
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
Under Section 13 or 15(d) of
the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): November 8, 2005

ResMed Inc

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction of
Incorporation)

001-15317
(Commission
File Number)

98-0152841
(I.R.S. Employer
Identification No.)

14040 Danielson Street
Poway, California 92064-6857
(Address of Principal Executive Offices)

(858) 746-2400
(Registrant's telephone number, including area code)

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))
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Item 1.01 Entry into a Material Definitive Agreement.

On November 8, 2005, our wholly-owned subsidiaries ResMed Corp and ResMed EAP Holdings Inc. entered into a First Amended and Restated Loan Agreement with Union Bank of California, N.A. (the "Loan Agreement"), that provides for two revolving loans, one of up to \$15 million and one of up to \$25 million, for a total commitment of \$40 million. Draws under both revolving loans must be made before October 1, 2008, at which time all unpaid principal and interest under both loans must be repaid. The outstanding principal amount due under either loan will bear interest at a rate equal to LIBOR plus either 1% or 0.9%, depending on certain financial ratios for ResMed Corp and ResMed EAP Holdings Inc. The current principal amount outstanding under the Loan Agreement is \$10 million.

The obligations of ResMed Corp and ResMed EAP Holdings Inc. under the Loan Agreement are guaranteed by ResMed Inc under a Continuing Guaranty and secured by a pledge of substantially all of the personal property of ResMed EAP Holdings Inc. and substantially all of the assets of ResMed Corp. The Loan Agreement also contains customary covenants, including certain financial covenants and an obligation that ResMed Inc maintain certain financial ratios, including a maximum ratio of total debt to EBITDA (as defined in the Loan Agreement), a minimum tangible net worth and a minimum EBITDA. The entire principal amount of the Loan and any accrued but unpaid interest may be declared immediately due and payable in the event of the occurrence of an event of default as defined in the Loan Agreement. Events of default include, among other items, failure to make payments when due, the occurrence of a material default in the performance of any covenants in the Loan Agreement or related document or a 20% or more change in control of ResMed Inc, ResMed Corp or ResMed EAP Holdings Inc.

Copies of the Loan Agreement and related documents are attached as exhibits to this report, and the foregoing summary is qualified by reference to the full documents.

Item 2.03 Creation of a Direct Financial Obligation.

On November 8, 2005, our wholly-owned subsidiaries ResMed Corp. and ResMed EAP Holdings Inc. entered into the Loan Agreement described in Item 1.01 above, which descriptions are incorporated by reference into this Item 2.03. The obligations of ResMed Corp and ResMed EAP Holdings Inc are guaranteed by ResMed Inc described in Item 1.01 above.

Item 9.01. Exhibits.

Exhibits:	Description of Document
10.1	First Amended and Restated Loan Agreement, dated as of November 1, 2005, by and among ResMed Corp, ResMed EAP Holdings Inc. and Union Bank of California, N.A.
10.2	Security Agreement, dated as of November 1, 2005, by and between ResMed EAP Holdings Inc. and Union Bank of California, N.A.
10.3	Continuing Guaranty, dated as of November 1, 2005, by and between ResMed Inc and Union Bank of California, N.A.
10.4	Commercial Promissory Note, dated as of November 1, 2005, made by ResMed Corp and ResMed EAP Holdings Inc.
10.5	Commercial Promissory Note, dated as of November 1, 2005, made by ResMed Corp and ResMed EAP Holdings Inc.

We have authorized the person whose signature appears below to sign this report on our behalf, in accordance with the Securities Exchange Act of 1934.

Date: November 14, 2005

RESMED INC
(registrant)

By: _____ /s/ ADRIAN M. SMITH

Name: **Adrian M. Smith**

Its: **Senior Vice President Finance and Chief Financial Officer**

Exhibit Index

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FIRST AMENDED AND RESTATED LOAN AGREEMENT

THIS FIRST AMENDED AND RESTATED LOAN AGREEMENT ("Agreement") is made and entered into as of November 1, 2005 by and between RESMED CORP., a Minnesota corporation, and RESMED EAP HOLDINGS INC. a Delaware corporation, whose obligations hereunder shall be joint and several (each individually, a "Borrower", and collectively, the "Borrowers") and UNION BANK OF CALIFORNIA, N.A. ("Bank").

RECITALS

A. ResMed Corp., ResMed International, Inc. (collectively, the "Existing Borrowers") and Bank are parties to the Loan Agreement dated as of April 11, 2003, as amended (collectively, the "Existing Loan Agreement"), pursuant to which the Bank provided Existing Borrowers with various credit facilities.

B. As part of a reorganization of its business units, ResMed, Inc., as parent company of ResMed Corp., ResMed International, Inc. and Resmed EAP Holdings Inc., has requested that ResMed International, Inc. be removed as a loan party and that Resmed EAP Holdings Inc. be substituted in its place.

C. Borrowers and Bank wish to enter into this Agreement which shall amend, restate, replace and supercede (but shall not constitute a novation of) the Existing Loan Agreement and which hereinafter shall govern the credit facilities provided to Borrowers by Bank.

SECTION 1. THE LOAN

1.1.1 The Revolving Loan A. Bank will loan to Borrowers an amount not to exceed Fifteen Million Dollars (\$15,000,000) outstanding in the aggregate at any one time (the "Revolving Loan A"). Borrower may borrow, repay and reborrow all or part of the Revolving Loan A in amounts of not less than One Million Dollars (\$1,000,000) in accordance with the terms of the Revolving Note A. All borrowings of the Revolving Loan A must be made before October 1, 2008 at which time all unpaid principal and interest of the Revolving Loan shall be due and payable. The Revolving Loan A shall be evidenced by a promissory note (the "Revolving Note A") on the standard form used by Bank for commercial loans. Bank shall enter each amount borrowed and repaid in Bank's records and such entries shall be deemed to be the amount of the Revolving Loan A outstanding. Omission of Bank to make any such entries shall not discharge Borrowers of their obligation to repay in full with interest all amounts borrowed.

1.1.1.1 The Standby L/C Sublimit. As a sublimit to the Revolving Loan A, Bank shall issue, for the account of Borrowers, one or more irrevocable, standby letters of credit (individually, an "L/C" and collectively, the "L/Cs"). All such standby L/Cs shall be drawn on such terms and conditions as are acceptable to Bank. The aggregate amount available to be drawn under all outstanding L/Cs and the aggregate amount of unpaid reimbursement obligations under drawn L/Cs shall not exceed Two Million Dollars (\$2,000,000) and shall reduce, dollar for dollar, the maximum amount available under the Revolving Loan A. No standby L/C shall have an expiry

date more than twelve months from its date of issuance and each L/C shall be governed by the terms of (and Borrower agrees to execute) Bank's standard form for standby L/C applications and reimbursement agreements. No L/C shall expire after October 1, 2008.

1.1.2 The Revolving Loan B. Bank will loan to Borrowers an amount not to exceed Twenty Five Million Dollars (\$25,000,000) outstanding in the aggregate at any one time (the "Revolving Loan B"). Borrower may borrow, repay and reborrow all or part of the Revolving Loan B in amounts of not less than One Million Dollars (\$1,000,000) in accordance with the terms of the Revolving Note B. All borrowings of the Revolving Loan B must be made before October 1, 2008, at which time all unpaid principal and interest of the Revolving Loan shall be due and payable. The Revolving Loan B shall be evidenced by a promissory note (the "Revolving Note B") on the standard form used by Bank for commercial loans. Bank shall enter each amount borrowed and repaid in Bank's records and such entries shall be deemed to be the amount of the Revolving Loan B outstanding. Omission of Bank to make any such entries shall not discharge Borrowers of their obligation to repay in full with interest all amounts borrowed.

1.2 Terminology.

As used herein the word "Loan" shall mean, collectively, all the credit facilities described above.

As used herein the word "Note" shall mean, collectively, all the promissory notes described above.

As used herein, the words "Loan Documents" shall mean all documents executed in connection with this Agreement.

1.3 Purpose of Loan. The proceeds of the Revolving Loan A and Revolving Loan B shall be used for working capital and general corporate purposes.

1.4 Interest. The unpaid principal balance of Revolving Loan A and Revolving Loan B shall bear interest at the rate or rates provided in the Revolving Note A and the Revolving Note B and selected by Borrower. The Revolving Loan A and Revolving Loan B may be prepaid in full or in part only in accordance with the terms of the Revolving Note A and Revolving Note B and any such prepayment shall be subject to the prepayment fee provided for therein.

1.5 Unused Commitment Fee. On the last calendar day of the third month following the execution of this Agreement and on the last calendar day of each three-month period thereafter until June 2, 2008, or the earlier termination of the Loan, Borrowers shall pay to Bank a fee on the average unused portion of the Loan for the preceding quarter computed on the basis of actual days elapsed of a year of 360 days in accordance with the table below:

Average Unused Portion of the Loan	Per Annum Fee
Less than \$25,000,000	0 basis points
Greater than or equal to \$25,000,000 but less than \$32,500,000	12.5 basis points
Greater than or equal to \$32,500,000	25 basis points

1.6 Balances. Borrowers shall maintain their primary domestic depository accounts with Bank so long as the Loan remains available to Borrowers.

1.7 Disbursement. Upon execution hereof, Bank shall disburse the proceeds of the Loan as provided in Bank's standard form Authorization executed by Borrowers.

1.8 Security. Prior to any disbursement of the Loan, Borrowers shall have executed a security agreement, on Bank's standard form, and a financing statement, suitable for filing in the office of the Secretary of State of the State of California and any other state designated by Bank, granting to Bank a first priority security interest in such of Borrower's property as is described in said security agreement. Exceptions to Bank's first priority, if any, are permitted only as otherwise provided in this Agreement or specifically in writing by Bank. ResMed Corp. shall also have executed a deed of trust, in Bank's standard form, granting to Bank a first-priority lien in the real property described in said deed of trust. Borrower shall comply with all of Bank's requirements with respect to such real property collateral, including, but not limited to, appraisal, assessment of environmental risk, recording and obtaining of title insurance. At Bank's request, Borrowers will also obtain executed landlord's and mortgagee's waivers on Bank's form covering all of Borrowers' property located on leased or encumbered real property.

1.9 Controlling Document. In the event of any inconsistency between the terms of this Agreement and any Note or any of the other Loan Documents, the terms of such Note or other Loan Documents will prevail over the terms of this Agreement.

