

Edgar Filing: HUGHES Telematics, Inc. - Form 424B3

HUGHES Telematics, Inc.  
Form 424B3  
February 08, 2011

**Filed Pursuant to Rule 424(b)(3)**

**File No. 333-164930**

SUPPLEMENT NO. 7 TO PROSPECTUS DATED APRIL 16, 2010

THE DATE OF THIS SUPPLEMENT IS FEBRUARY 8, 2011

On February 8, 2011, HUGHES Telematics, Inc. filed the attached Current Report on Form 8-K with the Securities and Exchange Commission.

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the

Securities Exchange Act of 1934

Date of report (Date of earliest event reported): February 8, 2011 (February 7, 2011)

**HUGHES Telematics, Inc.**

(Exact Name of Registrant as Specified in Charter)

**Delaware**  
(State or Other Jurisdiction

of Incorporation)

**001-33860**  
(Commission

File Number)

**26-0443717**  
(IRS Employer

Identification Number)

Edgar Filing: HUGHES Telematics, Inc. - Form 424B3

2002 Summit Boulevard, Suite 1800

Atlanta, Georgia  
(Address of Principal Executive Offices)

30319  
(Zip Code)

Registrant's telephone number, including area code: (404) 573-5800

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 1.01 Entry into a Material Definitive Agreement**

On February 7, 2011, HUGHES Telematics, Inc. (the Company) completed a private placement of 1,428,572 shares of its common stock, par value \$0.0001, to a group of accredited investors who are not affiliated with the Company (the Purchasers) at a per share price of \$3.50, pursuant to the terms of a Stock Purchase Agreement, dated February 7, 2011, by and among the Company and each of the Purchasers (the Stock Purchase Agreement). The aggregate purchase price for the common stock sold in the private placement was approximately \$5.0 million. The Company intends to use the net proceeds from the private placement for general corporate purposes. In connection with the private placement, the Company entered into an amendment to its Amended and Restated Credit Agreement dated as of March 31, 2008 with Morgan Stanley Senior Funding, Inc. as administrative agent, Morgan Stanley & Co. Incorporated, as collateral agent, and the lenders from time to time party thereto (the First Lien Credit Agreement) providing for the waiver of the requirement to use 25% of the net cash proceeds from the private placement for the repayment of senior secured term indebtedness.

The sale of the common stock in the private placement was not registered under the Securities Act of 1933 (the Securities Act), and the shares may not be sold in the United States absent a registration statement or an applicable exemption from registration requirements. The shares were offered and sold pursuant to the exemption from registration afforded by Rule 506 under the Securities Act and/or Section 4(2) of the Securities Act.

Concurrent with the private placement, the Company entered into an incremental loan commitment agreement with the Purchasers pursuant to which the Purchasers made loans in the aggregate principal amount of approximately \$5.0 million under the terms of the credit agreement with PLASE HT, LLC, as administrative agent, collateral agent and original lender (the Second Lien Credit Agreement). The loans under the Second Lien Credit Agreement bear interest at 9.0% per annum, payable-in-kind, and are guaranteed by all of the Company's existing and future domestic subsidiaries. The loans are secured by a second priority lien on substantially all of the Company's tangible and intangible assets, including the equity interests of the Company's subsidiaries. The liens granted in connection with the Second Lien Credit Agreement are expressly subject and subordinated to the liens securing the Company's obligations under the First Lien Credit Agreement. The Second Lien Credit Agreement was previously filed as Exhibit 99.2 to the Company's Current Report on Form 8-K filed on December 22, 2009. In addition, the Company entered into an amendment to the Second Lien Credit Agreement (the Amendment) pursuant to which, among other things, the Second Lien Credit Agreement was amended to provide that, in the event of certain defaults under the Second Lien Credit Agreement, notice from either the majority of all lenders or a majority of the incremental loan lenders is required for the Administrative Agent to enforce the lenders' claims against the Company.

In connection with the issuance of the loans under the Second Lien Credit Agreement, the Company issued warrants (the Warrants) to purchase an aggregate of 1,000,000 shares of the Company's common stock at an exercise price of \$5.99 per share, subject to certain customary anti-dilution provisions.

