the Participant's rights under the Option. For purposes of the foregoing, conversion of any convertible securities of the Company shall not be treated as "effected without receipt of consideration by the Company." Any fractional share resulting from an adjustment pursuant to this Section shall be rounded down to the nearest whole number, and in no event may the Exercise Price be decreased to an amount less than the par value, if any, of the stock subject to the Option. The Committee in its sole discretion, may also make such adjustments in the terms of the Option to reflect, or related to, such changes in the capital structure of the Company or distributions as it deems appropriate. The adjustments determined by the Committee pursuant to this Section shall be final, binding and conclusive.

10. **RIGHTS AS A STOCKHOLDER, DIRECTOR OR EMPLOYEE.**

The Participant shall have no rights as a stockholder with respect to any shares covered by the Option until the date of the issuance of the shares for which the Option has been exercised (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date the shares are issued, except as provided in Section 9. If the Participant is an Employee, the Participant understands and acknowledges that, except as otherwise provided in a separate, written employment agreement between a Participating Company and the Participant, the Participant's employment is "at will" and is for no specified term. Nothing in this Option Agreement shall confer upon the Participant any right to continue in the Service of a Participating Company or interfere in any way with any right of any Participating Company to terminate the Participant's Service as a Director or an Employee, as the case may be, at any time.

11. **LEGENDS**.

The Company may at any time place legends referencing any applicable federal, state or foreign securities law restrictions on all certificates representing shares of stock subject to the provisions of this Option Agreement. The Participant shall, at the request of the Company, promptly present to the Company any and all certificates representing shares acquired pursuant to the Option in the possession of the Participant in order to carry out the provisions of this Section.

12. **MISCELLANEOUS PROVISIONS.**

12.1 **Termination or Amendment.** The Committee may terminate the Plan or amend the Applicable Plan Provisions or the Option at any time; provided, however, that except as provided in Section 8 in connection with a Change of Control, no such termination or amendment may adversely affect the Option or any unexercised portion hereof without the consent of the Participant unless such termination or amendment is necessary to comply with any applicable law or government regulation. No amendment or addition to this Option Agreement shall be effective unless in writing.

12.2 **Further Instruments.** The parties hereto agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Option Agreement.

12.3 **Binding Effect.** Subject to the restrictions on transfer set forth herein, this Option Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

12.4 **Delivery of Documents and Notices.** Any document relating to receipt of the Option or any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given (except to the extent that this Option Agreement provides for effectiveness only upon actual receipt of such notice) upon personal delivery, electronic delivery at the e-mail address, if any, provided for the Participant by a Participating Company, or upon deposit in the U.S. Post Office or foreign postal service, by registered or certified mail, or with a nationally recognized overnight courier service, with postage and fees prepaid, addressed to the other party at the address shown below that party's signature to the Grant Notice or at such other address as such party may designate in writing from time to time to the other party.

(a) **Description of Electronic Delivery.** The Option documents, which may include but do not necessarily include: the Grant Notice, this Option Agreement, the Applicable Plan Provisions, the Option Prospectus, and any reports of the Company provided generally to the Company's stockholders, may be delivered to the Participant electronically. In addition, the Participant may deliver electronically the Grant Notice and Exercise Notice called for by Section 4.2 to the Company or to such third party involved in administering the Option as the Company may designate from time to time. Such means of electronic delivery may include but do not necessarily include the delivery of a link to a Company intranet or the internet site of a third party involved in administering the Option, the delivery of the document via e-mail or such other means of electronic delivery specified by the Company.

(b) **Consent to Electronic Delivery.** The Participant acknowledges that the Participant has read Section 12.4(a) of this Option Agreement and consents to the electronic delivery of the Option documents and the delivery of the Grant Notice and Exercise Notice, as described in Section 12.4(a). The Participant acknowledges that he or she may receive from the Company a paper copy of any documents delivered electronically at no cost to the Participant by contacting the Company by telephone or in writing. The Participant further acknowledges that the Participant will be provided with a paper copy of any documents if the attempted electronic delivery of such documents fails. Similarly, the Participant understands that the Participant must provide the Company or any designated third party administrator with a paper copy of any documents if the attempted electronic delivery of such documents fails. The Participant may revoke his or her consent to the electronic delivery of documents described in Section 12.4(a) or may change the electronic mail address to which such documents are to be delivered (if Participant has provided an electronic mail address) at any time by notifying the Company of such revoked consent or revised e-mail address by telephone, postal service or electronic mail. Finally, the Participant understands that he or she is not required to consent to electronic delivery of documents described in Section 12.4(a).

12.5 **Integrated Agreement.** The Grant Notice, this Option Agreement and the Applicable Plan Provisions, together with any employment, service or other agreement between the Participant and a Participating Company referring to the Option, shall constitute the entire understanding and agreement of the Participant and all Participating Companies with respect to the subject matter contained herein and supersede any prior agreements, understandings, restrictions, representations, or warranties among the Participant and all the Participating Companies with respect to such subject matter. To the extent contemplated herein, the provisions of the Grant Notice, the Option Agreement and the Applicable Plan Provisions shall survive any exercise of the Option and shall remain in full force and effect.

12.6 **Applicable Law.** This Option Agreement shall be governed by the laws of the State of Arizona as such laws are applied to agreements between Arizona residents entered into and to be performed entirely within the State of Arizona.

12.7 **Counterparts.** The Grant Notice may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.