SECTION 2. CONDITIONS PRECEDENT

Bank shall not be obligated to disburse all or any portion of the proceeds of the Loan unless at or prior to the time for the making of such disbursement, the following conditions have been fulfilled to Bank's satisfaction:

2.1 Compliance. Borrower shall have performed and complied with all terms and conditions required by this Agreement to be performed or complied with by it prior to or at the date of the making of such disbursement and shall have executed and delivered to Bank the Note and other documents deemed necessary by Bank.

2.2 Guaranties. ResMed, Inc. ("Guarantor") shall have executed and delivered to Bank a continuing guaranty in form and amount satisfactory to Bank.

2.3 Borrowing Resolution. Borrowers shall have provided Bank with certified copies of resolutions duly adopted by the Board of Directors of each Borrower, authorizing this Agreement and the Loan Documents. Such resolutions shall also designate the persons who are authorized to act on Borrowers' behalf in connection with this Agreement and to do the things required of Borrowers pursuant to this Agreement.

2.4 Termination Statements. Borrower shall have provided Bank with UCC-2 termination statements executed by such secured creditors as may be required by Bank suitable for filing with the Secretary of State in each state designated by Bank.

2.5 Continuing Compliance. At the time any disbursement is to be made, there shall not exist any event, condition or act which constitutes an event of default under Section 6 hereof or any event, condition or act which with notice, lapse of time or both would constitute such event of default; nor shall there be any such event, condition, or act immediately after the disbursement were it to be made.

SECTION 3. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants that:

3.1 Business Activity. The principal business of Borrowers is the design, manufacture and distribution of breathing devices and other electrical instruments.

3.2 Affiliates and Subsidiaries. Borrowers' affiliates and subsidiaries (those entities in which Borrowers have either a controlling interest or at least a 25% ownership interest) and their addresses, and the names of Borrowers' principal shareholders, are as provided on a schedule delivered to Bank on or before the date of this Agreement.

3.3 Authority to Borrow. The execution, delivery and performance of this Agreement, the Note and all other agreements and instruments required by Bank in connection with the Loan are not in contravention of any of the terms of any indenture, agreement or undertaking to which Borrowers are a party or by which it or any of its property is bound or affected.

3.4 Financial Statements. The financial statements of Borrowers, as presented by Guarantor on a consolidated and consolidating basis inclusive of Borrowers, including both a balance sheet at June 30, 2005, together with supporting schedules, and an income statement for the twelve (12) months ended June 30, 2005, have heretofore been furnished to Bank, and are true and complete and fairly represent the financial condition of the Guarantor and Borrowers during the period covered thereby. Since June 30, 2005, there has been no material adverse change in the financial condition or operations of Borrower.

3.5 Title. Except for assets which may have been disposed of in the ordinary course of business, Borrowers have good and marketable title to all of the property reflected in its financial statements delivered to Bank and to all property acquired by Borrowers since the date of said financial statements, free and clear of all liens, encumbrances, security interests and adverse claims except those specifically referred to in said financial statements.

3.6 Litigation. There is no litigation or proceeding pending or threatened against Borrowers or any of its property which is reasonably likely to affect the financial condition, property or business of Borrower in a materially adverse manner or result in liability in excess of Borrowers' insurance coverage.

3.7 Default. Borrowers are not now in default in the payment of any of its material obligations, and there exists no event, condition or act which constitutes an event of default under Section 6 hereof and no condition, event or act which with notice or lapse of time, or both, would constitute an event of default.

3.8 Organization. Borrowers are duly organized and existing under the laws of the state of its organization, and have the power and authority to carry on the business in which it is engaged and/or proposes to engage.

3.9 Power. Borrowers have the power and authority to enter into this Agreement and to execute and deliver the Note and all of the other Loan Documents.

3.10 Authorization. This Agreement and all things required by this Agreement have been duly authorized by all requisite action of Borrowers.

3.11 Qualification. Borrowers are duly qualified and in good standing in any jurisdiction where such qualification is required.

3.12 Compliance With Laws. Borrowers are not in violation with respect to any applicable laws, rules, ordinances or regulations which materially affect the operations or financial condition of Borrowers.

3.13 ERISA. Any defined benefit pension plans as defined in the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), of Borrowers meet, as of the date hereof, the minimum funding standards of Section 302 of ERISA, and no Reportable Event or Prohibited Transaction as defined in ERISA has occurred with respect to any such plan.

3.14 Regulation U. No action has been taken or is currently planned by Borrowers, or any agent acting on its behalf, which would cause this Agreement or the Note to violate Regulation U or any other regulation of the Board of Governors of the Federal Reserve System or to violate the Securities and Exchange Act of 1934, in each case as in effect now or as the same may hereafter be in effect. Borrowers are not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock as one of its important activities and none of the proceeds of the Loan will be used directly or indirectly for such purpose.

3.15 Continuing Representations. These representations shall be considered to have been made again at and as of the date of each disbursement of the Loan and shall be true and correct as of such date or dates.

SECTION 4. AFFIRMATIVE COVENANTS

Until the Note and all sums payable pursuant to this Agreement or any other of the Loan Documents have been paid in full, unless Bank waives compliance in writing, Borrowers agree that:

4.1 Use of Proceeds. Borrowers will use the proceeds of the Loan only as provided in subsection 1.3 above.

4.2 Payment of Obligations. Borrowers will pay and discharge promptly all taxes, assessments and other governmental charges and claims levied or imposed upon it or its property, or any part thereof, provided, however, that Borrowers shall have the right in good faith to contest any such taxes, assessments, charges or claims and, pending the outcome of such contest, to delay or refuse payment thereof provided that adequately funded reserves are established by it to pay and discharge any such taxes, assessments, charges and claims.

4.3 Maintenance of Existence. Borrowers will maintain and preserve its existence and assets and all rights, franchises, licenses and other authority essential and necessary for the conduct of its business and will maintain and preserve its property, equipment and facilities in good order, condition and repair. Bank may, at reasonable times, visit and inspect any of the properties of Borrowers.

4.4 Records. Borrowers will keep and maintain full and accurate accounts and records of its operations according to generally accepted accounting principles and will permit Bank to have access thereto, to make examination and photocopies thereof, and to make audits during regular business hours. Costs for such audits shall be paid by Borrowers.

4.5 Information Furnished. Borrowers will furnish or cause Guarantor to furnish to Bank:

(a) Within forty-five (45) days after the close of each of the first, second and third fiscal quarters, and ninety (90) days after the close of the fourth fiscal quarter, Guarantor's unaudited consolidating and consolidated balance sheet as of the close of such fiscal quarter, its unaudited consolidating and consolidated income and expense statement with supportive schedules and statement of retained earnings for that fiscal quarter, prepared in accordance with generally accepted accounting principles;

(b) Within ninety (90) days after the close of each fiscal year, a copy of Guarantor's statement of financial condition including at least its consolidated balance sheet as of the close of such fiscal year, its consolidated income and expense statement and retained earnings statement for such fiscal year, examined and prepared on an audited basis by independent certified public accountants selected by Guarantor and reasonably satisfactory to Bank, in accordance with generally accepted accounting principles applied on a basis consistent with that of the previous year;

(c) As soon as available, copies of such financial statements and reports as Borrowers or Guarantor may file with any state or federal agency, including those filed with the Securities and Exchange Commission;

(d) Such other financial statements and information as Bank may reasonably request from time to time;

(e) In connection with each financial statement provided hereunder, a statement executed by the Chief Financial Officer or Vice President Treasury and Finance or Regional Controller of Borrowers, certifying, to the best of such person's knowledge, that no default has occurred and no event exists which with notice or the lapse of time, or both, would result in a default hereunder and a certification, in form and detail acceptable to Bank, demonstrating that Borrowers are in compliance with all covenants under this Agreement;

(f) Prompt written notice to Bank of all material events of default under any of the terms or provisions of this Agreement or of any other agreement, contract, document or instrument entered, or to be entered into with Bank; and of any litigation which, if decided adversely to Borrowers or Guarantor, would have a material adverse effect on Borrowers' or Guarantor's financial condition; and of any other matter which has resulted in, or is likely to result in, a material adverse change in its financial condition or operations; and

(g) Prior written notice to Bank of any changes in Borrowers' or Guarantor's officers and other senior management; Borrowers' or Guarantor's names; and location of Borrowers' or Guarantor's assets, principal place of business or chief executive office.

4.6 Total Funded Debt to EBITDA Ratio. Borrowers shall cause Guarantor to at all times maintain a Total Funded Debt to EBITDA Ratio of not greater than 2.50 : 1.0. "Total Funded Debt" shall mean, for the Guarantor and its subsidiaries on a consolidated basis, the sum of the outstanding principal of all indebtedness including, without duplication, all indebtedness for borrowed money, deferred purchase price of property or services evidenced by a note, bond, debenture or similar instrument, obligations in respect of acceptances issued or created representing extensions of credit, and all liabilities secured by any lien on any property owned. "EBITDA" shall mean, for the Guarantor and its subsidiaries on a consolidated basis, net income, exclusive of extraordinary gains and losses, plus (i) payment or provisions for income taxes, (ii) depreciation and amortization, (iii) interest expense, and (iv) non-cash stock option expenses. For purposes of calculating this covenant, EBITDA shall be measured for the quarter most recently ended and the immediately preceding three fiscal quarters.

4.7 Senior Funded Debt to EBITDA Ratio. Borrowers shall cause Guarantor to at all times maintain a Senior Funded Debt to EBITDA Ratio of not greater than the correlative ratio indicated below for such fiscal quarter:

<u>Fiscal Quarter Ending</u>	<u>Maximum Senior Funded Debt to EBITDA Ratio</u>
June 30, 2005	1.50 : 1
September 30, 2005	1.50 : 1
December 31, 2005	2.00 : 1
March 31, 2006	2.00 : 1
June 30, 2006	2.00 : 1
September 30, 2006	2.00 : 1
December 31, 2006	2.00 : 1
March 31, 2007	2.00 : 1
June 30, 2007	1.75 : 1
September 30, 2007	1.50 : 1
December 31, 2007	1.50 : 1
March 31, 2008	1.50 : 1
June 30, 2008	1.50 : 1

“Senior Funded Debt” shall mean, for the Guarantor and its subsidiaries on a consolidated basis, the sum of the outstanding principal of all indebtedness including, without duplication, all indebtedness for borrowed money, deferred purchase price of property or services evidenced by a note, bond, debenture or similar instrument, obligations in respect of acceptances issued or created representing extensions of credit, and all liabilities secured by any lien on any property owned, less any indebtedness that, by its terms, is specifically subordinated in right of payment to Bank and other senior indebtedness of the Guarantor and its subsidiaries including those 4% Convertible Subordinated Notes maturing June 20, 2006 issued by the Guarantor in the initial amount of \$180,000,000 pursuant to that certain Indenture dated as of June 20, 2001. For purposes of calculating this covenant, EBITDA shall be measured for the quarter most recently ended and the immediately preceding three fiscal quarters.