In connection with the private placement and the issuance of the Warrants, the Company entered into a Registration Rights Agreement, dated February 7, 2011 (the Registration Rights Agreement) with the Purchasers requiring that, among other things, the Company register the resale of the shares of common stock sold in the private placement and the shares of common stock issuable upon exercise of the Warrants. If the Company does not meet certain deadlines with respect to making a registration statement covering such resale effective, then cash penalties of 1% of the purchase price per month of up to twelve months may apply.

The foregoing is a summary of the terms of the Stock Purchase Agreement, the Amendment, the Warrants and the Registration Rights Agreement and does not purport to be complete and is qualified in its entirety by reference to the full text of the Stock Purchase Agreement, the Amendment, the form of the Warrants and the Registration Rights Agreement, copies of which are attached hereto and are incorporated by reference herein.

**Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The disclosure regarding the Company's issuance of loans under the Second Lien Credit Agreement under Item 1.01 of this current report is also responsive to this item 2.03 and is incorporated herein by reference.

**Item 3.02 Unregistered Sales of Equity Securities**

The disclosure regarding the Company's issuance and sale of shares of common stock and the issuance of the Warrants under Item 1.01 of this current report is also responsive to this item 3.02 and is incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits**

(d) Exhibits

<b>Exhibit Number</b>	<b>Description</b>
99.1	Stock Purchase Agreement, dated February 7, 2011, by and among HUGHES Telematics, Inc. and the purchasers set forth therein.
99.2	Third Amendment to the Credit Agreement, by and among HUGHES Telematics, Inc., the lenders set forth therein and PLASE HT, LLC as administrative agent and collateral agent.
99.3	Form of Warrants.
99.4	Registration Rights Agreement, dated February 7, 2011, by and among HUGHES Telematics, Inc. and the Investors set forth therein.

**SIGNATURE**

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

HUGHES TELEMATICS, INC.

Dated: February 8, 2011

By: /s/ CRAIG KAUFMANN

Name: Craig Kaufmann

Title: Senior Vice President Finance and Treasurer

HUGHES TELEMATICS, INC.

STOCK PURCHASE AGREEMENT

Dated as of February 7, 2011

**TABLE OF CONTENTS**

	<b>Page</b>
1. Definitions	1
2. Authorization of Common Shares	10
3. Sale and Purchase of the Common Shares	10
4. Closing	10
5. Representations and Warranties of the Purchaser	10
5.1 Authority	10
5.2 Binding Obligation	11
5.3 Investment Representations and Warranties	11
5.4 Acquisition for Own Account	11
5.5 Ability to Protect Its Own Interests and Bear Economic Risks	11
5.6 Accredited Investor	11
5.7 No General Solicitation	11
5.8 Access to Information	12
5.9 No Brokers	12
5.10 Purchasers Representative	12
5. A Representations and Warranties of the Purchasers Representative	12
6. Representations and Warranties of the Company	12
6.1 Company Status	12
6.2 Power and Authority	13
6.3 No Violation	13
6.4 Approvals	13
6.5 Financial Statements; Financial Condition	13
6.6 No Material Adverse Effect	14
6.7 Litigation	14
6.8 True and Complete Disclosure	14
6.9 Use of Proceeds; Margin Regulations	14
6.10 Tax Returns and Payments	15
6.11 Compliance with ERISA	15
6.12 Properties	16
6.13 Capitalization	16
6.14 Subsidiaries	17
6.15 Compliance with Statutes, etc.	17
6.16 Investment Company Act	18
6.17 Environmental Matters	18
6.18 Employment and Labor Relations	18
6.19 Intellectual Property, etc	19