4.8 Tangible Net Worth. Borrowers shall cause Guarantor to at all times maintain Tangible Net Worth of not less than the correlative value indicated below, less Permitted Stock Repurchases, for such fiscal quarter:

<u>Fiscal Quarter Ending</u>	<u>Tangible Net Worth</u>
June 30, 2005	\$ 170,000,000
September 30, 2005	\$ 170,000,000
December 31, 2005	\$ 170,000,000
March 31, 2006	\$ 170,000,000
June 30, 2006 and as of the last day of each fiscal quarter thereafter	\$ 200,000,000

“Tangible Net Worth” shall mean net worth of Guarantor and its subsidiaries on a consolidated basis increased by indebtedness of Guarantor and its subsidiaries subordinated to Bank and decreased by patents, licenses, trademarks, trade names, goodwill and other similar intangible assets, organizational expenses, and monies due from affiliates (including officers, shareholders and directors). “Permitted Stock Repurchases” shall mean such amount of Guarantor’s common stock as the Guarantor may repurchase as permitted under Section 5.7 hereof.

4.9 Discrete Quarterly Consolidated EBITDA. Borrowers shall cause Guarantor to at all times maintain EBITDA of not less than the correlative value indicated below for such fiscal quarter:

Fiscal Quarter Ending	Discrete Quarterly Consolidated EBITDA
June 30, 2005	\$ 22,000,000
September 30, 2005	\$ 22,000,000
December 31, 2005	\$ 22,000,000
March 31, 2006	\$ 22,000,000
June 30, 2006 and as of the last day of each fiscal quarter thereafter	\$ 25,000,000

For purposes of calculating this covenant, EBITDA shall be measured solely for the quarter most recently ended.

4.10 Rolling Four-Quarter Unconsolidated EBITDA. ResMed Corp. will maintain minimum EBITDA of not less than \$3,000,000. For purposes of calculating this covenant, EBITDA shall be measured for the quarter most recently ended and the immediately preceding three fiscal quarters.

4.11 US Liquidity. Borrowers will maintain Liquidity of not less than \$30,000,000. "Liquidity" shall mean the sum of cash, marketable securities, and net accounts receivable of Borrowers on a combined basis that have been pledged to Bank under the Loan Documents and are maintained in the United States.

4.12 Insurance. Borrowers will and shall cause Guarantor to keep all of their insurable property, real, personal or mixed, insured by companies and in amounts approved by Bank against fire and such other risks, and in such amounts, as is customarily obtained by companies conducting similar business with respect to like properties. Borrowers will furnish to Bank statements of its insurance coverage, will promptly furnish other or additional insurance deemed necessary by and upon request of Bank to the extent that such insurance may be available and hereby assigns to Bank, as security for Borrower's obligations to Bank, the proceeds of any such insurance. Prior to any disbursement of the Loan, Bank will be named loss payee on all policies insuring collateral and such policies shall require at least ten (10) days' written notice to Bank before any policy may be altered or cancelled. Borrowers will and shall cause Guarantor to maintain adequate worker's compensation insurance and adequate insurance against liability for damage to persons or property.

4.13 Additional Requirements. Borrowers will promptly, upon demand by Bank, take such further action and execute all such additional documents and instruments in connection with this Agreement as Bank in its reasonable discretion deems necessary, and promptly supply Bank with such other information concerning its affairs as Bank may request from time to time.

4.14 Litigation and Attorneys' Fees. Borrowers will pay promptly to Bank upon demand, reasonable attorneys' fees (including but not limited to the reasonable estimate of the allocated costs and expenses of in-house legal counsel and legal staff) and all costs and other expenses paid or incurred by Bank in collecting, modifying or compromising the Loan or in enforcing or exercising its rights or remedies created by, connected with or provided for in this Agreement or any of the Loan Documents, whether or not an arbitration, judicial action or other proceeding is commenced. If such proceeding is commenced, only the prevailing party shall be entitled to attorneys' fees and court costs.

4.15 Bank Expenses. Borrowers will pay or reimburse Bank for all costs, expenses and fees incurred by Bank in preparing and documenting this Agreement and the Loan, and all amendments and modifications thereof, including but not limited to all filing and recording fees, costs of appraisals, insurance and attorneys' fees, including the reasonable estimate of the allocated costs and expenses of in-house legal counsel and legal staff.

4.16 Reports Under Pension Plans. Borrowers will and shall cause Guarantor to furnish to Bank, as soon as possible and in any event within 15 days after Borrower knows or has reason to know that any event or condition with respect to any defined benefit pension plans of Borrowers or Guarantor described in Section 3 above has occurred, a statement of an authorized officer of Borrowers or Guarantor describing such event or condition and the action, if any, which Borrowers or Guarantor proposes to take with respect thereto.

SECTION 5. NEGATIVE COVENANTS

Until the Note and all other sums payable pursuant to this Agreement or any other of the Loan Documents have been paid in full, unless Bank waives compliance in writing, Borrowers agrees that:

5.1 Encumbrances and Liens. Borrowers will not, and shall cause Guarantor to not, except in the ordinary course of its business as currently conducted, create, assume or suffer to exist any mortgage, pledge, security interest, encumbrance, or lien (other than for taxes not delinquent and for taxes and other items being contested in good faith) on property of any kind, whether real, personal or mixed, now owned or hereafter acquired, or upon the income or profits thereof, except to Bank.

5.2 Borrowings. Borrowers will not, and shall cause Guarantor to not, except in the ordinary course of its business as currently conducted, sell, discount or otherwise transfer any account receivable or any note, draft or other evidence of indebtedness, except to Bank.

5.3 Sale of Assets, Liquidation or Merger. Borrowers will not, and will cause Guarantor to not, except in the ordinary course of its business as currently conducted, liquidate nor dissolve nor enter into any consolidation, merger, partnership or other combination, nor convey, nor sell, nor lease all or the greater part of its assets or business, nor purchase or lease all or the greater part of the assets or business of another; provided, however, Guarantor and its subsidiaries may acquire, merge or consolidate with another corporation if Guarantor is the surviving corporation and provided that: (i) any note or indebtedness incurred by Borrowers or Guarantor in connection with such acquisition is subordinated to Bank, (ii) all such assets acquired by Borrowers will not be subject to any lien or encumbrance following the effective date of such combination other than that of Bank's, and (iii) prior to and giving effect to such acquisition, no Default shall have occurred and Borrowers will have delivered to Bank a certificate of compliance prepared on a pro forma basis assuming such acquisition had occurred demonstrating that Borrowers shall remain in compliance with the terms of this Agreement.

5.4 Loans, Advances and Guaranties. Borrowers will not and shall cause Guarantor to not, except in the ordinary course of its business as currently conducted, make any loans or advances, become a guarantor or surety, pledge its credit or properties in any manner or extend credit.

5.5 Investments. Borrowers will not and shall cause Guarantor to not purchase the debt or equity of another person or entity except for savings accounts and certificates of deposit of Bank, direct U.S. Government obligations, municipal obligations rated by Moody's as A-1 or better or rated by Standard & Poor's as P-1 or better, obligations issued by corporations rated by Moody's as A-2 or better or rated by Standard & Poor's as P-2 or better, and other instruments rated by Moody's as Aaa or rated by Standard & Poor's as AAA. Except for U.S. Government obligations, all such permitted investments shall mature within eighteen months of purchase.

5.6 Payment of Dividends. Borrowers will not and shall cause Guarantor to not declare or pay any dividends, other than a dividend payable in its own common stock, or authorize or make any other distribution with respect to any of its stock now or hereafter outstanding.

5.7 Retirement of Stock. Borrowers will not and shall cause Guarantor to not acquire or retire any share of its capital stock for value except as such action is approved by Guarantor's board of directors and is disclosed to Bank prior to the execution of such action.

5.8 Parent and Subsidiary Property. Borrowers will not transfer any property to its parent or any affiliate of its parent, except for value received in the normal course of business as business would be conducted with an unrelated or unaffiliated entity.

5.9 Lease Obligations. Borrowers will not and shall cause Guarantor to not incur new lease obligations as lessee except for equipment or real property needed by Borrowers or Guarantor and its subsidiaries in the ordinary course of its business.

5.10 Changes In Internal Operational Matters. (i) Borrowers will not and shall cause Guarantor to not make any material change (from that existing on the closing date) to such Borrowers' or Guarantor's transfer pricing activity, cash flow or accounting structure and (ii) ResMed Corp. shall not make any material change in its practice of purchasing inventory from its affiliates at current transfer pricing (except to the extent such change is required by applicable law), and selling such inventory in the domestic market, except, in each case set forth in clause (i) or (ii), with the prior written consent of Bank (such consent not to be withheld if such change could not adversely affect the benefits to Bank of the structure evidenced by this Agreement, including the likely value of the Guaranty and other Loan Documents, in each case as determined by Bank in its reasonable discretion).

SECTION 6. EVENTS OF DEFAULT

The occurrence of any of the following events ("Events of Default") shall terminate any obligation on the part of Bank to make or continue the Loan and automatically, unless otherwise provided under the Note, shall make all sums of interest and principal and any other amounts owing under the Loan immediately due and payable, without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or any other notices or demands:

6.1 Borrowers shall default in the due and punctual payment of the principal of or the interest on the Note or any of the other Loan Documents; or

6.2 Any default shall occur under the Note; or

6.3 Borrowers or Guarantor shall materially default in the due performance or observance of any covenant or condition of the Loan Documents; or

6.4 Any guaranty or subordination agreement required hereunder is breached or becomes ineffective, or any Guarantor or subordinating creditor dies, disavows or attempts to revoke or terminate such guaranty or subordination agreement; or

6.5 There is a change in ownership or control of twenty percent (20%) or more of the issued and outstanding stock of Borrowers or Guarantor and the acquiring entity is not owned by or controlled by Guarantor or a subsidiary of Guarantor.

SECTION 7. MISCELLANEOUS PROVISIONS

7.1 Additional Remedies. The rights, powers and remedies given to Bank hereunder shall be cumulative and not alternative and shall be in addition to all rights, powers and remedies given to Bank by law against Borrowers or any other person, including but not limited to Bank's rights of setoff or banker's lien.

7.2 Nonwaiver. Any forbearance or failure or delay by Bank in exercising any right, power or remedy hereunder shall not be deemed a waiver thereof and any single or partial exercise of any right, power or remedy shall not preclude the further exercise thereof. No waiver shall be effective unless it is in writing and signed by an officer of Bank.

7.3 Inurement. The benefits of this Agreement shall inure to the successors and assigns of Bank and the permitted successors and assignees of Borrowers, and any assignment by Borrowers without Bank's consent shall be null and void.

7.4 Applicable Law. This Agreement and all other agreements and instruments required by Bank in connection therewith shall be governed by and construed according to the laws of the State of California.

7.5 Severability. Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective. In the event of any conflict between the provisions of this Agreement and the provisions of any note or reimbursement agreement evidencing any indebtedness hereunder, the provisions of such note or reimbursement agreement shall prevail.

7.6 Integration Clause. Except for documents and instruments specifically referenced herein, this Agreement constitutes the entire agreement between Bank and Borrowers regarding the Loan and all prior communications verbal or written between Borrowers and Bank shall be of no further effect or evidentiary value.

7.7 Defined Terms. Unless otherwise specifically defined in this Agreement, all accounting terms used herein shall be interpreted in accordance with generally accepted accounting principals.

7.8 Construction. The section and subsection headings herein are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

7.9 Amendments. This Agreement may be amended only in writing signed by all parties hereto.

7.10 Counterparts. Borrowers and Bank may execute one or more counterparts to this Agreement, each of which shall be deemed an original, but when together shall be one and the same instrument.

7.11 Sale; Assignment; Participations. Bank may, in the ordinary course of its business, sell to any bank, financial institution, or other lender, which additional bank, financial institution or other lender shall be subject to the consent of Borrowers, such consent not to be unreasonably withheld, all or any part of its rights and obligations under this Agreement and the other Loan Documents, as documented on Bank's standard form of assignment and acceptance agreement.

SECTION 8. SERVICE OF NOTICES

8.1 Any notices or other communications provided for or allowed hereunder shall be effective only when given by one of the following methods and addressed to the respective party at its address given with the signatures at the end of this Agreement and shall be considered to have been validly given: (a) upon delivery, if delivered personally; (b) upon receipt, if mailed, first class postage prepaid, with the United States Postal Service; (c) on the next business day, if sent by overnight courier service of recognized standing; and (d) upon telephoned confirmation of receipt, if telecopied.

8.2 The addresses to which notices or demands are to be given may be changed from time to time by notice delivered as provided above.

THIS AGREEMENT is executed on behalf of the parties by duly authorized officers as of the date first above written.

UNION BANK OF CALIFORNIA, N.A.

By: /s/ Bruce A. Breslau
Title: Senior Vice President

By: /s/ Douglas S. Lambell
Title: Vice President

Address: 530 'B' Street, 4th Floor
San Diego, CA 92101

Attention: Douglas S. Lambell, VP
Telecopier: (619) 230-3766
Telephone: (619) 230-3029

RESMED CORP.

By: /s/ Peter C. Farrell
Title: CEO

By: /s/ David Pendarvis
Title: Secretary

Address: 14040 Danielson Street
Poway, CA 92064

Attention:
Telecopier: (858) 746-2830
Telephone:

RESMED EAP HOLDINGS INC.

By: /s/ Peter C. Farrell
Title: CEO

By: /s/ David Pendarvis
Title: Secretary

Address: 14040 Danielson Street
Poway, CA 92064

Attention:
Telecopier: (858) 746-2830
Telephone:



SECURITY AGREEMENT

This Security Agreement is executed at San Diego, California on November 1, 2005, by Resmed EAP Holdings Inc., a Delaware corporation (herein called "Debtor").

As security for the payment and performance of all of Debtor's obligations to UNION BANK OF CALIFORNIA, N.A., (herein called "Bank"), regardless of the manner in which or the time at which such obligations arose or shall arise, whether direct or indirect, alone or with others, or absolute or contingent, Debtor hereby grants a continuing security interest in, and assigns and transfers to Bank, the following personal property, whether or not delivered to or in the possession or control of Bank or its agents, and whether now or hereafter owned or in existence, and all proceeds thereof (hereinafter called the "Collateral"):

All present and hereafter acquired personal property including but not limited to all accounts, chattel paper, instruments, contract rights, general intangibles, goods, equipment, inventory, documents, certificates of title, deposit accounts, returned or repossessed goods, fixtures, commercial tort claims, insurance claims, rights and policies, letter of credit rights, investment property, supporting obligations, and the proceeds, products, parts, accessories, attachments, accessions, replacements, substitutions, additions, and improvements of or to each of the foregoing.

Entities executing this Security Agreement as Debtor agree not to change their state of organization, principal place of business (if a general partnership or other nonregistered entity) or name, as identified below, without Bank's prior written consent:

LEGAL NAME OF DEBTOR

STATE OF ORGANIZATION / PRINCIPAL PLACE OF BUSINESS

Resmed EAP Holdings Inc.

State of Delaware

AGREEMENT

1. The term "credit" or "indebtedness" is used throughout this Agreement in its broadest and most comprehensive sense. Credit may be granted at the request of any Debtor without further authorization by or notice to any other Debtor. Collateral shall be security for all nonconsumer indebtedness of Debtor to Bank in accordance with the terms and conditions herein.
2. Debtor will: (a) pay when due all indebtedness to Bank; (b) execute such other documents and do such other acts and things as Bank may from time to time require to establish and maintain a valid perfected security interest in Collateral, including payment of all costs and fees in connection with any of the foregoing when deemed necessary by Bank; (c) furnish Bank such information concerning Debtor and Collateral as Bank may from time to time request, including but not limited to current financial statements; (d) keep Collateral separate and identifiable where such Collateral is currently located and permit Bank its representative to inspect Collateral and/or records pertaining thereto from time to time during normal business hours; (e) not sell, assign or create or permit to exist any lien on or security interest in Collateral in favor of anyone other than Bank unless Bank consents thereto in writing and at Debtor's expense upon Bank's request remove any unauthorized lien or security interest and defend any claim affecting the Collateral; (f) pay all charges against Collateral prior to delinquency including but not limited to taxes, assessments, encumbrances, insurance and diverse claims, and upon Debtor's failure to do so Bank may pay any such charge as it deems necessary and add the amount paid to the indebtedness of Debtor hereunder; (g) protect, defend and maintain the Collateral and the perfected security interest of Bank and initiate, commence and maintain any action or proceeding to protect the Collateral; (h) reimburse Bank for any expenses, including but not limited to reasonable attorneys' fees and expenses (including the allocated costs of Bank's in-house counsel and legal staff) incurred by Bank in seeking to protect, collect or enforce any right in Collateral; (i) when required, provide insurance in form and amounts and with companies acceptable to Bank and when required, assign the policies or the rights thereunder to bank; (j) maintain Collateral in good condition and not use Collateral for any unlawful purpose; (k) perform all of the obligations of the Debtor under the Collateral and save Bank harmless from the consequence of any failure to do so; and (l) at its own expense, upon request of Bank, notify any parties obligated to Debtor on any Collateral to make payment to Bank and Debtor hereby irrevocably grants Bank power of attorney to make said notifications and collections. Debtor hereby appoints Bank the true and lawful attorney of Debtor and authorizes Bank to perform any and all acts which Bank in good faith deems necessary for the protection and preservation of Collateral or its value or Bank's perfected security interest therein, including transferring any Collateral into its own name and receiving the income thereon as additional security hereunder. Bank does not assume any of the obligations arising under the Collateral.
3. Debtor warrants that: (a) it is and will be the lawful owner of all Collateral free of all claims, liens, encumbrances and setoffs whatsoever, other than the security interest granted pursuant hereto; (b) it has the capacity to grant a security interest in Collateral to Bank; (c) all information furnished by Debtor to Bank heretofore or hereafter, whether oral or written, is and will be correct and true as of the date given; and (d) if Debtor is an entity, the execution, delivery and performance hereof are within its powers and have been duly authorized.
4. The term default shall mean the occurrence of any of the following events: (a) failure of Debtor to make any payment of any indebtedness to Bank when due; (b) deterioration or impairment of the value of any of the Collateral; (c) any breach, misrepresentation or other default by Debtor under this Agreement or any other agreements between Bank and Debtor; (d) a change in ownership or control of ten percent or more of the equity interest of Debtor; or (e) the deterioration of financial condition of Debtor which results in Bank deeming itself, in good faith, insecure.
5. Whenever a default exists, Bank, at its option, may: (a) without notice accelerate the maturity of any part or all of the indebtedness and terminate any agreement for the granting of further credit to Debtor; (b) sell, lease or otherwise dispose of Collateral at public or private sale; (c) transfer any Collateral into its own name or that of its nominee; (d) retain Collateral in satisfaction of obligations secured hereby, with notice of such retention sent to Debtor as required by law; (e) notify any parties obligated on any Collateral consisting of accounts, instruments, chattel paper, choses in action or the like to make payment to Bank and enforce collection of any Collateral; (f) file any action or proceeding which Bank may deem necessary or appropriate to protect and preserve the right, title and interest of the Bank in the Collateral; (g) require Debtor to assemble and deliver any Collateral to Bank at a reasonably convenient place designated by Bank; (h) apply all sums received or collected from or on account of Collateral, including the proceeds of any sale thereof, to the payment of the costs and expenses incurred in preserving and enforcing rights of Bank, including reasonable attorneys' fees (including the allocated costs of Bank's in-house counsel and legal staff), and indebtedness secured hereby in such order and manner as Bank in its sole discretion determines; Bank shall account to Debtor for any surplus remaining thereafter, and shall pay such surplus to the party entitled thereto, including any second secured party who has made a proper demand upon Bank and has furnished proof to Bank as requested in the manner provided by law; in like manner, Debtor agrees to pay to Bank without demand any deficiency after any Collateral has been disposed of and proceeds applied as aforesaid; and (i) exercise its banker's lien or right of setoff in the same manner as though the credit were unsecured. Bank shall have all the rights and remedies of a secured party under the Uniform Commercial Code of California and in any jurisdiction where enforcement is sought, whether in said state or elsewhere. All rights, powers and remedies of Bank hereunder shall be cumulative and not alternative. No delay on the part of Bank in the exercise of any right or remedy shall constitute a waiver thereof and no exercise by Bank of any right or remedy shall preclude the exercise of any other right or remedy or further exercise of the same remedy.
6. Debtor waives: (a) all right to require Bank to proceed against any other person including any other Debtor hereunder or to apply any Collateral Bank may hold at any time or to pursue any other remedy; Collateral, endorssors or guarantors may be released, substituted or added without affecting the liability of Debtor hereunder; (b) the defense of the Statute of Limitations in any action upon any obligations of Debtor secured hereby; (c) any right of subrogation and any right to participate in Collateral until all obligations secured hereby have been paid in full; (d) to the fullest extent permitted by law, any right to oppose the appointment of a receiver or similar official to operate Debtor's business.