6.20	Indebtedness	20
6.21	Insurance	20
6.22	Material Contracts	20
6.23	SEC Reports	21
6.24	Off Balance Sheet Arrangements	21
6.25	Transactions With Affiliates and Employees	21
6.26	Internal Accounting Controls	21
6.27	Sarbanes-Oxley; Disclosure Controls	21
6.28	Certain Fees	21
6.29	Private Placement	22
6.30	No Integrated Offering	22
6.31	No General Solicitation or General Advertising	22
6.32	Acknowledgment Regarding Purchasers' Purchase of Securities	22
6.33	Foreign Corrupt Practices Act	22
6.34	Acknowledgement Regarding Purchasers' Trading Activity	22
7.	Deliveries; Closing Conditions; Deliverables	23
7.1	Obligations on the Closing Date	23
7.2	Condition to Purchaser's and the Company's Obligations	23
7.3	Conduct Pending Closing	24
7.4	Notice of Certain Events	25
8.	Post-Closing Covenants of the Company	25
8.1	Use of Proceeds	25
8.2	Securities Laws Disclosure; Publicity	25
8.3	Form D and Blue Sky	25
8.4	No Integration	25
8.5	Pledge of Securities	26
9.	Restrictive Legends	26
10.	Indemnification	27
10.1	Indemnification by the Company	27
10.2	Notice and Defense of Claims	27
10.3	Payments	29
10.4	No Exclusive Remedy	29
11.	Miscellaneous	29
11.1	Miscellaneous; Waivers and Amendments	29
11.2	Notices	29
11.3	No Implied Waivers	30
11.4	Successors and Assigns	30
11.5	Headings	30
11.6	Governing Law	30
11.7	Fees and Expenses	30
11.8	Specific Performance	31
11.9	Exclusive Jurisdiction	31

11.10	Waiver of Jury Trial	31
11.11	Counterparts; Effectiveness	31
11.12	Entire Agreement	31
11.13	Severability	31
11.14	Independent Nature of Purchasers	32
11.15	Taxes and Filings	32
11.16	Survival	32
11.17	Remedies Cumulative, etc	33
11.18	No Third Party Beneficiaries	33
11.19	Confidentiality	33
11.20	Termination	33
SCHEDULE 1	Schedule of Purchasers	
EXHIBIT A	Registration Rights Agreement	
EXHIBIT B	Form of Legal Opinion of Skadden, Arps, Slate, Meagher & Flom LLP	

---

STOCK PURCHASE AGREEMENT

This STOCK PURCHASE AGREEMENT, dated as of February 7, 2011, by and among HUGHES TELEMATICS, INC., a Delaware corporation (the Company ), and the entities and individuals designated on Schedule 1 hereto (each of which is herein referred to as a Purchaser, and together, the Purchasers ).

WITNESSETH

WHEREAS, the Company desires to issue and to sell to each Purchaser and each Purchaser desires to purchase from the Company, the number of Common Shares (as defined below) set forth opposite such Purchaser's name on Schedule 1 hereto, all in accordance with the terms and provisions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties and covenants herein contained, the parties hereto hereby agree as follows:

1. Definitions. Except as otherwise expressly provided, all accounting terms used in this Agreement, whether or not defined in this Section 1, shall be construed in accordance with GAAP.

Action means any action, suit, proceeding, governmental inquiry or investigation of any kind involving the Company.

Actual Damages has the meaning assigned to it in Section 10.1 hereof.

Affiliate means, with respect to any specified Person, (a) any other Person which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified Person, (b) any Person who is an executive officer, director, general partner, manager, or trustee of, or serves in a similar capacity with respect to, the specified Person or of which the specified Person is an executive officer, general partner, manager or trustee, or with respect to which the specified Person serves in a similar capacity and (c) any Person who shares a common investment adviser. The term control (including the terms controlling, controlled by and under common control with ) as used with respect to any Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

Agreement means this Stock Purchase Agreement, as the same may be amended in accordance with the terms hereof.

Approvals means actions, approvals, consents, waivers, exemptions, Orders, authorizations, registrations, declarations, filings and recordings.

Business shall mean any corporation, limited liability company, partnership or other business entity (or the adjectival form thereof, where appropriate) or the equivalent of the foregoing in any foreign jurisdiction.

Business Day means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

CERCLA shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as the same has been amended and may hereafter be amended from time to time, 42 U.S.C. § 9601 et seq.

Certificate of Incorporation means the Amended and Restated Certificate of Incorporation of the Company, as amended and in effect on the date hereof.

Closing has the meaning assigned to it in Section 4 hereof.

Closing Date has the meaning assigned to it in Section 4 hereof.

Code shall mean the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder. Section references to the Code are to the Code, as in effect at the date of this Agreement and any subsequent provisions of the Code, amendatory thereof, supplemental thereto or substituted therefor.

Common Shares has the meaning assigned to it in Section 2 hereof.