7. The right of Bank to have recourse against Collateral shall not be affected in any way by the fact that the credit is secured by a mortgage, deed of trust or other lien upon real property.

8. The security Interest granted herein is irrevocable and shall remain in full force and effect until there is payment in full of the indebtedness or the security interest is released in writing by Bank.

9. Debtor shall be obligated to request the release, reassignment or return of Collateral after the payment in full of all existing obligations. Bank shall be under no duty or obligation to release, reassign or return any Collateral except upon the express written request of Debtor and then only where all of Debtor's obligations hereunder have been paid in full.

10. If more than one Debtor executes this Agreement, the obligations hereunder are joint and several. All words used herein in the singular shall be deemed to have been used in the plural when the context and construction so require. Any married person who signs this Agreement expressly agrees that recourse may be had against his/her separate property for all of his/her obligations to Bank.

11. This Agreement shall inure to the benefit of and bind Bank, its successors and assigns and each of the undersigned, their respective heirs, executors, administrators and successors in interest. Upon transfer by Bank of any part of the obligations secured hereby, Bank shall be fully discharged from any liability with respect to Collateral transferred therewith.

12. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but, if any provision of this Agreement shall be prohibited or invalid under applicable law, such provisions shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such or the remaining provisions of this Agreement.

The grant of a security interest in proceeds does not imply the right of Debtor to sell or dispose of any Collateral without the express consent in writing by Bank.

"Debtor"

Resmed EAP Holdings Inc., a Delaware corporation

By: /s/ Peter C. Farrell
Title: Chief Executive Officer

By: /s/ David Pendarvis
Title: Secretary



CONTINUING GUARANTY

- 1. Obligations Guaranteed.** For consideration, the adequacy and sufficiency of which is acknowledged, the undersigned ("Guarantor") unconditionally guarantees and promises (a) to pay to UNION BANK OF CALIFORNIA, N.A. ("Bank") on demand, in lawful United States money, all Obligations to Bank of ResMed Corp., a Minnesota corporation and Resmed EAP Holdings Inc., a Delaware corporation ("Borrower") and (b) to perform all undertakings of Borrower in connection with the Obligations. "Obligations" is used in its most comprehensive sense and includes any and all debts, liabilities, rental obligations, and other obligations and liabilities of every kind of Borrower to Bank, whether made, incurred or created previously, concurrently or in the future, whether voluntary or involuntary and however arising, whether incurred directly or acquired by Bank by assignment or succession, whether due or not due, absolute or contingent, liquidated or unliquidated, legal or equitable, whether Borrower is liable individually or jointly with others, whether incurred before, during or after any bankruptcy, reorganization, insolvency, receivership or similar proceeding ("Insolvency Proceeding"), and whether recovery thereof is or becomes barred by a statute of limitations or is or becomes otherwise unenforceable, together with all expenses of, for and incidental to collection, including reasonable attorneys' fees.
- 2. Limitation on Guarantor's Liability.** Although this Guaranty covers all Obligations, Guarantor's liability under this Guaranty for Borrower's Obligations shall not exceed at any one time the sum of the following (the "Guaranteed Liability Amount"): (a) Forty Million and 00/100ths Dollars (\$40,000,000.00) for Obligations representing principal and/or rent ("Principal Amount"), (b) all interest, fees and like charges owing and allocable to the Principal Amount as determined by Bank, and (c) without allocation in respect of the Principal Amount, all costs, attorneys' fees, and expenses of Bank relating to or arising out of the enforcement of the Obligations and all indemnity liabilities of Guarantor under this Guaranty. The foregoing limitation applies only to Guarantor's liability under this particular Guaranty. Unless Bank otherwise agrees in writing, every other guaranty of any Obligations previously, concurrently, or hereafter given to Bank by Guarantor is independent of this Guaranty and of every other such guaranty. Without notice to Guarantor, Bank may permit the Obligations to exceed the Principal Amount and may apply or reapply any amounts received in respect of the Obligations from any source other than from Guarantor to that portion of the Obligations not included within the Guaranteed Liability Amount.
- 3. Continuing Nature/Revocation/Reinstatement.** This Guaranty is in addition to any other guaranties of the Obligations, is continuing and covers all Obligations, including those arising under successive transactions which continue or increase the Obligations from time to time, renew all or part of the Obligations after they have been satisfied, or create new Obligations. Revocation by one or more signers of this Guaranty or any other guarantors of the Obligations shall not (a) affect the obligations under this Guaranty of a non-revoking Guarantor, (b) apply to Obligations outstanding when Bank receives written notice of revocation, or to any extensions, renewals, readvances, modifications, amendments or replacements of such Obligations, or (c) apply to Obligations, arising after Bank receives such notice of revocation, which are created pursuant to a commitment existing at the time of the revocation, whether or not there exists an unsatisfied condition to such commitment or Bank has another defense to its performance. All of Bank's rights pursuant to this Guaranty continue with respect to amounts previously paid to Bank on account of any Obligations which are thereafter restored or returned by Bank, whether in an Insolvency Proceeding of Borrower or for any other reason, all as though such amounts had not been paid to Bank; and Guarantor's liability under this Guaranty (and all its terms and provisions) shall be reinstated and revived, notwithstanding any surrender or cancellation of this Guaranty. Bank, at its sole discretion, may determine whether any amount paid to it must be restored or returned; provided, however, that if Bank elects to contest any claim for return or restoration, Guarantor agrees to indemnify and hold Bank harmless from and against all costs and expenses, including reasonable attorneys' fees, expended or incurred by Bank in connection with such contest. No payment by Guarantor shall reduce the Guaranteed Liability Amount hereunder unless, at or prior to the time of such payment, Bank receives Guarantor's written notice to that effect. If any Insolvency Proceeding is commenced by or against Borrower or Guarantor, at Bank's election, Guarantor's obligations under this Guaranty shall Immediately and without notice or demand become due and payable, whether or not then otherwise due and payable.
- 4. Authorization.** Guarantor authorizes Bank, without notice and without affecting Guarantor's liability under this Guaranty, from time to time, whether before or after any revocation of this Guaranty, to (a) renew, compromise, extend, accelerate, release, subordinate, waive, amend and restate, or otherwise amend or change, the interest rate, time or place for payment or any other terms of all or any part of the Obligations; (b) accept delinquent or partial payments on the Obligations; (c) take or not take security or other credit support for this Guaranty or for all or any part of the Obligations, and exchange, enforce, waive, release, subordinate, fail to enforce or perfect, sell, or otherwise dispose of any such security or credit support; (d) apply proceeds of any such security or credit support and direct the order of manner of its sale or enforcement as Bank, at its sole discretion, may determine; and (e) release or substitute Borrower or any guarantor or other person or entity liable on the Obligations.
- 5. Waivers.** To the maximum extent permitted by law, Guarantor waives (a) all rights to require Bank to proceed against Borrower, or any other guarantor, or proceed against enforce or exhaust any security for the Obligations or to marshal assets or to pursue any other remedy in Bank's power whatsoever; (b) all defenses arising by reason of any disability or other defense of Borrower, the cessation for any reason of the liability of Borrower, any defense that any other Indemnity, guaranty or security was to be obtained, any claim that Bank has made Guarantor's obligations more burdensome or more burdensome than Borrower's obligations, and the use of any proceeds of the Obligations other than as intended or understood by Bank or Guarantor; (c) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Guaranty and of the existence or creation of new or additional Obligations, and all other notices or demands to which Guarantor might otherwise be entitled; (d) all conditions precedent to the effectiveness of this Guaranty; (e) all rights to file a claim in connection with the Obligations in an Insolvency Proceeding filed by or against Borrower; (f) all rights to require Bank to enforce any of its remedies; and (g) until the Obligations are satisfied or fully paid with such payment not subject to return: (i) all rights of subrogation, contribution, indemnification or reimbursement, (ii) all rights of recourse to any assets or property of Borrower or to any collateral or credit support for the Obligations, (iii) all rights to participate in or benefit from any security or credit support Bank may have or acquire, (iv) all rights, remedies and defenses Guarantor may have or acquire against Borrower. Guarantor understands that if Bank forecloses by trustee's sale on a deed of trust securing any of the Obligations, Guarantor would then have a defense preventing Bank from thereafter enforcing Guarantor's liability for the unpaid balance of the secured Obligations. This defense arises because the trustee's sale would eliminate Guarantor's right of subrogation, and therefore Guarantor would be unable to obtain reimbursement from Borrower. Guarantor specifically waives this defense and all rights and defenses that Guarantor may have because the Obligations are secured by real property. This means, among other things: (a) Bank may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower; and (b) if Bank forecloses on any real property collateral pledged by Borrower (i) the amount of the Obligations may be reduced only by the price for which the collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (ii) Bank may collect from Guarantor even if Bank, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Borrower. This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Obligations are secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure or similar laws in other states.
- 6. Guarantor to Keep Informed.** Guarantor warrants having established with Borrower adequate means of obtaining, on an ongoing basis, such information as Guarantor may require concerning all matters bearing on the risk of nonpayment or nonperformance of the Obligations. Guarantor assumes sole, continuing responsibility for obtaining such information from sources other than from Bank. Bank has no duty to provide any information to Guarantor until Bank receives Guarantor's written request for specific information in Bank's possession and Borrower has authorized Bank to disclose such information to Guarantor.
- 7. Subordination.** All obligations of Borrower to Guarantor which presently or in the future may exist ("Guarantor's Claims") are hereby subordinated to the Obligations. At Bank's request, Guarantor's Claims will be enforced and performance thereon received by Guarantor only as a trustee for Bank, and Guarantor will promptly pay over to Bank all proceeds recovered for application to the Obligations without reducing or affecting Guarantor's liability under other provisions of this Guaranty.
- 8. Security.** To secure Guarantor's obligations under this Guaranty, other than for payment of Obligations which are subject to the disclosure requirements of the United States Truth in Lending Act, Guarantor grants Bank a security interest in all moneys, general and special deposits, instruments and other property of Guarantor at any time maintained with or held by Bank, and all proceeds of the foregoing.
- 9. Authorization.** Where Borrower is a corporation, partnership or other entity, Bank need not inquire into or verify the powers of Borrower or authority of those acting or purporting to act on behalf of Borrower, and this Guaranty shall be enforceable with respect to any Obligations Bank grants or creates in reliance on the purported exercise of

such powers or authority.

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COMMERCIAL PROMISSORY NOTE
Secured By Deed of Trust
(Base Rate)

Vanna Hua-Tham / SR / 8971

Debtor Name

ResMed Corp., a Minnesota corporation and ResMed EAP Holdings Inc., a Delaware corporation

Debtor Address

14040 Danielson Street
 Poway, CA 92064

Office

40061

Maturity Date

October 1, 2008

Loan Number

735-346-701-6

Amount

\$15,000,000.00

0080-00-0-000

\$15,000,000.00

Date November 1, 2005

FOR VALUE RECEIVED, on October 1, 2008, the undersigned ("Debtor") promises to pay to the order of UNION BANK OF CALIFORNIA, N.A. ("Bank"), as indicated below, the principal sum of Fifteen Million and 00/100ths Dollars (\$ 15,000,000.00), or so much thereof as is disbursed, together with interest on the balance of such principal from time to time outstanding, at the per annum rate or rates and at the times set forth below.

1. INTEREST PAYMENTS. Debtor shall pay interest on the 1st day of each month commencing December 1, 2005 . Should interest not be paid when due, it shall become part of the principal and bear interest as herein provided. All computations of interest under this note shall be made on the basis of a year of 360 days, for actual days elapsed. If any interest rate defined in this note ceases to be available from Bank for any reason, then said interest rate shall be replaced by the rate then offered by Bank, which, in the sole discretion of Bank, most closely approximates the unavailable rate.

(a) BASE INTEREST RATE. At Debtor's option, amounts outstanding hereunder in minimum amounts of at least \$1,000,000 shall bear interest at a rate which is equal to Bank's LIBOR Rate for the Interest Period selected by Debtor plus the Applicable Margin.

Except for changes in the Applicable Margin, no Base Interest Rate may be changed, altered or otherwise modified until the expiration of the Interest Period selected by Debtor. The exercise of interest rate options by Debtor shall be as recorded in Bank's records, which records shall be prima facie evidence of the amount borrowed under either interest option and the interest rate; provided, however, that failure of Bank to make any such notation in its records shall not discharge Debtor from its obligations to repay in full with interest all amounts borrowed. In no event shall any Interest Period extend beyond the maturity date of this note.

To exercise this option, Debtor may, from time to time with respect to principal outstanding on which a Base Interest Rate is not accruing, and on the expiration of any Interest Period with respect to principal outstanding on which a Base Interest Rate has been accruing, select an index offered by Bank for a Base Interest Rate Loan and an Interest Period by telephoning an authorized lending officer of Bank located at the banking office identified below prior to 10:00 a.m., Pacific time, on any Business Day and advising that officer of the selected index, the Interest Period and the Origination Date selected (which Origination Date, for a Base Interest Rate Loan based on the LIBOR Rate, shall follow the date of such selection by no more than two (2) Business Days).

Bank will mail a written confirmation of the terms of the selection to Debtor promptly after the selection is made. Failure to send such confirmation shall not affect Bank's rights to collect interest at the rate selected. If, on the date of the selection, the index selected is unavailable for any reason, the selection shall be void. Bank reserves the right to fund the principal from any source of funds notwithstanding any Base Interest Rate selected by Debtor.

(b) VARIABLE INTEREST RATE. All principal outstanding hereunder which is not bearing interest at a Base Interest Rate shall bear interest at the Reference Rate, which rate shall vary as and when the Reference Rate changes.

At any time prior to the maturity date of this note, subject to the provisions of paragraph 4 below, Debtor may borrow, repay and reborrow hereunder so long as the total outstanding at any one time does not exceed the principal amount of this note.

Debtor shall pay all amounts due under this note in lawful money of the United States at Bank's San Diego Corporate Banking Office, or such other office as may be designated by Bank, from time to time.

2. LATE PAYMENTS. If any installment payment required by the terms of this note shall remain unpaid ten days after due, at the option of Bank, Debtor shall pay a fee of \$100 to Bank; provided that if this note is secured by a deed of trust on real property containing only a single-family owner-occupied dwelling, such fee shall not exceed six percent of the installment due that is applicable to the payment of principal and interest, or five dollars, whichever is greater.

3. INTEREST RATE FOLLOWING DEFAULT. In the event of default, at the option of Bank, and, to the extent permitted by law, interest shall be payable on the outstanding principal under this note at a per annum rate equal to five percent (5 %) in excess of the interest rate specified in paragraph 1.b, above, calculated from the date of default until all amounts payable under this note are paid in full.

4. PREPAYMENT.

(a) Amounts outstanding under this note bearing interest at a rate based on the Reference Rate may be prepaid in whole or in part at any time, without penalty or premium. Debtor may prepay amounts outstanding under this note bearing interest at a Base Interest Rate in whole or in part provided Debtor has given Bank not less than five (5) Business Days prior written notice of Debtor's intention to make such prepayment and pays to Bank the prepayment fee due as a result. The prepayment fee shall also be paid, if Bank, for any other reason, including acceleration or foreclosure, receives all or any portion of principal bearing interest at a Base Interest Rate prior to its scheduled payment date. The prepayment fee shall be an amount equal to the present value of the product of: (i) the difference (but not less than zero) between (a) the Base Interest Rate applicable to the principal amount which is being prepaid, and (b) the return which Bank could obtain if it used the amount of such prepayment of principal to purchase at bid price regularly quoted securities issued by the United States having a maturity date most closely coinciding with the relevant Base Rate Maturity Date and such securities were held by Bank until the relevant Base Rate Maturity Date ("Yield Rate"); (ii) a fraction, the numerator of which is the number of days in the period between the date of prepayment and the relevant Base Rate Maturity Date and the denominator of which is 360; and (iii) the amount of the principal so prepaid (except in the event that principal payments are required and have been made as scheduled under the terms of the Base Interest Rate Loan being prepaid, then an amount equal to the lesser of (A) the amount prepaid or (B) 50% of the sum of (1) the amount prepaid and (2) the amount of principal scheduled under the terms of the Base Interest Rate

Loan being prepaid to be outstanding at the relevant Base Rate Maturity Date). Present value under this note is determined by discounting the above product to present value using the Yield Rate as the annual discount factor.

(b) In no event shall Bank be obligated to make any payment or refund to Debtor, nor shall Debtor be entitled to any setoff or other claim against Bank, should the return which Bank could obtain under this prepayment formula exceed the interest that Bank would have received if no prepayment had occurred. All prepayments shall include payment of accrued interest on the principal amount so prepaid and shall be applied to payment of interest before application to principal. A determination by Bank as to the prepayment fee amount, if any, shall be conclusive.

(c) Bank shall provide Debtor a statement of the amount payable on account of prepayment. Debtor acknowledges that (i) Bank establishes a Base Interest Rate upon the understanding that it apply to the Base Interest Rate Loan for the entire Interest Period, and (ii) Bank would not lend to Debtor without Debtor's express agreement to pay Bank the prepayment fee described above.

DEBTOR INITIAL HERE: DBP PCF

5. DEFAULT AND ACCELERATION OF TIME FOR PAYMENT. The occurrence or existence of any one or more of the following shall constitute a default hereunder:

(a) Debtor shall fail to pay when due any principal payment, or shall fail to pay within three (3) days of the date when due any interest, reimbursement or other payment, required under the terms of this note, that certain First Amended and Restated Loan Agreement between Debtor and Bank, dated November 1, 2005, and any extensions, modifications or amendments thereof (the "Loan Agreement") or any of the other Loan Documents (as defined in the Loan Agreement); (b) Debtor shall fail to observe or perform any covenant, obligation, condition or agreement set forth in section 5, in subsections 4.6, 4.7, 4.8, 4.9, 4.10, or 4.11, or in the first clause of subsection 4.5(f), of the Loan Agreement; (c) Debtor shall fail to observe or perform any other covenant, obligation, condition or agreement contained in the Loan Agreement or the other Loan Documents, and such failure shall continue for ten (10) days after written notice thereof to Debtor from Bank; (d) any representation, warranty, certificate or other statement (financial or otherwise) made or furnished by or on behalf of Debtor to Bank in or in connection with this note, the Loan Agreement or any of the other Loan Documents, or as an inducement to Bank to enter into the Loan Agreement and the other Loan Documents, shall be false, incorrect, incomplete or misleading in any material respect when made or furnished; (e) Debtor shall fail to pay when due any principal or interest payment required under the terms of any bond, debenture, note or other evidence of indebtedness in a principal amount in excess of Three Million Dollars (\$3,000,000.00) required to be paid by Debtor (except for payments required hereunder, under the Loan Agreement or under the other Loan Documents) beyond any period of grace provided with respect thereto, or shall default in the observance or performance of any other agreement, term or condition contained in any such bond, debenture, note or other evidence of indebtedness, and the effect of such failure or default is to cause, or permit the holder or holders thereof to cause, the indebtedness evidenced thereby to become due prior to its stated date of maturity; (f) Debtor shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) be unable, or admit in writing its inability, to pay its debts generally as they mature, (iii) make a general assignment for the benefit of its or any of its creditors, (iv) be dissolved or liquidated, (v) commence a voluntary case or other proceedings seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (vi) take any corporate action for the purpose of

effecting any of the foregoing; (g) proceedings for the appointment of a receiver, trustee, liquidator or custodian of Debtor or of all or a substantial part of its property, or an involuntary case or other proceedings seeking liquidation, reorganization or other similar relief with respect to Debtor or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, shall be commenced and shall not be dismissed or discharged within thirty (30) days of commencement; or (h) a final judgment or order for the payment of money in excess of Three Million Dollars (\$3,000,000.00) shall be rendered against Debtor and the same shall remain undischarged for a period of twenty (20) days during which execution shall not be effectively stayed, or any judgment, writ, warrant of attachment, or execution or similar process shall be issued or levied against a substantial part of Debtor's property and such judgment, writ, or similar process shall not be released, stayed, vacated, bonded or otherwise dismissed within twenty (20) days after its issue or levy. Upon the occurrence of any such default, Bank, in its discretion, may cease to advance funds hereunder and may declare all obligations under this note immediately due and payable; provided, however, upon the occurrence of a default under (f) or (g), all principal and interest shall automatically become immediately due and payable.