Common Stock has the meaning assigned to it in Section 2 hereof.

Company has the meaning assigned to it in the introductory paragraph.

Company Board means the board of directors of the Company.

Company Disclosure Statement means the Company Disclosure Statement dated as of the date hereof and delivered by the Company. Any matter disclosed on any section of the Company Disclosure Statement shall be deemed to be disclosed with respect to any other section of the Company Disclosure Statement and with respect to any representation, warranty or covenant in this Agreement or the other Transaction Documents, to which the applicability of such matter is reasonably apparent based on the information contained in the Company Disclosure Statement.

Contingent Obligation shall mean, as to any Person, any obligation of such Person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations ( primary obligations ) of any other Person (the primary obligor ) in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (d) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

Credit Facility means the Amended and Restated Credit Agreement, dated as of April 9, 2008, by and among the Company, Morgan Stanley Senior Funding, Inc., as administrative agent, Morgan Stanley & Co. Incorporated, as collateral agent, and the lenders named therein and party thereto from time to time, as amended, and references herein to the Credit Facility shall be deemed to include the ancillary agreements and documentation entered into in connection therewith.

Environmental Claims shall mean any and all administrative, regulatory or judicial actions, suits, demands, demand letters, directives, claims, liens, notices of noncompliance or violation, investigations or proceedings relating in any way to any Environmental Law or any permit issued, or any approval given, under any such Environmental Law (hereafter, Claims ), including, without limitation, (a) any and all Claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief in connection with alleged injury or threat of injury to health, safety or the environment due to the presence of Hazardous Materials.

Environmental Law shall mean any Federal, state, foreign or local statute, law, rule, regulation, ordinance, code, guideline, policy and rule of common law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the environment, employee health and safety or Hazardous Materials, including, without limitation, CERCLA; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 3803 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; the Emergency Planning and the Community Right-to-Know Act of 1986,

42 U.S.C. § 11001 et seq.; the Hazardous Material Transportation Act, 49 U.S.C. § 1801 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; and any state and local or foreign counterparts or equivalents, in each case as amended from time to time.

Equity Interests of any Person shall mean any and all shares, interests, rights to purchase, warrants, options, participation or other equivalents of or interest in (however designated) equity of such Person, including any common stock, preferred stock, any limited or general partnership interest and any limited liability company membership interest, but excluding any debt security convertible or exchangeable into any such interest prior to conversion or exchange.

ERISA shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder. Section references to ERISA are to ERISA, as in effect at the date of this Agreement and any subsequent provisions of ERISA, amendatory thereof, supplemental thereto or substituted therefor.

ERISA Affiliate shall mean each person (as defined in Section 3(9) of ERISA) which together with the Company and/or any of its Subsidiaries would be deemed to be a single employer (a) within the meaning of Section 414(b), (c), (m) or (o) of the Code or (b) as a result of the Company and/or any Subsidiary of the Company being or having been a general partner of such person.

Exchange Act means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

Foreign Pension Plan shall mean any plan, fund (including, without limitation, any superannuation fund) or other similar program established or maintained outside the United States by the Company or any one or more of its Subsidiaries primarily for the benefit of employees of the Company or such Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

Fair Market Value shall mean, with respect to any asset (including any Equity Interests of any Person), the price at which a willing buyer, not an Affiliate of the seller, and a willing seller who does not have to sell, would agree to purchase and sell such asset, as determined in good faith by the board of directors or other governing body or, pursuant to a specific delegation of authority by such board of directors or governing body, a designated senior executive officer, of the Company, or the Subsidiary of the Company selling such asset.

Foreign Subsidiary shall mean, as to any Person, any Subsidiary of such Person that is not a Domestic Subsidiary of such Person.

GAAP means United States generally accepted accounting principles consistently applied.

Governmental Authority shall mean the government of the United States, any other nation or any political subdivision thereof, whether state, provincial or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

Hazardous Materials shall mean (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, dielectric fluid containing levels of polychlorinated biphenyls, and radon gas; (b) any chemicals, materials or substances defined as or included in the definition of hazardous substances, hazardous waste, hazardous materials, extremely hazardous substances, restricted hazardous waste, toxic substances, toxic pollutants, contaminants, or pollutants, or words of similar import under any applicable Environmental Law; and (c) any other chemical, material or substance, the exposure to, or Release of which is prohibited, limited or regulated by any Governmental Authority.