6. CROSS DEFAULT. It is a further condition of this note that any default in the observance, performance or discharge of any condition, obligation, covenant or agreement contained in any of the following shall, at the option of Bank, constitute a default hereunder:

6.1 the promissory notes described below, and any and all modifications, extensions, renewals, or replacements thereof, whether hereafter evidenced by said notes or otherwise (collectively, the "Notes"):

(a) this promissory note,

(b) that certain promissory note dated November 1, 2005, executed by Debtor to the order of Bank in the original principal amount of Twenty Five Million and 00/100ths Dollars (\$25,000,000.00), and

6.2 any other promissory note executed by Debtor to the order of Bank which recites that it is secured by the deed of trust securing repayment of this note (collectively, the "Future Notes"), and

6.3 any promissory note, deed of trust or other instrument or document at any time executed by Debtor for the benefit of Bank which by its terms recites that it is intended to be cross-defaulted with this note and provides that a default thereunder shall also be a default hereunder (collectively, the "Additional Notes"), and

6.4 any Loan Agreement relating to any indebtedness evidenced by any of the Notes, any of the Future Notes or any of the Additional Notes and any other documents or instruments executed by Debtor having reference to, arising out of or in connection with any of the Notes, Future Notes or Additional Notes, and

6.5 any deed of trust or other instrument or document securing repayment of any of the Notes, Future Notes or Additional Notes.

7. ADDITIONAL AGREEMENTS OF DEBTOR. If any amounts owing under this note are not paid when due, Debtor promises to pay all costs and expenses, including reasonable attorneys' fees, (including the allocated costs of Bank's in-house counsel and legal staff) incurred by Bank in the negotiation, documentation and modification of this note and all related documents and in the collection or enforcement of any amount outstanding hereunder. Debtor and any Obligor, for the maximum period of time and the full extent permitted by law, (a) waive diligence, presentment,

demand, notice of nonpayment, protest, notice of protest, and notice of every kind; (b) waive the right to assert the defense of any statute of limitations to any debt or obligation hereunder; and (c) consent to renewals and extensions of time for the payment of any amounts due under this note. If this note is signed by more than one party, the term "Debtor" includes each of the undersigned and any successors in interest thereof; all of whose liability shall be joint and several. Any married person who signs this note agrees that recourse may be had against the separate property of that person for any obligations hereunder. The receipt of any check or other item of payment by Bank, at its option, shall not be considered a payment on account until such check or other item of payment is honored when presented for payment at the drawee bank. Bank may delay the credit of such payment based upon Bank's schedule of funds availability, and interest under this note shall accrue until the funds are deemed collected. In any action brought under or arising out of this note, Debtor and any Obligor, including their successors and assigns, hereby consent to the jurisdiction of any competent court within the State of California, as provided in any alternative dispute resolution agreement executed between Debtor and Bank, and consent to service of process by any means authorized by said state's law. The term "Bank" includes, without limitation, any holder of this note. This note shall be construed in accordance with and governed by the laws of the State of California. This note hereby incorporates any alternative dispute resolution agreement previously, concurrently or hereafter executed between Debtor and Bank. The deed of trust securing this note permits the Bank to declare all obligations hereunder immediately due and payable upon the occurrence of certain events described therein.

8. DEFINITIONS. As used herein, the following terms shall have the meanings respectively set forth below: "**Agreement**" shall mean that certain Amended and Restated Loan Agreement, dated as of July 5, 2005, by and between Debtor and Bank, as the same may be amended, modified, supplemented, extended, renewed, replaced or restated from time to time. "**Applicable Margin**" shall mean a per annum rate equal to (a) 1.00%, if the ratio of Debtor's Senior Funded Debt to EBITDA (as each of such terms is defined in the Agreement) (the "Senior Funded Debt Ratio") as at the end of the most recent fiscal quarter in respect of which Debtor has furnished a financial statement to Bank as required by the Agreement (the "Reported Period") is equal to or greater than 1.00:1.00, and (b) 0.90%, if the Senior Funded Debt Ratio as at the end of the most recent Reported Period is less than 1.00:1.00. A change in the Applicable Margin resulting from a change in the Senior Funded Debt Ratio shall become effective on the first day of the calendar month following a calendar month in which a financial statement furnished by Debtor to Bank pursuant to the Agreement reflects a change in the Senior Funded Debt Ratio which requires a change in the Applicable Margin as provided herein. For the purpose of determining the Applicable Margin, if a default under this note or an Event of Default (as such term is defined in the Agreement) has occurred and is continuing (including without limitation a default or an Event of Default resulting from the failure of Debtor to furnish any financial statement to Bank as required by the Agreement), then, without waiving any right or remedy that Bank may have under the Agreement as a result of such default or Event of Default (including without limitation the right to accelerate Debtor's obligations or to invoke the default interest rate), the Senior Funded Debt Ratio shall be conclusively presumed to be greater than 1.00:1.00 from the date of the occurrence of such default or Event of Default until such default or Event of Default is cured by Debtor or waived by Bank. "**Base Interest Rate**" means a rate of interest based on the LIBOR Rate. "**Base Interest Rate Loan**" means amounts outstanding under this note that bear interest at a Base Interest Rate. "**Base Rate Maturity Date**" means the last day of the interest Period with respect to principal outstanding under a Base Interest Rate Loan. "**Business Day**" means a day on which Bank is open for business for the funding of corporate loans, and, with respect to the rate of interest based on the LIBOR Rate, on which dealings in U.S. dollar deposits outside of the United States may be carried on by Bank. "**Interest Period**" means any calendar period of one, three, six, nine or twelve months. In determining an Interest Period, a month means a period that starts on one Business Day in a month and ends on and includes the day preceding the numerically corresponding day in the next month. For any month in which there is no

DEBTOR:

By: /s/ Peter C. Farrell
Title: **Chief Executive Officer**

By: /s/ Peter C. Farrell
Title: Chief Executive Officer

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COMMERCIAL PROMISSORY NOTE
Secured By Deed of Trust
(Base Rate)



Debtor Name

ResMed Corp., a Minnesota corporation and ResMed EAP Holdings Inc., a Delaware corporation

Debtor Address

14040 Danielson Street
 Poway, CA 92064

Office

40061

Maturity Date

October 1, 2008

Loan Number

735-346-701-6

Amount

\$25,000,000.00

\$25,000,000.00

Date November 1, 2005

FOR VALUE RECEIVED, on October 1, 2008, the undersigned ("Debtor") promises to pay to the order of UNION BANK OF CALIFORNIA, N.A. ("Bank"), as indicated below, the principal sum of Twenty Five Million and 00/100ths Dollars (\$ 25,000,000.00), or so much thereof as is disbursed, together with interest on the balance of such principal from time to time outstanding, at the per annum rate or rates and at the times set forth below.

1. INTEREST PAYMENTS. Debtor shall pay interest on the 1st day of each month commencing December 1, 2005. Should interest not be paid when due, it shall become part of the principal and bear interest as herein provided. All computations of interest under this note shall be made on the basis of a year of 360 days, for actual days elapsed. If any interest rate defined in this note ceases to be available from Bank for any reason, then said interest rate shall be replaced by the rate then offered by Bank, which, in the sole discretion of Bank, most closely approximates the unavailable rate.

(a) BASE INTEREST RATE. At Debtor's option, amounts outstanding hereunder in minimum amounts of at least \$1,000,000 shall bear interest at a rate which is equal to Bank's LIBOR Rate for the Interest Period selected by Debtor plus the Applicable Margin.

Except for changes in the Applicable Margin, no Base Interest Rate may be changed, altered or otherwise modified until the expiration of the Interest Period selected by Debtor. The exercise of interest rate options by Debtor shall be as recorded in Bank's records, which records shall be prima facie evidence of the amount borrowed under either interest option and the interest rate; provided, however, that failure of Bank to make any such notation in its records shall not discharge Debtor from its obligations to repay in full with interest all amounts borrowed. In no event shall any Interest Period extend beyond the maturity date of this note.

To exercise this option, Debtor may, from time to time with respect to principal outstanding on which a Base Interest Rate is not accruing, and on the expiration of any Interest Period with respect to principal outstanding on which a Base Interest Rate has been accruing, select an index offered by Bank for a Base Interest Rate Loan and an Interest Period by telephoning an authorized lending officer of Bank located at the banking office identified below prior to 10:00 a.m., Pacific time, on any Business Day and advising that officer of the selected index, the Interest Period and the Origination Date selected (which Origination Date, for a Base Interest Rate Loan based on the LIBOR Rate, shall follow the date of such selection by no more than two (2) Business Days).

Bank will mail a written confirmation of the terms of the selection to Debtor promptly after the selection is made. Failure to send such confirmation shall not affect Bank's rights to collect Interest at the rate selected. If, on the date of the selection, the index selected is unavailable for any reason, the selection shall be void. Bank reserves the right to fund the principal from any source of funds notwithstanding any Base Interest Rate selected by Debtor.

(b) VARIABLE INTEREST RATE. All principal outstanding hereunder which is not bearing interest at a Base Interest Rate shall bear interest at the Reference Rate, which rate shall vary as and when the Reference Rate changes.

At any time prior to the maturity date of this note, subject to the provisions of paragraph 4 below, Debtor may borrow, repay and reborrow hereunder so long as the total outstanding at any one time does not exceed the principal amount of this note.

Debtor shall pay all amounts due under this note in lawful money of the United States at Bank's San Diego Corporate Banking Office, or such other office as may be designated by Bank, from time to time.

2. LATE PAYMENTS. If any installment payment required by the terms of this note shall remain unpaid ten days after due, at the option of Bank, Debtor shall pay a fee of \$100 to Bank; provided that if this note is secured by a deed of trust on real property containing only a single-family owner-occupied dwelling, such fee shall not exceed six percent of the installment due that is applicable to the payment of principal and interest, or five dollars, whichever is greater.

3. INTEREST RATE FOLLOWING DEFAULT. In the event of default, at the option of Bank, and, to the extent permitted by law, interest shall be payable on the outstanding principal under this note at a per annum rate equal to five percent (5 %) in excess of the interest rate specified in paragraph 1.b, above, calculated from the date of default until all amounts payable under this note are paid in full.

4. PREPAYMENT.

(a) Amounts outstanding under this note bearing interest at a rate based on the Reference Rate may be prepaid in whole or in part at any time, without penalty or premium. Debtor may prepay amounts outstanding under this note bearing interest at a Base Interest Rate in whole or in part provided Debtor has given Bank not less than five (5) Business Days prior written notice of Debtor's intention to make such prepayment and pays to Bank the prepayment fee due as a result. The prepayment fee shall also be paid, if Bank, for any other reason, including acceleration or foreclosure, receives all or any portion of principal bearing interest at a Base Interest Rate prior to its scheduled payment date. The prepayment fee shall be an amount equal to the present value of the product of: (i) the difference (but not less than zero) between (a) the Base Interest Rate applicable to the principal amount which is being prepaid, and (b) the return which Bank could obtain if it used the amount of such prepayment of principal to purchase at bid price regularly quoted securities issued by the United States having a maturity date most closely coinciding with the relevant Base Rate Maturity Date and such securities were held by Bank until the relevant Base Rate Maturity Date ("Yield Rate"); (ii) a fraction, the numerator of which is the number of days in the period between the date of prepayment and the relevant Base Rate Maturity Date and the denominator of which is 360; and (iii) the amount of the principal so prepaid (except in the event that principal payments are required and have been made as scheduled under the terms of the Base Interest Rate Loan being prepaid, then an amount equal to the lesser of (A) the amount prepaid or (B) 50% of the sum of (1) the amount prepaid and (2) the amount of principal scheduled under the terms of the Base Interest Rate

Loan being prepaid to be outstanding at the relevant Base Rate Maturity Date). Present value under this note is determined by discounting the above product to present value using the Yield Rate as the annual discount factor.