Incremental Loan Commitment Agreement means the Incremental Loan Commitment Agreement, dated as of February 7, 2011, by and among the Company and the lenders therein.

Indebtedness for purposes of this Agreement shall mean Indebtedness for purposes of the Credit Facility.

Indemnified Party has the meaning assigned to it in Section 10.2(a) hereof.

Intellectual Property shall mean and include all of the following:

(i) copyrights, including any United States or foreign copyright now or hereafter owned by the Company or any of its Subsidiaries, including any registrations of any copyrights in the United States Copyright Office or any foreign equivalent office, as well as any application for a copyright registration now or hereafter made with the United States Copyright Office or any foreign equivalent office by the Company or any of its Subsidiaries;

(ii) domain names, including all internet domain names and associated URL addresses in or to which the Company or any of its Subsidiaries now or hereafter have any right, title or interest; trademarks and service marks and all goodwill connected with the use thereof and symbolized thereby, including all right, title and interest in and to any trademarks, service marks and trade names now held or hereafter acquired by the Company or any of its Subsidiaries, including any registration or application for registration of any trademarks and service marks now held or hereafter acquired by the Company or any of its Subsidiaries, which are registered or filed in the United States Patent and Trademark Office or the equivalent thereof in any state of the United States or any equivalent foreign office or agency, as well as any unregistered trademarks and service marks used by the Company or any of its Subsidiaries and any trade dress including logos, designs, fictitious business names and other business identifiers used by the Company or any of its Subsidiaries;

(iii) patents, including any patent in or to which the Company or any of its Subsidiaries now or hereafter have any right, title or interest therein, and any divisions, continuations (including, but not limited to, continuations-in-parts) and improvements thereof, as well as any application for a patent now or hereafter made by the Company or any of its Subsidiaries; and

(iv) trade secrets, including any secretly held proprietary existing engineering or other data, information, production procedures and other secretly held proprietary know-how relating to the design manufacture, assembly, installation, use, operation, marketing, sale and/or servicing of any products or business of the Company or any of its Subsidiaries worldwide whether written or not.

Knowledge or knowledge means, (a) with respect to any Person other than the Company, the actual knowledge of such Person (including the actual knowledge of the officers and directors of such Person (or Persons having similar authority) if such Person is an entity), and (b) with respect to the Company, means the actual knowledge of any of its executive officers and shall include knowledge of such facts or other matters as a prudent person, in the position of such named individuals or any one of them, could be expected to discover or otherwise become aware of in the course of conducting a reasonable investigation concerning the existence of such fact or matter.

Leaseholds of any Person shall mean all the right, title and interest of such Person as lessee or licensee in, to and under leases or licenses of land, improvements and/or fixtures.

Law and Laws means all laws, principles of common law, statutes, constitutions, treaties, rules, regulations, ordinances, codes, rulings, orders, licenses and determinations of all Governmental Authorities.

Lien shall mean any mortgage, pledge, hypothecation, assignment for security, deposit arrangement, encumbrance, lien (statutory or other), preference, priority or other security agreement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing or similar statement or notice filed under the UCC or any other similar recording or notice statute, and any lease having substantially the same effect as any of the foregoing).

Margin Stock shall have the meaning provided in Regulation U of the Board of Governors of the Federal Reserve System (as from time to time in effect and any successor to all or a portion thereof).

Material Adverse Effect shall mean (a) a material adverse effect on the business, operations, property, assets, liabilities, condition (financial or otherwise) or prospects of the Company and its Subsidiaries, taken as a whole, or (b) a material adverse effect on the ability of the Company to perform its obligations to the Purchasers under the Transaction Documents, provided, that, it is agreed and understood that the net economic effect of any event or circumstance shall be taken into account in determining whether or not a Material Adverse Effect has occurred.