(b) In no event shall Bank be obligated to make any payment or refund to Debtor, nor shall Debtor be entitled to any setoff or other claim against Bank, should the return which Bank could obtain under this prepayment formula exceed the interest that Bank would have received if no prepayment had occurred. All prepayments shall include payment of accrued interest on the principal amount so prepaid and shall be applied to payment of interest before application to principal. A determination by Bank as to the prepayment fee amount, if any, shall be conclusive.

(c) Bank shall provide Debtor a statement of the amount payable on account of prepayment. Debtor acknowledges that (i) Bank establishes a Base Interest Rate upon the understanding that it apply to the Base Interest Rate Loan for the entire Interest Period, and (ii) Bank would not lend to Debtor without Debtor's express agreement to pay Bank the prepayment fee described above.

DEBTOR INITIAL HERE: DBP PCF

5. DEFAULT AND ACCELERATION OF TIME FOR PAYMENT. The occurrence or existence of any one or more of the following shall constitute a default hereunder:

(a) Debtor shall fail to pay when due any principal payment, or shall fail to pay within three (3) days of the date when due any interest, reimbursement or other payment, required under the terms of this note, that certain First Amended and Restated Loan Agreement between Debtor and Bank, dated November 1, 2005, and any extensions, modifications or amendments thereof (the "Loan Agreement") or any of the other Loan Documents (as defined in the Loan Agreement); (b) Debtor shall fail to observe or perform any covenant, obligation, condition or agreement set forth in section 5, in subsections 4.6, 4.7, 4.8, 4.9, 4.10, or 4.11, or in the first clause of subsection 4.5(f), of the Loan Agreement; (c) Debtor shall fail to observe or perform any other covenant, obligation, condition or agreement contained in the Loan Agreement or the other Loan Documents, and such failure shall continue for ten (10) days after written notice thereof to Debtor from Bank; (d) any representation, warranty, certificate or other statement (financial or otherwise) made or furnished by or on behalf of Debtor to Bank in or in connection with this note, the Loan Agreement or any of the other Loan Documents, or as an inducement to Bank to enter into the Loan Agreement and the other Loan Documents, shall be false, incorrect, incomplete or misleading in any material respect when made or furnished; (e) Debtor shall fail to pay when due any principal or interest payment required under the terms of any bond, debenture, note or other evidence of indebtedness in a principal amount in excess of Three Million Dollars (\$3,000,000.00) required to be paid by Debtor (except for payments required hereunder, under the Loan Agreement or under the other Loan Documents) beyond any period of grace provided with respect thereto, or shall default in the observance or performance of any other agreement, term or condition contained in any such bond, debenture, note or other evidence of indebtedness, and the effect of such failure or default is to cause, or permit the holder or holders thereof to cause, the indebtedness evidenced thereby to become due prior to its stated date of maturity; (f) Debtor shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) be unable, or admit in writing its inability, to pay its debts generally as they mature, (iii) make a general assignment for the benefit of its or any of its creditors, (iv) be dissolved or liquidated, (v) commence a voluntary case or other proceedings seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (vi) take any corporate action for the purpose of

effecting any of the foregoing; (g) proceedings for the appointment of a receiver, trustee, liquidator or custodian of Debtor or of all or a substantial part of its property, or an involuntary case or other proceedings seeking liquidation, reorganization or other similar relief with respect to Debtor or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, shall be commenced and shall not be dismissed or discharged within thirty (30) days of commencement; or (h) a final judgment or order for the payment of money in excess of Three Million Dollars (\$3,000,000.00) shall be rendered against Debtor and the same shall remain undischarged for a period of twenty (20) days during which execution shall not be effectively stayed, or any judgment, writ, warrant of attachment, or execution or similar process shall be issued or levied against a substantial part of Debtor's property and such judgment, writ, or similar process shall not be released, stayed, vacated, bonded or otherwise dismissed within twenty (20) days after its issue or levy. Upon the occurrence of any such default, Bank, in its discretion, may cease to advance funds hereunder and may declare all obligations under this note immediately due and payable; provided, however, upon the occurrence of a default under (f) or (g), all principal and interest shall automatically become immediately due and payable.

6. CROSS DEFAULT. It is a further condition of this note that any default in the observance, performance or discharge of any condition, obligation, covenant or agreement contained in any of the following shall, at the option of Bank, constitute a default hereunder:

6.1 the promissory notes described below, and any and all modifications, extensions, renewals, or replacements thereof, whether hereafter evidenced by said notes or otherwise (collectively, the "Notes"):

(a) this promissory note,

(b) that certain promissory note dated November 1, 2005, executed by Debtor to the order of Bank in the original principal amount of Fifteen Million and 00/100ths Dollars (\$15,000,000.00), and

6.2 any other promissory note executed by Debtor to the order of Bank which recites that it is secured by the deed of trust securing repayment of this note (collectively, the "Future Notes"), and

6.3 any promissory note, deed of trust or other instrument or document at any time executed by Debtor for the benefit of Bank which by its terms recites that it is intended to be cross-defaulted with this note and provides that a default thereunder shall also be a default hereunder (collectively, the "Additional Notes"), and

6.4 any Loan Agreement relating to any indebtedness evidenced by any of the Notes, any of the Future Notes or any of the Additional Notes and any other documents or instruments executed by Debtor having reference to, arising out of or in connection with any of the Notes, Future Notes or Additional Notes, and

6.5 any deed of trust or other instrument or document securing repayment of any of the Notes, Future Notes or Additional Notes.

7. ADDITIONAL AGREEMENTS OF DEBTOR. If any amounts owing under this note are not paid when due, Debtor promises to pay all costs and expenses, including reasonable attorneys' fees, (including the allocated costs of Bank's in-house counsel and legal staff) incurred by Bank in the negotiation, documentation and modification of this note and all related documents and in the collection or enforcement of any amount outstanding hereunder. Debtor and any Obligor, for the maximum period of time and the full extent permitted by law, (a) waive diligence, presentment,

demand, notice of nonpayment, protest, notice of protest, and notice of every kind; (b) waive the right to assert the defense of any statute of limitations to any debt or obligation hereunder; and (c) consent to renewals and extensions of time for the payment of any amounts due under this note. If this note is signed by more than one party, the term "Debtor" includes each of the undersigned and any successors in interest thereof; all of whose liability shall be joint and several. Any married person who signs this note agrees that recourse may be had against the separate property of that person for any obligations hereunder. The receipt of any check or other item of payment by Bank, at its option, shall not be considered a payment on account until such check or other item of payment is honored when presented for payment at the drawee bank. Bank may delay the credit of such payment based upon Bank's schedule of funds availability, and interest under this note shall accrue until the funds are deemed collected. In any action brought under or arising out of this note, Debtor and any Obligor, including their successors and assigns, hereby consent to the jurisdiction of any competent court within the State of California, as provided in any alternative dispute resolution agreement executed between Debtor and Bank, and consent to service of process by any means authorized by said state's law. The term "Bank" includes, without limitation, any holder of this note. This note shall be construed in accordance with and governed by the laws of the State of California. This note hereby incorporates any alternative dispute resolution agreement previously, concurrently or hereafter executed between Debtor and Bank. The deed of trust securing this note permits the Bank to declare all obligations hereunder immediately due and payable upon the occurrence of certain events described therein.

8. DEFINITIONS. As used herein, the following terms shall have the meanings respectively set forth below: "**Agreement**" shall mean that certain Amended and Restated Loan Agreement, dated as of July 5, 2005, by and between Debtor and Bank, as the same may be amended, modified, supplemented, extended, renewed, replaced or restated from time to time. "**Applicable Margin**" shall mean a per annum rate equal to (a) 1.00%, if the ratio of Debtor's Senior Funded Debt to EBITDA (as each of such terms is defined in the Agreement) (the "Senior Funded Debt Ratio") as at the end of the most recent fiscal quarter in respect of which Debtor has furnished a financial statement to Bank as required by the Agreement (the "Reported Period") is equal to or greater than 1.00:1.00, and (b) 0.90%, if the Senior Funded Debt Ratio as at the end of the most recent Reported Period is less than 1.00:1.00. A change in the Applicable Margin resulting from a change in the Senior Funded Debt Ratio shall become effective on the first day of the calendar month following a calendar month in which a financial statement furnished by Debtor to Bank pursuant to the Agreement reflects a change in the Senior Funded Debt Ratio which requires a change in the Applicable Margin as provided herein. For the purpose of determining the Applicable Margin, if a default under this note or an Event of Default (as such term is defined in the Agreement) has occurred and is continuing (including without limitation a default or an Event of Default resulting from the failure of Debtor to furnish any financial statement to Bank as required by the Agreement), then, without waiving any right or remedy that Bank may have under the Agreement as a result of such default or Event of Default (including without limitation the right to accelerate Debtor's obligations or to invoke the default interest rate), the Senior Funded Debt Ratio shall be conclusively presumed to be greater than 1.00:1.00 from the date of the occurrence of such default or Event of Default until such default or Event of Default is cured by Debtor or waived by Bank. "Base Interest Rate" means a rate of interest based on the LIBOR Rate. "**Base Interest Rate Loan**" means amounts outstanding under this note that bear interest at a Base Interest Rate. "**Base Rate Maturity Date**" means the last day of the Interest Period with respect to principal outstanding under a Base Interest Rate Loan. "**Business Day**" means a day on which Bank is open for business for the funding of corporate loans, and, with respect to the rate of interest based on the LIBOR Rate, on which dealings in U.S. dollar deposits outside of the United States may be carried on by Bank. "**Interest Period**" means any calendar period of one, three, six, nine or twelve months. In determining an Interest Period, a month means a period that starts on one Business Day in a month and ends on and includes the day preceding the numerically corresponding day in the next month. For any month in which there is no

DEBTOR:

By: /s/ Peter C. Farrell
Title: Chief Executive Officer

By: /s/ Peter C. Farrell
Title: Chief Executive Officer

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