Material Contracts shall mean any and all oral or written supply agreements, requirements contracts, customer agreements, franchise agreements, license agreements, distribution agreements, joint venture agreements, asset purchase agreements, stock purchase agreements, merger agreements, agency or advertising agreements, leases of real or personal property, credit agreements, loan agreements, security agreements, pledge agreements, mortgages, trust deeds, trust indentures, stock purchaser agreements, consulting agreements, management agreements, employment agreements, severance agreements, collective bargaining agreements, employee benefit plans or arrangements, tax sharing agreements, indemnification agreements (including, without limitation, as may be entered into with suppliers) or other contracts, agreements, arrangements, understandings and commitments which if terminated is reasonably likely to cause a Material Adverse Effect. Without limiting the foregoing, any contract of the Company that was filed, or is required to be filed, as an exhibit to the Company's SEC Reports pursuant to Item 601 of Regulation S-K shall be deemed a Material Contract for purposes of this Agreement.

Multiemployer Plan shall mean any multiemployer plan as defined in Section 4001(a)(3) of ERISA, which is contributed to by (or to which there is an obligation to contribute of) the Company, any of its Subsidiaries and/or an ERISA Affiliate, and each such plan for the five-year period immediately following the latest date on which the Company, any of its Subsidiaries and/or an ERISA Affiliate contributed to or had an obligation to contribute to such plan.

Order means any order, writ, injunction, decree, judgment, award, determination, stipulation, award, direction or demand by a Governmental Authority.

Organizational Documents means, with respect to any Person, its certificate or articles of incorporation, its by-laws, its memorandum and articles of association, its limited liability company agreement or operating agreement, its certificate of formation, its partnership or limited partnership agreement, its trust indenture or agreement or other documentation governing the organization or formation of such Person, but not any shareholder, registration rights, subscription or other contract to which such Person may become a party after its formation or organization.

PBGC shall mean the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

Permitted Liens means Liens permitted to be incurred under the Credit Facility.

Person means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, incorporated organization, association, corporation, institution, public benefit corporation, Governmental Authority or other entity.

Plan shall mean any pension plan as defined in Section 3(2) of ERISA, other than a Multiemployer Plan, which is maintained or contributed to by (or to which there is an obligation to contribute of) the Company, any of its Subsidiaries or an ERISA Affiliate, and each such plan for the five-year period immediately following the latest date on

which the Company, any of its Subsidiaries or an ERISA Affiliate maintained, contributed to or had an obligation to contribute to such plan.

Purchase Consideration has the meaning assigned to it in Section 3 hereof.

Purchaser has the meaning assigned to it in the introductory paragraph of this Agreement.

Purchaser Group has the meaning assigned to it in Section 10.1 hereof.

Purchasers Representative shall mean Zesiger Capital Group, LLC or such other representative or representatives as may be designated by one or more of the Purchasers from time to time.

Real Property of any Person shall mean all the right, title and interest of such Person in and to land, improvements and fixtures, including Leaseholds.

Registration Rights Agreement means the Registration Rights Agreement, dated as of the date hereof, by and among the Company and the Purchasers, as attached hereto as Exhibit A.

Regulation U shall mean Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

Release shall mean actively or passively disposing, discharging, injecting, spilling, pumping, leaking, leaching, dumping, emitting, escaping, emptying, pouring, seeping, migrating or the like, into or upon any land or water or air, or otherwise entering into the environment.

Reportable Event shall mean an event described in Section 4043(c) of ERISA with respect to a Plan that is subject to Title IV of ERISA other than those events as to which the 30-day notice period is waived under subsection .22, .23, .25, .27 or .28 of PBGC Regulation Section 4043.

Representative means, with respect to any Person that is an entity, such officer, director, manager, general partner, agent or employee of such Person.

Returns shall have the meaning provided in Section 6.10 hereof.

Rule 144 means Rule 144 promulgated by the SEC pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC having substantially the same effect as such Rule.

SEC shall mean the United States Securities and Exchange Commission.

SEC Reports shall have the meaning provided in Section 6.23 hereof.

Securities shall mean the Common Shares, the Warrants and the Warrant Shares.

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

Subsidiary shall mean, as to any Person, (a) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person and/or one or more Subsidiaries of such Person or (b) any partnership, limited liability company, association, joint venture or other entity in which such Person and/or one or more Subsidiaries of such Person has more than a 50% Equity Interest at the time. Unless otherwise qualified, all references to a Subsidiary or to Subsidiaries in this Agreement shall refer to a Subsidiary or Subsidiaries of the Company.